WEEKLY FOCUS
#35 Week 3 APR 2021

VISIONIAS
INSPIRING INNOVATION
www.visionias.in

Censorship in media.
A necessary evil?

INTRODUCTION

India has exceptionally lively media on varied platforms – newspapers, periodicals, TV channels, online media, radio stations and more, in more than 20 languages. These platforms voice varied opinions that are protected by the constitution. The media jurisprudence has developed over a period of time through cases touching upon press, arts, books, motion pictures, social media and advertisements.

While the right to free speech is one of the most celebrated as well as vigorously guarded civil liberties in India, the additional restrictions on the content in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 have sparked concerns about governmental intrusion in functioning of Indian media and creation of a stricter Censorship regime.

In this regard, let us first understand what is meant by censorship and its correlation with freedom of speech and expression? How the censorship regime in India has evolved over time and what is the present regulatory framework governing media content? Why is any form of censorship needed for society and the country as whole? What are the prevalent issues related to censorship? What can be done to resolve issues related to censorship? In this edition we will answer these questions.

What is meant by censorship?

Censorship refers to **official prohibition or restriction of any type of expression** such as films, books, television shows etc believed to threaten the political, social, or moral order. It may be **imposed by a governmental authority, local or national, by a religious body,** or occasionally by a powerful private group.

While Censorship represents **denial of freedom of speech, of expression and of information** which is often regarded as an integral concept in modern liberal democracies, it is also **considered rational based on factors ranging from political** (sedition, treason, national security), **religious** (blasphemy, heresy), **moral** (obscenity, impiety), to **social** (incivility, irreverence, disorder).

Types of censorship

Preventive	Punitive
It is exercised before the expression is made public.	It is exercised after the expression is made public.
It includes prior restraint by government such as Licensing etc.	It includes fines, post exhibition bans, etc.

In democracies across the world, the **space for freedom of speech and expression and the application of censorship have always been at loggerheads with each other.** Since the conceptualization of idea of freedom of expression, thinkers, societies and government have tried to find the right balance between the two-

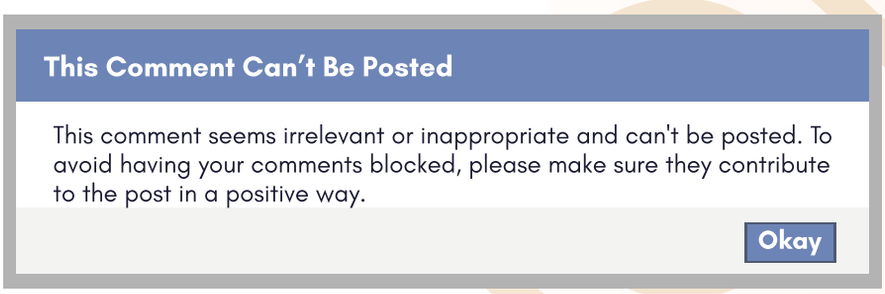
- **Plato:** The Greek thinker Plato was the first thinker to formulate a rationale for intellectual, religious, and artistic censorship. He was in favor of censorship which was narrow and definite and would benefit the youth in learning. It was to be done to enhance the knowledge of the privileged youth of those time who would grow up to become leaders of society.
  - Plato's arguments in favour of censorship are two-fold- **Censorship as a tool to protect children from "evil" influences and Censorship as a tool to protect society.** For instance, in his ideal state outlined in "The Republic", official censors would prohibit mothers and nurses from rreciting tales deemed bad or evil.
- **Socrates:** The freedom vs. censorship balance proposed by Socrates was tilted towards the former. He **pleaded for intellectual freedom** by asserting the supremacy of his conscience over the verdict of the jury and by maintaining that when he exercised freedom of inquiry, he was a public benefactor, and that free discussion had a supreme public value.
- **John Stuart Mill:** He argued for absolute freedom of opinion on all subjects, tastes and pursuits without social interference, and assembly. However, Mill tried to create a balance by recognizing exceptions to these "absolute" freedoms using the **'Harm Principle'** where self-protection alone can justify either the state's tampering with the liberty of the individual or any personal interference with another's freedom.

