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BALANCING FREEDOM OF ARTISTIC EXPRESSION AND FUNDAMENTAL DUTIES: A CONSTITUTIONAL PERSPECTIVE

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ABSTRACT-

Artistic expression serves as a vital tool for dialogue, cultural enrichment, and social transformation. In India, this freedom is protected under Article 19(1)(a) of the Constitution, which guarantees the right to freedom of speech and expression. However, this right is not absolute. Article 19(2) permits reasonable restrictions to safeguard public order, morality, decency, and national integrity. Further, Article 51A outlines the Fundamental Duties of citizens, emphasizing the need to promote harmony, respect cultural heritage, and uphold the dignity of the nation. This creates a delicate balance between individual liberties and collective responsibilities, particularly when art unsettles prevailing beliefs or social norms. Recent controversies highlight this ongoing tension. The protests against Padmaavat (2018), the backlash to Besharam Rang (2023), and the debate around a socially charged performance on India's Got Talent (2024) reveal how creative works often face opposition for offending community sentiments. Such cases have prompted judicial scrutiny to determine the boundaries of acceptable expression. This paper critically analyzes the legal framework governing artistic freedom in India, with a focus on evolving judicial interpretations. It explores how state intervention, public morality, and societal sensitivities shape the limits of expression. It also examines whether invoking Fundamental Duties contributes to a culture of censorship or genuinely upholds social cohesion. The study advocates for a balanced constitutional approach—one that protects artistic freedom while respecting the pluralistic values of Indian society. A nuanced framework is essential to ensure that artistic expression continues to flourish as a democratic force without undermining the nation's ethical and cultural fabric.

Keywords: Artistic Expression, Freedom of Speech, Reasonable Restrictions, Fundamental Duties, Public Morality, Censorship.

Introduction-

Art has historically served as a powerful medium for societal reflection, critique, and transformation. It is often considered the essence of civilization, as Pablo Picasso famously stated, "Art is the lie that enables us to realize the truth."²¹⁴ Similarly, Mahatma Gandhi emphasized the transformative role of art in society, asserting that its true function is to inspire reform²¹⁵. Artistic expression provides a

unique lens through which societies examine their cultural traditions, historical events, and contemporary challenges. Literature, music, cinema, and visual arts have significantly influenced political thought, shaped cultural identities, and promoted social justice. In democratic systems, art enables individuals to voice diverse perspectives, challenge mainstream ideologies, and spark critical discussions. India, with its vast and diverse artistic heritage, has witnessed numerous movements that have shaped public consciousness and policy debates.

²¹⁴ Pablo Picasso, *Conversations with Christian Zervos*, 1935.

²¹⁵ M.K. Gandhi, *Collected Works of Mahatma Gandhi*, Vol. 47 (New Delhi: Publications Division, Government of India, 1961) 421.

The Indian Constitution upholds the right to free speech and expression under Article 19(1)(a), acknowledging artistic freedom as a cornerstone of democracy. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2) to maintain public order, morality, decency, and national security. These limitations often lead to concerns about striking the right balance between creative freedom and societal interests. Additionally, the Fundamental Duties enshrined in Article 51A impose ethical obligations on citizens, including respecting cultural heritage and national integrity²¹⁶. While these duties are advisory, they have increasingly influenced legal discourse and policy decisions, complicating the debate on artistic expression. This raises crucial questions: How much regulation should govern artistic creativity? Does the emphasis on Fundamental Duties foster responsible artistic expression, or does it contribute to censorship and intolerance?

