

UNVEILING ARTISTIC FREEDOM: A COMPREHENSIVE ANALYSIS OF ARTISTIC EXPRESSION THROUGH THE LENS OF ARTICLE 19

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ABSTRACT

The paper titled – Unveiling Artistic Freedom: A Comprehensive Analysis of Artistic Expression Through the Lens of Article 19, would explore the complex relationship between censorship and artistic freedom with a special emphasis on the effects of OTT platforms, press censorship, issues with societal norms, and the legal structure for expressing one's creativity, the impacts of censorship on artists and the pursuit of striking a balance between legal restrictions and artistic freedom. This research looks at how digital platforms such as OTT media, affect creative expression. Specifically, we look at how these platforms both make it easier and harder for creative works to be shared. In addition, we examine the difficulties the government pose to the artists by the way of censorship and impede their creative liberty. This paper investigates the complex interactions that exist between censorship systems, cultural standards and the laws that control creative expression. This paper also explores the impact censorship have on the artists emphasizing the deterrent effect it might have on artistic discourse variety and creative expression. Striking a fine balance between creative expression and the law the paper examines the conflicts that arise when regulating creative material. The paper provides a pathway towards a more diverse creative environment by supporting open and accessible legal standards, strong judicial supervisions and public involvement channels. In the end this research paper puts emphasis on how crucial creative freedom as a basic human right is and works as the fourth pillar of democratic nations. Through the prism of the 19th article the paper sheds light on the intricacies of artistic expression and to cultivate a more profound understanding of the obstacles and possibilities that come with advancing a culture that values creativity and diversity.

Keywords- Over-The-top (OTT), Artistic Expression, Censorship, Public Involvement, Judicial Interference.

This title provides an encapsulating and a thorough examination of the basic right of artistic expression tied in the scope of framework of the article. This paper will provide with an in-depth examination of the challenges artists face in exercising their right of artistic freedom through different art forms. The phrase "Unveiling Artistic Freedom reveals insights into the complexities and violation artists encounter in expressing themselves freely. The mention of a "Comprehensive Analysis indicates a thorough investigation into the nuances and implications of artistic freedom. Through the Lens of Article 19 the title implies a focused

perspective on the legal and ethical dimensions surrounding artistic expression. This title promises an in-depth study of how censorship, societal norms and political influences impact the freedom of artists to create and express themselves authentically.

Background- The background of article 19 can be traced back to the Indian independence movement, where freedom of speech and expression were regarded as an essential component of democratic administration. However, after the country gained independence, the government faced difficulty in striking a balance between the right to

freedom of speech and expression with the need to maintain law and order and protect national security. This led to amendments in this law and the inclusion of reasonable restrictions on the freedom of speech was implemented through 103rd Amendment 2019. This was challenged in the case of *State of Madras v. Champakam Dorairajan*²⁸¹⁰ in this case the apex court made it clear that the state could not restrict the liberty of an individual to express himself in the country. In another similar case of *S. Rangarajan v. Jagjivan Ram*²⁸¹¹, the supreme court declared that creative expression may transit feelings and ideas, also in the case of *In Kesavananda Bharati Sripadagalvaru v. State of Kerala*²⁸¹², the court decide that the liberty to voice one's opinion on any topic is a part of the right. Through these precedents the artists in the country felt safe and protected and started to express themselves freely without any fear of censor and exploitation by the government. Efficient protection of the right to dialogue and creation free from any constraints has further fuelled the Indian people's confidence in the nation's constitution.

Discussions and praises centred on the freedom of speech, cultural change, and the laws governing creative expression in India, which included many suppressions of controversial subjects. Conversations and media attention are abundant as more and more artists choose to present their work in ways that defy expectations. This article provides a quick overview of the varied terrain of artistic expression in India, addressing topics including press constraint, deprivation, over-the-top regulations, and the board which has the authority to regulate movies. There is a middle ground between public decency and legal freedom. With historic rulings that protect media freedom from excessive government control, India's top court has upheld the values of a free press over the years. Cases like *Ranjit Udeshi v. State of Maharashtra*²⁸¹³ and *Aveek*

*Sarkar & Anr v. State of West Bengal*²⁸¹⁴ and *Anr* established a clear position against censorship. Furthermore, the crucial watchdog role played by the media in the democratic process was highlighted in *Indian Express Newspapers v. Union of India*²⁸¹⁵ and *Brij Bhushan v. State of Delhi*²⁸¹⁶. But there are legitimate boundaries to press freedom, as demonstrated by the 1975 national emergency that resulted in reporting limitations. Although journalists must be free to report on public affairs without hindrance, in extraordinary situations, appropriate limitations may be put in place to guarantee that there is no impending danger.

