



A Comparative Analysis of Laws Restricting and Protecting Artistic Freedom Across Nations

Nuha Hajira. K¹, Abinithy Satyamoorthy²

^{1,2}B.C.A., LL. B, The Tamilnadu Ambedkar Law University

ABSTRACT

The present study examines the legal frameworks that restrict and safeguard artistic freedom in different countries and areas, thereby showing the diversity of legal systems that oversee creative expression worldwide. One of the main pillars of cultural development, artistic freedom, is restricted to different degrees according to political, cultural, historical, religious circumstances. This research looks at laws that impose restrictions or censorship, like those pertaining to blasphemy, obscenity, and defamation, International human rights standards and political influences on legal frameworks will all be examined in this examination in addition to legal protections for artistic freedom, such as constitutional guarantees and international accords. The study highlights the conflict between the right to free speech and governmental control, the impact of cultural norms, and the relationship between international human rights law and artistic freedom through a comparative analysis of democratic, authoritarian, and theocratic governments. The analysis of case studies from various nations, including the United States, China, Saudi Arabia, and France, aims to investigate the relationship between legal frameworks and creative expression. The goal of this analysis is to present a thorough grasp of how legal frameworks influence artistic freedom globally and its possibilities in a rapidly changing world. This study aims to give a thorough overview of the legal environment surrounding artistic freedom through a comparative analysis and to pinpoint possible areas for change and development.

Keywords: Artistic Freedom, Censorship, Cultural Norms, Political Regimes, International Agreements

1. INTRODUCTION:

Artistic freedom is the fundamental right of artists to create, distribute, and exhibit their work without interference, censorship, or constraint. This freedom allows artists to delve into the depths of human experience, challenge societal norms, and express diverse cultural, political, and personal perspectives. As defined by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), "artistic freedom is the freedom to imagine, create, and distribute diverse cultural expressions free of governmental censorship, political interference, or the pressures of non-state actors." The evolution of artistic freedom has transitioned through various phases, from prohibition to approval, then privilege, and ultimately to a state of freedom and protection. Numerous international frameworks, including UN treaty bodies and other regional mechanisms, have played a crucial role in safeguarding artistic freedom. This paper undertakes a comparative analysis of artistic freedom across European, Asian, and American countries, supplemented by relevant case studies. Additionally, it examines key issues such as the dynamics between authoritarian and democratic states, the distinction between freedom of expression and hate speech, and the tension between cultural appropriation and cultural expression. The paper concludes by identifying conflict zones in artistic freedom and offering suggestions for improvement, aiming to enhance the scope of artistic freedom in the future.

2. HISTORICAL EVOLUTION OF ARTISTIC FREEDOM IN WESTERN WORLD:

2.1 From the Period of Prohibition to Conditional Permission¹

During the early era of Western culture, artistic freedom was restricted due to political and theological ideas. Ancient Greek philosophy, Roman art, and Christianity all had their own restrictions on art, particularly religious imagery. The Council of Elvira's Canon 36 prohibited church ornamentation, while the Theodosian Code recognized the artistic quality of pagan statues. By 438 AD, a degree of forbearance emerged, with Byzantine iconoclastic disputes from 725 to 742 AD illustrating the conflict between religious proscriptions and artistic expression. The first phase of artistic freedom was marked by early bans rooted in religious beliefs, but by the eighth century, these bans had given way to conditional acceptance.

¹<https://www.researchgate.net/publication/357268336> *The History of Artistic Freedom as a Legal Standard in Western Culture An Attempt at Periodization of the Process of Its Formation* (accessed on 18/9/24)

2.2 The Period of Approval

By allowing the use of images in worship and declaring that doing so did not break the First Commandment, the Second Council of Nicaea in 787 marked a turning point for artistic freedom in religious situations. It was decided to eliminate the Second Commandment, which forbade the adoration of images, in order to conform to the beliefs of the Post-Nicaean Church. The Eastern Christian iconography tradition was established when Empress Theodora reiterated her choice in 842.

The Byzantine influence on religious imagery was criticised in Western Europe since certain images were deemed morally neutral and acceptable by the Council of Frankfurt in 794 and the **Libri Carolini**. With the emergence of the idea of **Bible pauperum**—using pictures to educate the illiterate religious art came to be used under stringent State and Church control.

Institutional regulations were put in place to limit artistic expression, especially during the Reformation and Counter-Reformation eras when the Church exercised strict control over the arts, as seen by the Council of Trent's rulings. Censorship affected even well-known painters like Michelangelo, as seen by the alteration of his frescoes in the Sistine Chapel.

With the Council of Nicaea, art was granted conditional license for a period of time that lasted until about the 16th century, during which time its main uses were religious and utilitarian.

2.3 The Period of Privilege

Early modern artists faced scrutiny from the state and church, leading to the awarding of individual and collective privileges. These privileges improved their position and protected them from legal action for exceeding content standards. Guilds like the Royal Academy of Painting and Sculpture and the Saint Luke Brotherhood were granted collective privileges, while court painters and those defending their authorship were granted individual privileges. However, this led to a fight for creative freedom, with the founding of the Royal Academy in Paris in 1648 increasing their status.

2.4 The Period of Legal Positization of Artistic Freedom

The French Revolution of 1789 led to the rise of positive law domination, allowing artists to become independent and self-governing individuals. Art became more accessible, and modern copyright rights emerged. However, state censorship targeted political art, particularly caricature, and theater, with prohibitions on political topics and nudity. Despite these restrictions, artists became more aware of the law, leading to laws like the Hogarth Act in the UK and the movement against the German Lex Heinze in 1900.

