

Defending The Right to Speech and Expression



(Source: <https://thewire.in/131167/for-india-a-year-of-shrinking-liberty/>)

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Lead Essay

Defending the Right to Speech and Expression

"Censorship is when a work of art expressing an idea which does not fall under current convention is seized, cut up, withdrawn, impounded, ignored, maligned, or otherwise made inaccessible to its audience." — Ritu Menon, for Women's World Organisation for Rights, Literature, and Development

Introduction

The Right to Free Speech is one of the most celebrated and guarded civil liberty guaranteed by the Constitution of India. The Constitution through Article 19(1), guarantees the right to every citizen to express oneself freely whether through speech, literature, art, or any other medium of communication and it also seeks to protect citizens from any attempt by the state to infringe upon it. However this freedom guaranteed to us by law, is not without constraints. The State has the right to curtail freedom of speech and expression under Article 19(2) if it is found to be objectionable, harmful, or necessary to maintain communal harmony.

Of late, there has been an increased discussion on freedom of speech and expression due to a general perception that this right to express one's opinion is under threat. Books and movies have either been banned or received threats of violence on grounds of offending one particular religious or caste group, or are deemed offensive to Indian culture in general. Despite its constitutional commitment to free speech, India's justice system's poor record on freedom of expression cases reveals its declining interest on the part of the judiciary in defending freedom of expression. The recent Ahmadabad Court of India's decision in the Jay Shah (son of BJP President, Amit Shah) case that barred The *Wire*, an online news portal from publishing anything regarding the businesses belonging to Shah, is a clear example of how injustice won over one's freedom.

Often practiced on the grounds that an act of expression harms or offends the public, censorship has been in most of the cases, imposed on invalid constitutional or legal grounds in order to serve the interests of certain communities. Another consequence of censorship, apart from the fact that it challenges free speech, is that it creates an environment that intimidates people and creates an atmosphere of fear thereby silencing voices of dissent. This is self-censorship. Whether it was Gauri Lankesh, one of India's most outspoken journalists murder or open death threats targeted at actress Deepika Padukone on a national platform, or banning of well known writers like Salman Rushdie, Arundathi Roy and few others who have faced controversies, exile, physical attacks and being boycotted by certain communities or the government itself. After witnessing all these recent arbitrary attacks on the freedom of speech by the government on its citizens or among the citizens, the question that arises here is whether the state or fringe elements will decide what should be viewed or read by the citizen of India.

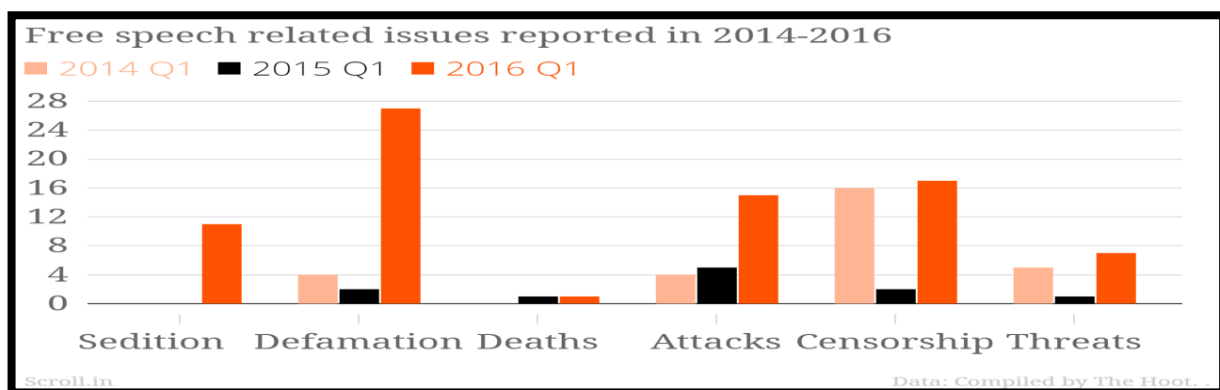
The Architecture of Censorship

Almost every country practices some form of censorship or places restraints on certain kinds of action or speech. Often we come across news of cartoons, articles or films getting banned in different parts of the world. For instance, China's online population of 731 million gets a highly restricted internet, controlled by the government aptly known as the

