

## NAVIGATING THE NEXUS OF MEDIA FREEDOM, CENSORSHIP DYNAMICS, AND SOCIETAL EVOLUTION: A MULTIFACETED ANALYSIS

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Ms. Shukla Shilpa\*

### ABSTRACT

*The article delves into the critical importance of freedom of expression, particularly within the context of democratic societies. It emphasizes that unrestricted exchange of ideas and open debate is a cornerstone of governance, essential for maintaining government responsiveness to public will. The piece discusses a legal case in Canada as an illustration of the crucial role freedom of discussion plays in enlightening public opinion. Highlighting the role of media, the article acknowledges it as a vital safeguard against exploitation and arbitrary actions by governments. It stresses the media's constructive role in disseminating information, shaping public opinion, and contributing to a healthy democratic society. The article emphasizes the need to preserve and safeguard media freedom against both external and internal influences. The subsequent sections delve into the implications of the Copyright Act of 1957 on electronic media, exploring the delicate balance between authorial rights and media autonomy. It discusses the emergence of film censorship, tracing its origins to safety concerns and evolving to regulate the content of films. The discussion then shifts towards hate speech, emphasizing its detrimental impact on the dignity of individuals and the challenges in treating anti-speech as equivalent to normal speech. The article advocates for a nuanced approach, recognizing the need for constraints on speech within institutional contexts. The latter part of the article explores contemporary issues in censorship, particularly in the digital age. It discusses the evolution of power structures from state to corporate influence and how entities like the Internet Watch Foundation play a role in online content regulation. The article touches upon self-censorship in platforms like YouTube and the challenges and opportunities posed by the internet in circumventing traditional forms of censorship. Overall, the article provides a comprehensive exploration of various facets of censorship, from historical perspectives to contemporary challenges in the digital era. It calls for a nuanced understanding of power dynamics and the delicate balance required to preserve freedom of expression while addressing the potential harms associated with unrestrained speech.*

**Keywords:** Freedom of Expression, Censorship, Speech, Media, Democracy.

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### Introduction

The unrestricted exchange of ideas and open debate stands as a fundamental cornerstone in the governance of a democratic society. In the absence of such liberties, the responsiveness of the government to the collective will of the people could be compromised. This freedom encompasses more than just the entitlement to articulate personal opinions; it also entails a responsibility to embrace perspectives contrary to one's own. Lessons from democratic practices underscore the significance of disseminating information from diverse and, at times, conflicting sources on the broadest scale possible, emphasizing its pivotal role in promoting the well-being of the populace<sup>1</sup>.

As evident in a legal case in Canada<sup>2</sup>, the significance of freedom of discussion is underscored, emphasizing its crucial role in enlightening public opinion within a democratic state. The restriction of this freedom is viewed as a potential infringement on the public's right to be informed through independent sources about matters of public interest. Scholars argue that the right to free speech is not merely a luxury but an absolute necessity for preserving a free society, one where governance relies on the consent of an informed citizenry and is dedicated to safeguarding the rights of all, including marginalized minorities<sup>3</sup>.

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\* PhD Scholar, Rabindranath Tagore University, Bhopal, M.P., India.

<sup>1</sup> J. R. Mudholkar, *Press Law*, p. 2, 1975

<sup>2</sup> *Dionne v. City of Montreal*, (1956)3 D.L.R 727; See also *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129

<sup>3</sup> *Speiser v. Randall*, 357 U.S 513

A free media serves as a vital safeguard against various forms of exploitation, harassment, and arbitrary actions by a callous, autocratic, corrupt, or incompetent government. The press, as the most potent medium of mass communication in any civilized society, plays a pivotal role in disseminating information about local, national, and international developments. Moreover, electronic media not only informs the public but also serves as an influential tool in mobilizing public opinion and shaping national politics. In essence, the media assumes a significant and constructive role in the life of a nation, particularly within the context of a democratic society. In all democratic nations, the role of a free media in disseminating information, commenting on critical issues, and shaping the fundamental principles of democracy is highly valued. The privileges accorded to the media empower it to address vital and contentious topics, enlightening the public on matters of general importance, advocating for the rights of the weak and oppressed, critiquing governmental shortcomings, and contributing to the development of a clean, healthy, competent, and critical societal environment. Representative democracy, anchored in the free exchange of reasoned ideas, faces substantial challenges in a society devoid of freedom of speech.

Preserving and safeguarding the freedom of the media is imperative, not only against external interference but also from internal influences. Internal mechanisms, such as 'letters to the editor,' internal ombudsman roles, peer-led Media Councils, and Media Watch Groups, are implemented to ensure adherence to guidelines. These mechanisms focus on holding media personnel, journalists, and management accountable, serving as a check on arbitrary power and contributing to the enhancement of media credibility. These ethical practices are not intended to control the media but are essential for promoting fair and objective media use, preserving the true spirit of media freedom. The electronic media, beyond being a means of expression, thrives on diverse methodologies for its sustenance and promotion, including advertising, films, serials, songs, news, and discussions. These elements collectively engage the audience, securing and consolidating the media's position in the competitive market.

