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Censorship in the Contemporary Digital Era: Manhandling of Literature by Law

by
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INTRODUCTION

The effects of law on literature (both cinematic and literary) can be perceived in the explicit removal of certain subjects as well as the implicit use of allusions and allegories to depict a prohibited subject in a cinematic work. Law determines the content of literature which in turn circumvents such an intervention by altering its content to legitimise its existence by conforming to the legal norms. Censorship, though feeds into the paternalistic attitude of the State, is necessitated due to the dominance of majoritarian perspectives in the intellectual marketplace which hinders free participation of diverse ideas or opinions. It is also required because, in a society where an individual is constructed by the ideas that he is exposed to, the possibility of an individual internalising “wrong” ideas in a “bad” society is immense. Thus, to prevent the proliferation of racist or sexist speech, government intervention is necessary while simultaneously demarcating the territory of justifiable censorship and the censorship that violates the right of freedom of speech and expression.

Part II of the paper elucidates the impact of cinematic works on the audience by emotively influencing the society. This is achieved through powerful imagery and impassioned story-telling. The immense influence of cinematic productions can be perceived by copycat crimes on one hand, as well as the beneficial steps are taken to replicate the social message depicted in the movie, on the other. The section goes on to analyse the justification of censorship offered by the censor board and their practical implications. This part attempts to distinguish between the explicit reasoning behind prohibiting a movie and the implicit attempts to regulate the morality in the society.

Part III of the paper juxtaposes the phenomenon of censorship with existing principles of liberal theory. The section specifically concentrates on the doctrine of the marketplace of ideas and its limitations in an unequal and highly differentiated society, which renders the doctrine futile. The section



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also attempts to delineate between justifiable censorship and censorship that explicitly transgresses the right to free speech and expression with the help of Scanlon's theory of freedom of expression.

Finally, part IV of the paper is aimed at emphasising the inefficacy of censorship in the current setting of the digital age. Even when censorship principles are incongruent with the extant principles of a democracy, governments all over the globe still continue to censor cinematic works. The last part aims to explore the futility of such an exercise in the contemporary society.

Through the research undertaken, the researcher aims to analyse the need for censorship in a society that reinforces individual autonomy and ensures civil liberties. The paper also explores the government justification of the same, stemming from a paternalistic need to guide the citizens to the “right” movies by defining vague

standards that confer immense arbitrary power over them. During the course of research, the paper also attempts to understand the phenomenon in the context of liberal theories of free speech and expression. Finally, the paper analyses the efficacy of censorship in a modern day setting.

CENSORSHIP OF CINEMATIC CONTENT: PATERNALISTIC ATTITUDE OF THE GOVERNMENT

"Movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focusing of an intense light on a screen with the dramatising of facts and opinion makes the ideas more effective. The combination of action and speech, sight and sound in semi-darkness of the theatre with the elimination of all distracting ideas will have an impact in the minds of the spectator."¹

SOCIAL IMPACT OF CINEMATIC WORKS

Censorship of motion pictures in the contemporary setting provides for a fascinating intersection of the two distinct strands of law and literature (including both cinematic and literary works). It is a situation where in the statutory provisions of the law are utilised to regulate and limit the effect of literature on the society. Censorship is formally defined as an impediment to dispensation or espousal of information, knowledge, and ideas for



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any legitimate reason that is defined by the official body situated with the power to censor.²

The effect of motion pictures on the audience cannot be undermined. The literature prevalent at a particular time in the society regulates the action of an individual at an isolated and personal level, while simultaneously affecting the collective thinking of the society at large, thereby heralding a social change. Exposure to a myriad diversity of literature provides us with distinct perspectives and experiences of other religions, regions, class or gender.³ The effect of movies can be gauged by analysing a distinct category of crime that arises due to the replication of situations and sequences in movies by the intended audiences. Copycat crimes occur when an individual watches a movie and emulates the film sequences in their real life.⁴ For instance, the movie *Fight Club*⁵ by David Fincher-inspired setting off homemade bombs in New York City in 2009 at various places which were symbolic of the perpetrator's oppression.⁶ Similarly, in Australia, a group of teenagers formed their own "Fight Club" and started fighting until the victim, Stephen Luu, passed out and later died in a hospital due to a brain haemorrhage.⁷ Another instance is the *Saw* franchise where the movie depicts a killer who targets people and tortures them, without killing them. The targets are chosen specifically because they don't value their own lives.⁸ In Utah, two teenagers were turned in by their mothers because they were planning on a *Saw*-style killing of a policeman and two teenage girls.⁹

