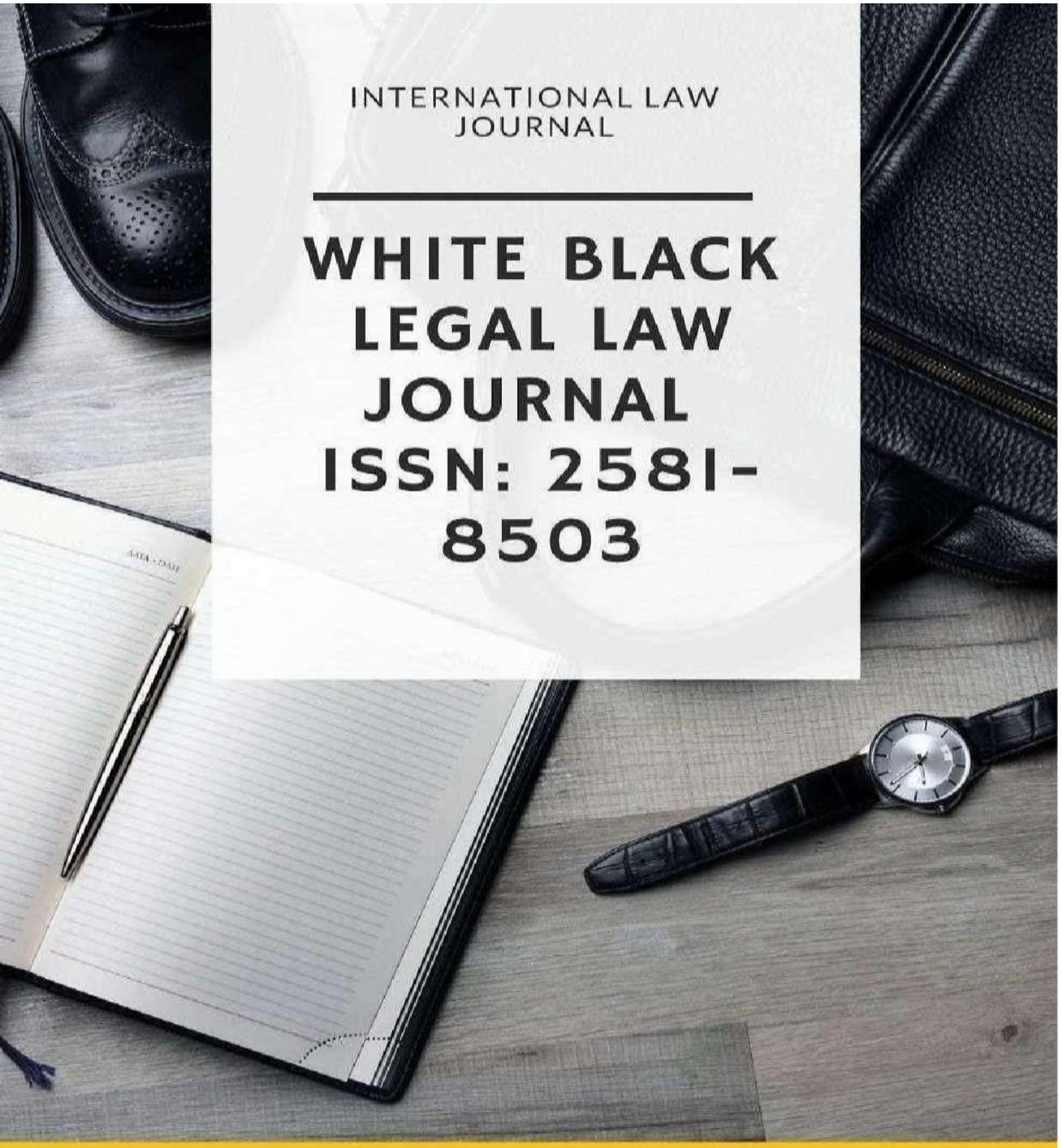

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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www.whiteblacklegal.co.in
Volume 3 Issue 5 | March 2026 ISSN: 2581-8503

"ARTISTIC FREEDOM: A CONSTITUTIONAL RIGHT UNDER SIEGE"

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Abstract

India's constitutional protection of artistic freedom under Article 19(1)(a) [1]is severely compromised by a patchwork censorship framework that includes colonial-era obscenity legislation, broadly defined provisions on religious sectarianism, opaque film certification systems, and algorithmic digital removals, which allow state and non-state actors to impose unpredictable boundaries on artistic freedom. This research project addresses the research question of whether vague legal terms "obscenity", "public order", "decency" and "religious sentiments" cause arbitrary censorship and a general chilling effect. The purpose is to illustrate systemic flaws in India's legal framework and propose a reformed framework based on comparative analysis. This research project conducts doctrinal research on constitutional texts, statutory provisions (Cinematograph Act 1952; BNS Sections 326, 354; IT Rules, 2021), significant judicial rulings (e.g., Ranjit D. Udeshi v. State of Maharashtra; Digital Freedom Fund v. Meta), and applies Critical Legal Theory and Postcolonial Theory to expose how neutral-facing restrictions disguise majoritarian control of arbitrary censorship, and provides a comparative study of U.S. First Amendment case law (Miller v. California; Hustler Magazine v. Falwell) and European Convention Article 10 protections (Charlie Hebdo rulings) to highlight procedural and substantive alternatives.

The deliberative conclusions are intended to push for (i) a statutory adoption of a Miller-style holistic obscenity test which mandates consideration of the overall artistic/social value of the work; (ii) openly, stakeholder-driven CBFC and OTT guidelines with specific timelines, reasoned orders, and an independent Certification Review Board; (iii) anti-SLAPP legislation designed to deter frivolous FIRs filed under Sections 295A[2] and 153A [3]and provide mechanisms for the early dismissal of unfounded IFirs and shifting of costs; (iv) judicial orders

[1] India Const. art. 19, cl. (1)(a).
[2] Indian Penal Code § 295A (Act No. XLV of 1860) (India).
[3] Bharatiya Nyāya Saṃhitā [BNS] § 153A (India) (enacted 2023).

that require a notice-and-hearing/cum-review process prior to the removal of digital content under the IT Rules as well as structural remediation under Article 142 [4] to enhance protections to dissenting artists. Each of these reforms-regarding the redefinition of important terms, procedural transparency, an independent certification process, attempts to curb legal harassment, and courts overseeing the legislatively enacted processes- are necessary to reclaim India's identity as a democratic society and signal artistic freedom as a hallmark of a pluralistic culture and robust public debate.