2.5 The Period of Freedom

The Weimar Constitution of 1919 established artistic freedom as a fundamental right, but state oversight remained. Post-World War II, censorship in Soviet Russia and Nazi Germany expanded protection. Despite constitutional safeguards, lawsuits against artists arose in France, Germany, the US, and other countries due to lack of protective laws. The European Court of Human Rights addressed conflicts between artistic freedom and other legal principles, resulting in court battles from 1919-2000.

2.6 The Period of Protection

Since 2000, regulations pertaining to artistic freedom have changed, with an emphasis on employing secondary laws to reinforce constitutional protections. Examples are the Polish Penal Code amendment from 2005 (which solely exempts the arts from criminal penalties due to "hate speech") and the French public art protection legislation from 2015. UNESCO has also overseen the worldwide compliance with these assurances. Legal rules that balance the significance of art in society against other protected interests, such as public morality, define this era. Political changes present obstacles, but generally speaking, the trend points to a continuous extension of the legal safeguards for artistic freedom, even if its sustainability is still up in the air.

3. INTERNATIONAL FRAMEWORKS PROTECTING ARTISTIC FREEDOM

3.1 UNITED NATIONS MECHANISMS FOR THE PROTECTION OF ARTISTIC FREEDOM – REPORTS BY SPECIAL RAPPORTEUR²

3.1.1 Special Rapporteur in the field of cultural rights³

The United Nations Special Rapporteur on cultural rights, established in 2009, plays a crucial role in promoting and safeguarding artistic freedom. In 2013, Farida Shaheed delivered a groundbreaking report on artistic freedom, identifying fundamental human rights components associated with creative

² <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/artistic-freedom> (accessed on 19/9/24)

³ <https://shs.cairn.info/free-to-create-artistic-freedom-europe--9789287193148-page-13?lang=en>

expression. The report, which included feedback from 29 member states, governmental and non-governmental organizations, and artists like Tania Bruguera and Nadia Plesner, has been a major source of reference for proponents of artistic expression worldwide. The Special Rapporteur's work has been further reinforced through trips, reports, and correspondence. In 2014, a follow-up report on memorialisation procedures highlighted the critical role of artists in promoting discourse through public art. In 2018, a report on culturally engaged projects highlighted the transformative impact of art on human rights, particularly in oppressive environments. In 2019, a commemorative report emphasized the need to consider Article 15 of the International Covenant on Civil and Political Rights and advocated for a comprehensive approach unifying civil and political rights with economic, social, and cultural rights.

3.1.2 *The Right To Freedom Of Artistic Expression And Creation (2013)*

Nadia Plesner's 2007 artwork, *Simple Living*, was inspired by the media's prioritization of celebrity rumors over global issues. Plesner was sued by Louis Vuitton for using status symbols in her artwork, but a judge in The Hague allowed her to display it with her permission. The Special Rapporteur's report explores the right to freedom of artistic expression and creation, focusing on laws and rules that limit artistic liberties and financial and economic factors that influence them. The report emphasizes the affirmative duties of states to preserve citizens' freedoms to engage in the arts.

3.1.3 *The Contribution Of Cultural Initiatives To Creating And Developing Right-Respecting Societies (2018)*

The Special Rapporteur's 2018 report to the Human Rights Council highlights the importance of arts and cultural initiatives in promoting human rights. These initiatives foster societal reflection, non-violent expression of fears and grievances, resilience after traumatic experiences, and envisioning the future. Artistic and cultural expression also foster social interaction, enhancing social contacts, mutual understanding, and trust. The achievement of human rights objectives and cultural diversity preservation depend on these activities.

3.2 UNITED NATIONS TREATY BODIES

3.2.1 *Human Rights Committee*

The Human Rights Committee expressly acknowledges creative freedom as a component of the right to freedom of expression in its General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights (ICCPR). It recognises the wide spectrum of statements covered by Article 19, including debates about human rights, politics, journalism, the arts and culture, and religion. All forms of speech and their distribution channels, including pictures and artistic creations, are covered under Article 19.

In a 2004 case from the Republic of Korea, a painter was found guilty under the National Security Law of producing art that was considered to be a "enemy-benefiting expression." This case serves as a noteworthy illustration of how Article 19 applies to creative expression⁴.

According to Article 19 of the ICCPR, the Human Rights Committee declared that the painter's freedom of expression was harmed by this conviction. The Committee stressed that even in cases where legislation authorises the seizure of artwork, the state is required by Article 19(3) to provide justification for the action's necessity in preserving public order, national security, or other justifiable goals.

However, the Committee's work rarely mentions artistic freedom. In order to ensure more regular protection and promotion of artistic freedom under international human rights legislation, increased lobbying by civil society organisations at the national and international levels may be able to help integrate this right into more reports and state party evaluations⁵.

3.2.2 *Committee on Economic, Social and Cultural Rights*

In its General Comment No. 21, the Committee on Economic, Social, and Cultural Rights (CESCR) reaffirmed the universality of human rights and stressed that cultural variety cannot be used to violate them. As evidenced by their remarks on Lebanon in 2016, the CESCR has used this concept to defend artistic freedom and called for the preservation of creative activity from unwarranted censorship. The PEN International and Freemuse civil society organisations were instrumental in drawing the CESCR's attention to these issues.