Even when movies and documentaries are lumped in the 'Entertainment' part of our lives, censorship debate touches numerous nerves because movies are seen as a tool for social change and mobilisation. For instance, the movie *Chak De! India*¹⁰ spread awareness about the pervasiveness of corruption in Indian Hockey Federation. It led to a sting operation being conducted by a news channel that showed the then Secretary General K. Jothikumaran accepting bribe for the inclusion of a hockey player in the




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men's senior Indian hockey team.¹¹ Consequently, Jothikumaran resigned after holding the post for the past fifteen years.¹² Another movie, *Taare Zameen Par*¹³ dealt with the plight of dyslexic students in India who are not provided with the facilities or the resources to complete their education at par with other students, who are labelled as "lazy" or "trouble-makers". Inspired by the movie, Maharashtra government started 12 classrooms for autistic students and Chandigarh government devised a course aimed to instruct teachers to deal with differently abled students.¹⁴

JUSTIFICATION FOR GOVERNMENT INTERVENTION

Such an immense proclivity to be swayed by the cinematic works that might lead to a positive social change or an undesirable crime urges the government to intercede. This absolute reverence towards movies that borders on an obsessive addiction, ostensibly, necessitates the censoring of entire movies, or certain parts of it. In India, the Central Board of Film Certification (hereinafter CBFC), under the Cinematograph Act, 1952 has the authority to grant A (adults), UA (unrestricted public exhibition but subject to parental supervision for children below the age of twelve), U (approved for all age groups) or S (specialised audiences) certificates to different movies, or completely ban the movie from mass circulation.¹⁵ Censorship is premised on the assumption that government intervention before distribution of movies is essential as movies wield enormous power over the viewers which can both inspire and motivate them, or move them to crime and violence. The underlying implication in such a justification is that citizens of a country are irrational and immature and need the government to guide them to the 'right' movies.¹⁶ This presumption deprives the viewers of individual autonomy while being subjected to paternalistic attitude of the government. A democratic setting, which considers individual liberty and autonomy as laying the foundation for the existence of one,

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effectively negates an individual's choice to watch or not to watch a movie by taking it out of their hands entirely.

The government also cites reasons as 'protecting the Indian culture against corrupt Western practices' to justify banning movies and literary works frequently. This justification is premised on the argument that the social function of censorship is to inhibit ideas that are not in consonance with the prevalent majoritarian values and norms.¹⁷ Such ideas, if approved, for popular consumption would lead to social disorder and disruptions and hence, it would be better to obstruct them. For instance, *Unfreedom*¹⁸ depicted a lesbian love story and Hindu-Muslim rivalry. It was banned because the CBFC was uncomfortable with the love-making scene between the female protagonists, which could potentially "ignite unnatural passions."¹⁹ The subject matter of the movie was homosexuality which is still in fledgeling stages of gaining acceptance in India. If the dissemination of the movie was allowed, it could lead to discussion over these ideas and values that are still foreign to Indian society, leading to awareness and subsequent acceptance of the same. But banning the movie, *firstly*, disincentivises the director and producer to make unconventional movies and *secondly*, stops the influx of novel ideas, thereby effectively preventing any societal change.