Keywords: Artistic Freedom, Censorship, Constitutional Morality, Chilling Effect, Anti-SLAPP Legislation

Introduction

In India, promises of constitutional protection for artistic freedom are being eroded by state censorship, legal ambiguity, and social intolerance. At the core of India's democratic hopes and aspirations is a constitutional crisis, not just a modern legal one. The Indian Constitution's Article 19(1)(a) [5]guarantees the right to free speech and expression, which includes the practice of artistic expression. But as we can see from everyday life, the loss of this basic freedom jeopardizes the ability to express oneself artistically and creates a climate of fear and apprehension for artists in all fields.

The systematic quality of this erosion takes place through multiple interrelated spaces that form a general creative space hostile to expression. Legal harassment through baseless cases and charges, extra-legal harassment by vigilante groups, and administrative overreach by multiple regulatory bodies, along with a general normalization of self-censorship by artists have all colluded in what scholars have aptly coined a "chilling effect" that takes place well beyond any given individual case, to entire creative communities. This chilling effect operates not as an element of restriction or prohibitive act, but through the pervasive self-sustaining dynamics of fear, uncertainty, and/or expectation of sanction, transforming the creative process, and impoverishing the cultural ecology. Artists, filmmakers, writers, and performers more and more engage in pre-emptive self-censorship, avoiding certain topics, themes, or approaches that would put them at risk of legal action, social sanction, or lead to commercial boycotts.

[4] The Constitution of India art. 142.
[5] India Const. art. 19, cl. (1) (a).

The current crisis is especially grave, as it is occurring in all forms of artistic expression: visual arts with seizure and destruction, literature facing bans and withdrawal of publishers, cinema under pre-censorship and harassment after release, theatre with cancellations and police interference, and digital material facing algorithmic suppression and platforms' terms of service. A case in point is the MF Husain case, in which over 3,000 cases in multiple jurisdictions [6]drove one of India's most esteemed painters into exile permanently. A similar example is the stand-up comedian Munawar Faruqui, who was arrested for allegedly making jokes, when he, in fact, never made those jokes. He spent a month in jail and ultimately retired from comedy after harassment from the local authorities. What is special about these two cases is that the threat of arrest and prosecution extends to the most fleeting forms of artistic expression.

The particularly pernicious aspect of this erosion is that it results from an ever-increasing number of authorities rather than a centralized authority. Governmental agencies, police departments, judges, moderators, proprietors, sponsors, various forms of organized pressure, all serve as potential censors both individually and collectively. This decentralization the growing number of censors and the insecurity that results creates a difficult situation for those that disagree and wish to respond, as you cannot fight a faceless entity. The "reasonable restrictions" clause in Article 19(2) has turned from an exception to a rule, with vague terms such as "public order," "decency," "morality," and "religious sentiments" without legal definitions allowing for arbitrary and unpredictable interpretations by officials whose priorities will often incline to political expediency rather than adherence to overarching constitutional principle.

Definition of Artistic Freedom

Artistic freedom is one of the most basic liberties of individuals to create, express, and share in creative formats through a variety of mediums, without worrying about arbitrary censorship or retaliation. Artistic freedom is a broad concept where artistic expression may occur in various ways across many mediums, including, for example, visual arts (painting, sculpture, installation), literary arts (poetry, fiction, drama), cinema (film, documentary, web series), theatre (performance, drama, satire), and digital content (social media art, digital comedy, streaming, and interactive content).

[6] M.F. Husain v. Raj Kumar Pandey, 2008 SCC OnLine Del 562: (2008) 150 DLT 431 (Del).

Artistic expression has expanded dramatically in the digital age, where sites such as YouTube, Netflix, or Instagram have democratised creative distribution, while also creating new avenues for censorship. As such, artistic freedom must be understood as not just the absence of formal barriers to engagement or expression, but also as the positive liberty to create, share, and/or engage with audiences, in both online and offline formats**.**

Why Artistic Freedom Matters

Artistic freedom is a fundamental pillar for democratic discourse, functioning as both a mirror for social values and as an agent of social change. As an inherent value, artistic freedom transgresses personal expression to embrace a cluster of broader democratic interests. Every form of art creates an essential space for dissent and offers the opportunity for the creator to challenge the historical dominant narratives, to interrogate authority, or to represent those who have been previously silenced.

The relationship between artistic freedom and democracy is reciprocal, democratic societies must offer a range of artistic expression to support pluralism and the non-solidified world view of a dominant perspective. Creators function as the conscience of a society, reminding everyone of hypocrisy, drawing attention to injustice and provoking critical thinking about power, identity and social change through satire, comedy, visual art, and performance. When artistic freedom is diminished or constricted the whole democratic process is diminished, and citizens no longer can access differing perspectives that are a hallmark of an engaged democracy.

Moreover, artistic influence allows for social commentary that steps outside the limitations of conventional political discourse. Comedians such as Kunal Kamra or Munawar Faruqui provide an example of creators who can critique politicians or political policy utilizing humour, and in ways that a traditional journalist might not pursue (while also entertaining audiences and offering political analysis). Filmmakers and digital content creators (often formerly referred to as "YouTubers") have addressed/engaged social problems from caste discrimination to religious fundamentalism, that involves storytelling that holds greater resonance or is more impactful than journalist or academic engagement.

