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ART, ARTIST AND THE LAW: EXPLORING BARRIERS IN ARTISTIC EXPRESSION

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Introduction

There is no generally agreed definition of Art. It can be defined as any creative work of human beings or a form of expressing oneself. Art can be generally defined as any human action or creation that expresses an idea, an emotion, or a visual image. Art can take various forms, including paintings, drawings, sculptures, photography, theatre, dance, music, opera, film, poetry, digital arts, folk music, traditional crafts etc. Art is a universal language. At times when words fail to communicate, art keeps those forever embedded in our soul. Art transcends words, language limits the world of words, and Art overflows the barrier of language. It's often interesting to cherish the moments when a tedious speech ceases to function where art conveniently conveys in the lapse of time.

Art was always the symbol of change, and artists, the flag bearers of that change. Throughout different periods and contexts, art has been used as a powerful tool for expressing dissent, challenging established norms, and advocating for social and political change. The ruling class have been triggered by these and has always tried to suppress artistic freedom and artistic movements. For these, laws have often been distorted. It can't be said that there should be no regulations upon artwork. There can be reasonable legal and ethical restrictions upon artworks. These restrictions should aim to strike a balance between protecting the rights of artists and safeguarding the well-being of society as a whole.

How Art Enlightened, Educated and Transformed the World?

Art can communicate emotions, philosophy, concepts, messages etc., in ways that language alone often cannot. Throughout history, art has pushed limits and fostered critical thinking by challenging accepted standards and ideas. Art may bring about enlightenment by inspiring people to reconsider their views and values by providing different viewpoints and challenging

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received knowledge. There are plenty of examples in which artists challenged traditional beliefs and motivated critical thinking. Michelangelo, who is well known for his works like Pieta, David etc., through his works had challenged the traditional view about the human body. Great artists like Leonardo da Vinci have even studied and conducted research in anatomy in order to give perfection to their works. Art has been used effectively to address various social issues. Art has been used as an effective medium to promote social justice. Various social issues like poverty, inequality, human rights violations, casteism etc have been addressed through artworks. Artists create powerful visual representations of social issues through paintings, illustrations, and street art. These artworks often depict the struggles of marginalised communities, highlight human rights violations, and call for equality and justice. Art has been used as a catalyst to promote critical thinking. It can assist us in developing fresh perspectives and challenging our presumptions. Many pieces of art, particularly abstract or conceptual works, are susceptible to several interpretations. It fosters critical thinking and analytical abilities when viewers are encouraged to analyse the artwork, weigh alternative interpretations, and draw their own conclusions. Art has the remarkable ability to provide a sense of hope and inspiration to individuals and communities, offering solace, encouragement, and a vision of a better future.

Positive and inspiring themes like love, unity, optimism, and the triumph of the human spirit are prevalent in many works of art. These ideas strike a chord with viewers, encouraging sentiments of hope and faith in the kindness of others.

Art is a powerful tool for educating the world. It can teach us about the world, ourselves, and our emotions. It can foster creativity in us. It may improve our lives and broaden our perspectives as people. Art may be a window into the past, revealing to us how individuals in other eras and locations thought, felt, and lived. We may challenge our preconceptions and think more critically about the world around us with the aid of art. We can think creatively and generate original ideas with the aid of art. For instance, a piece of music or a painting might pique our imagination and help us perceive the world from a fresh perspective. We can become more emotionally aware and receptive via the use of art.

Additionally, it can support social interaction and community development. Art from different regions and communities introduces people to diverse worldviews, traditions, and customs. Experiencing art from various cultures fosters cultural awareness and promotes tolerance and

appreciation for diversity. In the subject of anatomy, artists like Leonardo da Vinci's comprehensive anatomical drawings and dissections were revolutionary. They performed in-depth studies of the human body's muscles, bones, and internal organs, which helped to advance knowledge of human anatomy at the time. Artists have played a crucial role in scientific illustration, creating detailed and accurate visual representations of plants, animals, and scientific phenomena. These illustrations help scientists communicate their findings and discoveries to a broader audience. The curriculum in many schools all around the world includes art education. It encourages respect for art and culture while cultivating their creativity, self-expression, and problem-solving abilities in children.