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Great Firewall of China for protecting the country's internet from undue foreign influence. In India, the recent controversy revolving around a Hindi film *Padmavati*, a period epic depicting the story of a 14th century Hindu queen and a Muslim ruler, is facing delayed release due to fierce protests and violent threats by right-wing Hindu groups who believe that the movie distorts history. Similarly, a Tamil movie called *Mersal* also faced the ire of the Government because it took a stand against GST; *Sexy Durga* was not cleared by the censor board as it felt the word sexy cannot be used in connection with the name Durga which is the name of a goddess in India.

The recent public outrage against films like, *Padmavati*, *S Durga* and *Mersal* are examples of how provisions of law and order is being unethically cited by the states and the central government in defiance of a number of rulings of India's Supreme Court which has repeatedly held that a film can be only be censored if its screenings pose a threat to "public order". This is not the first time that a film has hit the headlines due to the censorship cut debate. Films have been banned in India since 1959 with Mrinal Sen's Bengali film *Neel Akasher Neechey* banned for two months. The movie, *Bandit Queen*, was banned on the ground of obscenity. Christians have protested against the novel and movie *The Da Vinci Code*, as they believed that it went against the very essence of Christianity. The Central Board of Film Certification's ban on films such as *Lipstick under My Burkha*, *Ae Dil Hai Mushkil*, *Uda Punjab*, and others have made news in recent time. The issue with these films isn't that they are vulgar or obscene, but that some people might get "offended" by the portrayal of certain characters in these films or by the presence of actors from other countries in the film.



(Source: <https://scroll.in/article/806218/this-chart-shows-how-attacks-on-freedom-of-speech-in-india-have-soared-this-year>)

There are a few other areas where censorship is a recurring issue, and book censorship is one among them. In today's time, some of the few eminent writers that this country once was proud of are seen fighting for their basic freedom, questioned on their knowledge and integrity, been accused of hurting the sentiments of certain communities. For instance, India became the first country to ban the novel, *The Satanic Verses* by Salman Rushdie in the year 1988, following pressure from the leaders of the Muslim community. In 2014, the publishing house Penguin India pulled destroyed all copies of American historian Wendy Doniger's "The Hindus: An Alternative History" after a Hindu right-wing group protested, against the book claiming that it described Hindu mythological texts as fictional. Recently "One Part Woman" written by Perumal Murugan faced vociferous protests by certain caste based groups eventually ended up with the Madras High Court intervening in the case or the recent *Samajika Smuggluru Komatollu*, a book written by

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writer and activist Professor Kancha Illiah based on the caste system in India coming under serious allegations by the government. Every author or writer has the fundamental right to articulate his/her ideas and publish it.

A study done by International Telecommunication Union (ITU), World Bank, and United Nations Population Division revealed that around 40% of the world population has an internet connection today. Many of the defamation cases are directed at ideas or opinions expressed online through social media, internet etc. Facebook, during the last month was highly criticised for purportedly blocking and putting under scrutiny accounts and pages that shared posts critical of the government, the ruling Bharatiya Janata Party and right-wing groups. According to the latest Facebook Global Government Request Report, published every six months, the Government of India made 2,753 requests for removal of content in 2016 – an average of 15 posts every two days. It was second only to France, which made 2,896 requests. Nikhil Pahwa, founder of MediaNama, a website that provides information and analysis on digital and telecom businesses in India, said platforms like Facebook and Twitter have emerged as carriers of speech, and governments can censor speech by pressuring the sites to take content down. “These platforms are not liable for the speech they carry but that doesn’t mean they don’t have a responsibility to users,” he added. **By censoring freedom of expression and information, be it the State or other institutions/agencies deny individuals their autonomy.**

Are we moving towards an Intolerant Nation?