The Copyright Act of 1957, discussed in the preceding chapter, has implications for the electronic media, and this section aims to emphasize its specific provisions in this context. In relation to electronic media, the author of a work is generally recognized as the initial copyright owner, possessing a range of rights such as reproduction, translation, adaptation, and communication of the work to the public<sup>1</sup>. However, these authorial rights can come into conflict with the operational autonomy of the media, leading to a delicate balance between the two. The Copyright Act strives to reconcile these conflicting rights, introducing special provisions for broadcasting organizations, known as Broadcast Reproduction Right<sup>2</sup>.

Accordingly, the Act acknowledges that electronic media holds copyright in disseminating information to the public. The term of this copyright extends for twenty-five years from the commencement of the calendar year following the broadcast. Infringement of the broadcast reproduction right occurs when an individual, without the owner's license, rebroadcasts the broadcast during its subsistence, allows the broadcast to be heard or seen by the public for a fee, creates a sound or visual recording of the broadcast, reproduces such recording without the necessary license, or sells, hires, or offers for sale or hire any such recording made without the proper authorization. Such actions make the person liable for infringement of the broadcast reproduction right<sup>3</sup>.

The genesis of film censorship can be traced back to the early days of cinema, marked by a hazardous compound present in film stock known as guncotton or nitrocellulose. Guncotton, originally utilized in explosives, posed a significant threat due to its highly flammable nature. The catalyst for film censorship occurred in 1897, a mere year and a half following the inaugural film screening, when a nitrate fire at the Bazar de la Charité in Paris claimed the lives of 126 individuals. This tragic event, coupled with similar incidents in subsequent years, prompted the enactment of the world's first cinematograph legislation in Britain in 1909.

The primary objective of the 1909 Act was to enhance safety standards by regulating the issuance of cinema licenses. While this initial form of control aimed at ensuring the safe exhibition of films, it inadvertently extended to encompass the content of the films themselves. As the Act mandated licenses for public screenings, local authorities seized the opportunity to oversee both the screening conditions and the substance of the films. The ensuing years were marked by a lack of standardized rules, leading to widespread confusion. Consequently, the British Board of Film Censors was established in 1912 to bring

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<sup>1</sup> Sec. 14, Copy Right Act, 1957

<sup>2</sup> *Id.*, Sec. 37(1)

<sup>3</sup> *Id.*, Sec. 37(2)

coherence to film regulations. By this juncture, cinema had gained traction in India, with audiences not only consuming films but also actively participating in film production. Following numerous locally-produced newsreels and shorts, the release of D.G. Phalke's Raja Harishchandra in 1913 marked India's foray into full-length feature filmmaking. Recognizing the burgeoning popularity of cinematography and the proliferation of film exhibitions in India, a bill was introduced in the Imperial Legislative Council in 1917.

This legislation acknowledged the necessity for a comprehensive law addressing both safety concerns and the "protection of the public from indecent or otherwise objectionable representations" in films. Consequently, the Cinematograph Act of 1918 was enacted, marking the formal inception of film censorship in India. The Act set the stage for the regulation and oversight of the burgeoning film industry, initiating a journey that would see the evolution of film censorship in response to the dynamic landscape of cinema and societal values

*"Classic form of bad speech is hate speech and its aim is to compromise the dignity of those at whom it is targeted, both in their own eyes and in the eyes of other members of society. Also it sets to make out the establishment and upholding of their dignity... much more difficult. It aims to besmirch the basics of their reputation, by associating inscriptive characteristics like ethnicity, or race, or religion with conduct or attributes that should disqualify someone from being treated and accepted as a member of society in good standing."*<sup>1</sup>

Some advocates of hate speech often employ deceptive disguises such as "pride," "state's rights," or "religious freedom" to cloak their socially destructive messages. However, it is crucial to recognize that treating anti-speech as equivalent to normal speech, deserving of equal protection, is a misconception. Consequently, there is a need to be intolerant of intolerance. The idea of absolute free speech is unrealistic, given that we exist within a framework of powerful and interconnected institutions such as family, education, entertainment, commerce, career, the law, the military, and religion, among others.

While these institutions provide benefits to their members, they also impose constraints that limit the range of permissible expressions. Striking a balance between freedom and constraint is essential for the proper functioning of these institutions, as excessive freedom could jeopardize the social relations that sustain their flexibility. Speech within institutional contexts is inherently limited, and even speech beyond these contexts tends to possess less power.