Why the Ruling Class Fear Art?

The depiction of what the eyes see and what humans feel and think is one of the main themes of art. Art has historically played a powerful role in challenging authority, questioning the status quo, and inspiring social change. In order to express opposition to repressive governments, societal injustices, and power abuses, art has frequently been employed as a form of resistance. Artistic expressions can be deeply critical of those in authority, making the ruling class uncomfortable and fearful of potential uprisings or revolutions. Art has the ability to empower and unite the masses by evoking emotions and inspiring collective action. The ruling class is concerned that strong creative statements can incite people to rebel against them and jeopardise their position of control. The ruling class's corruption and covert plans and hidden agendas can be exposed using Art. Commonly, artistic manifestations strengthen ties between various social groups. The ruling elite could be concerned that a vocal and united populace would call for accountability and reforms to the current power arrangements. The power structure's attempts to manipulate information and influence public perception can be overthrown through art. Alternative stories and viewpoints that go against state propaganda may be unrolled. Art frequently provides a voice to underrepresented groups and opposes the systemic injustices that the privileged class upholds. Art may undermine the attempts of the ruling class to enforce the current quo by amplifying these voices.

One of the great challenges today is that we often feel untouched by the problems of others and by global and regional issues. We do not feel strongly enough that we are part of a global community, part of a larger "WE". Art can play a crucial role in addressing the challenge of apathy and disconnection towards global issues and inspiring action to make a positive impact. Art has the ability to motivate and inspire action. Artistic expressions that showcase positive

change, resilience, and solutions can encourage individuals to become actively involved in addressing global challenges. Art can challenge perceptions and broaden perspectives. By presenting alternative narratives and viewpoints, art can help people see global and regional issues in a new light and consider the interconnectedness of challenges.

We have various examples in which art has been used as a tool of protest. Guernica, one of Picasso's most famous works, is a powerful anti-war statement. The painting depicts the horrors and suffering caused by the bombing of the town of Guernica during the Spanish Civil War, conveying the devastating impact of war on innocent civilians. Chinese artist Ai Weiwei used 100 million hand-painted porcelain sunflower seeds in an installation to protest against the Chinese government's suppression of dissent. The work represents the strength of individuals standing together against oppressive regimes. The raised fist has become an iconic symbol of protest and solidarity. It was made well-known by an artwork created by artist Frank Cieciora for the Black Panther Party in the 1960s, and it has since been embraced by several organisations promoting social justice, labour rights, and civil rights. During CAA protests in Shaheen Bagh, one entire street turned into an open-air gallery. Despite the winter rains and the damning cold and pollution, artworks and installations were placed on the roads and bridges.

How the Ruling Class have Suppressed Artistic Freedom?

Governments have historically employed various methods to suppress artists and artistic expression, particularly when the art challenges or critiques the ruling regime. Censorship is the most common violation of artistic freedom. Contemporary Art and Artists are unfairly suppressed by governments, political and religious groups etc. Governments restrict or outlaw works of art that question their authority or deal with delicate social or political themes. This may entail limiting the publishing, distribution, or exhibition of such works. Artists who publicly criticise the government or support social change may be subject to intimidation, harassment, or threats from the government or its affiliates. Artists who are viewed as potential security risks by the government may be detained, jailed, or imprisoned on the basis of nebulous accusations. According to Freemuse, the largest independent international organisation defending artistic freedom, the governments of Turkey, Russia, and China misuse counterterrorism laws to target artists, who, as a result, face censorship, harassment, threats, or imprisonment on the grounds that they are associated with terrorist organisations or that their

artwork poses a threat to the country. Turkish artist and journalist Zehra Doan was imprisoned for a two-year and ten months term for a painting that showed a town in the south-east of the nation with a significant Kurdish population that had been devastated by Turkish forces in 2015. Ai Weiwei is a famous artist who utilised his artistic endeavours as a platform to oppose censorship and denounce China's ruling government. He was taken into custody in 2011 after authorities searched his studio, took laptops, and interrogated aides. His Shanghai studio was destroyed soon after his 81-day detention, which was followed by four years of house confinement.