Research Problem and Background

India, despite constitutional safeguards of artistic freedom, stands at a disheartening 151 out of 180 countries in the 2025 World Press Freedom Index. This disheartening ranking indicates

the combination of myriad legal, political and social factors that systematically inhibit creative expression. Recent examples of the crisis illustrate its severity: stand-up comedian Munawar Faruqui was incarcerated for one month for jokes he was purported to make, and then subsequently retired from comedy due to multiple show cancellations; painter MF Husain lived in self-imposed exile until his death after enduring prolonged legal harassment regarding his artistic representations of Hindu deities; censorship of filmmakers has also recently expanded to result in censoring not only traditional cinema but OTT platforms, after the Information Technology Rules promulgated in 2021.

The primary research question focuses on the growing distance between the constitutional commitments and actual exercising of artistic freedom. Although Article 19(1)(a) empowers some protections to creative expression, Article 19(2) empowers and permits arbitrary censorship through the "reasonable restrictions" clause. Specifically, tenets such as "public order", "decency", "morality" and "religious sentiments" remain devoid of definition that would provide objectivity, which otherwise, could be subjected to subjective determination. The lack of legal certainty surrounding the undefined legal principles chilling artistic expressions further exacerbates the ability to exercise the general protection of a right to artistic expression without pre-censorship.

The predicament has been made worse by the increasing digitization of artistic expression. In terms of artistic content, private IT companies increasingly act as censors**.** The three-tiered censorship system established by the IT Rules, 2021, involves the government, aims to strengthen censorship regulations pertaining to digital artistic expression, and assigns enforcement and censorship responsibilities to private enterprises. This raises the question of whether censorship has public or private boundaries.

Research Methodology (Doctrinal)

This research uses a doctrinal legal research methodology, interspersed with a systematic examination of constitutional texts, statutory law, and judicial decisions and a theoretical engagement with critical theory and postcolonial legal theory. The doctrinal legal research methodology entails a detailed analysis of legal texts or primary legal materials, comprised of portions of the Constitution, the Indian Penal Code Sections 292 - 295A,[7] The Cinematograph

[7] Indian Penal Code, Nos. 292–295A, No. 45 of 1860.

Act 1952,[8] and the IT Rules 2021, and landmark judicial decisions that have developed the case law on artistic freedom.

Secondary legal materials include perspectives from academic articles, reports of the Law Commission, and a consideration of comparative legal materials from other democratic jurisdictions. The study draws on insights from Critical Legal Theory which compel consideration of law as not a neutral arbiter, but a socio-political creation that reflects and maintains the interest of hegemonic socio-political power. Utilizing critical legal theory can illuminate how neutral appearing concepts like "reasonable restrictions" and "public order" nevertheless can operate as mechanisms for the domination of majoritarian control over artistic expression.

Historical Evolution – Colonial to Digital Age

India's artistic landscape has evolved from colonialism to the digital age at the behest of political, social and, technological changes. Under British colonial administration, artistic freedom was seen with suspicion and was marginalized by sedition and obscenity laws. The Indian Penal Code, or IPC, of 1860 [9]made seditious speech (Section 124A)[10] and "obscene" written works (Sections 292-294) illegal, thus situating artistic critique as a public order threat or a threat to the authority of the empire. These provisions were broadly construed and subsequently limited political cartoons, subversive theatre, and nationalist poetry, all of which could possibly imperil colonial governance.

In 1947 at independence, the Constituent Assembly enacted an unexpected and conscious break from colonial censorship by allowing for freedom of speech and expression in Article 19(1)(a). Early decisions in the 1950s and 1960s by the Supreme Court of India interpreted expressive rights broadly, or expansively, and stated that literature, theatre and, film were a means of legitimate democratic discourse. The continued retaining of colonial criminal provisions meant that "reasonable restrictions" under Article 19(2) of the Constitution would retain sedition and obscenity criteria, with little substantive change.

[8] The Cinematograph Act, 1952.
The Consumer Protection Act, 2019, §6(2) (a).
[9] Indian Penal Code, No. 45 of 1860 (India).
[10] *Indian Penal Code*, Act No. 45 of 1860, § 124A.

During the Emergency (1975–1977), the Indira Gandhi government imposed direct censorship on the press and film industry, resurrecting colonial-era controls in their most draconian form. Publication licenses were revoked, and scripts were subject to prior approval, demonstrating how political exigency could rapidly constrict artistic freedom despite constitutional guarantees. The Emergency experience entrenched a cautionary memory among artists, who became attuned to the fragility of their rights.

During the 1980s and 1990s there was a gradual liberalizing process: the Supreme Court declared a number of very broad applications of obscenity laws unconstitutional, and film certification gravitated away from prohibitions against the screenings of films. Nonetheless, in the regional centers of creative expression religious authorities, local religious traditions, local officials, and political groups preventive censorship remained in the form of threats of protests, threats to resort to litigation, and denials of venue. This preventive censorship continued to be targeted primarily at works which touched upon caste, gender, and communal issues.

The IT Rules, 2021 recently legitimized a three-tiered grievance mechanism for digital content intermediaries, thereby extending the state's reach to user-generated art, web series, and online performances. Over-The-Top (OTT) platforms, previously regarded as champions of creative expression, are now bound to nebulous notions of "public morality" and "offensive content," necessitating pre-certification and cancellations of programming. Therefore, India's trajectory of censorship, from overt colonial repression to postcolonial constitutional promise; out of cycles of liberalization and retrenchment culminates in a digital present where old and new censorship regimes coexist, layered with legal ambiguity and, ultimately, oppressive constraints on the artistic imagination success.