This balance got distorted when **censorship reached its pinnacle during the World War I and World War II era.** The Post-war era gave shape to democracies across the world and consequently charted the boundaries beyond which censorship becomes unacceptable. Though omnipresent, these boundaries are not universal but vary with nature of societies and the practiced form of polity.

Why is any form of censorship needed for society and the country as a whole?

It is important to understand that when used with the best of intentions censorship has its advantages, such as:

- **Maintaining Sovereignty and Security of the State:** Unhindered access and misuse of social media by criminals, antinational elements have brought new challenges for law enforcement agencies. These include inducement for recruitment of terrorists, spread of disharmony, financial frauds, incitement of violence, public order etc.
- **Guaranteeing personal liberty:** Activities such as cyber bullying, trolling, offensive and defamatory content, online sexual harassment, journalists overstepping the line encroaching on people's right to privacy and reputation etc. restricts the Right to life with dignity ensured under Article 21 of the Indian Constitution.
  - Bullying can also impact on a person's freedom to express feelings or opinions, especially among marginalized sections of the community, as they no longer feel safe to do so.



- **Preventing spread of Fake news:** Fake news, rumours etc. spread virally through social media platforms like WhatsApp, Facebook, Twitter etc. There have been instances of targeted misinformation aimed at religious minorities and dissenting individuals, with consequences ranging from riots, death threats to actual murders.
- **Preventing religious and ethnic violence:** Some hate speech, if not censored, can become politically sensitive and create inflammable situations, especially in India which has the history of oppression and religious divide.
- **Protecting children:** Censorship is necessary to ensure that children in the society, with highly impressionable minds, do not get exposed to psychologically damaging matter like obscene or violent content or glorified portrayal of anti-social or unhealthy behaviors like consumption of cigarettes, tobacco products, liquor or other intoxicants.
  - According to the Supreme Court, a film motivates thought and action and assures a high degree of attention and retention as compared to the printed words and can have a strong impact on the minds of the viewers Therefore, it has as much potential for evil as it has for good and has an equal potential to instill or cultivate violent or good behavior.
- **Increasing social solidarity:** Some censorship is largely symbolic, offering a way to enhance social solidarity by avoiding insults to shared values e.g., a prohibition on flag burning.

External censorship enforced by the state becomes necessary in a situation where despite having internal mechanisms to tackle illegal and inappropriate content, media companies remain incompetent to effectively address certain harrowing issues. For instance, self-regulatory mechanism proposed by **Internet and Mobile Association of India (IMAI)** was recently rejected by the I&B Ministry due to issues such as conflict of interest, lack of independent third-party monitoring, well-defined Code of Ethics etc.

How has the censorship regime in India evolved over time and what is the current framework governing media content in India?

Censorship during Colonial Rule

- The British used censorship as a method to break down any feeling of revolt and disrupt the National movement led by the Indian press, through legislations such as **Vernacular Press Act, 1878** (also known as the Gagging Act), Newspapers (Incitement to Offences) Act of 1908, the **Press Act of 1910,** Defence of India Act 1915, Press Emergency Act 1931 etc.
- The **Cinematograph Act of 1918** (later repealed by 1952 Act) laid the foundation of film censorship in India to ensure safety and the protection of the public from indecent or otherwise objectionable representations.
  - It gave the **district magistrate the power to issue licenses to exhibitors**, and the government to appoint inspectors to examine & certify films as "suitable for public exhibition".
  - In 1920, Censor boards were set up in Bombay, Madras, Calcutta and Rangoon and a fifth was established in Lahore in 1927.

Types of Media

- **Print:** It includes **Newspapers, Magazines, Banners, Billboards, Brochures, Flyers etc.**
- **Broadcast:** Broadcasting media includes videos, audios, or written content that provides important or entertaining information shared by different methods such as **Television, Radio and Movies.**
- **Digital:** It includes **Social networks or websites** such as Facebook, **User generated content (UGC)** providers such as Youtube, **OTT services** such Hotstar and other **internet forums** such as Podcast etc.