Several national and international reports have analyzed the state of artistic freedom in India. UNESCO's 2021 Global Report on Cultural Policies highlights the need to protect artistic expression as a means of ensuring cultural diversity and democratic participation²¹⁷. Similarly, the 2002 Report of the National Commission to Review the Working of the Constitution stresses the importance of balancing free expression with social responsibility²¹⁸. The 2019 Freemuse Report on The State of Artistic Freedom ranks India among countries where artists frequently face legal and societal constraints, citing state-imposed censorship, self-censorship due to fear of legal consequences, and backlash from political or religious groups²¹⁹. Judicial institutions have played a crucial role in defining the scope of free artistic expression. The Supreme Court of India has, through various

rulings, reaffirmed that artistic freedom is integral to democracy while also underscoring the need for responsible expression. In *S. Rangarajan v. P. Jagjivan Ram* (1989), the Court ruled that freedom of expression cannot be curtailed merely because certain groups find it offensive, reinforcing the notion that tolerance is a fundamental element of democratic societies²²⁰.

This study critically examines the relationship between artistic freedom and constitutional limitations, analyzing key judicial rulings and contemporary debates. It explores whether the increasing focus on Fundamental Duties encourages responsible expression or fosters a culture of self-censorship. Through an analysis of legal frameworks, landmark cases, and international best practices, this paper advocates for a balanced constitutional approach that safeguards artistic freedom while ensuring social harmony. A progressive and inclusive legal structure is essential to uphold democratic values while respecting cultural sensitivities. Strengthening legal protections against the arbitrary application of censorship laws is vital to ensuring that artistic expression continues to flourish in a diverse and democratic society. Ultimately, the challenge lies in achieving equilibrium—protecting creative freedoms without undermining social cohesion.

The Complex Interplay of Rights, Duties, and Censorship

This study delves into the intricate relationship between artistic freedom and constitutional constraints in India, examining how legal and societal factors influence creative expression. While Article 19(1)(a) of the Indian Constitution upholds free speech, it is subject to reasonable restrictions under Article 19(2) to preserve public order, morality, and national security²²¹. Additionally, the growing emphasis on Fundamental Duties under Article 51A has contributed to both external censorship and

²¹⁶ The Constitution of India, art. 19(1)(a), 19(2), 51A(f).

²¹⁷ UNESCO, *Global Report on Cultural Policies and Sustainable Development* (Paris: UNESCO Publishing, 2021).

²¹⁸ National Commission to Review the Working of the Constitution, *Final Report* Government of India, (2002).

²¹⁹ Freemuse, *The State of Artistic Freedom 2019* Copenhagen: (Freemuse, 2019).

²²⁰ *S. Rangarajan v. P. Jagjivan Ram*, AIR 1989 SC 2075.

²²¹ Constitution of India, Art. 19(1)(a), Art. 19(2).

self-regulation.²²² This research explores whether these restrictions genuinely protect cultural and ethical values or whether they disproportionately curb democratic freedoms in the realm of art.

A primary focus of this study is assessing the legitimacy and scope of these legal constraints. It examines whether the imposition of restrictions aligns with constitutional principles and whether such limitations are enforced uniformly or selectively. The study also investigates the judiciary's role in interpreting and balancing artistic liberties with constitutional boundaries, analyzing key legal rulings to determine whether judicial decisions have expanded or restricted creative freedom.

Another key aspect of the research is understanding how censorship impacts artistic expression. The study evaluates how legal provisions and societal pressures shape creative narratives in India and whether the fear of legal repercussions or public opposition results in widespread self-censorship among artists²²³. A comparative analysis with other democratic nations offers insights into how India's approach to artistic freedom differs and what lessons can be drawn from international standards.²²⁴

The study further explores how political, religious, and social entities influence censorship, shaping artistic regulations and limiting creative expression. It examines the impact of these forces on various creative fields, including cinema, literature, and visual arts, and their broader implications for India's cultural landscape.²²⁵

Despite its broad scope, this study acknowledges certain limitations. It primarily focuses on widely known cases and landmark judicial rulings, which may not fully capture the experiences of lesser-known or independent

artists who operate outside mainstream visibility²²⁶. Additionally, as judicial interpretations and legal frameworks continue to evolve, new developments may impact the conclusions drawn²²⁷. Given that artistic expression is inherently subjective, defining universal boundaries between free speech and cultural sensitivity remains a challenge. While global comparisons are included, the study primarily focuses on India's legal and cultural framework.