In addition, the Working Group on Arbitrary incarceration declared that **Lapiro de Mbanga**, a musician from Cameroon, had been denied his right to freedom of expression by his arbitrary incarceration. **His story brought to light the relationship between human rights advocacy and artistic freedom**⁶. The 2008 Human Rights Council resolution addressed defamation of religions; nonetheless, the High Commissioner for Human Rights pointed

⁴ UN HRC: Artistic expression must be protected, ARTICLE 19 (Sept. 18, 2015), <https://www.article19.org/resources/un-hrc-artistic-expression-must-be-protected/>.

⁵ Human Rights Committee, OHCHR, <https://www.ohchr.org/en/treaty-bodies/ccpr> (last visited Sept. 23, 2024).

⁶ Working Group on Arbitrary Detention, OHCHR, <https://www.ohchr.org/en/issues/detention/pages/wgadindex.aspx> (last visited Sept. 23, 2024). Joint Report of the Special Rapporteurs on Freedom of Expression, OHCHR, <https://www.ohchr.org/en/special-procedures/sr-freedom-of-expression> (last visited Sept. 23, 2024).

[Blasphemy laws and ICCPR] <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19->

out that there is disagreement about what really qualifies as defamation. The argument that critical remarks infringe the rights of religious believers was refuted in a 2008 joint report by UN Special Rapporteurs. **Blasphemy laws are incompatible with the International Covenant on Civil and Political Rights (ICCPR)**, as stated in General Comment No. 34 on freedom of expression. Efforts to create a new international duty on religious defamation were ultimately unsuccessful, which resulted in a shift in focus towards fighting religious intolerance and discrimination.

3.3 ARTISTIC FREEDOM IN REGIONAL MECHANISMS

3.3.1 European Court Of Human Rights⁷

Following the 2015 Charlie Hebdo attack, EU Ministers of Culture defended artistic freedom and rejected terrorism. The European Court of Human Rights (ECHR) protects artistic expression under Article 10 of the Convention on Human Rights. However, the ECHR often favors state interests when balancing artistic freedom against other rights, such as religion or public morals. The court's rulings have been inconsistent, particularly in cases involving contemporary art versus European literary heritage.

3.3.2 Inter-American Human Rights System

Article 13 of the American Convention on Human Rights explicitly protects freedom of expression, including artistic expression, and prohibits prior censorship. The Office of the Special Rapporteur for Freedom of Expression⁸, established in 1997, also addresses artistic freedom, particularly through its Declaration of Principles on Freedom of Expression. While the Office mainly focuses on journalists, it has also highlighted concerns about the criminalization of artists, particularly in Cuba. Civil society is encouraged to inform the Special Rapporteur about the situation of artists during country visits.

A significant case before the Inter-American Court of Human Rights involved the 2001 Chilean ban **on the film The Last Temptation of Christ**. The court ruled that the ban violated Article 13, emphasizing that artistic expressions should not be subject to prior censorship. The court underscored the importance of protecting access to artistic works to support pluralist democracy, affirming that artistic freedom is clearly protected under the Convention.

3.3.3 African Commission On Human And Peoples' Rights

The African Charter on Human and Peoples' Rights, adopted in 1981, does not explicitly mention artistic expression⁹. Article 17 allows individuals to participate freely in the cultural life of their community. The African Commission on Human and Peoples' Rights has been relatively inactive regarding freedom of expression and artistic freedom. However, the Declaration of Principles on Freedom of Expression in Africa adopted in 2002 also lacks specific references to artistic freedom.

Despite this, national legislation across Africa is increasingly incorporating measures to support the economic and social rights of artists. These developments, along with the periodic reporting required of state parties, present opportunities for civil society organizations to advocate for greater attention to artistic freedom at both regional and national levels.

3.3.4 Organisation For Security And Cooperation In Europe (OSCE)

The Cracow Symposium of the Commission on Security and Cooperation in Europe (CSCE)¹⁰ in 1991 emphasized the importance of freedom of expression in artistic and cultural fields. The document emphasized the need for independent dissemination of artistic and cultural expressions to ensure pluralism. The OSCE has made limited references to academic expression, but in 2018, artistic freedom became more visible. The OSCE has also worked on decriminalizing defamation and advocating for the removal of blasphemy laws.

3.3.5 Arab Charter On Human Rights

The Arab Charter on Human Rights¹¹, adopted in 2004 and effective from 2008, links human rights to international peace and addresses cultural participation, scientific research, creative activity, and artistic production. The Arab Human Rights Committee monitors its implementation but lacks

[freedoms-opinion-\]](#)

⁷ European Court of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms art. 10, Nov. 4, 1950, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁸ Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, <https://www.oas.org/en/iachr/expression/> (last visited Sept. 24, 2024).

⁹ African Charter on Human and Peoples' Rights, ACHPR, <https://www.achpr.org/legalinstruments/detail?id=49> (last visited Sept. 24, 2024).

¹⁰ OSCE - Freedom of Expression, OSCE, <https://www.osce.org/fom> (last visited Sept. 24, 2024).

¹¹ Arab Charter on Human Rights, Refworld, <https://www.refworld.org/docid/3ae6b38540.html> (last visited Sept. 24, 2024).

independent mechanisms. The Charter's compatibility with international standards, particularly minors, non-nationals, women's rights, and minorities, is debated. Since the 2011 Arab uprisings, calls for amendments and regional human rights courts have been made.