India's dedication to a free exchange of ideas has reinforced the country's democratic roots, but vigilante measures are still needed to protect this hard-won freedom. In light of this, people are thinking about how to properly strike a balance between issues of national security and fundamental human rights. Controlling creative expression has become more challenging as it has grown. The acts that control the streaming of movies in theatres and the regulations that control content display on television are among the laws in the nation that regulate the distribution and exhibition of adult content. Excessive (OTT) content regulations have been at the centre of many lawsuits about content fairness, censorship, and traditional media laws.

Research Gap (1) Does analysing India's legal censorship framework impact artistic expression in relation to case laws that can try to achieve balance between the two?

A thorough analysis of the balance between the two is necessary to understand the relationship between creative expression and the nation's censorship controlling structure. The independence of dialogue and creative expression are protected under the Indian constitution, though rational boundaries may also be imposed for the purposes of social

²⁸¹⁰ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

²⁸¹¹ *S. Rangarajan v. Jagjivan Ram*, AIR (1989) 2 SCC 574.

²⁸¹² *Kesavananda Bharati Sripadagalvaru v. State of Kerala*, AIR 1973 SC 1461.

²⁸¹³ *Ranjit Udeshi v. State of Maharashtra*, AIR 1965 SC 881.

²⁸¹⁴ *Aveek Sarkar & Anr v. State of West Bengal and Anr*, AIR 2014 SC 1495.

²⁸¹⁵ *Indian Express Newspapers v. Union of India*, AIR, 1986 SC 515.

²⁸¹⁶ *Brij Bhushan v. State of Delhi*, AIR, 1950 SC 129

order, national security, and sovereignty. The Information Technology Act 2000, which addresses concerns of obscenity, slander, defamation, and incitement to violence, is one of the primary laws governing censorship in the nation. The power to manage theatres and Approve movies and other. screen able artworks for public viewing are given to the government by the Cinematograph act. Moreover, there is a separate act which gives power to the Legislature, to keep the record of books, publications and newspapers and grants the appropriate authorities to supervise the Any publication that is to be judged against the public morality and undesirable. It should also be noticed that govt can change the rating of a particular movie thanks to the newly passed bill last year, which can result in censorship. All this results in Restricting the original content from the artists that can be brought out on these screens and shown to the public, and that's how the government roasts the artists freedom of expression. The international artists also have shown Disparagement towards this specific bill of the government, which restricts originality of the artist. Every single artist has its own dream and complicated goals, which he wants to achieve. Yet, due to this act, they have to worry about many different things Such as protecting their right of freedom of liberal speech and creative expression on top of the new regulations that came last year.

The discussion around censorship and speech freedom has been impacted by these prominent cases of censorship in India.

1. "The Satanic Verses" by Salman Rushdie (1988): Salman Rushdie's depiction of Islam and its prophet Muhammad caused a significant deal of controversy when "The Satanic Verses" was first published. The book was banned in India in 1988 amid pressure from Muslim organizations who thought it to be insulting in nature. The restrictions led to demonstrations, debates on censorship, and concerns on the boundaries of creative expression in the country.

2 The case of Bobby Art International v Ompal Singh Hoon²⁸¹⁷: - In this case Bobby Art International, a film production company, released a film named "Bandit Queen" which was based on a real tale of a country girl was raped and brutalized, and who then became a member of a violent criminal gang as a method of revenging herself against society. It had censorship issues, with the Central Borad of Film approval requesting extensive edits before receiving approval for distribution. In this case the court concluded that the message of a serious film should be acknowledged and the criteria to be employed was whether the individual scenes enhance the pictures message. If the sequences did advance the message the court concluded that the films should not be banned and that a certificate of "A" grade would be adequate. In this case the court made various reference to cases such as the 1980's case of Raj Kapoor v. State, the 1985 case of Samaresh Bose v. Amal M, and the 1962 case of State of Bihar v. Shailabala Devi and noted that these cases had emphasized that vulgar writing is not necessarily categorised to be obscene and consideration must be given to the writing as a whole.

3 India's Daughter documentary (2015): Directed by Leslee Udwin, "India Daughter" examined the 2012 Delhi gang murder and rape case. In this documentary one of the convicted rapists was interviewed which caused controversy and led to charges of sensationalism. The documentary was then outlawed by the government due to fear of disturbance of public order and reputation of the country. This sparked the debate of free expression and censorship and how delicate subjects must be portrayed.

4 The case of Manohar Lal Sharma v. Sanjay Leela Bhansali²⁸¹⁸:- In this case Sanjay Leela Bhansali's historical epic "Padmaavat" which portrayed the Rajput queen Padmavati, was alleged of distorting the historical facts which

²⁸¹⁷ Bobby Art International v Ompal Singh Hoon, AIR 1996 SC1846.