By analyzing the intersection of legal, social, and political influences on artistic freedom, this study aims to provide a nuanced perspective on the ongoing debate surrounding censorship in India. Through an exploration of judicial trends, policy implications, and socio-political factors, it contributes to the broader discourse on protecting creative liberties in democratic societies.

Historical Context and Evolution of Censorship in India

The regulation of artistic and expressive freedoms in India has undergone significant transformation, influenced by colonial-era policies, post-independence legal developments, and contemporary socio-political factors. During British rule, censorship laws such as the Vernacular Press Act of 1878²²⁸ and the Indian Press Act of 1910²²⁹ were enacted to curb dissent and control public discourse. These colonial-era measures established a precedent for future legal frameworks governing free speech in independent India²³⁰.

After gaining independence in 1947, India adopted a democratic framework that guaranteed freedom of speech and expression under Article 19(1)(a) of the Constitution. However, the state also recognized the necessity of imposing certain restrictions to maintain public order, morality, and national

²²² Constitution of India, Art. 51A.

²²³ Freemuse, *The State of Artistic Freedom Report 2019*, available at www.freemuse.org (last visited Mar. 2025).

²²⁴ UNESCO, *Global Report on Cultural Policies and Sustainable Development 2021*, available at www.unesco.org.

²²⁵ Rajeev Dhavan, *Censorship and Obscenity Laws in India*, 1996.

²²⁶ National Commission to Review the Working of the Constitution, *Report on Free Speech and Expression*, 2002.

²²⁷ Legislative updates on film and digital media regulation, Government of India, Ministry of Information and Broadcasting, 2023.

²²⁸ Vernacular Press Act, 1878.

²²⁹ Indian Press Act, 1910.

²³⁰ Seervai, H. M. *Constitutional Law of India*. Universal Law Publishing, 2017.

security. The First Amendment to the Constitution in 1951²³¹ introduced reasonable limitations under Article 19(2), which included restrictions on defamation, incitement to violence, and threats to the sovereignty and integrity of the nation²³². This amendment laid the foundation for a legal framework that continues to evolve in response to emerging societal and political challenges.

Several laws and regulatory bodies have since been established to oversee speech and artistic expression. The Cinematograph Act of 1952²³³ led to the creation of the Central Board of Film Certification (CBFC), responsible for reviewing and censoring films deemed controversial or politically sensitive. Filmmakers often face mandatory modifications or content removal to comply with CBFC regulations, reflecting both state-mandated norms and public sentiments²³⁴. Likewise, the Indecent Representation of Women (Prohibition) Act of 1986²³⁵ was introduced to monitor the depiction of women in media and prevent their objectification²³⁶. The Information Technology Act of 2000²³⁷ further expanded government oversight by granting extensive powers to regulate online content, including artistic and journalistic expressions²³⁸.

One of the most extreme instances of censorship in independent India occurred during the Emergency (1975–77), when Prime Minister Indira Gandhi's government severely restricted press freedoms, banned films, and suppressed dissenting voices²³⁹. This period underscored the vulnerability of free expression under authoritarian rule and highlighted the need for legal safeguards to prevent state overreach. Although censorship eased

somewhat post-Emergency, instances of suppression have persisted, particularly in response to religious and political sensitivities. The banning of Salman Rushdie's *The Satanic Verses* in 1988 and the legal and extralegal actions against M.F. Husain for his depictions of Hindu deities exemplify how both legal mechanisms and societal pressures have been leveraged to curtail artistic expression²⁴⁰.

In the digital era, censorship has become even more intricate. The rapid growth of online media has intensified government scrutiny, particularly with the introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021²⁴¹. These regulations have sparked debates on state control versus the right to free expression in digital spaces²⁴². Streaming platforms and social media companies are now subject to increased regulation, raising concerns over excessive government intervention. Simultaneously, online harassment and digital vigilantism have emerged as serious threats, with artists and writers frequently facing intimidation, backlash, and legal consequences for expressing controversial viewpoints²⁴³.