Current framework of censorship

- **Constitutional:** Neither cinema nor press is explicitly listed in the Constitution, although freedom of speech is a constitutional right under Article 19(1)(a) which says that all persons shall have "freedom of speech and expression". The freedom of expression is interpreted as the right to express one's opinion by word of mouth, writing, printing, picture or any other manner, including movies.
  - But this right is subject to certain **"reasonable restrictions"** on grounds set out under Article 19(2) of the Constitution, namely the **sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.**
  - Additionally, freedoms under Article 19 of the Constitution **can be suspended during the Emergency by virtue of Article 359.**
- **Institutional and Legislative framework:**
  - **Information Technology (IT) Act, 2000 and IT Rules:** The IT Act, 2000 regulates transactions carried out by means of electronic data interchange and other means of electronic communication.

- The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 has been framed by the Central Government in exercise of powers under **section 87 (2) of the Act.** Part- II of these Rules regulates Social Media Intermediaries while Part-III provides Code of Ethics and procedure and safeguards in relation to digital media and Over the Top (OTT) platforms/Online Content Curated Platforms (OCCPs)*.

- **Cable Television Networks Regulation Act, 1995:** Cable Television Act which awarded vast powers to the government, contains the right to ban cable operators as well as news channels.
  - According to the Act, all broadcasters have to comply with the 'Programme Code' which restricts broadcasting of programmes on television that are indecent in nature, contain an attack on religions or communities, or contain obscene, defamatory, deliberately false and suggestive innuendos and half-truths.
  - For adhering to the 'Programme code' and for smooth functioning of the industry, **Indian Broadcasting Foundation** (IBF) has been created. It is largely a self-regulated industry body which works closely with the Ministry of Information and Broadcasting (I&B ministry). To avoid external censorship, the IBF undertakes self-regulation in accordance with the 2008 Guidelines proposed by the I&B Ministry.

- **News Broadcasters Association (NBA):** It has devised a Code of Ethics to regulate television content and is empowered to warn, admonish, censure, express disapproval and fine the broadcaster for violation of the Code. The NBA, however, only has jurisdiction over broadcasters that are members of the association.

- **Central Board of Film Certification (CBFC):** It is a statutory body under Ministry of Information and Broadcasting, regulating the public exhibition of films under the provisions of the Cinematograph Act 1952.
  - The Cinematograph Act states that "a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of, inter alia, decency". In addition, the guidelines stipulated that film certification must ensure that "artistic expression and creative freedom are not unduly curbed" and that "certification is responsive to social change".

- **Press Council of India (PCI):** The PCI was established under the PCI Act of 1978 for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.
  - The PCI's powers are defined as being able to "warn, admonish or censure" or "disapprove," the print news outlet or journalist. They may ask newspapers to publish clarifications.

Other Provisions:

- **Section 95 of the Code of Criminal Procedure** authorizes State governments to forfeit copies of any newspaper, book, or document that "appears" to violate certain provisions of the IPC, such as Section 124A (sedition), Sections 153A or B (communal or class disharmony), Section 292 (obscenity), or Section 295A (insulting religious beliefs).
- **Protection of Children from Sexual Offences Act 2012:** It makes browsing and downloading of material depicting or containing child pornography an offence with severe punishment.
- Radio Channels have to follow the same Programme and Advertisement Code as followed by All India Radio.

**For more information also refer to the article "Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" in February 2021 VisionIAS Current Affairs Magazine.*