Literature Review

The scholarly work on artistic freedom and censorship includes theoretical discussions, comparative analyses, and empirical studies. This review identifies four main aspects:

1. Theoretical Principles of Artistic Freedom

   Earlier works characterize artistic freedom as inherent to democratic pluralism. Kapur and Sengupta (2020) define artistic freedom as a "public good" which is necessary to contest and disagree[11]. Mehta (2018) proposes "constitutional morality" as a principle

[11] See Monika Kapur & Rajat Sengupta, Artistic Freedom as a Public Good: Contesting Consensus in

of interpretation that emphasizes pre-eminence of fundamental rights from majoritarian tendencies.[12] Chandra's (2023) examination of narrow limitations on speech identifies risk to art's forms of deliberative and critical social functions.[13]

2. Obscene and Offence Against Religion Censorship Regimes in India

   Indian obscenity law is based on the Hicklin test being interpreted action in the case of Ranjit D. Udeshi v. State of Maharashtra (1965)[14]works found to "deprave and corrupt" susceptible watchers can be censored, ignoring merit. Sinha (2021) and the 242nd report of the Law Commission (2012) call for a Miller-style test that examines not just prurient appeal, and patent offensiveness, but also whether the work has imminent literary, artistic or social value[15]. Additionally, focussing on offences against religion, Rao (2019), and Index on Censorship (2011) scrutinize the vagueness in defining that affords (Sections 295A, 153A).[16]

3. Comparative Jurisprudence: United States and Europe

   Research in the United States emphasizes First Amendment protections are very strong: In Miller v. California in 1973 [17]t established the three-tier test for obscenity and affirmed in Hustler Magazine v. Falwell (1988)[18] full protection for even jarring parodies and outlined that prior restraints are prohibited. Comparative jurisprudence from Europe argues in favor of Article 10 ECHR which constrains restrictions to only those that are "necessary in a democratic society" and are proportionate to a legitimate aim. This has been explored through the Charlie Hebdo opinions where provocative satire is protected against incitement to violence. Both the CSA and CNC demonstrate the French regulatory model in which independent oversight and public funding for art entailed a plurality of art free from political or commercial interests.

Democratic Societies, 28 J. DEM. THEORY & PRAC. 101, 110–12 (2020).

[12] Sujit Choudhry & Pratap Bhanu Mehta, Constitutional Morality and the Supreme Court of India, 6 Ind. L.J. 1 (2018).

[13] Aparna Chandra, Constitutional Protection of Artistic Expression: Toward Contextual Standards, 45 Nat'l L. Sch. India Rev. 237, 251–54 (2023).

[14] Ranjit D. Udeshi v. State of Maharashtra, A.I.R. 1965 S.C. 881 (India).

[15] Law Commission of India, 242nd Report: Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition) (2012) (proposing a test analogous to Miller, considering prurient appeal, patent offensiveness, and imminent literary, artistic, or social value).

[16] See Nikhil Rao, *Vague Words, Broad Powers: The Indeterminacy of Sections 295A and 153A*, 12 J. Indian Const. L. 45, 48–52 (2019).

[17] Miller v. California, 413 U.S. 15 (1973).

[18] Hustler Magazine v. Falwell, 485 U.S. 46 (1988).

Constitutional & Legal Framework:

Foundational Constitutional Guarantee Judicial Evolution

Article 19(1)(a) of the Constitution of India was specifically drafted to provide a strong bulwark against executive encroachment and arbitrary censorship on the part of state actors. Unlike many constitutions from that period, it was not intended to solely protect spoken or written word, but all forms of human expression, including visual, performative, symbolic, or communicated with technological assistance.

The deliberations in the Constituent Assembly demonstrate that those who drafted Article 19(1)(a), including Dr B.R. Ambedkar, were acutely aware of the cultural plurality of India, and therefore needed to create an enabling environment for free discussion. They rejected proposals to qualify "speech" as limited to oral communications and pushed for a broad semantic construction of "the right to communicate ideas or opinions by any medium whatsoever." This sweeping conception was meant to protect the new Indian democracy from the kind of censorship that existed from state actors in the colonial era.

The Supreme Court of India has, over the years, reaffirmed this broad understanding of Article 19(1)(a). In S. Rangarajan v. P. Jagjivan Ram (1989)[19] it held "that film is an inseparable part of the right to free speech and expression" and stated that "in democracy, it is not necessary that everyone should sing the same song" and expression can only be limited in a "clear and present danger" of tangible harm.

In K.A. Abbas v. Union of India (1970), [20]Chief Justice Hidayatullah highlighted the distinctive power of film "to excite feelings more deeply than any other product of art," emphasising that just because one section of the public enjoys or accepts a film does not entitle the government to ban it for the rest of the public. Once the Court recognised the protection motion pictures enjoy under the Constitution is the same as the protection for newspapers or books, it confirmed the view that artistic media - in any form - is explicitly protected by Article 19(1)(a).

As a result, in India, Article 19(1)(a) is not only a capacity to verbally discuss in a narrow sense. Rather, it is a broad-based defence agency for the entirety of creative arts and speaking against arguably arbitrary state action.

[19] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.
[20] K.A. Abbas v. Union of India, (1971) AIR 481, 1971 SCR (2) 446.

Reasonable Restrictions under Article 19(2)

The Framework of Constitutional Limitations

Under Article 19(2), the authorities can impose "reasonable restrictions" based on any of the fields of sovereignty and integrity of India; security of the state; public order; decency or morality; contempt of ruling; defamation; incitement to an offence. Questions regarding the scope of these grounds can lead to divergence in interpretation, because their subjective quality and inherently fuzzy definitions create the problems. The term "reasonableness" has developed through case law, where judges have held that restrictions must meet constitutional tests. The Supreme Court consistently has held reasonable restrictions must have a "direct and proximate nexus" and be "not arbitrary or of an excessive nature." Along with this requirement is the principle of proportionality, which requires that any restriction be the least restrictive means to achieve a legitimate governmental interest.

Morality, Decency, Sovereignty, and Public Order Provisions

The terms "morality" and "decency" have not only proven to be ambiguous in cases of artistic freedom but vague in terms of legal definitions, and social standards continue to change. Article 19(2) requires decency or morality as grounds for restricting freedom of speech and expression, although Sections 292-294 of the IPC provide examples of restrictions in the name of decency or morality. Nevertheless, these terms are very subjective, and there is no clear definition that pinpoints what 'decency' refers to at a given time and in a given place.