3.3.6 ASEAN Human Rights Declaration

The ASEAN Human Rights Declaration¹², adopted in 2012, acknowledges cultural participation, arts enjoyment, and artistic production. The UN High Commissioner criticized the declaration for language inconsistency and lack of consultation with civil society. Despite this, ASEAN member states will continue to be held accountable by international human rights mechanisms.

4. ARTISTIC FREEDOM VS. NATIONAL SECURITY AND PUBLIC MORALITY

4.1 IN INDIA

The ability to express oneself creatively, or artistic freedom, has long been a tenet of democratic society. But it frequently collides with morals and national security issues, sparking nuanced discussions and legal difficulties. India is not an exception to this dynamic interaction, with its diverse population and rich cultural legacy.

Constitutional Framework:

Article 19(1)(a) of the Indian Constitution guarantees the fundamental right to freedom of speech and expression. However, this right is not absolute and can be subject to reasonable restrictions in the interests of:

- Sovereignty and integrity of India
- Security of the State
- Friendly relations with foreign States
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

Case Study: Padmaavat (2018)

The 2018 movie "Padmaavat" sparked a lot of debate and demonstrations because of how historical figures Rani Padmini in particular were portrayed. The movie, according to critics, misrepresented historical events and encouraged intergroup violence.

Government Intervention: Initially, the Central Board of Film Certification (CBFC) declined to certify the movie, citing a number of alterations and omissions. The filmmakers filed a Supreme Court challenge against this ruling.

Decision: The Supreme Court affirmed the filmmakers' right to release the movie with specific changes, highlighting the value of artistic freedom and the necessity of avoiding censorship motivated by ill-founded concerns.

India faces a complex debate on balancing morality and national security/artistic freedom. Media, civil society, and courts play crucial roles in maintaining democratic principles and ensuring artistic expression isn't restricted. Promoting respect for differing opinions and open discussion is essential for India's development.

Case Study: Salman Rushdie and The Satanic Verses (1988)

Controversy: Muslims around the world were incensed by Rushdie's book, which featured characters modelled by Islam and the Prophet Muhammad. A fatwa issued by the Iranian government demanding Rushdie's execution sparked international outrage and resulted in the book being banned in other nations.

Impact on India: Despite being mostly a Hindu country, the debate had a big impact on India. India outlawed the novel, and Rushdie's Indian passport was cancelled. The matter escalated into a significant political and cultural discussion, bringing to light the intricacies involved in religious liberty and tolerance.

Case Study: Kamala Markandaya and Nectar in a Sieve (1955)

¹² ASEAN Human Rights Declaration, ASEAN, <https://asean.org/asean-human-rights-declaration/> (last visited Sept. 24, 2024).

Social Commentary: The lives of a rural family battling poverty, social injustice, and the passing of time are explored in this post-independence India novel. It presents a critical viewpoint on the difficulties marginalised populations in India confront.

Controversy: Although the book was well-received by critics, its depiction of Indian society drew criticism. Some contended that it did not fairly portray the variety of the nation and instead perpetuated unfavourable stereotypes.

Case Study: Adipurush

The Hindu epic Ramayana serves as the inspiration for the 2023 Indian mythological fantasy film Adipurush. When it was first released, the portrayal of Hindu deities and legendary figures caused a great deal of controversy. The CGI and visual aesthetic of the movie drew criticism for being "cartoonish" and demeaning to Hindu mythology. Some people felt that the way some characters were portrayed especially Lord Hanuman was inappropriate and disrespectful.

Many people felt that the conversation, especially in the Hindi version, was impolite and unfit for a legendary movie. Many people felt that the lines were disrespectful and offensive to Hindu gods. The filmmakers became the target of multiple lawsuits alleging copyright violations and religious injury.

Widespread boycotts and demonstrations were directed towards the movie, especially in Uttar Pradesh, the state home of the Hindu nationalist Bharatiya Janata Party (BJP).

The directors declared their intention to change a few sentences and sequences in reaction to the negative reviews. They apologised for the offending material as well.

4.2 IN FRANCE

France, known for its strong devotion to individual liberty and rich cultural legacy, has long struggled with the intricate relationship between creative freedom and larger societal issues. The freedom of expression is protected by the French Constitution, but it is not unqualified and may be restricted for reasons of morality, public order, or national security.

Constitutional Framework:

According to Article 10 of the 1789 Declaration of Human Rights, "No one shall be molested on account of his opinions, not even religious opinions, provided that their expression does not disturb public order established by law." Later French laws and constitutions have included this idea.

Case Study: Charlie Hebdo Attack (2015)

The attack on the satirical magazine Charlie Hebdo in 2015, which featured drawings of the Prophet Muhammad, is a clear illustration of the conflicts that exist between the demands of society and artistic expression.

Charlie Hebdo has a history of releasing contentious and thought-provoking articles, frequently criticising religious leaders and establishments. The attack was carried out by Islamist radicals and was inspired by the magazine's alleged blasphemy.

Many people in France and around the world saw the massacre as an attack on freedom of expression, which led to widespread outrage and support for Charlie Hebdo.

The magazine's publication of the divisive drawings was the subject of several court actions as a result of the attack. Some stated that the caricatures incited hatred and prejudice, while others argued that they were protected by the right to free speech.

In an effort to better safeguard journalists and media outlets, the French government strengthened security protocols and reiterated its commitment to freedom of expression.

France faces the challenge of balancing artistic freedom with public morality and national security. Media, civil society, and courts play crucial roles in maintaining democratic ideals and ensuring artistic expression isn't restricted. Fostering a culture of respect and free discourse is essential for France's ongoing transformation.