²⁸¹⁸ Manohar Lal Sharma v. Sanjay Leela Bhansali., (2018) 1 SCC 770.

sparked protests, threats of violence from extremist organizations. To pacify opponents, the film made alterations in some scenes and changed the title of the movie. The picture was released in spite of the chaos, reviving discussions about creative freedom, censorship and historical interpretations.

These different instances and cases highlight the intricate interactions that exist in the country between culture sensitivities, freedom of expression, censorship and legal obstacles. They draw attention to the necessity of sophisticated censorship strategies that strike a compromise between upholding basic rights of the citizens and addressing the issues of morality, ethics, and cultural sensitivity.

Role of the government agencies in implementing and regulating censorship is significant and because of this power the government misuses its authority and put restriction on content which they find to objectionable and is not according to the decency and morality codes set by the government. Like for instance in the year 1990 the book "Understanding Islam through Hadis" By Ram Swarup was banned in the country because of its critical analysis of Islam. Another recent example in the year 2021 the government banned the BBC documentary "India: The Modi Question" on the grounds of national security and foreign interference. These incidents draw significant attention of people from around the world to the continuous discussion and conflict in the country about the basic rights of expression in the country. Although upholding public morality and order is a legitimate goal, censorship can be a tactic by the government for moral policing and controlling the lives of the citizens of the country. Fear of abuse and overreach are further raised by the absence of strong and binding legislative support and appeal mechanisms for India's censorship authority.

Significant societal repercussions result from censoring artistic works it stifles the creative freedom, diversity and pluralism, erodes artistic

and cultural heritage, stifles creativity, blocks access to information, upholds social justice and violates human rights. Restrictions on artists freedom to express themselves and share their thoughts via their work might hinder their ability to be creative and innovative. Censorship frequently results in the marginalisation of minority perspectives and people and their ideas leading in eradication of their cultural variety and reducing avenues for communication and understanding. By preventing people from accessing works that question established conventions or present alternative views of history, culture and identity. Censorship can also weaken a society's cultural and creative legacy. Artists who are afraid of being censored may self-censor, sacrificing their version or diluting their message to prevent possible censorship or retaliation. Through suppression of stories that highlight problems like inequality, discrimination, and violations of human rights censorship can contribute to the continuation of social injustice. It is important to acknowledge the intricate relationships that exists between censorship and society in order to cultivate an atmosphere that respects artistic freedom and encourages cultural diversity and protects the rights and liberties of the citizens.

Research Gap (2) What impact does changing social norms and digital media bring on obscenity and in what ways digital platforms especially OTT have impacted the society's perspective?

Changing societal standards and the emergence of digital media have substantially altered obscenity laws, notably in the country as shown in numerous case laws and legal viewpoints. These developments have led to a dynamic shifting of field in defining obscenity. The effect of digital media and developing societal standards has challenged conventional conceptions of obscenity, making it a complicated and context- dependent notion. In India, the legal concept of obscenity is tightly related to community values and the freedom of speech and expression. Because the legal

meaning of profanity is ambiguous, there are many different interpretations and difficulties when trying to define it precisely in a court of law. It is challenging to establish boundaries around obscenity since it is situational and subjective. The law forbids the purchase, distribution, and sale of indecent items in both physical and digital media, however this rule is vague and open to interpretation.

Obscene and vulgar content has increased accessibility and diversity of content and due to which the rise of OTT platforms and other forms of media has significantly impacted the society in a negative way. Explicit language which is considered to be much common nowadays is considered to be an inventive medium and has raised many problems or concerns regarding potential detrimental impacts specially to the younger generations. OTT platforms have uploaded many content that is in explicit language and violent imagery that is deemed to be offensive and improper as they are not subject to broadcast requirements as traditional television did. And due to which new laws and regulations have been enacted by government and regulatory agencies as people have encountered a variety of viewpoints and that might change how society grasps vulgarity and obscenity.

For example, media and complaint channels as mandated by the Indian government to be independent and national government has proposed many strict rules for the OTT platforms. Introduction of multimedia has totally changed the viewpoint of the society i.e.; dirt and immorality and cultural norms and morals will probably continue to be influenced as technologically advances.

let's look at some instances and illustrations to see how the Indian justice has defined obscenity:

1 In the 1965 case of *State of Maharashtra v. Ranjit Udeshi*²⁸¹⁹: This case was being maintained regarding the novel *Lady*

Chatterley's Lover. It was determined that the Hicklin test was a reliable method for identifying obscenity in this case. The judiciary looked at the standard to see what is constitutionally permissible because simple sexuality and nudity are not recognised as obscenity. The purpose of the Hicklin test was to determine if the content under scrutiny has the potential to deprave and contaminate the mind of those individuals who are exposed to such moral impacts and into the control of a work kind may fall. The court determined that obscene content should be evaluated independently and in case where art and obscenity coexist the obscene content should be preponderate as to bury it under the surface or make it seem so insignificant and inconsequential that it would go unnoticed.