Coming to artistic freedom in India, comedians such as Kunal Kamra and Munawar Faruqui and cartoonists such as Rachita Taneja face criminal proceedings against them for their work. The great Indian artist MF. Husain was forced to move to the UK due to death threats by Hindu extremists and legal suits for depicting nude Hindu goddesses.

One of the findings of Freemuse, an independent international organisation advocating for artistic freedom in 2017, was shocking that India surpassed China, Pakistan, Turkey etc., to top the list of countries that have censored the most number of films. In the report published by Freemuse in 2021, it accuses the BJP government of curtailing artistic freedom. A headmistress and mother were charged under the IPC for sedition² and promoting enmity for training children a play on CAA-NRC. Numerous artists who protested against CAA-NRC were charged with serious offences like sedition. In Kerala, we saw the movie set of a church constructed for the shooting of the film Minnal Murali was demolished by Bajrang Dal, alleging that it stood opposite to Shiva temple. Due to pressure from followers, particularly members of the nationalist Maharashtra Navnirman Sena, the music label T-Series took the rendition of the Pakistani artist Atif Aslam's song Kinna Sona off its YouTube account.

Where Artistic Freedom can be Restricted?

While artistic freedom is crucial for promoting creativity and free expression, societies also recognize the importance of setting boundaries to protect individuals and uphold community standards. Artworks may be subject to ethical and legal limitations that are appropriate. These restrictions should be in order to safeguard the interest of society at all. Some areas where reasonable restrictions are essential in order to protect larger public interests are:

² Indian Penal Code, 1860

- **Obscenity and Violence:** Certain viewers, especially young children, may not be able to handle art that incorporates graphic violence, explicit sexual content or other upsetting aspects. To protect minors from potentially harmful or inappropriate content, restrictions are required. Societies frequently work to uphold public morality and decency norms. To maintain respect and appropriateness for a wide spectrum of people using public spaces, content that is deemed to be overly graphic or offensive may be banned. Art that glorifies or promotes violence can pose a risk to public safety. Restrictions are meant to lessen any potential detrimental effects on people or communities. Obscenity, its definitions and the boundaries of acceptable expression can be debatable issues that differ greatly throughout cultures, communities, and legal systems. What one person finds offensive may be regarded by another as a valid form of artistic expression.
- **Hate speech:** Hate speech that incites or glorifies violence against particular groups can pose a direct threat to public safety. Hate speech can exacerbate tensions and societal divisions, hurting social cohesiveness and general well-being. Several aspects, such as the motivation behind the creation, the context in which it is presented, and its potential influence on society, must be taken into consideration when determining whether a given piece is hate speech.
- **National Security:** Works of art that divulge vital military operations, state secrets, or classified information could harm national security. To safeguard national interests, restrictions may be imposed on artistic works that are influenced or controlled by foreign governments or entities and designed to propagate propaganda or false information.
- **Religious sensitivities:** For many people, their religious views are very essential and intensely personal. Blasphemous artwork has the potential to insult, injure, or negatively impact religious people and communities. The permissibility of blasphemous art can vary significantly depending on the cultural, legal, and political context of a country or community. There are many instances where art has hurt religious feelings and raised serious issues. The Danish cartoon controversy where the Danish newspaper Jyllands-Posten published a series of editorial cartoons depicting the prophet Muhammad. Many Muslims considered the cartoons blasphemous because Islamic tradition discourages any visual representations of the prophet Muhammad. The controversy escalated quickly, and it became a major point of tension between the Muslim world and Denmark, as well as other Western countries.