The Danish cartoons (Denmark): In 2005, cartoons featuring the Prophet Muhammad were published in Denmark. This caused a stir worldwide and prompted discussions on the boundaries of free speech. Although the publication was protected by Denmark's legal system from hate speech that could inspire violence, the episode made artists and media more accountable for not spreading hate speech.

4.3 IN SAUDI ARABIA

Blasphemy laws are very rigid in several Middle Eastern nations and severely limit artistic expression. Any creative work that is deemed to be disrespectful to religious beliefs in these areas is punishable by harsh laws, which may include incarceration or even the death penalty. This severely restricts artistic freedom since, in order to avoid consequences, artists frequently practise self-censorship.

The conservative Islamic nation of Saudi Arabia has always severely restricted artistic creativity. Creative expression has frequently been restricted by the government due to its emphasis on religious and cultural conservatism, national security, and public morality.

Constitutional Framework:

Saudi Arabia lacks a formal constitution, but its legal system is founded on Islamic law (Sharia), which offers principles for public behaviour and morality among other things.

Case Study: Raif Badawi (2012-2015)

2012 saw the imprisonment of Saudi blogger Raif Badawi for his criticism of Islam and the regime. He was given a 10-year prison term and 1,000 lashes after being found guilty of apostasy. A portion of the flogging was done in public, which infuriated people all over the world.

On his blog, "Free Saudi Liberals," Badawi criticised the political and theological policies of the regime. The conservative social order of the monarchy was perceived as being threatened by his writings.

Governments and human rights organisations from all around the world strongly condemned the case. Many contended that Badawi's right to freedom of expression was infringed and that his penalty was excessive.

In 2015, Badawi was freed from prison and the flogging was finally stopped by the Saudi authorities as a result of worldwide pressure. But he's still under home arrest, with limitations on his activities

Saudi Arabia's government's religious and cultural conservatism poses significant challenges to creative expression, despite recent signs of liberalization. The Raif Badawi case highlights the dangers faced by those questioning societal standards or government authority.

4.4. IN PAKISTAN

Pakistan, a nation with a large Muslim population, has a convoluted past when it comes to artistic liberty. Although the freedom of expression is guaranteed by the Constitution, it has frequently been restricted for reasons of morality, public order, and national security. The fundamental right to freedom of speech and expression is guaranteed under Article 19 of the Pakistani Constitution. This right, however, is not unqualified and may be restricted in a fair manner

Constitutional Framework:

- Sovereignty and integrity of Pakistan
- Security of the State
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

Case Study: Salman Taseer (2011)¹³

In Pakistan, tensions between artistic freedom and social concerns are exemplified by the 2011 death of Punjab Governor Salman Taseer. Because Taseer supported the repeal of the blasphemy legislation, which carries the death penalty for insulting Islam, he was assassinated by his bodyguard.

Religious conservatives in Pakistan harshly denounced Taseer's position on the blasphemy law. His murder was interpreted as a clear assault on the right to free speech and a warning to others who might venture to question established religious doctrine.

The assassination spurred a nationwide discussion about the boundaries of religious freedom and the blasphemy law. Some defended Taseer's assassin's conduct, saying he had acted in defence of Islam, while others denounced the death. The case gave rise to several legal disputes about the government's handling of the assassination and the blasphemy statute. The case has brought up concerns over the efficacy and abuse potential of the law, even though it is still in effect.

Pakistan's relationship between public morality and artistic freedom is complex, with the government's religious and cultural conservatism posing challenges for creative expression, despite recent signs of liberalization, as illustrated by the Salman Taseer case.

¹³https://www.researchgate.net/publication/260716197_Blasphemy_or_Art_What_Art_Should_Be_Censored_and_Who_Wants_to_Censor_It

4.5. IN USA

The conflict between artistic freedom and more general societal issues has long plagued the United States, a country built on the ideals of individual liberty and free speech. The right to freedom of speech and expression is protected by the First Amendment of the United States Constitution, although it is not unqualified and may be restricted for reasons of morality, public order, or national security.

Constitutional Framework:

The rights to freedom of speech, press, religion, assembly, and petition are safeguarded by the First Amendment of the Bill of Rights. This amendment has been construed broadly to encompass a broad spectrum of artistic forms, encompassing not only music and literature but also film and performance art.

Case Study: Brandenburg v. Ohio (1969)

A seminal ruling in the 1969 case of *Brandenburg v. Ohio* established a standard for figuring out whether speech can be suppressed due to its content. In this instance, Clarence Brandenburg, the leader of the Ku Klux Klan, was found guilty of inciting violence following his remarks at a rally.

Threats of violence against African Americans and government officials were made by Brandenburg during her address. The state of Ohio contended that there was a clear and present risk to public order from the speech.

Supreme Court Decision: The conviction of Brandenburg was reversed by the Supreme Court, which also established the "incitement test." In order to pass this test, the government must demonstrate that the speech is intended to provoke impending criminal activity and is likely to do so.

The Brandenburg ruling raised the threshold for the government to censor speech based only on its ideas. It has been referenced a lot in cases involving contentious or offensive statements, like hate speech, artistic creations, and political demonstrations.

4.6. IN RUSSIA

Russia has had a difficult time balancing artistic freedom with more general concerns about public morality and national security due to its complicated history of authoritarian leadership and repression. Although the freedom of expression is guaranteed by the Russian Constitution, it has frequently been restricted in the sake of preserving social order and political stability.