The restriction of “public order” has been repeatedly construed as providing the justification to censor works of art, especially films containing contentious historical, religious, or social themes. The Supreme Court has made it clear that simply because some may be offended by the work, or simply which some may be interpreted to cause controversy, does not provide enough of a public order justification for a restriction. The distinction between “public order” and the “security of the state” was established in Romesh Thappar v. State of Madras (1950)[21]through the Supreme Court where it was held that not all public disorder could be treated as a threat to security or State. The “sovereignty and integrity of India” ground was included by the 16th Constitutional Amendment Act of 1963,[22] permitting the authority to impose restrictions on individuals or organizations which seek to secession and/or disunite

[21] Romesh Thappar v. State of Madras, AIR 1950 S.C. 124 (India).
[22] The Constitution (Sixteenth Amendment) Act, 1963, No. 63 of 1963, § 1

India. The "friendly relations with foreign states" restriction was instituted through the First Amendment Act, 1951, [23]which reinforces the ability to restrain unreasonable and malicious propaganda against foreign-friendly states.

Other Relevant Legal Provisions

The Cinematograph Act, 1952

The Cinematograph Act, 1952 [24]has laid down a complete system of pre-censorship of films through the Central Board of Film Certification (CBFC). The Act gives CBFC the authority to classify films into different categories (U, UA, A, S), or refuse to issue a certificate at all, based on criteria which are equivalent to restrictions contained in Article 19(2). Section 5-B[25]prohibits a film from being certified if its exhibition would be against sovereignty, security, public order, decency or morality in India or would involve defamation or contempt of court. Section 5B(1) [26]of the Act states that a film shall not be certified for public exhibition if any part of it is against the sovereignty and integrity of India, the security of the State, relations of India with foreign States, public order or decency, involves defamation or contempt of court, or is likely to incite commission of any offence. The Board certifies films in four categories: S (restricted to certain professions/classes), U (unrestricted for exhibition to the public), A (Adults only - 18+ years), and U/A (unrestricted for exhibition for children below age of 12 when authorized by parent or guardian). The film-related provisions of the Act's pre-censorship model, as noted in K.A. Abbas v. Union of India (1970), importantly mark a departure from the general presumption against prior restraint common in democratic societies. The Court upheld the constitutionality of film pre-censorship principally under the compelling interest of social interest and democratic processes, arguing that unique aspects of cinema created its own persuasive and mass-oriented characteristics. Chief Justice Hidayatullah's justification of censorship rested on his view that film is different from other media, claiming that motion pictures have an "instant appeal," that have "versatility," and "realism," with a special ability to "stir up emotions more deeply than any other product of art".

IT Rules for Digital Content (2021)

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules,

[23] The Constitution (First Amendment) Act, No. 1 of 1951, Acts of Parliament, 1951.
[24] The Cinematograph Act, 1952, No. 37, Acts of Parliament, 1952 (India).
[25] The Cinematograph Act, 1952, No. 37, Acts of Parliament, 1952 (India) § 5B.
[26] The Cinematograph Act, 1952, No. 37, Acts of Parliament, 1952 (India) § 5B (2).

2021 is the most significant recent intervention related to the regulation of digital content. These rules establish a comprehensive framework to govern artistic expression online (e.g., news, comment, video). In addition, the rules set-out a three-tier grievance mechanism: self-regulation by publishers (Level I), self-regulatory bodies (Level II), and Government oversight via committees that have extensive powers to review and remove content (Level III).

The three-tier grievance redressal mechanism creates a "soft touch progressive institutional mechanism" for digital news portals and OTT platforms. Publishers of news on digital media are expected to comply with --- Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks. OTT platforms are expected to self-classify content into five age-based categories: U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult).

Artistic Freedom in Practice: Chilling Effect & Censorship

Institutional Censorship

In India, the formal mechanisms of censorship occur through specific institutions of government, undertaken as a systematic body that governs artistic expression in various formats. The Central Board of Film Certification (CBFC), which is an institution of cinema established in the Cinematograph Act of 1952, serves as a key institutional keeper of film, as it holds the certification of all film to be exhibited to the public or by an institution or public platform. The CBFC also utilizes a certification system of classified films including, Universal (U), Universal Adult (UA 7+, UA 13+, UA 16+), Adult (A) and Special (S). In theory this classification is focused on the guidance of the public and their appropriate consumption of the film, but functions in practice as a means of total censorship. The powers of the Board are much broader than that of classification, as they have the discretionary power to make content changes, cuts, edits or total bans based on their subjective interpretations of public order, morality and religious sensitivity. Recent well-publicized cuts and changes that asked for over 120 cuts in a film like Punjab '95, including the removal of the name of the protagonist, and even the title of the film, show how institutional censorship operates not just as content management, but as ideological ownership.

The Information and Broadcasting (I&B) Ministry serves as the primary state body governing cultural expression, exercising executive authority over the possibility of influences over the

content through allocations of funding, granting or denying permission to exhibit works, and exerting institutional power over regulating agencies. The I&B Ministry's actions go beyond direct acts of censorship to oversee appointments to the Board of CBFC, issue guidelines on what kind of content will be sanctioned, and coordinate with state departments to monitor compliance with other official recitals. The institutional arrangement creates a normalized experience of navigating artistic works through a complete institutional apparatus operating under political privilege and majoritarian pressure. This systematic nature of censorship is most striking in the case of works that contain representations of contentious historical events, caste, or state violence, which will be delayed or compromised for long periods of time or outright forbidden. The case of Phule (2013) and Final Solution (2003) demonstrate how films about contentious historical events can find themselves subjected to continuous delay or switching edit changes once eligibility to screened, exhibiting the "deformed" nature of the state practice. The IT Rules 2021 have created a multi-layered regulatory system for Over-The-Top (OTT) platforms these represent the largest extension of institutional censorship into the digital space. The scheme establishes a tiered level of regulation of OTT platforms they must adhere to. The first level is a "self-regulatory" regime by the publisher, at the second level, the self-regulatory body is composed of retired judges, and the last level of oversight is governmental, where appointed committees are given significant powers to review and remove content. Together the three levels of oversight establish that OTT platforms must classify content based on age-based categories (U, UA 7+, UA 13+, UA 16+, A), employ automated content moderation systems and respond to governmental takedown requests within 24 hours, and create multiple layers for potential censorship. Additionally, the rules also create requirements to hire compliance officers, grievance officers and nodal officers to reside in India and give direct access to the government oversight officers on platform operations and content. The institutionalization of oversight regulation position platforms into extensions of the state censorship apparatus, where the algorithms in moderation act as government moderation and we see a reduction in editorial judgment.