Legal and Judicial Perspectives on Artistic Freedom

Roscoe Pound's theory of social engineering provides a useful framework for understanding the legal tensions between artistic freedom and censorship in India. According to Pound, law functions as a tool to balance competing societal interests, ensuring stability while allowing for progress²⁴⁴. The conflict between artistic expression and state-imposed restrictions reflects this struggle—the individual's right to creative expression versus the state's duty to maintain public order and

²³¹ Constitution (First Amendment) Act, 1951.

²³² Basu, D. D. *Commentary on the Constitution of India*. LexisNexis, 2018.

²³³ Cinematograph Act, 1952.

²³⁴ Gopal, S. *Censorship in South Asia: Cultural Regulation from Sedition to Seduction*. Indiana University Press, 2009.

²³⁵ Indecent Representation of Women (Prohibition) Act, 1986.

²³⁶ Agnes, F. *Women and Law in India*. Oxford University Press, 2012.

²³⁷ Information Technology Act, 2000, Section 69A.

²³⁸ Singh, P. *Cyber Laws in India: Focusing on Information Technology Act, 2000*. Eastern Book Company, 2013.

²³⁹ Guha, R. *India After Gandhi: The History of the World's Largest Democracy*. HarperCollins, 2007.

²⁴⁰ Salman Rushdie, *The Satanic Verses* (Viking 1988); see also Rajeev Dhavan, *Publish and Be Damned: Censorship and Intolerance in India* (Tulika Books 2008) 45-50.

²⁴¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

²⁴² Bhardwaj, A. *Digital Censorship and Freedom of Speech in India*. Routledge, 2022.

²⁴³ Menon, N. *The Public Sphere and Freedom of Expression in India*. Sage Publications, 2020.

²⁴⁴ Roscoe Pound, *Interpretation of Legal History* (1923), 92.

cultural harmony. This negotiation is evident in India's legal framework, where artistic freedom is upheld in principle but constrained by statutory limitations.

This balance is evident in Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression, but simultaneously, Article 19(2) permits reasonable restrictions to protect public order, morality, decency, and national security²⁴⁵. Various laws reinforce these limitations, including the Cinematograph Act, 1952,²⁴⁶ which empowers the Central Board of Film Certification (CBFC) to regulate films, and the Indian Penal Code (IPC) provisions such as Section 295A, penalizing insults to religious sentiments, and Section 153A²⁴⁷, prohibiting actions that promote enmity between groups.

Over the years, the Supreme Court of India has played a crucial role in shaping the jurisprudence on artistic freedom, striving to balance individual rights with state-imposed restrictions. In *S. Rangarajan v. P. Jagjivan Ram* (1989), the Court ruled that expression cannot be curtailed merely because it offends certain groups²⁴⁸. Similarly, in *Bobby Art International v. Om Pal Singh Hoon* (1996), the Court upheld the right of filmmakers to portray harsh social realities, permitting the screening of *Bandit Queen* despite its controversial content²⁴⁹. A landmark ruling in *Shreya Singhal v. Union of India* (2015) struck down Section 66A of the IT Act, reinforcing digital free speech protections²⁵⁰. More recently, in *Kaushal Kishore v. State of Uttar Pradesh* (2023), the Court reiterated that speech restrictions must strictly adhere to constitutional provisions²⁵¹. However, while these rulings have supported free speech, courts have also upheld restrictions in cases involving obscenity, blasphemy, and public order, making the legal framework uncertain for artists.

When compared to other democracies, India's approach to artistic freedom falls between absolutist and restrictive models. In the United States, the First Amendment provides near-absolute protection to free speech, as seen in *Miller v. California* (1973)²⁵², whereas European nations impose hate speech restrictions, demonstrated by *Handyside v. United Kingdom* (1976)²⁵³. On the other hand, China and Middle Eastern countries maintain strict government control over artistic content, leaving India with a hybrid model that allows free speech but permits significant state intervention, often leading to arbitrary censorship.