In its annual World Press Freedom Index, Reporters without Borders has ranked India at 136 of 180 countries.¹ The country's ranking has slipped by three spots from last year's 133rd ranking. On November 21, Sudip Datta Bhaumik, a journalist in Tripura, was shot dead inside a camp of the Tripura State Rifles because of the stories the reporter had written on corruption charges against a commandment of the force. On November 24 2017, the Aaj Tak office in Bengaluru saw demonstrations against one of its journalists, not for a story that the television channel had reported but for a tweet. The tweet by the journalist was said to have offended religious sensibilities, another all too common phenomenon in India today. According The Hoot², a news website, 54 journalists have come under attack in the last 16 months, through 2016 and the first quarter of 2017 and the perpetrators to be found were usually politicians, vigilante groups, police and security forces, lawyers and sometimes mafia and criminal groups. Apart from the increasing attacks on journalists, the fact that the state wields a strict baton when it comes to news that may not be to their liking is alarming. News channels such as NDTV, Zee News, few regional channels like Sakshi TV and many others have faced harassment and self-censorship in the past. Thus, similar incidents that highlighted cases such as sedition charges against Jawaharlal Nehru University students for allegedly chanting anti-national slogans or Urdu writers being asked to declare that their writings would not criticise the government or the country, from banning documentary films to comedian Kiku Sharda being arrested for mimicking supposed godman Gurmeet Ram Rahim in Haryana (who ironically is serving a jail sentence now) and crushing down anti Modi tweets on social media platform and the recent acts of banning eating beef, which is central to the diet of many Indians, creates a larger picture of India that depicts a phase of shrinking freedom of speech with democracy in decline. **Such vindictiveness should be a cause for alarm to those who believe in artistic freedom, democratic principles and basic human decency.**

¹ <https://rsf.org/en/ranking>

² <http://www.thehoot.org/free-speech/media-freedom/the-india-freedom-report-january-2016-april-2017-10080>

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Cases	2014	2015	2016
Sedition	0	0	11 cases, 19 people
Defamation	4	2	27
Deaths	0	1	1
Attacks	5	5	15
Censorship	16	2	17
Threats	5	1	7

(Source: <https://thewire.in/27750/bad-news-for-free-speech-in-the-first-three-months-of-2016/>)

As a community, most of our ideas and perceptions are influenced by and are based on the events happening in our surrounding and the news bought to us through print and visual media. However, we tend to overlook the fact that much of the news reporting or how events are narrated has some amount of bias in it. .. Mass protests against issues like banning an individual's creativity or questioning an individual's religion have occupied the centre stage in the political arena of our nation.

While our Prime Minister Modi speaks of his government's dedication to free speech and underlines his government's commitment to "uphold the freedom of the press and expression in all forms", his government has always seemed to distance itself from taking any direct stand on state censorship nor has it taken any decisive action against certain groups that respond to views they do not like with threats of violence. Whether it was our Home Minister's comments on the recent movie issue, where he claimed that, "They are not the only two leaders raising the issue; people from other political parties are voicing their views as well. People can have their own wish", questions why authorities have not acted against those threatening violence or the government's sudden decision favouring Section 66A of the IT Act 2000 that supports online censorship after coming to power in 2015, an act which they earlier criticised on the basis of free speech. **Thus, for a man with such extraordinary social media presence Mr. Modi's silence is a matter of great concern.**

Several senior Delhi-based journalists who have covered both the BJP and the Congress-led United Progressive Alliance for many years have expressed through various news articles of how the clear shift in the way, the government wishes to control on what it citizens should see and what they shouldn't, has created pressure not only on the media and the officials working under them but also on the common man whose actions are slowly been controlled by the state. This will take India a step behind.

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So is Censorship Justifiable?