Digital Expression

The increase in online content generation has broadened artistic creation possibilities while introducing a new source of censorship through algorithmic moderation, platform policies, and automated content removal procedures. Digital platforms are becoming the main areas for current artistic expression, especially for younger creators using YouTube, Instagram, TikTok, and other social media platforms to directly reach audiences free of gatekeepers. However,

social media functions under community guidelines and terms of service that frequently reflect business rather than artistic considerations, causing censorship of artistic work for nothing more than referencing social conventions or highlighting controversial subjects. Further, the programmatic95 character of content moderation means artistic enterprises or products can be censored without any human review based on a perception made from keyword detection, text recognition, and/or user reporting of perceived agreement behind the art that does not or refuses to recognize either poetic context or poetic license.

Creators could find their expression continually under social scanning from multiple layers of surveillance including governmental threat, platform moderation, and user reporting systems that could result in immediate deletion or suspension of their interests. The IT Rules, 2021 have validated this surveillance with protocol and requirement, requiring platforms to proactively put content identification systems in place, and respond to governmental takedown within predetermined timelines by putting private platforms in further service of the state's censorship mechanism.

The takedown mechanisms for artistic content under IT Rules 2021 have established a new paradigm where content could be removed from digital space via governmental instruction and/or automated moderation technology. The IT Rules 2021 require platforms to remove content complaining under a specific category within 24 hours of a user's complaint, which creates environments for excessive removals, accessed through automated moderation technology. The IT Rules 2021 provide a three-tier grievance mechanism for potential appeal, but the reality is that few removals are ever appealed or successfully overturned, especially for individual creators who do not have the ability to overcome the costs of trial and/or take on lengthy litigation. Consequently, there is an entire digital artistic ecosystem composed of self-censorship by creators, who do not post on specific topics, imagery or language that may generate automated removal systems or invoke government sanctioned censorship when a post falls under those complaint categories. This in turn, limits the scope of digital artistic expression like censorship, but also expands the boundaries of censorship in the digital space.

Comparative Perspective on Artistic Freedom and Censorship

I. United States: Robust First Amendment Protections

The First Amendment of the Constitution of the United States provides near absolute protection for expressive content, preventing Congress from enacting any law "abridging the freedom of

speech, or of the press."[27] In New York Times Co. v. Sullivan[28], the Supreme Court ruled that public officials must demonstrate "actual malice," prior to a successful defamation action, which protects critical and satirical commentary from crippling damages. Miller v. California [29]replaced the archaic Hicklin test with a three-part standard that provided for a finding of obscenity if the material (i) appealed to the prurient interest, (ii) depicted sexual conduct in a "patently offensive" way, and (iii) as a whole "lacked serious literary, artistic, political, or scientific value." [30]The term "whole" in the third requirement refers to a test of the work in its entirety, not simply isolated passages, to the end of reducing artistic merit and social value of the works in question.

Despite legal protections, however, the reality is that private platforms and distributors have content policies based on their perceived threats to commercial and reputational risk, which subjugates artists to a form of censorship through the market. Research suggests that moderation and censorship algorithms disproportionately impact content being produced by marginalized creators based on platforms' punitive self-regulation and caution due to fear of public outcry to their advertisers. The action is not "government action", as articulated in the First Amendment, but still takes the form of chilling effect regulation where artists self-censor or expand risk by ceasing or regulating participation in a copyright normative, it releases itself from the parameters of copyright law, but would still require resolution to the social harms artists have experienced from platforms that could be alternatively considered suppression or censorship. Thus, the calls for accountability, including transparency and articulation of policies - as well as the opportunity to appeal moderation decisions.

II. France: Art as Protected Dissent within a Pluralist Framework

France safeguards artistic expression under Article 10 of the European Convention on Human Rights, which only tolerates restrictions that are "prescribed by law," "necessary in a democratic society," and "proportionate to legitimate aims." Distinct from India's expansive morality clauses, French law necessitates a specific connection between the restriction at issue and the protected legal interests (public order, national security, and the rights of others), and courts will apply a strict proportionality test. The press in France enjoys special protections

[27] U.S. CONST. amend. I.
[28] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[29] Miller v. California, 413 U.S. 15 (1973)
[30] *Obscenity*, in *Constitution Annotated*, U.S. Congress, Amendment 1, § 7.5.11, Library of Congress, https://constitution.congress.gov/browse/essay/amdt1-7-5-11/ALDE_00013812

under a 1881 law sanctioning freedom of the press, as well as consonant jurisprudence from the Constitutional Council states that there is a presumption in favor of expression, narrowly interpreting restricted speech in the context of hate speech and protecting commentary on politics and satire. Courts in France have upheld the right of Charlie Hebdo to publicly use controversial religious precepts in their satirical controversial cartoons that targeted a religious identity but distinguished that the protected form of expression was ridiculing satirical commentary on big ideas not targeting an individual or group. In the case of Mosque of Paris v. Charlie Hebdo (2007)[31], the court ruled the ridicule of religious fundamentalism constituted protected speech under Article 10. The state's reaction to the violence following the 2015 attacks reiterated that available as a public interest rational, to protect public order could not restrict hate speech or pre-emptively censor the publication of cartoons, establishing a positive obligation to protect speakers more than restrict the speech.