The fragility of artistic freedom in India is evident in recent controversies. The violent protests and political backlash against *Padmaavat* (2018) showcased how historical and religious sentiments can override creative liberties, forcing filmmakers to alter content under pressure²⁵⁴. Similarly, *Besharam Rang* (2023) faced scrutiny due to moral policing and ideological opposition²⁵⁵. Even reality television has not been spared, as demonstrated by the *India's Got Talent* (2024) controversy, where a performance addressing social injustices led to public and political criticism²⁵⁶. These incidents highlight how artists, filmmakers, and writers who challenge dominant narratives often face legal disputes, censorship, or threats of violence.

Structural challenges in India's censorship framework stem from vague legal definitions of terms such as "obscenity," "morality," and "public order," leading to selective enforcement. The CBFC and other regulatory bodies often function under external pressures, resulting in politically motivated decisions. Fear of legal repercussions has fueled widespread self-censorship, limiting the scope of artistic expression. To address these challenges, there is an urgent need for clearer legal definitions, independent regulatory bodies, and transparent censorship guidelines

²⁴⁵ Constitution of India art. 19(1) (a) & 19(2).

²⁴⁶ Cinematograph Act, 1952.

²⁴⁷ Indian penal code, 1860, s. 295A, s. 153A.

²⁴⁸ *S. Rangarajan v. P. Jagjivan Ram* (1989) SCR (2) 204

²⁴⁹ *Bobby Art International v. Om Pal Singh Hoon* (1996) 4 SCC 1.

²⁵⁰ *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

²⁵¹ *Kaushal Kishore v. State of Uttar Pradesh* (2023) 1 SCC 1.

²⁵² *Miller v. California* 413 US 15 (1973).

²⁵³ *Handyside v. United Kingdom* (1976) 1 EHRR 737.

²⁵⁴ *Viacom18 Media Pvt. Ltd. v. Union of India* (2018) SCC OnLine SC 125.

²⁵⁵ Film Censorship Controversy over *Besharam Rang*, Times of India (2023).

²⁵⁶ Social Media Outrage Over *India's Got Talent* Performance, The Hindu (2024).

to ensure fair and consistent enforcement of laws. The tension between artistic freedom and censorship in India remains an ongoing legal and societal debate. While judicial interventions have protected free speech in some instances, existing laws allow significant restrictions, often leading to inconsistencies in enforcement.

Self-Censorship and the Chilling Effect on Creativity

Self-censorship has become a pervasive issue in India, due to legal ambiguities, political influence, and societal intolerance, fostering an atmosphere of fear and restraint. Unlike direct government-imposed censorship, self-censorship occurs when creators voluntarily alter or suppress their work to avoid controversy. This chilling effect discourages artists, filmmakers, writers, and musicians from exploring critical themes, thereby stifling creativity, limiting intellectual discourse, and weakening democratic participation. Concerns over legal consequences, threats of violence, and financial risks have led to a decline in bold, thought-provoking art, replacing it with safer, more conventional narratives.

A significant factor contributing to self-censorship is the vague and inconsistent application of laws governing speech and expression. The controversies surrounding Padmaavat (2018) and Tandav (2021) illustrate how loosely defined legal provisions can be weaponized to curtail creative expression. Even if legal cases are ultimately dismissed, the financial strain and psychological distress of defending one's work in court discourage many from addressing controversial subjects.²⁵⁷

Beyond legal constraints, social and political pressures further exacerbate self-censorship. The rise of digital outrage campaigns and politically motivated calls for boycotts have led to targeted harassment of creators. For instance, lyricist Javed Akhtar has remarked on the growing hesitancy among filmmakers to engage with politically sensitive topics due to

fear of backlash.²⁵⁸ Similarly, the continued prohibition of Salman Rushdie's *The Satanic Verses* in India exemplifies how societal intolerance and state policies often converge to suppress literary and artistic works.²⁵⁹