*“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter”-
George Washington*

Can a state legitimately prohibit citizens from writing or viewing content that they don't like or would this be an unjustified violation of basic freedoms? This question lies at the heart of a debate that raises fundamental issues about just when, and on what grounds, the state is justified in using its coercive powers to limit the freedom of individuals. However, censorship is sometimes necessary; it is needed to protect an individual's privacy and security of the State. But this does not justify violence, mass protests and under extreme conditions, justifies killing in the name of censorship and suppression. If not controlled, it can be used as a tool by those who want to hide the truth to the people they rule, preventing them the right to information they are entitled to

One criterion to determine whether a country is truly democratic is the extent of dissent permitted. A liberal democracy is one in which all groups in the country accept the fact that in a free country, people can have different opinions and beliefs and shall have equal rights in voicing them without any fear of legal penalties or social sanctions. Our Constitution prescribes certain fundamental duties to be performed by citizens (Article 51-A) and one of the most important duty of a citizen to practise the art of tolerance. Freedom of expression will continue to remain under siege unless all groups accept that people can have different opinions and beliefs in a free country. And if crushing down ideas and thoughts is been justified to maintain peace and order in the nation, so is war.

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Headline

“30% Premature Deaths in India due to Air Pollution: CSE Report”

(Express News Service, *The Indian Express*, November 28, 2017)

In its new report titled ‘Body Burden: Lifestyle Diseases,’ the Centre for Science and Environment (CSE) notes that air pollution is responsible for 30 per cent of premature deaths in India while every third child in Delhi has impaired lungs. The report claims crucial links between environment and health – both physical and mental – noting that “an increase of PM 2.5 in the environment by 4.34 microgram/cubic metre can increase the risk of Alzheimer’s.” The report also found that more than 1.73 million new cancer cases were likely to be recorded each year by 2020 with air pollution, tobacco, alcohol and diet change being the “primary triggers.” Further highlighting that over 61% all deaths in India were attributed to lifestyle or non-communicable diseases, the report underlines the World Health Organisation’s claim that by investing just \$1-3 per person per year, countries can dramatically reduce illness and death from NCDs.

Read more: <http://indianexpress.com/article/india/air-pollution-causes-30-per-cent-premature-deaths-in-india-report-4957786/>

Date accessed: 03.12.2017

Economy

The FRDI Bill and Concerns of the Depositor

(The Hindu Net Desk, *The Hindu*, November 29, 2017)

The Financial Resolution and Deposit Insurance Bill, 2017, expected to be tabled in the upcoming winter session, has faced strong opposition from the bank employees union. The Bill seeks closure of the Deposit Insurance and Credit Guarantee Corporation (DICGC) – a Reserve Bank of India (RBI) subsidiary – which guarantees repayment of all bank deposits up to ₹1,00,000 in case a stressed bank is liquidated. The DICGC will be replaced by a ‘Resolution Corporation,’ which will monitor financial firms, calculate stress and take ‘corrective actions’ in case of a failure. The Bill stays ambiguous on how depositors’ savings will be protected in stressed banks and other financial entities, and furthermore proposes ‘bail-in’ as one of the methods of resolution, where the banks issue securities to the depositors in lieu of the money deposited.

Read more: <http://www.thehindu.com/business/Industry/the-frdi-bill-and-concerns-of-the-depositor/article21081902.ece>

Date accessed: 04.12.2017

Governance and Development

HEALTH

India Unlikely to Cut Malaria by Half in 2020: WHO

(Jacob Koshy, *The Hindu*, November 29, 2017)

In its recently released World Malaria Report, 2017, the World Health Organisation (WHO) noted that 6% of the world's new cases of malaria and 7% deaths caused by the same were reported from India, making the country one of the major contributors to the global burden of malaria. According to the report, India is one of the 15 countries that carry 80% of the global disease burden. Nigeria accounts for the highest (27%) proportion of cases, followed by Democratic Republic of Congo (10%), India (6%) and Mozambique (4%). The figures also suggest that India is unlikely to reduce its malaria case burden beyond 40% by 2020, in contrast to Maldives and Sri Lanka, which achieved malaria-free status in 2015 and 2016 respectively.

Read more: <http://www.thehindu.com/news/national/india-unlikely-to-cut-malaria-by-half-in-2020-who/article21100399.ece>

Date accessed: 03.12.2017

TECHNOLOGY

HAL to offer technology to private sector to build helicopter

(*The Indian Express*, December 3, 2017)

State run HAL will transfer the technology of its advanced light helicopter Dhruv to a domestic defence manufacturer for the commercial production of the chopper. The private entity collaborating with HAL, which is yet to be identified, will have the option of selling the choppers or through HAL. HAL will for the first time share technology with a private entity for the mass production of a military platform which is in keeping with the government's initiative to promote the domestic defence industry. It had enhanced its production facilities to speed up the manufacturing of helicopters and the Tejas light combat aircraft and plans to manufacture nearly 1,000 military helicopters and over 100 planes.