Therefore, the central question is not whether constraints on speech are necessary, but rather, what types of constraints are appropriate to safeguard against censorship? This question prompts a deeper examination of the delicate balance between preserving free expression and preventing the harmful consequences of unrestrained speech within and outside institutional boundaries.

### **Self-Censorship and Technology**

The contemporary exposure of the state's claim to regulatory authority in censorship, often referred to as the "sovereign pretension," is a focal point of discussion. In the age of the Internet, as articulated by Arrback, the traditional notion of regulatory censorship has become obsolete. The visibility of sovereign power, irrespective of its nature, has significantly increased. While certain authoritarian states, such as China and North Korea, persist in attempting to censor information on the Internet, the unique characteristics of the digital information sphere make the imposition of what can be succinctly termed as "censorship of access and participation" markedly distinct from the methods feasible with conventional technologies and power structures<sup>2</sup>.

The events of the early weeks in 2009 underscored this distinction. Despite Israel's efforts to deny access to Gaza for Western news agencies, the world still witnessed numerous images, including some live footage of the unfolding violence. The Israeli military-state machinery sought to censor the visible information, but, in what Butler terms a "performative contradiction," its forceful prohibition paradoxically brought attention to itself. Consequently, everything that was observed became emblematic of "what Israel didn't want us to see," transforming Israeli censorship into a noteworthy aspect of the event.

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<sup>1</sup> Jeremy Waldron, a law professor at the New York University School of Law

<sup>2</sup> That the Australian Communications and Media Authority (ACMA) is planning to spend 55 million pounds developing and deploying internet-use filtering technologies provides a clear indication of how restricting free access is high on agendas of democratic regimes as well as dictatorial ones. For further information, see Lara Parker's recent article in The Guardian (20.11.08) "Fears over Australia's £55m. Plan to censor the internet."

Author is not implying that the state's authority to prosecute perceived legal breaches in determining permissible content is obsolete. Numerous cases attest to the fact that doors can still be forcibly opened, computers seized, and records subpoenaed from Internet Service Providers (ISPs), while websites remain susceptible to takedown orders. Notably, the United Kingdom's Regulation of Investigatory Powers Act (2000) empowers ISPs to monitor and redirect all data traffic to the National Technical Assistance Centre for analysis, raising concerns about civil liberties in democratic nations.

Despite the state's efforts, preventing the circulation of material it deems objectionable is a formidable challenge. The emergence of a networked-communications society has transformed every node into a potential "editor," "remixer," and "information generator," exemplified by the influential role of bloggers. This decentralization diminishes the traditional power of censorship, enabling access to content even if denied by national news agencies or threatened theatre's. Geert Wilders' contentious film *Fitna* or Theo Van Gogh's *Submission*, restricted by local laws, find alternative platforms on the internet, challenging conventional notions of control.

This accessibility has fueled the belief in the internet's democratization of communication and information, seemingly signaling the "end" of censorship by undermining traditional forms of power. However, the reality is more intricate, necessitating a nuanced analysis of power dynamics within the digital mediascape. Gilles Deleuze's essay "Postscript on the Societies of Control," penned almost two decades ago, foresaw the transformative impact of the information society on power structures. This insight provides a framework for understanding contemporary censorship issues and their future trajectory.

Deleuze outlines a shift from state power to "corporate power," eliminating the need to compare regimes based on toughness. The evolution of censorship power is evident in entities like Network Solutions, a major Internet domain name registrar, wielding influence through its Acceptable Use Policy. This policy prohibits hosting material deemed obscene, defamatory, libellous, profane, indecent, or objectionable, reflecting the evolving landscape where corporate entities play a pivotal role in content regulation.

Another form of "corporate" organization within the realm of online content regulation is the Internet Watch Foundation (IWF), established in 1996 by the "Internet industry" and sponsored by various well-known corporations, including high-profile entities like Tesco, Vodafone, and News International. The IWF's stated mission is to function as a "hotline for the public," receiving reports on suspected illegal content, particularly "online child sexual abuse content hosted anywhere in the world and criminally obscene and incitement to racial hatred content hosted in the UK." The organization emphasizes its collaborative efforts with the police, government, the wider online industry, and the public to combat potentially criminal activities.

This discussion does not aim to critique the specific goals of the IWF, although its focus extends beyond combating "Internet paedophiles," its headline activity. Rather, the intention is to highlight how the influence wielded by the IWF and similar corporations gives rise to a new form of subjectivity characterized by self-censorship. In the context of a self-regulating system, self-censorship becomes the *modus operandi* of the subject. Consider, for instance, how YouTube might choose to censor content by removing a video from its platform—after receiving a certain number of complaints from users asserting that the video is offensive.