Prominent Court Judgments related to Censorship in India

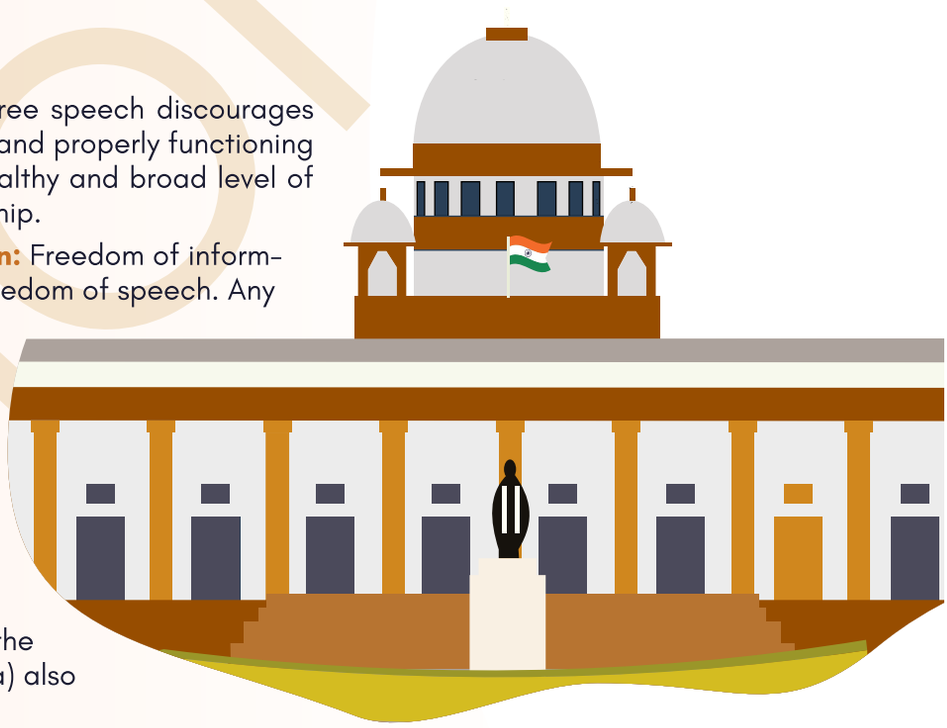
K.A. Abbas v. Union of India: In 1970, the constitutionality of censorship under the 1952 Act was challenged for the first time before the Supreme Court. The apex court upheld the constitutionality within the ambit of Article 19(2) of the constitution and added that films have to be treated separately from other forms of art and expression because a motion picture is "able to stir up emotions more deeply than any other product of art". At the same time, it cautioned that it should be "in the interests of society".

- On the standards of obscenity and censorship, the Supreme Court held that the **"test that would be applied to determine obscenity must be judged by the standards of reasonable, strong and firm-minded men** who possess ordinary common sense and prudence and not by an ordinary or hypersensitive mind."

- **S Rangarajan v. P. Jagjivan Ram(1989):** The Supreme Court of India applied **test of clear & present danger** for censoring free speech in the context of movies under Article 19(2) in this case. The test entails that freedom of expression through a movie can be restricted if the expression possess a clear and present danger which has a direct and proximate nexus with the expression at hand.

- **Shreya Singhal v. Union of India, (2013):** The Supreme Court of India invalidated Section 66A of the Information Technology Act of 2000 in its entirety. The Court agreed that the prohibition against the dissemination of information by means of a computer resource or a communication device intended to cause annoyance, inconvenience or insult did not fall within any reasonable exceptions to the exercise of the right to freedom of expression.
  - It further found that because the provision failed to define terms, such as inconvenience or annoyance, "a very large amount of protected and innocent speech" could be curtailed and hence its sweep was overly broad and vague.
  - The Supreme Court found this as arbitrary, disproportionate and an unreasonable restriction on the right to free speech. The court also said that the speech available online should have the same level of constitutional protection of free speech as that available offline.

What are the prevalent issues related to censorship?



- **Threat to democracy:** An attack on free speech discourages dissent. In order to showcase a thriving and properly functioning democracy it is important to have a healthy and broad level of free speech without the fear of censorship.
- **Deprivation of freedom of information:** Freedom of information is considered inseparable from freedom of speech. Any restriction on flow of content also restricts flow of information and limits intellectual development of individuals.
  - In the case of Secretary, Ministry of I&B v. Cricket Association of Bengal, it was held by the Supreme Court that freedom of speech and expression includes"right to acquire information and to disseminate it to the public at large". Hence, Article 19(1)(a) also includes the right of viewers.
- **Forcible Self-censorship:** Psychological effects of widespread government surveillance undertaken to monitor adherence to censorship norms such as removal of safe harbor for social media intermediaries and enabling **identification of the first originator of the information under the IT Rules, 2021**, can make subjects to be self-conscious and fearful, and such apprehension manifests in a culture of self-censorship.
- **Limits creative freedom and personal autonomy:** Censorship regulations may give validity to the illegitimate concerns that have been raised by certain groups against artistic content and have direct implications on creative freedom and personal autonomy.
  - Also, censorship norms based on rigid societal definitions of social or moral order can **promote an environment of intolerance towards progressive and new ideas.**