Read more:

<http://indianexpress.com/article/india/hal-to-offer-technology-to-private-sector-to-build-helicopter-4966243/>

Date accessed: 4.12.2017

LAW AND JUSTICE

Draft law proposes ban on instant triple talaq, with three-year jail term

(Sandeep Phukan, *The Hindu*, December 1, 2017)

Sources in the government have stated that the Centre will introduce the Bill on triple talaq in the upcoming winter session of Parliament and has asked states to urgently revert with suggestions on the draft Bill. Provisions of the draft Bill include a penalty of 3 years of jail term to deal with the talaq e biddat which was held unconstitutional by the Supreme Court. It also provides for a subsistence allowance of a harassed Muslim woman and the custodial rights of minor children. The draft Bill titled Muslim Woman Protection of Rights on Marriage Bill will adjudicate all cases of instant triple talaq across the country, except Jammu and Kashmir.

Read more: <http://www.thehindu.com/news/national/instant-triple-talaq-draft-law-proposes-ban-on-practice-three-year-jail-term/article21243503.ece>

Date accessed: 4.12.2017

Governance and Development

Madhya Pradesh assembly passes bill awarding death for rape of girls aged 12 or less

(Milind Ghatwai, *The Indian Express*, December 4, 2017)

Following the NCRB report that revealed that Madhya Pradesh recorded the highest number of rape cases in the country, the state assembly unanimously passed to Bill that proposes death penalty or a minimum term of 14-year rigorous imprisonment or life imprisonment till death for raping girls aged 12 or less. The bill also proposes punishment for disrobing, stalking or sex on the pretext of marriage. It also increases the punishment for second and subsequent offences to a minimum jail term of seven to 10 years and a fine of Rs 1 lakh. Another provision of the amendment also proposes denial of bail to those accused of crimes punishable with seven or more years.

Read more: <http://indianexpress.com/article/india/madhya-pradesh-assembly-passes-bill-awarding-capital-punishment-to-rapist-of-girls-below-12-years-of-age-4967372/>

Date accessed: 4.12.2017

Governance and Development

GENDER

Viewing National Water Policies through a Gendered Lens

(Tanushree Paul, *Economic & Political Weekly*, December 02, 2017)

The author notes that despite the international recognition accorded to the key role played by women in issues around water, the incorporation of women in the planning, provisioning, and management of water resources continues to be disregarded. Analysing the three National Water Policies of 1987, 2002, and 2012 and discussing the question of availability and accessibility, the author notes: "Women's concerns in the water sector are articulated around their domestic roles and subsumed under notions of 'household' and 'social equity.' The larger questions of water rights of women, both in terms of access and control over decision-making, remain unaddressed." The paper also includes a discussion on gender concerns regarding privatisation and pricing of water, along with gender issues pertaining to the collection of information and data on water resources.

Read more: http://www.epw.in/system/files/pdf/2017_52/48/SA_LII_48_021217_Tanusree_Paul.pdf

Date accessed: 04.12.2017

India and the World

India may join n-project in Bangladesh

(*The Hindu*, November 30, 2017)

Russia led Roopur nuclear power plant which is under construction in Bangladesh may also include India within the tripartite agreement. India cannot directly take part in the construction of nuclear power plants since it is not a member of the Nuclear Suppliers' Group (NSG) but has individual agreements with Bangladesh and Russia. India and Russia signed the "Strategic Vision for Strengthening Cooperation in Peaceful Uses of Atomic Energy" which allows both countries to cooperate on construction and development of nuclear plants and India's experience of setting up reactors can be useful for Bangladesh.

Read more: <http://www.thehindu.com/news/national/india-may-join-n-project-in-bangladesh/article21235649.ece>

Date accessed: 4.12.2017

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