Another reason for banning movies has been that its release would be against "public sentiment." *Hawayein*²⁰ was banned because it dealt with the time period after

anti-Sikh riots, with a major focus on the atrocities committed by the perpetrators on the masses. Fear of communal violence arousing again due to the explicit portrayal of events in the movie led to it being censored. Similarly, *Black Friday*²¹ and *India's Daughter*²² which dealt with 1993 Bombay blasts and *Nirbhaya rape case* respectively were banned before their respective judgements came because it might have led to a huge public outcry. These set of banned movies reveal a commonality that CBFC bans movies that deal with any past socio-political situation, for fear of public unrest, thus revealing a paternalistic grounding of the same. The CBFC board members in India, or any official body that is responsible for censorship across the globe, presumes to anticipate any future unrest and prevents it, without letting other sections of the society hear what the opposition is



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saying.²³ Even if the censors are motivated by good interests at heart, the presumption is that they are, ostensibly, in a better position to know what is circulation-worthy for the society, than the society itself. Such a position affords immense power and discretion on the censors, thus also allowing for the possibility of abuse of the same power. Thus, situations may arise where the censor board prohibits the dissemination of a cinematic work not because it is "harmful" to the society, but because the board personally does not concur with the content of the work and circulating such work might lead to jeopardising their interest or the group of people they represent.

Consider the reason for banning Leslee Udwin's documentary *India's Daughter*²⁴ which was that broadcasting such a documentary would lead to public outcry. This reason is symptomatic of an attempt by the CBFC, and by implication the Indian Government, to conceal the misogynistic attitude of Indian society at large. The defence lawyer compared Indian women to a "flower" and called them so "precious" that they cannot be left in a gutter and that in Indian society, "there is no space for women." One of the accused was quoted as saying that "a decent girl won't roam around at 9 o'clock at night. A girl is far more responsible for rape than a boy. Boy and girl are not equal."²⁵ Such remarks are representative of the sexist malaise plaguing the Indian society and the government, instead of combating sexual violence, proceeded to ban the movie. This ban is reminiscent of the expulsion of BBC from India when a ban of a film series titled *Phantom India* by Louise Malle in India was ignored and it was broadcasted without any impediments in the UK. The film series dealt with abject poverty and pervasive corruption in the Indian sub-continent. The content was deemed 'anti-Indian' and was thereby banned.²⁶

Another case in point is the use of censorship until the 1980s in South Korea to sustain the legitimacy of the authoritarian government became a political tool to suppress the dissident voices in the country.²⁷ The late 1980s was a period of transition for Korea from a military government to a civilian one, and in spite of the relatively liberal provisions appertaining to cinematic works, censorship continued to be exercised in subjects such as



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industrial struggles, the role of US in Korea or previous regressive regimes in South Korea. Thus, the Indian and Korean instances point to abuse of power by the government authorities in censoring movies to further specific ideologies, which

thereby validate their respective regimes.


CENSORSHIP IN JUXTAPOSITION WITH LIBERAL THEORY

Freedom of speech and expression are statutory rights, guaranteed by the Constitution of various countries. In India, the transgression of this right is permissible only under certain circumstances that are enumerated in Article 19(2). If this right, which is otherwise constitutionally permissible, is curtailed, such prohibition would be deemed illegal and thereby void. The directors, producers or authors that go to Courts to challenge the decision of the Film Certification Appellate Tribunal (hereinafter FCAT) in banning a movie or literary work contend that such prohibition is a curtailment of their right to freedom of speech and expression. The Courts then adjudicate whether such a restriction is reasonable as envisaged in Article 19 or is a violation of the right.

THE DOCTRINE OF MARKETPLACE OF IDEAS

The doctrine of the marketplace of ideas was introduced in the discourse of American jurisprudence in the dissenting opinion of Justice Holmes in *Abrams v. United States*.²⁸ The judge articulated the doctrine which says that a proper and robust debate over any topic without any government interference will lead to "discovery of truth".²⁹ Such a marketplace would function effectively and produce truths, as long as the government does not interfere. "The truth can be expected to emerge when all ideas are free to compete for rational acceptance".³⁰ In such a scenario, wrong opinions and facts would be countered by the correct ones or the 'truth', but for this to occur, it is necessary that even the wrong ideas and arguments are permitted to enter the marketplace and aren't prohibited *prima facie*. Thus this doctrine promulgates unfettered free speech without any justification for censorship.