- **Suppression of marginalized voices:** Policing online speech and implementing rigid moderation policies can make social media inaccessible to marginalized voices. For example, YouTube's bans on violent content have resulted in journalism on the Syrian war being pulled from the site.
- **Restricting growth of Indian cinema/television industries:** India competes actively with other countries such as South Korea and needs an environment that recognizes that traditional cinema or television-based regulation may irreparably harm the sector and negatively impact India's growing cultural influence.
  - Also, it is debated that in a liberal society, deciding whether a particular content written, audio or visual will offend their sensibilities should be left to the citizen and regulating it could be **conferred as infringement upon the citizen's right to choose.**
- **Implementation challenges in effecting censorship-**
  - **Subjectivity:** Film censorship is a tricky field since it has no objective boundaries, it is wholly reliant on the viewer's sense of morality and morality, to a large extent, is subjective with dynamic standards of decency, obscenity etc.
  - **Potential for misuse, overregulation and abuse:** Censorship provides the state motivated by political gains, an opportunity and means to impose control on the ideas and expression of citizens, especially under influential constituencies. Further, a weak criminal justice system, vague & arbitrary language in legislations and lack of clarity in jurisprudence, can make it easier to suppress free speech.
    - The Red Scare during the 1950-1980's saw the arbitrary use of censorship in film and media in the USA and any deviation from a democratic or republican way of life resulted in arrest. Communism or any Communistic sentiment was punished with imprisonment and fine.
  - **Ineffective in certain cases:** Censored material has the tendency of finding its way in the society through underground channels. In some cases, censoring content has also led to generation of widespread curiosity in the censored material, hence defeating the purpose of censorship.

What can be done to resolve issues related to censorship?

- **Encouraging Self-regulation:** It can be set up both in-house and industry-wide depending on the function that it is supposed to serve.
  - Interested stakeholders could be civil society's representatives like business owners and artists, retired judges, professionals, any other interest groups, and individual members of the public.
- **Right to choose and consume content:** The tendency to treat the consumer as incapable of making independent and informed decisions needs to be addressed. Instead of outright censorship, increased usage of content warnings involving explicit material can be encouraged.
  - For instance, a board of film critic was established under the purview of the CBFC in order to review films effectively so that the potential viewer is made aware of the content of the film by someone who has considerable expertise and experience about films.
- **Promoting professional education in the media:** Ethical standards that respect privacy, dignity and freedom of speech and expression of citizens can be developed and inculcated in course curriculums to train professionals in various media, especially television, cinema, the press and the internet so as to minimize the need of external application of censorship standards.
- **Codification of all media laws:** Codification leads to the certainty of governing laws as it moves the focus out of distributed statutory laws and precedents and packs the law in a systematic manner. This certainty will help allay fears of citizens and creators and enhance creative and intellectual freedom.
- **Limiting the extent of censoring power of the State:** To prevent abuse and overuse of power, any regulatory body should be allowed to take decisions independently, while the Government can act as a facilitator by forwarding its suggestions/recommendations.

- **Stringent restrictions upon free speech:** Legal restraints upon individual freedom of speech should only be tolerated where they are absolutely necessary to prevent infliction of actual harm. Also, such decisions should be judged on the basis of objective standards rather than referring to community standards.
- **Adopting proactive or non-punitive steps to address hate speech:** Such steps may involve public education, encouraging diversity, openly combating libelous or incendiary misinformation, and improving protection to protect a community at risk.

CONCLUSION

The question of freedom of expression in India needs a nuanced approach rather than a simple 'for or against' conclusion. It is the duty of the state to protect the freedom of expression since it is a liberty guaranteed against the state and also to ensure that this freedom is not violated by unscrupulous elements in society. Also, censorship in India today is a complicated affair due to our ever-changing ideals of acceptability and needs a more tolerant approach that does not suppress the voices and ideas that stand in opposition to majority views.