Given the vast quantity of material on YouTube, the platform relies on users to identify potentially "offensive" (and potentially illegal) content. However, these complainants do not constitute a "public" in the traditional sense, as there is no public discussion or argument, nor an apparent requirement for a "public sphere" to implement a censorship decision. Instead, the complainants represent a disparate set of individuals, each engaging in a form of "self-censorship" within a "YouTube-corporate-style" framework. Their reward is the perceived power of censorship over others. In response to a subsequent set of complaints from users asserting that such actions constitute unacceptable censorship of free expression<sup>1</sup>, YouTube may even make a corporate decision to reinstate a previously censored video.

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<sup>1</sup> An interesting case to cite in this context is that of the censorship of Pat Condell by YouTube. Pat Condell is a professional British comedian who has in the last year posted a series of anti-religious videos on YouTube. It is easy to see why they might cause offence to the religious, and it is interesting to follow the public debate and media representation of the case that the removal of some of his posts by YouTube generated, following the receipt of complaints from within the "YouTube community". To follow this case, you could start here: <http://www.mediawatchwatch.org.uk/2008/10/02/now-condellvideo-is-banned-from-youtube/>.

In order to attain complete access to "the system," denoting the utilization of YouTube as a fully-fledged member, one must individually internalize the understanding that an "exclusion mechanism" can be automatically initiated or triggered through interactions with the entire system. Advocates for internet freedom would likely express concerns about this form of censorship, particularly about the corporatization of the power of censure. They might argue that the authority of censorship should ideally remain within the realm of the law, even for those who oppose censorship in general. The reasoning behind this perspective is that, in our current cultural transition, legal censorship can be challenged through appeals. Conversely, under the corporate censorship model described, the censoring entity is ambiguous, making it reminiscent of Kafka's Trial. This model aims to demonstrate the erosion of subjective intentionality, a foundation traditionally associated with the public sphere. It suggests that censorship could be, and perhaps already is, an inherent feature and control mechanism within socio-technological systems of governance.

Following Deleuze's perspective, the evolution of a power structure operating along these lines aligns with the production of a "continuously modulated" social subject. Corporations supplant the traditional institutions that, as Deleuze notes, used to "mould" the subject, such as factories, schools, and hospitals. An example he provides, though slightly tangential to the current discussion, is the shift in capitalist production from wages for specific jobs to salaries based on individual merit. This continuous modulation is evident in various sectors, such as education, where constant assessments replace end-of-course examinations, and in public services, where continuously updated performance tables are widely employed—a technique highly developed and often criticized in the United Kingdom. This control mechanism aligns with Deleuze's notion of the continuous modulation of the subject.

### **Constant Censorship**

We find ourselves in an era where the traditional interplay of the censorship-power-subjectivity paradigm intersects with a new dynamic, as alluded to earlier. This period, marked by the transformative impact of digital technologies, introduces both fresh possibilities and risks for free expression. The very notion of "free expression," as demonstrated here, is intricately tied to a specific power struggle—a struggle not so much "against" censorship, despite the libertarian perspective, but rather one that unfolds "within" censorship itself. This reality poses challenges for contemporary liberalism, engaged in the ongoing defence of free expression and speech, especially in the midst of global socio-technological transformations and the complexities of diverse multicultural societies.

The clash between two liberal impulses becomes evident in this scenario—on one side, the assertion of freedom of expression, and on the other, the desire for inclusiveness. Against the backdrop of a pervasive culture of fear, heightened by post-9/11 state authoritarianism, anti-terror legislation, and sporadic panics, the struggle for maintaining civil liberties in liberal democracies faces a challenging landscape. Knee-jerk reactions and failures to uphold freedom of expression are becoming increasingly prevalent, contributing to a general obfuscation of the threats faced by civil liberties.

Recent instances in Britain highlight the multifaceted challenges. The government urged universities to curtail the use of their premises by "religious extremists" and report suspicions about students' political leanings. However, when a regional theater faced intimidation and violence from the local Sikh community resulting in the closure of a play, the government deemed it an internal matter for the Sikh community. Additionally, the BBC chose not to broadcast a humanitarian appeal for Gaza to maintain its perceived impartiality.

The instances of power asserting censorship are seemingly endless. Each act of censorship shapes and limits perspectives, and as long as the rhetoric of "respect for others" prevails over engagement across differences, conflicts may persist. The concept of free expression has always been risky, and understanding the end of censorship defines who we are.

In a global context, authoritarian regimes look to Chinese methods of information control as a model, while activists seek to anticipate and counteract these methods. Several technological developments in China are worth monitoring, such as the convergence of online content, telephony, and broadcasting under the same management, interprovincial filtering, and targeting circumventors by usage patterns. The last example, ironically, may offer hope for online freedoms in China, as users continuously adapt to circumvent censorship. The existence of "collateral freedom," built on technologies indispensable to the regime, underscores that internet control runs counter to the public interest and may inadvertently contribute to the persistence of internet freedom.