- Defamation: Deliberately using artistic expression to defame or harm the reputation of specific individuals or entities is something that needs to be restricted. Sometimes, artists create artwork with the malicious intention of defaming a particular person or organisation due to personal vengeance or for monetary gain. Satirical and parody works often use exaggeration and fictional elements to mock or criticise individuals or public figures. Courts may recognize such artistic works as protected forms of expression, even if they involve some degree of ridicule or criticism. But Artworks with malicious intentions should be restricted using law.

Present Legal Framework on Artistic Freedom

While considering the legal framework on artistic freedom on a global level, the most important is Article 27 of the Universal Declaration of Human Rights. Article 27 reads:

“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”³

Right to freedom, indispensable for artistic expression and creativity, protected under Articles 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴ and 19 of the International Covenant on Civil and Political Rights (ICCPR)⁵, are other international statutes which deal with artistic freedom. Article 13 (1) of the American Convention on Human Rights and Article 14 of its Protocol in the area of Economic, Social and Cultural Rights⁶, and Article 42 of the Arab Charter for Human Rights are some regional and national human rights instruments containing provision for artistic freedom.

In the Indian scenario, artistic freedom is dealt with in Article 19(1)(a), which discusses the right to free speech and expression. By applying a liberal reading to Article 19 (1) (a) of The Constitution of India, one may readily infer that the word “Freedom of Expression” also encompasses “Freedom of Art”. Though it is a fundamental right, there can be reasonable restrictions which are mentioned under Article 19(2). The Cinematograph Act⁷ governs cinema in India, and the Central Board of Film Certification is the organisation in charge of

³ Universal Declaration of Human Rights, 1948

⁴ International Covenant on Economic, Social and Cultural Rights, 1966

⁵ International Covenant on Civil and Political Rights, 1966

⁶ American Convention on Human Rights, 1969

⁷ Cinematograph Act, 1952

certification of films for public exhibition. *KA. Abbas v. Union of India*⁸ is the first case where the question relating to the censorship of films arises. In this case, the petition that questioned the right to censorship was thus rejected by the Supreme Court of India, which upheld the limitations on public exhibition under the Cinematograph Act of 1952. The court further stated that pre-censorship fell under the category of reasonable restrictions allowed under the freedom of speech and expression.

Laws related to obscenity are dealt with under Sections 292- 294⁹ of the Indian Penal Code. Various tests like the Miller test, Hicklin test and community standards test are used to determine whether a work is obscene or not. In India, the Community standards test is popular. Two offences which are commonly faced by artists are Sec 153A and 295A of IPC. Section 153A of the Indian Penal Code (IPC) specifically addresses hate speech. It prohibits any act that promotes enmity between different religious, racial, or linguistic groups and is likely to disturb public tranquillity. Both spoken and written words, as well as visual representations, are covered under Section 153A. Acts that offend religious feelings are addressed under Section 295A. It forbids wilful and malicious acts, including the creation, publication, or circulation of any material that insults or intends to insult religious beliefs or feelings. These two offences, especially 153A, have often been distorted by the government for protecting their interests.

CONCLUSION

Art has a tremendous ability to evoke feelings, question societal conventions, and provide social criticism. The subjective nature of interpretation is one of the complications surrounding art. The same work may be interpreted and understood differently by many people. Even while the artist may have wanted to make a certain point or critique, it is important to remember that art is subject to personal interpretation. Therefore, the artist has a responsibility to think about whether his work of art will pose a danger to society. Artists have an ethical responsibility towards society and their audience. While dealing with sensitive topics, they should also consider their impact on society. The government can make reasonable restrictions on artistic freedom to maintain social harmony. But these restrictions should not be distorted in order to protect the malicious interest of the government or any other organisation. A balance is always required between artistic freedom and social responsibility.

⁸ *K.A Abbas v Union of India*, (1970) 2 SCC 780: AIR 1971 SC 481. ⁹ Indian Penal Code, 1860