Continuing an unapologetic affirmation of free speech is a core, foundational, and non-negotiable value of our Republic and our Constitution. Therefore, as a society we must actively strive towards working for standards of public conviction which would remove the very reasons for censoring. Censoring should be only called for when people fail to exercise due restraint over their personal inclinations to endanger the good order of their community in various types of communications.

VISION IAS

TOPIC AT A GLANCE

Views of philosophers & thinkers regarding freedom of speech & censorship

- **Plato:** was in favor of censorship which was narrow and definite and would benefit the youth in learning.
- **Socrates:** pleaded for intellectual freedom by asserting that free discussion had a supreme public value.
- **John Stuart Mill:** argued for absolute freedom of opinion on all subjects, tastes and pursuits.

About censorship

- Refers to **official prohibition or restriction of any type of expression** such as films, books, television shows etc believed to threaten the political, social, or moral order.
- May be **imposed by a governmental authority, local or national, by a religious body,** or occasionally by a powerful private group.
- Represents **denial of freedom of speech, of expression and of information** but is also considered rational based on factors ranging from **political (sedition, treason, national security), religious (blasphemy, heresy), moral (obscenity, impiety), to social (incivility, irreverence, disorder).**

Evolution of censorship regime in India

- **Censorship during Colonial Rule:** Censorship used as a method to break down **any feeling of revolt and disrupt the National movement** through acts like **Vernacular Press Act, 1878, Newspapers (Incitement to Offences) Act of 1908, the Press Act of 1910 etc.**
- **Cinematograph Act of 1918** (later repealed by 1952 Act) laid the foundation of film censorship in India

Current framework governing media content

- **Information Technology (IT) Act, 2000 and IT Rules:** regulate content on digital media such as Social Media Intermediaries, Over the Top (OTT) platforms etc.
- **Cable Television Networks Regulation Act, 1995** regulates broadcasting of programmes on television along with bodies such as News Broadcasters Association (NBA) and Indian Broadcasting Foundation (IBF).
- **Central Board of Film Certification (CBFC):** regulates the public exhibition of films.
- **Press Council of India (PCI):** maintains and improves the standards of newspapers and news agencies.
- **Other provisions regulating media content: Section 95 of the Code of Criminal Procedure, Protection of Children from Sexual Offences Act 2012 etc.**

Need of censorship for society and the country as a whole

- **Maintains Sovereignty and Security of the State** by preventing misuse of social media by criminals or anti-national elements.
- **Guarantees personal liberty** by restricting activities such as cyber bullying, trolling, offensive and defamatory content, online sexual harassment etc.
- **Limits spread of Fake news.**
- **Prevents religious and ethnic violence** by controlling hate speech which is politically sensitive and can create inflammable situations.
- **Protects children from exposure** to psychologically damaging matters like obscene or violent content or glorified portrayal of anti-social or unhealthy behaviour.
- **Increases social solidarity** by avoiding insults to shared values e.g., a prohibition on flag burning.

Prevalent issues related to censorship

- **Threat to democracy as** it may discourage dissent.
- **Deprives citizens of freedom of information.**
- **May lead to Self-censorship.**
- **Limits creative freedom and personal autonomy.**
- Can **promote an environment of intolerance towards progressive and new ideas.**
- Can lead to **suppression of marginalized voices.**
- Can **restrict growth of Indian cinema/television industries** and infringe upon the citizen's right to choose.
- **Implementation challenges:** lack of objective boundaries, Potential for misuse, over regulation and abuse, censored content may move underground.

Way Forward

- **Encouraging Self-regulation** by including civil society's representatives like business owners and artists, retired judges, professionals etc.
- Granting citizens the **right to choose & consume content** through steps such as usage of content warnings.
- **Promoting professional education in the media and codifying all media laws.**
- **Limiting the extent of censoring power of the State.**
- **Placing restrictions upon free speech** only to prevent infliction of actual harm based on objective standards.
- **Adopting proactive or non-punitive steps to address hate speech** such as public education, encouraging diversity etc.