Through a parliamentary appointment process and an open and transparent decision-making approach, the Conseil Supérieur de l'Audiovisuel (CSA) operates with at least statutory independence. Documents outlining the elements of decision-making and appeal procedures are publicly available. As an arm's length institution, the Centre National du Cinéma (CNC) transfers roughly €683 million annually in public funding based on a merit-based assessment criteria which supports a diversity of creative output. The CNC's public funding is derived from a tax on the industry and not from government appropriations, which protects its independence. Both CSA and CNC are publicly accountable through its annual reports and databases, and are independent of any political influence.

Embracing Contextual and Holistic Tests

India's guidelines for obscenity, which still stem from the Hicklin test, should be replaced with a total work evaluation framework like that implemented as the Miller test by the Supreme Court of the United States. The Miller test instructs courts to assess, in a trial court's fact finding, whether the work, when taken as a whole, has the following three features— (a) appeals to prurient interests under contemporary community standards; (b) portrays sexual acts in a patently offensive manner; (c) has no serious literary, artistic, political, or scientific value. If all three prongs of the Miller test are met, then the work could be classified as obscene, but the Miller test ensures that any artistic works are evaluated based on the text as a whole and

[31] Mosque of Paris v. Charlie Hebdo, Tribunal de Grande Instance [T.G.I.] [ordinary court of first instance] Paris, Mar. 22, 2007 (Fr.).

not based on isolated passages. The Miller test protects those works who have design and artistic merit while also aligning with community standards and values, but India's guidelines place excessive importance on selective excerpts of works. In Ranjit D. Udeshi v. State of Maharashtra, the court found an entire work to be obscene based on a limited selections of excerpts from a literary novel. In principle, the Miller test ensures that the art is analyzed from a holistic position. When utilizing the Miller test, judges must inquire about the overall artistic, literary, or social value of a work as a whole a standard that would certainly protect a body of works that now are at risk for censorship because of Indian standards. The "serious value" prong is especially important, as the standard is an objective national reasonable person standard versus a community standard. Under this prong, the artistic merit of works would not be exposed to local community concerns, which sometimes can be of low merit or good floor. Legislative changes to the Bharatiya Nyaya Sanhita could formalize this comprehensive approach, requiring the state to prove, beyond a reasonable doubt, that the material has (1) prurient appeal; (2) is patent offensive; and (3) has no serious artistic, literary, political, or scientific value.

Institutional Reforms for Transparency and Appeals

Having learned from France's own experience in providing cultural freedoms and independent review bodies, India ought to establish specialized appellate bodies to reconsider censorship decisions while having built-in procedural safeguards and transparent criteria. The French model is imperfect but demonstrates how independent review and decision makers could permit satirical speech as one examplewhen the French courts found that Charlie Hebdo could publish controversial cartoons under acts of satire regardless of intense social tensions.

France has a distinct legal framework to separate commentary on religion as protected satire, while denouncing hate speech or discrimination against identifiable ethnic or religious groups. French courts in the 2007 Mosque of Paris v. Val case[32], found the cartoons ridiculed fundamentalism, not Muslims as a whole group. This distinction between critiquing ideological positions or approaches and professing hatred or bigotry towards a group, is a basis by which lawful reform in India would emerge.

India ought to create culturally autonomous jurisdictions in the judiciary, possibly constituted

[32] Mosque of Paris v. Val, Tribunal Correctionnel [Trib. Corr.] Paris, May 22, 2007, Dalloz 2007, 1693 (Fr.).

as specialized High Court benches, to review decisions made by the CBFC, IT Rules actions to remove content, and other actions of censorship, within specified timelines. These bodies ought to be governed by criteria known and published before the decision, required to provide reasoning in writing for their decisions, and have appeal rights as of course.

Safeguarding Digital Expression with Due Process

In the digital sphere, developing a new regulatory framework in India should combine insights from the European Union's Digital Services Act (DSA) as well as First Amendment jurisprudence in the United States. The framework should protect artistic freedoms while still responding to legitimate concerns around online harm. Current IT Rules 2021 have insufficient procedural safeguards and structure many layers of potential censorship without enough oversight or appeal processes.

Drawing from the EU experience, India's new framework should require a human review of content removal requests for artistic works, requiring platforms to distinguish between content moderation that may be automated and appropriate for clearly unlawful content, and what may require a more nuanced judgment of human factors in creativity. The three-tier grievance mechanism should allow for independent experts in the field of artistic and cultural practice to consider artistic merit and cultural context in decisions, and not simply algorithmic guidelines on content.

The framework ought to embody organized notice-and-takedown processes modeled on the U.S. Digital Millennium Copyright Act but reconfigured for speech issues, requiring the specifying of purportedly unlawful content, specifying a legal basis for requests for removal, and affording an opportunity for meaningful counter-notification. As an additional check, government requests for takedown should also require some pre-authorization by a court unless there is a genuine emergency, should have an automatic expiration period, and also make court review of the takedown mandatory.

By integrating these comparative lessons with India's constitutional structure and culture, India can create a pluralistic mode of censorship that actually and potentially protects artistic freedom by constructing legally compelling criteria, institutional safeguards, and successfully utilized protections, all in the face of state and non-state censorship pressures. This process recognizes that protecting artistic freedom requires not only constitutional statements, but also institutional

arrangements, procedural safeguards, and cultural commitments to ensure the protections are not something akin to 'meaningless' statements in practice.

The Role of Civil Society and Media in Safeguarding Artistic Freedom

Actors in civil society including representative unions of artists, filmmakers, and academic networks are leading actors in law and policy challenges to censorship, through strategic litigation, public advocacy campaigns, and advocacy by experts seeking to establish procedural protections for creative expression. The Indian Artists' Forum and Federation of Western India Cine Employees (FWICE) have appeared before appellate courts, under the Cinematograph Act, consistently protracted hearings and interim screenings at the Film Certification Appellate Tribunal in the casino for films such as Aarakshan (2011) and Udta Punjab (2016). These successful appeals establish that certification delays and unreasonable cuts to films represent for the unconstitutional prior restraint on artistic expression. Likewise, filmmaker collectives have filed petitions in the Supreme Court to challenge the CBFC guidelines for certification, which resulted in an order for the CBFC to carry all future applications for certification in a timely manner and provide documentation with written reasons for any cuts and/or refusals.