Constitutional Structure:

The Russian Constitution's Article 29 protects the freedom of expression, the press, and thought. This right, however, is not unqualified and may be restricted for the following reasons:

- Federal security
- Public order
- Protection of health, morals, and rights and legitimate interests of others
- Protection of state secrets

Case Study: Pussy Riot (2012)

The punk rock band Pussy Riot's arrest and conviction in 2012 for singing a protest song in Moscow's Cathedral of Christ the Saviour is a well-known illustration of the conflicts that exist in Russia between political repression and artistic freedom.

Vladimir Putin's leadership and the Russian Orthodox Church's endorsement of his policies were the targets of Pussy Riot's performance. The group was charged with engaging in religiously motivated hooliganism. Many people throughout the world condemned the case, seeing it as a human rights violation and a crackdown on dissent.

Citing the Pussy Riot's actions as a threat to public order and religious sentiment, the Russian government supported the group's prosecution. Members of the group received prison sentences that were subsequently lowered after an appeal.

4.7. IN NORTH KOREA

The authoritarian nation of North Korea, which has an extremely harsh government, severely restricts artistic expression. Creative expression that strays from official narratives is severely restricted by the government's concentration on upholding political control, supporting the cult of personality surrounding the Kim family, and promoting a state-sanctioned ideology.

Constitutional Framework:

The freedom of expression and the press are among the rights guaranteed by the North Korean Constitution, however these freedoms are severely restricted for the country's security, public order, and socialist system maintenance.

Case Study: The Case of Park Ji-hyon (2006)

North Korean defector Park Ji-hyon offers insight into the hard reality that artists who oppose the regime must endure. Park was detained and given a labour camp sentence in 2006 for allegedly owning a South Korean film. Her offence was considered a threat to national security as well as a breach of the state's cultural regulations.

Because the North Korean government tightly regulates the movement of information and the media, Park's possession of a South Korean film was viewed as a subversive act.

Park endured severe treatment in the work camp, which included physical and psychological torment in addition to hard labour. Her story serves as a reminder of the dire repercussions that follow those who don't adhere to the official line of thought.

North Korea lacks artistic freedom due to government control over information, media, and culture. All forms of expression must conform to official ideology, and resisters face severe consequences. The story of Park Ji-hyon highlights the challenging circumstances faced by those opposing the system.

5. CENSORSHIP IN AUTHORITARIAN VS. DEMOCRATIC STATES

Suppression of speech or publishing, or censorship, is a common tactic in both democratic and authoritarian nations. But these two kinds of regimes differ greatly in the kind and degree of censorship.

5.1 Authoritarian States' Censorship Practices

Authoritarian States

In order to keep control over information and quell opposition, which are defined by a dearth of political pluralism and restricted civil liberties frequently use overt and violent censorship.

- **Direct Censorship:** Under authoritarian regimes, books, films, music, and other forms of expression that propagate opposing views or pose a threat to the power of the state may be outright banned by the government.¹⁴
- **Internet Censorship:** Access to websites, social media platforms, and VPN services is regularly blocked by governments in authoritarian states, which frequently impose severe internet censorship¹⁵.
- **Media Control:** In authoritarian regimes, the media is frequently owned by the state or strictly regulated by it, guaranteeing that only official narratives are spread. Mass surveillance is a common tool used by authoritarian governments to keep tabs on its populations' whereabouts and interactions, both online and off.

5.2 In Democratic States

Although free speech is more strongly protected in democratic states, censorship is still possible, albeit in more covert and deceptive ways.

- **Self-censorship:** People and organisations may self-censor by refraining from expressing opinions that could be deemed controversial or objectionable out of fear of negative social or economic consequences¹⁶.
- **Economic Pressure:** Government money and advertising revenue are two examples of the economic pressures that democratic media firms may face to refrain from publishing stories that can be interpreted as disparaging powerful interest
- **Soft Censorship:** This term describes more subdued types of censorship, like government pressure on media organisations to refrain from reporting on particular subjects or publishing negative articles.

The practice of censoring speech or publications is widespread in both authoritarian and democratic nations. Democratic states may rely on more covert and indirect strategies, such as self-censorship, economic pressure, and soft censorship, to preserve control over information, while authoritarian regimes frequently use overt and aggressive censorship. Promoting and defending the right to free speech in all communities requires an understanding of the various types of censorship.

¹⁴Censorship in Authoritarian Regimes, Human Rights Watch, <https://www.hrw.org/world-report/2021/country-chapters/global> (last visited Sept. 25, 2024).

¹⁵ Internet Censorship in Authoritarian States, Freedom House, <https://freedomhouse.org/report/freedom-net/2020/pandemic-disinformation> (last visited Sept. 25, 2024).

¹⁶Self-censorship in Democratic States, The Guardian (Nov. 12, 2020), <https://www.theguardian.com/media/2020/nov/12/self-censorship-journalism-press-freedom>

6. ART AND POLITICAL DISSENT

Political art, which frequently acts as a platform for social criticism and dissent, is faced with distinct legal obstacles in many nations. Such work may be viewed by governments as a danger to political authority or stability, which could result in various forms of repression.

6.1 Legal Challenges to Political Art

Repression and Censorship: Political art frequently encounters censorship, particularly when it parodies or criticises the government. This can happen by legal measures like fines, incarceration, or forced exile, or it can happen through direct government intervention, such as the removal of artwork from public view.