Political intervention in cultural institutions also plays a crucial role in shaping the creative landscape. The Central Board of Film Certification (CBFC) has frequently imposed edits or bans on films that challenge dominant narratives. The extensive censorship of *Udta Punjab* (2016) highlighted how political interests often override artistic integrity.²⁶⁰

Financial considerations further contribute to the curtailment of creative freedom. Production houses, publishers, and streaming platforms increasingly avoid projects that could provoke controversy. The backlash against *Tandav* (2021), which resulted in the creators issuing an apology and making edits, demonstrated how digital platforms are not immune to censorship pressures²⁶¹.

The most detrimental impact of self-censorship is the gradual narrowing of artistic expression. Instead of fostering challenging and thought-provoking content, the entertainment and literary industries increasingly produce sanitized narratives that steer clear of pressing social and political issues. In contrast, nations with stronger free speech protections, such as the United States, encourage open debate, whereas India's growing trend of self-censorship threatens to limit creative expression to politically safe content.²⁶²

To mitigate this chilling effect, comprehensive legal and institutional reforms are necessary. A more precise interpretation of Article 19(1)(a)²⁶³ is required to prevent the misuse of censorship laws. The judiciary must consistently uphold creative freedom and ensure that Sections 295A

²⁵⁸ Akhtar, Javed. "Filmmakers' Fear of Backlash and Self-Censorship," *The Indian Express*, January 15, 2023.

²⁵⁹ Rushdie, Salman. *The Satanic Verses*, 1988; Government of India, Ministry of Home Affairs Notification, 1988.

²⁶⁰ *Phantom Films v. CBFC*, Bombay High Court, 2016.

²⁶¹ Amazon Prime Video Statement on *Tandav*, February 2021.

²⁶² First Amendment, U.S. Constitution; *Miller v. California*, 413 U.S. 15 (1973).

²⁶³ Constitution of India, Art. 19(1)(a).

²⁵⁷ Indian Penal Code, 1860, §§ 295A, 153A.

and 153A²⁶⁴ are not selectively enforced. Furthermore, regulatory bodies such as the CBFC should function as certifying agencies rather than censorship authorities.

Fostering a culture of tolerance and open dialogue is equally important. Awareness campaigns and educational initiatives can help create an environment where diverse artistic voices are celebrated rather than suppressed. Without immediate reforms, India risks curtailing creative freedom in favor of political expediency and majoritarian sensitivities. A strong commitment to protecting free expression is essential to preserving India's status as a hub of artistic and intellectual innovation.

Critical Analysis & Interpretations

Artistic expression in India operates within a complex legal and socio-political framework where the constitutional right to free speech, as enshrined in Article 19(1)(a), frequently conflicts with societal sensitivities and state-imposed limitations. While artistic freedom is a cornerstone of democracy, it is subject to the reasonable restrictions outlined in Article 19(2), which include considerations related to public order, morality, and national security²⁶⁵. This creates an inherent tension between individual liberties and collective responsibilities, especially in a culturally diverse nation like India, where religious, historical, and social sentiments significantly shape public discourse. Furthermore, the increasing emphasis on Fundamental Duties under Article 51A has added another layer of complexity, as these duties are now often cited as a justification for censorship and moral regulation. Originally intended to encourage civic responsibility, they are increasingly used to impose restrictions on artistic works, fostering an atmosphere of self-censorship and creative restraint²⁶⁶.