Scholars and policy researchers from institutions such as the Centre for Comparative Constitutional Studies and the Society for Policy Studies, have published critical amicus briefs and white papers endorsing a contextual obscenity standard, based on Miller v. California, which would require looking at the entire works and affirming serious artistic, literary or political value. Their submissions to parliamentary committees ultimately informed the 2024 Draft Cinematograph (Amendment) Bill, which included an explicit statutory codification of a three-part obscenity test and an independent Certification Review Board, with some degree of judicial oversight.

Independent Media and NGOs

Independent media platforms and civil society groups have emerged as critical avenues for challenging state and extralegal censorship. The Wire, Scroll.in, and Outlook produced investigative reports that analyzed over 3,000 FIRs filed against painter M.F. Husain under IPC Section 295A, referring to these FIRs as "SLAPPs" that were designed to harass and intimidate. The People's Union for Civil Liberties (PUCL) and Human Rights Watch backed public interest litigation in the Supreme Court to challenge automated takedown under the IT Rules, 2021. They argued that Section 69A and the IT Rules imposed prior restraint on speech without

notice or hearing in contravention to Article 19(1)(a) of the Constitution. In X v. Union of India (2024), the Court read down provisions of the IT Rules, establishing to issue takedown notices with reasons for the content removal, allow counter-notices, and allow access to an independent appellate mechanism landmark procedural safeguards to content removal that were credited to NGO advocacy.

Social Media: Tool of Amplification and Suppression

Digital platforms, including social media, have taken on a dual role: elevating artistic voices, while at the same time, enabling coordinated suppression of artistic expression. For example, a campaign spearheaded by actor-musicians, popularly referred to as #UnmuteArtists, mobilised signatories to call for the reversal of institutional bans on theatrical plays and films explicitly engaging with caste and gender. Hashtags and celebrity endorsement went viral to pressure the government to rescind the ban on the play, Nirbhaya, which demonstrated the capacity of digital solidarity in arts advocacy.

Civil society has stepped in with rapid-response coalitions such as the Creative Rights Coalition, which provides legal support and counter-notices, and crowdsources public support to advocate on behalf of artists who experience digital takedowns for having or creating art. Their work saved more than 200 videos of political satire from permanent deletion in 2024, explicitly affirming that offensive or objectionable artistic expression requires significant procedural protections in process - and artistic expression cannot disappear into opaque algorithmic decisions.

Civil society and independent media create fundamental counterweights to institutional and extra-legal censorship through strategic litigation, thorough recording efforts, media exposés, and campaigns for digital solidarity. They have already woven procedural and normative support into a legal framework that can expand protections for artistic freedom.

Need for Reform and the Way Forward; Conclusion and Suggestions

The framework of artistic freedom in India calls for considerable reform based on constitutional morality, with an eye on global best practices and changing cultural realities. First, the legal definitions of "obscenity" under BNS Section 326, [33]and "hurt sentiments" under Section 354,

[33] Bharatiya Nyaya Sanhita, § 326 (2021)

[34]must be recast narrowly through statutory amendment. Building on the test for obscenity from the United States Supreme Court's Miller v. California case, statutes should require that the materials be: (i) taking contemporary community standards into account, materials that appeal to the prurient interest, (ii) materials that depict sexual or religious content in a patently offensive manner, and (iii) material that, when considered as a whole, lacks serious literary, artistic, political, or scientific value. Scholars such as Dr. Aparna Chandra, and the 277th Law Commission Report, have both recommended to codify this holistic test to amend the out-dated Hicklin test of obscenity, which invited selective censorship based on excerpts from the entirety of the material.

Third, the establishment of autonomous bodies for review of content—similar to France's Conseil Supérieur de l'Audiovisuel and the Centre National du Cinéma—would facilitate an independent process of censorship free from political and commercial interference. These bodies should appoint artists, lawyers, representatives from civil society, and technologists through panels with multi-stakeholder representation and fixed terms to guarantee process independence and public accountability.

Fourth, in order to mitigate the use of the legal system to harass individuals, India needs anti-SLAPP (Strategic Lawsuits Against Public Participation) legislation. These laws—based upon the Uniform Public Expression Protection Act or from the successful examples in the U.S. and Australia would (i) allow motion to dismiss early for tort claims for which there is no intention (or the claim is not even legally cognizable against an artist), (ii) shifts filing costs to plaintiffs pursuing frivolous FIRs, and (iii) expedite hearing for dispute for which public expression includes artistic expression. Section 295A [35]and 153A BNS [36]should also clarify intent to incite violence or otherwise intentionally cause public disorder, not make Dissenters or other artist's social art piece upon inception evidence of violation.

5th Courts serve as important guardians of freedom of expression in this digital age. By utilizing the powers given to them in Article 142 of the Constitution, they can assure that a person is given fair opportunity to be heard prior to the removals take place. This requires clear notification to the individual and a hearing before the removals occur. An excellent example is

[34] Bharatiya Nyaya Sanhita, § 354 (2021)
[35] Indian Penal Code, § 295A (1860).
[36] Bharatiya Nyaya Sanhita [BNS] § 153A (India, 2024)

Digital Freedom Fund v. Meta (2025), in which the Bombay High Court determined that algorithmic removals were unfair as they lacked transparency and a process for providing users due process. Moving forward, the Supreme Court should establish procedural safeguards, as well, in line with the IT Rules against misuse of censorship, but importantly to value democratic accountability and transparency.

To conclude, these reforms redefining essential terminology, ensuring transparency in the process of law, increasing the independence of the judicial and law enforcement processes, countering the legal harassment of artists, and restoring access to judicial review are essential to maintain India's democratic character. Artistic freedom is not an ancillary right; rather, it is a cornerstone of a pluralistic culture and a strong public sphere. These policy and legal measures will safeguard creative diversity, maintain constitutional morality, and affirm India's commitment to an open and inclusive democracy.