2 *Samaresh Bose v. Amal Mitra* (1985)²⁸²⁰: In this case *Samaresh Bose* was the writer of a novel named *Prajapati* which was challenged based on being obscene the judiciary in this case stated that the writer's viewpoint must be read and comprehended by the judiciary. To comprehend it much better first we should read the obscene sections by itself, and then read the entire novel including the obscene parts. The judiciary also went in to say that people need to put themselves into the writer's shoes and comprehend what the author is trying to convey about the literatures artistic worth. The court must also consider the potential impact of the creative creation on the masses. As a result, the court must be impartial to determine whether the piece of art is obscene or not. In the end the court decided that *Prajapati* the novel was not obscene as it is not necessary that vulgar writing need not to be obscene. Both the elder audience and the teens are well balance between the two sides of this evaluation.

3 *Maqbool Fida Husain Controversy*: The debate centred around on the works of well-known artist *MF Husain*, bringing into light the intricacies of the country's obscenity laws. *Husain's* portrayals of Hindu deities were

²⁸¹⁹ *State of Maharashtra v. Ranjit Udeshi*, AIR1965 SC 881

²⁸²⁰ *Samaresh Bose v. Amal Mitra*, AIR 1986 SC967.

deemed to be insulting and indecent by certain groups while others supported his creative freedom. The judicial disputes and the public discussions around the issue have highlighted the necessity of an intricate and situation-specific approach to obscenity legislations.

4 Aveek Sarkar & Anr v State of West Bengal & Anr (2014)²⁸²¹: Using the community standard test the court decided that the semi-nude photo of Boris Becker and his fiancée was not obscene. Because the image did not arouse sexual desire or have the potential to deprave or pollute the minds of anyone who could have come in the possession of magazine or newspaper, the court concluded that it was not obscene in nature. They also said that national norms and modern mores must be taken into consideration, not the standards of delicate individuals. They also said that the image does not fulfil the required criteria to be called obscene and in addition the picture and the article in which it was featured encouraged racial equality and love and marriage between people from various ethnic origins.

5 Apporva Arora & Anr. v. State (Govt. of NCT of Delhi) & Anr. (2024)²⁸²²: In this case a complaint was filed against the actors and makers of the web-series College Romance and it was alleged that the series contained various portions have vulgar and obscene language used in it. the matter got heard and it was observed that obscenity is not the same as vulgarity or profanity in and of itself. Even while someone may find language that is full of expletives and vulgarities repulsive, unpleasant, indecent and unsuitable that does not make it obscene. Instead, such words might make one feel repulsed, disgusted, shocked. They further noted that labelling content as obscene does not prevent its availability because it contains profanity and swear words.

Overall, the judiciary's evolving view of obscenity shows a move towards a more

contextualised and nuanced definition of the term. When determining what constitutes obscenity the judiciary have acknowledged the significance of taking into account individual liberty, modern societal norms and constitutional considerations. This progression is a reflection of how social norms are dynamic and how difficult it is to control expression in a diverse society like India.

Conclusion- This research paper gives emphasis on the 19th article of the constitution the paper examined the nuanced connections legality and artistic expression. It draws attention to the consequences of censorship, societal norms, cultural standards, OTT media and legislations restricting the expression of art. The research comes to the conclusion that while online mediums provide more chances for artistic expression, content management but screening and filtering what is considered acceptable. Even though social standards are dynamic and prone to change, they have a significant impact on artistic expression. There is an obvious tension between social standards and freedom of speech when work that violates them is prohibited or receives unfavourable response. The laws that govern creative expression differ from country to country and may prohibit anything that a state's censorship standards and obscenity laws find objectionable or harmful. These regulations might stifle free expression and hinder artists' originality. Due to limitations, artists may choose not to discuss controversial topics or voice their thoughts for fear of negative social or legal repercussions. To facilitate the peaceful cohabitation of legal regulations and artistic expression, a balanced strategy including of transparent and open legal standards, a strong judiciary, and public involvement in content management is needed. Creating a culture that values individuality and accepts variety is simply one more essential component of a thriving cultural environment. To protect creative freedom, a comprehensive plan that upholds central principles, respects cultural diversity, and encourages open dialogue

²⁸²¹Aveek Sarkar & Anr v. State of West Bengal & Anr, AIR 2014 SC1495.

²⁸²² Apporva Arora & Anr. v. State (Govt. of NCT of Delhi) & Anr, 2024 INSC 223.



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between the public, lawmakers, and artists is needed. Recognizing creative pursuits as a crucial element of democratic dialogue can assist countries in promoting creativity, advancing social progress, and strengthening fundamental rights.