The critique of the marketplace doctrine points out the similarity between the analogy of an economic marketplace and a marketplace of ideas and the conditions of their respective failures. A marketplace of ideas

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will only subsist effectively when there are mechanisms to "correct market imperfections".³¹ A pervasive instance of such a market imperfection could be hate speech, including racist and sexist speeches. Hate speech is defined as inflammatory ideas or arguments that exacerbate the existing ethnic/religious/class conflicts leading to a situation where complete liberalisation could be counterproductive.³² The social constructionist argument propagates that every citizen of a society is 'constructed' by the prevailing views, ideas and opinions around him. Thus, in a regressive (sexist or racist) society, an individual's opinions will be framed by the society around him and to prevent such behaviour, post behaviour actions for illegal activities won't suffice. Positive government intervention is required to ensure complete and free participation of an individual in a society and to prevent negative social conditioning.³³ Further, an intellectual marketplace cannot be free because of prevalent dominant discourses that suppress the voices of the dissidents and reduces their credibility in comparison to the proponents of the majoritarian view. In such a constructed society, a free marketplace cannot function, and thus government intervention in the form of censorship is necessitated.

DRAWING THE LINE: SCANLON'S THEORY OF FREEDOM OF EXPRESSION

Scanlon defines the freedom of expression to extend to cover specific acts that even though cause harm to the society, and would otherwise be subject to legal sanctions

and penalties, should not be restricted.³⁴ According to his theory, speech can only be censored in cases where a person is directly responsible for the harm that is caused. The distinction created to demarcate the justified censorship of speech and unreasonable restriction is that of responsibility. If a person supports a particular viewpoint and expresses it to another, who acts on that viewpoint and does an act which harms the society, then the speech that expressed that particular viewpoint is not to be censored. However, if the manner in which the viewpoint is propagated is such that it provides the audience with the means to accomplish that particular harm, then the censoring of that viewpoint is justifiable. Thus, a distinction is created between a speech that provides *reasons* to do a harmful act, while another that provides the *means* to accomplish it.³⁵ This theory prioritises the autonomy of an individual. If



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the individual is capable of exercising his rational judgement and faculties to a situation to decide what is right and wrong, then mere persuasion by another to undertake harmful act would not be restricted. Censorship would be justified in cases only where the expression of an idea or opinion does more than merely communicate persuasive reasons to follow it. Though, special circumstances of diminished capacity like incapacity of a child or being legally incompetent would carve exceptions to the theory.³⁶

Hence movies that are censored on the basis that they are against 'public order' or may 'ignite unnatural tendencies' are unjustifiably restricting the right to freedom of expression as per Scanlon's theory. Conceding to the fact that marketplace doctrine is futile where majoritarian values dominate the intellectual discourse, which then constructs their social realities and inhibits their rational judgment. But censorship of movies merely because they depict a situation which effectively and emotively influences the viewer is unwarranted as in such cases the movie cannot be held responsible directly for the harm caused. Hence, censoring a movie for a probabilistic anticipation of future harm with no substantial causation invalidates the requirement of pre-censorship of cinematic works. Thus, in this threshold of justifiable censorship, the autonomy of the viewer is held paramount (as should be in a democratic setting) without creating idealistic situations of the intellectual marketplace.

INEFFICACY OF CENSORSHIP IN THE DIGITAL ERA

Historically, censoring and prohibiting movies to maintain the *status quo* and prevent the influx of deviant ideas that do not reflect the majoritarian views has been a complete failure. For instance, during the time period from 1930-1968, Hollywood implemented a Code that prohibited any reference to homosexuality in the movies. To circumvent such a code, filmmakers came up with ingenious allegories and allusions that are highlighted in the documentary *The Celluloid Closet*.³⁷ Thus, the efficacy of banning a particular movie is rendered futile because filmmakers try to get the forbidden message across using implicit techniques that cannot be banned by the censors.