A critical issue emerging from this discussion is the lack of clarity and consistency in India's

legal framework governing artistic freedom, which results in arbitrary censorship and selective enforcement. Laws such as the Cinematograph Act of 1952 and sections of the Indian Penal Code (IPC), including Section 295A (which penalizes insults to religious beliefs) and Section 153A (which criminalizes promoting enmity between groups), are frequently misapplied to suppress dissenting or controversial artistic works²⁶⁷. The ambiguous nature of terms like "public morality" and "decency" allows for broad and often subjective interpretations, leading to the suppression of content that challenges dominant social or political narratives. Judicial rulings have played a significant role in shaping the scope of artistic freedom, with landmark decisions such as *S. Rangarajan v. P. Jagjivan Ram* (1989) and *Bobby Art International v. Om Pal Singh Hoon* (1996) affirming that free speech should not be restricted simply because certain sections of society find it offensive²⁶⁸. However, courts have also upheld censorship in cases where artistic works were deemed obscene or inflammatory, highlighting inconsistencies in judicial reasoning. This lack of uniformity creates uncertainty for creators, who must navigate legal risks and potential public backlash in pursuing their craft.

One of the most alarming trends identified is the rise of self-censorship among artists, driven by concerns over legal consequences, political opposition, and social hostility. Controversies surrounding films like *Padmaavat* (2018) and the song *Besharam Rang* (2023) demonstrate how non-state actors, often influenced by religious or political agendas, exert significant pressure to censor artistic content they find objectionable. This form of extralegal censorship, in which groups outside the legal system dictate the boundaries of creative expression, weakens democratic principles and undermines the fundamental right to free speech. Additionally, state institutions such as

²⁶⁴ Indian Penal Code, 1860, §§ 295A, 153A.

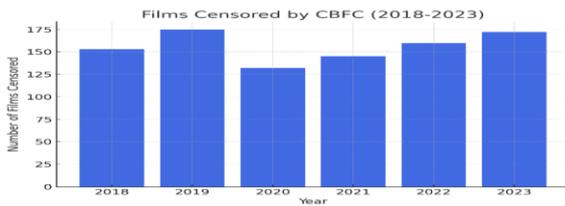
²⁶⁵ Constitution of India, Article 19(1)(a) and 19(2).

²⁶⁶ Constitution of India, Article 51A.

²⁶⁷ Indian Penal Code, Sections 295A and 153A.

²⁶⁸ *S. Rangarajan v. P. Jagjivan Ram*, AIR 1989 SC 2075; *Bobby Art International v. Om Pal Singh Hoon*, AIR 1996 SC 1846.

the Central Board of Film Certification (CBFC) often align with prevailing political ideologies rather than objectively assessing artistic merit, further exacerbating the problem.



The CBFC's censorship of films fluctuated between 2018–2023, peaking at 175 in 2019 and rising to 172 in 2023. This highlights ongoing regulatory control and the need for clearer censorship guidelines.

Empirical studies and case reports further illustrate the fragile state of artistic freedom in India. The *Freemuse Report on The State of Artistic Freedom* (2022) documents numerous instances where artists, writers, and filmmakers have faced legal action or threats due to their work²⁶⁹. A survey conducted by the Indian Cultural Forum revealed that over 60% of artists admitted to self-censorship to avoid legal complications or backlash from political and religious groups²⁷⁰. The controversy surrounding renowned painter M.F. Husain, who faced multiple lawsuits under obscenity and religious offense laws, highlights how legal ambiguities enable the persecution of creative professionals²⁷¹. Similarly, the arrest of stand-up comedian Munawar Faruqui in 2021 on allegations of hurting religious sentiments demonstrates the arbitrary enforcement of laws such as IPC Section 295A²⁷². A report by the Centre for the Study of Developing Societies (CSDS) further shows that government institutions, including the CBFC, disproportionately censor politically sensitive material, reinforcing the notion that artistic

suppression is often institutionally driven rather than merely a response to public sentiment²⁷³.

Another significant observation is the increasing reliance on Fundamental Duties as a counterbalance to fundamental rights, particularly in the context of restricting free speech. While these duties were originally envisioned as a means to instill civic responsibility, their growing use in legal and policy arguments suggests a shift toward prioritizing national pride and cultural preservation over artistic freedom²⁷⁴. This raises crucial questions about whether the emphasis on duties is fostering responsible creativity or merely providing a legal justification for restricting dissenting voices. The study finds that in many cases, the invocation of Fundamental Duties has contributed to an environment of intolerance, where creators feel compelled to conform to majoritarian viewpoints rather than engage in critical discourse.