Vague and Broad Legislation: Many nations use vague and broad legal prohibitions, such those that forbid "subversion," "insulting the state," or "public disorder," as a means of silencing political artists. Due to the ambiguous nature of these regulations, artists whose work is deemed politically sensitive or oppositional may be arbitrarily enforced against them.

Surveillance and Intimidation: Political artists are sometimes the targets of governmental monitoring, harassment, and intimidation under authoritarian regimes. Authorities may conduct raids on their studios, seize their works, and halt their public performances.

6.2 Notable Instances of Prosecution or Silencing

- **China's Ai Weiwei:** One of the most well-known modern artists and campaigners, Ai Weiwei has endured numerous persecutions at the hands of the Chinese government. Ai, who is well-known for his candid criticism of the Chinese Communist Party, has regularly had his works restricted and has been jailed and surveilled. Many believed that his 81-day detention in 2011 disguised as a justification for economic crimes—was an attempt to quell his political opposition.
- **Banksy (UK):** The anonymous street artist frequently has his politically sensitive artwork removed by authorities, despite the fact that he mostly works in democratic cultures where freedom of expression is more strongly protected. The conflict between official authority and public art is exemplified by the fact that local governments in several nations have painted over or erased several of his murals, which criticise political problems including war, consumerism, and surveillance.
- **El Haqed, Morocco:** Rapper Mouad Belghouat, also known as El Haqed, is from Morocco. Because of his music, which criticises social injustice and corruption in Morocco, he has been arrested and imprisoned numerous times. His story serves as an example of how political art including music can face severe legal consequences in nations that don't allow much criticism.

6.3 International Views of Political Art

Democracies in the West: Political art is typically protected under free speech regulations in many Western nations. Artists may still run into legal issues, though, especially if their creations are thought to have broken other laws, such those pertaining to defamation or property damage (in the case of street art).

Authoritarian Regimes: Political art is frequently regarded as a criminal offence in authoritarian nations. Artists could face accusations of encouraging public disruption, disseminating anti-government propaganda, or engaging in sedition. Serious repercussions may ensue, such as forced exile, torture, or lengthy incarceration.

Emerging Democracies: Political artists can be extremely important in influencing public opinion in nations making the transition to democracy. They can also run serious dangers, though, since the political environment can be unpredictable and there might still be outdated oppressive legislation in effect.

Political art, often used for satire or street art, can be a powerful tool for dissent, but it often goes against the law. Artists like Ai Weiwei and Pussy Riot have faced censorship and incarceration, highlighting the ongoing conflict between state power and artistic freedom, making political art a contentious field globally.

7. FREEDOM OF EXPRESSION VS. HATE SPEECH

The relationship between hate speech and creative freedom is complex and multifaceted. While freedom of expression is inalienable, countries have varying legal frameworks to suppress hate speech, especially in politically or culturally sensitive situations. Balancing safeguarding society from hate speech with promoting artistic expression is challenging.

Freedom of Expression: This essential right permits people, especially artists, to freely express their opinions, ideas, and criticisms. It is recognised by the majority of democratic countries. Several international human rights treaties, including the International Covenant on Civil and Political Rights

(ICCPR, Article 19) and the Universal Declaration of Human Rights (Article 19), safeguard this right. A key component of this larger right is artistic freedom, which allows artists to participate in social, political, and cultural criticism¹⁷.

Hate Speech: On the other hand, any communication that disparages or targets people or groups because of characteristics such as race, religion, ethnicity, gender, or sexual orientation is considered hate speech. Hate speech is prohibited in many nations in order to uphold social harmony, stop violence, and stop discrimination. The difficulty is in distinguishing between speech that is acceptable though contentious and speech that is hateful¹⁸.

8. CULTURAL APPROPRIATION VS. CULTURAL EXPRESSION

Art often faces conflict between cultural appropriation and expression, as artists often draw inspiration from different cultures. This can lead to ethical questions, especially when power disparities or historical injustices are involved. Artists must consider the impact of their work on the cultures they originate, honoring and respecting their sources while maintaining their creative freedom.

Cultural expression is the celebration and exchange of customs, icons, and artistic creations. It can encourage respect for and knowledge of different cultures when done appropriately¹⁹.

Cultural appropriation is the act of members of a dominant culture using aspects of a minority or marginalised culture without their consent, knowledge, or consent. This may result in the original culture being exploited or trivialised.

Example

Fashion Industry: When brands use traditional apparel or patterns without giving acknowledgement or remuneration to the original culture, they frequently encounter criticism. For example, high fashion has used native motifs from Native American cultures without giving credit where credit is due.

Musicians: may face allegations of cultural appropriation if they employ instruments from Asia or Africa or don't give due credit to the original artists or comprehend the cultural value of the material.

Visual Arts: There have been discussions on whether Pablo Picasso's art is an act of appropriation or homage because he took inspiration from African masks.

9. INTELLECTUAL PROPERTY AND ARTISTIC FREEDOM

Intellectual property laws play a crucial role in promoting artistic freedom for artists, as they can both protect their rights and stifle original expression. A balance between upholding original artists' rights and fostering creative expression is essential in this complex legal landscape. As technology continues to blur the lines between original and derivative works, ongoing discussions about intellectual property rights and artistic freedom remain essential.

9.1 The relationship between IP laws and artist support for artistic freedom:

Copyright and other intellectual property laws are intended to safeguard artists' original creations and grant them authority over their usage, distribution, and commercialisation. This legislative framework can stop unapproved use and guarantees artists receive payment for their creations.