In today's digital era, the point of censorship seems redundant, as the movies, documentaries or the books that are banned are easily available online. In the age of piracy and internet, it is extremely difficult for authorities to curb the circulation of any work entirely. When information and ideas are exchanged in the virtual world at an immense speed, the

intervention of the authorities to prevent such a transfer is close to impossible. For instance, the documentary *India's Daughter*³⁸ was officially banned in India. But every citizen with access to the Internet could watch it and did so. Banning the documentary urged the citizens to watch it even more as opposed to the situation where the documentary hadn't been banned and it wouldn't have garnered media attention, thus facilitating its fade into oblivion. But the government's decision to ban it and stop circulation proved counterproductive.

Further, the justification by the government to regulate morality and sustain Indian culture falls if we consider the amount of sexually explicit content available online. The ubiquity of pornography and its easy accessibility to anyone with an internet access defeats the moral policing that censor authorities aim to accomplish.³⁹ This argument reveals the underlying hypocrisy that censors have inculcated in their functioning. The censors are concerned with the 'official' stand of the government more than its transgression in reality.

In the contemporary digital era, the censorship of 'harmful' scenes and concepts in movies is still on the rise, despite its evident incongruence with the principles and theories of free speech and expression which are the foundation of a modern day democracy. The government regularly bans the circulation of movies that are deemed 'sexually explicit' or 'against public sentiment'. The former is an attempt to regulate the morality of the society, while the latter is to legitimise the past and present socio-economic instances in the country. The arbitrariness of censorship is aggravated by the vague wording of the censoring criteria. For instance, the term 'maintaining public order' is ambiguous and can be interpreted according to the needs of the censor board to prohibit a movie they may not like or to legitimise the majoritarian view. This forms the basis of the extent of the arbitrary power conferred upon the censor board to decide the 'right' movies for the society.

CONCLUSION

With one of the world's largest readership population and a film industry generating \$4.5 billion in annual revenue, the impact of literature should not be underestimated in India. Literature can popularise any subject and can present it in such a way that readers can correlate themselves. It can enlighten people on those subjects which they were never aware of. This influence of cinematic works is explored in the course of the research paper

and leads to the instances of copycat crimes on one hand and replication of beneficial social message depicted in the movie, on the other. Through the analysis of the censored movies and the reasons justifying such an act, it is submitted that the censorship is used by governments all over the globe to legitimise the majoritarian perspectives. By restricting the circulation of ideas that are novel to a society, censorship is used as a political tool to maintain the *status quo*.

The research undertaken also reveals the complications in restricting the circulation of a cinematic or literary work by a statutorily instituted group of people. This group of people decides the appropriateness of a work for mass consumption and claims to represent the diverse experiences and opinions extant in the society. This monopolisation is problematic in a democratic society. The censors by prohibiting the

circulation of a work restrict any further debate and engagement with the topic by different groups of people projecting different perspectives in the society. This curbs awareness and disincentives filmmakers to make movies on unconventional subjects.

Exploring the theories of free speech extant in the liberal theory reveals the limitations of the doctrine of the marketplace of ideas in an intellectual marketplace which is generally dominated by majoritarian paradigm. Such a dominance of certain ideas inhibits the participation of people who do not concur with the same and thus impedes an open dialogue. Due to an inefficient marketplace, the discussion does not lead to the emergence of truth and hence, the justification of wrong opinions or hate speech falls. Relying on Scanlon's theory of freedom of expression culminates in setting a strict threshold of justifiable censorship. In accordance with this theory, the proposed standard to justify censorship is that of 'direct responsibility'. If a cinematic work merely persuades a viewer to a certain viewpoint, which in turn causes tangible harm to the society does not mean his expression of that viewpoint should be curtailed. Only when such an expression of a specific viewpoint provides the 'means' and not merely 'reasons' to cause harm, that censorship is justified.

Further, extrapolating the discussion in the era of the digital age, such a justifiable censorship is also rendered futile because of piracy, anonymous transfers and digital sharing. The analysis reveals the limitation of the government to effectively ban a work completely in this age. Even in older times before the advent of the internet, censorship had proved futile because the filmmakers would devise innovative ways to depict the prohibited subject by the use of allusions and allegories, which the censors could not ban. Thus, the attempt of the State to regulate morality and sustain the *status quo* was futile both in earlier times and even more so in the digital era, even when such a prohibition is justified.

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