A comparative analysis with other democracies reveals that India's approach to artistic freedom is significantly more restrictive than that of countries such as the United States, where the First Amendment offers broad protections for free speech, including controversial and provocative content²⁷⁵. While European nations enforce some restrictions on hate speech and historical revisionism, they generally do not engage in the extensive content-based censorship seen in India. In contrast, authoritarian regimes like China maintain strict state control over artistic and journalistic expression, positioning India somewhere between strong democratic safeguards and excessive regulatory oversight.

Recommendations

1. **Legal and Judicial Reforms:** The government must refine restrictive laws such as Sections 295A and 153A of the IPC to prevent their misuse in silencing

²⁶⁹ Controversy over *Padmaavat* (2018) and *Besharam Rang* (2023), reported in various media sources.

²⁷⁰ Centre for the Study of Developing Societies (CSDS) report on censorship trends.

²⁷¹ *Freemuse Report on The State of Artistic Freedom* (2022).

²⁷² *Munawar Faruqui v. State of Madhya Pradesh*, 2021.

²⁷³ Indian Cultural Forum Survey (2022).

²⁷⁴ Lawsuits against M.F. Husain, documented in legal archives.

²⁷⁵ *First Amendment to the United States Constitution*.

artistic expression. The judiciary should consistently uphold free speech protections, ensuring that legal provisions are not selectively applied. Furthermore, the Cinematograph Act should be amended to redefine the CBFC's role as a certifying rather than censoring authority.

2. **Institutional Independence:** Regulatory bodies like the CBFC must function autonomously, free from political and ideological influences. An independent oversight committee comprising legal experts, artists, and civil society representatives should be established to ensure transparent and fair decision-making in content regulation.
3. **Promoting a Culture of Open Discourse:** Public awareness campaigns and educational initiatives should encourage tolerance, critical thinking, and engagement with diverse perspectives. Encouraging debate over suppression can help counter reactionary censorship and foster a more inclusive cultural environment.
4. **Strengthening Digital and Alternative Platforms:** Digital platforms should be protected from undue regulatory pressure, ensuring they remain spaces for artistic and political expression. Mechanisms must be established to prevent politically motivated content takedowns and promote the availability of diverse voices.
5. **Industry and Economic Support:** The creative industry—film producers, publishers, and streaming platforms—should establish legal defense funds to support artists facing censorship threats. Financial safeguards, such as insurance against losses due to political backlash, could encourage investment in bold and socially relevant content.

Conclusion-

The ongoing conflict between artistic freedom and censorship in India is emblematic of broader tensions between individual rights and societal controls. While the Constitution guarantees freedom of expression under Article 19(1)(a), the presence of vague and overbroad legal restrictions under Article 19(2) has enabled both state and non-state actors to curtail creative expression. This has fostered an environment where artists, filmmakers, writers, and musicians must constantly navigate the risk of legal repercussions, social backlash, and economic losses, leading to widespread self-censorship. The impact of this censorship extends beyond individual creators—it diminishes public discourse, curtails critical engagement with pressing social and political issues, and weakens the democratic ethos of the nation. A society that suppresses dissenting voices and discourages artistic innovation risks stagnation, where cultural production is reduced to safe, non-controversial narratives that fail to challenge, question, or inspire. Art and literature have historically played a crucial role in shaping public consciousness, questioning power structures, and pushing the boundaries of accepted norms. The restriction of this space results in intellectual impoverishment, where difficult but necessary conversations are avoided rather than confronted.

The way forward requires both legal and societal reforms. Strengthening judicial oversight, refining censorship laws, and promoting institutional independence are necessary steps to protect creative liberties. However, legal safeguards alone are insufficient; a broader cultural shift toward tolerance, critical thinking, and open dialogue is essential.

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