Creative Restrictions: On the other hand, these laws may also impede artistic freedom, especially in cases where artists wish to produce fan art, mashups, or other derivative works. The need to acquire consent from the original author or the owner of the rights can inhibit artistic expression and restrict artists' interactions with preexisting cultural works.

9.2 Current Issues and Legal Difficulties

Music sampling, a controversial practice in hip-hop, involves incorporating pre-existing songs into original works. However, disputes over fair use and intellectual property infringement often lead to court cases, highlighting the challenge of balancing intellectual property rights with artistic originality, as demonstrated by Robin Thicke and Kanye West.

¹⁷ Universal Declaration of Human Rights, Article 19, United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Sept. 25, 2024).

¹⁸ Hate Speech versus Free Speech, International Bar Association, <https://www.ibanet.org/Hate-speech-versus-free-speech> (last visited Sept. 25, 2024).

¹⁹ Cultural Appropriation vs. Cultural Appreciation, CultureAlly, <https://www.cultureally.com/blog/cultural-appropriation-vs-cultural-appreciation> (last visited Sept. 25, 2024).

Fan Fiction and Art: Works by fans that are influenced by popular culture, such as fan fiction, fan art, or fan films, frequently occupy a legal grey area. While many artists and businesses accept or even promote fan art, others zealously protect their intellectual property rights, which can result in takedown requests or legal action against fans. The limits of artistic expression in the digital era are called into question by this tension.

Mashups and Remixes: With the advent of digital tools, artists can now more easily construct original works by combining components from other works to create remixes and mashups. But these works frequently call for the usage of copyrighted content, which raises legal issues. The question of what constitutes fair use in these kinds of situations is still up for debate; courts have been known to protect the remix artist under fair use principles while at other times ruling in favour of the original rights holders.

9.3 Balancing IP Protection and Artistic Freedom

The Fair Use Doctrine The fair use doctrine offers a legal foundation in certain jurisdictions that permits restricted unrestricted use of copyrighted content for purposes including parody, commentary, and criticism. Unfortunately, fair use is used subjectively and differs from case to case, which leaves artists in the dark.

Creative Commons licensing: Some authors choose to make use of these licenses, which let other people use their work in specific ways without asking permission. By striking a balance between IP protection and artistic freedom, this strategy can promote a more transparent and cooperative creative environment.

Changing Legal Standards: The laws protecting intellectual property and artistic freedom are always changing as new forms of art, including digital art and NFTs, come into being. There is a growing difficulty for legislators and courts to modify current intellectual property rules to accommodate contemporary creative practices.

10. ARTISTIC FREEDOM IN CONFLICT ZONES

Impact of Conflict on Artistic Freedom: When living in conflict areas or under military rule, artistic expression frequently turns into a means of resistance. For instance, artists documented the atrocities of the battle and protested against the regime during the Syrian Civil War through their artwork²⁰.

These settings are extremely constrictive, though, and artists who dare may face violence, incarceration, or censorship for their work. In these areas, where it might be dangerous to express disapproval through art, the threat to artistic freedom is greater.

Role of International Law and NGOs²¹: The protection of artistic expression is the goal of international law, particularly human rights accords, although enforcing these laws in conflict areas can be difficult.

NGOs are essential in helping artists because they provide them a forum, fight for their rights, and give safe havens or asylum to people who are in danger. In conflict-affected areas, groups like Freemuse and PEN International actively seek to uphold and advance artistic freedom.

11. CONCLUSION

Artistic freedom is a global issue, with liberal democracies like Europe and North America upholding it as a core value, while authoritarian regimes like China, Russia, Iran, and Saudi Arabia often curtail it. In emerging democracies and developing nations, freedom fluctuates due to political, social, or religious sensitivities. The digital era has introduced new challenges like online harassment and geopolitical restrictions. International organizations like UNESCO, PEN International, and IFACCA advocate for artistic freedom worldwide, promoting international frameworks to protect artists from censorship and persecution. These bodies raise awareness, support artists under threat, and push for global standards of freedom of expression.

12. SUGGESTIONS

1. New protocols in the existing conventions can be added to address the gaps in protecting artists from censorship, restrictions and retaliation.
2. A new international treaty focused solely on artistic freedom could offer more direct and enforceable protections for artists. This agreement could define artistic freedom more comprehensively, including the rights of artists to free expression, fair compensation, and protection from censorship.
3. Enforce diplomatic sanctions against violators in the sense, the countries that violate international standards on artistic freedom, especially in cases involving censorship or imprisonment of artists, should face diplomatic sanctions or other international consequences. Organizations such as the United Nations and regional bodies like the European Union can impose pressure to ensure compliance.

²⁰ Art in the Syrian Civil War, Al Jazeera (Mar. 15, 2016), <https://www.aljazeera.com/features/2016/3/15/syrian-artists-use-their-work-to-protest-war>.

²¹ NGOs Supporting Artistic Freedom, Freemuse, <https://freemuse.org/news/pen-international-and-freemuse-join-forces-to-protect-artistic-freedom/> (last visited Sept. 25, 2024).

4. Digital censorship must be addressed as more artistic contents are produced and shared online. International organizations should promote open internet policies and create mechanisms for artists to challenge unjust takedowns, restrictions, or de-platforming across social media and other platforms.
5. More international programs that provide safe havens to artists who face persecution should be established. Existing programs like the Artist Protection Fund and Artists at Risk can be expanded to provide broader, coordinated support, helping persecuted artists relocate, rebuild their careers, and continue their creative work in safety.