

DOI: 10.5281/zenodo.11042521

FREEDOM OF EXPRESSION VS. CULTURAL SENSITIVITY: A COMPARATIVE LEGAL ANALYSIS OF ARTISTIC FREEDOM IN MULTICULTURAL DEMOCRACIES

Satri Veera Kesalu^{1*}, Anupriya Ravindrakumar Prasad², Navin Kumar³, Neha Purohit⁴,
Dal Chandra⁵, Navpreet Singh⁶, Shally Victor⁷

¹Associate Professor of Political Science, School of Social Sciences and Humanities, VIT- AP University,
Amaravati- 522237, AP, India. Email: veerakesalu.s@vitap.ac.in,
Orchid ID: <http://orcid.org/0009-0005-1693-8655>

²Assistant Professor, Pune Institute of Business Management (PIBM) Pune, India
Email: anupriyaprasad27599@gmail.com, Orchid ID: <https://orcid.org/0009-0005-5848-9800>

³Assistant Professor, Brainware University, Email: navingudia25@gmail.com,
Orchid ID: <https://orcid.org/0009-0001-0433-031X>

⁴Assistant Professor, IILM University Greater Noida, School of Law, Email: Neha85.purohit@gmail.com
Orchid ID: <https://orcid.org/0009-0008-8883-8196>

⁵Associate Professor, College of Law and Legal Studies, Teerthanker Mahaveer University, Moradabad
Email: dcgautambahjoi@yahoo.co.in, Orchid ID: 0000-0003-4950-0711

⁶Assistant Professor, Chandigarh Group of Colleges Jhanjeri, Mohali, Punjab, India - 140307, Chandigarh
Law College, Law Department. Email: navpreet.j2537@cgcuniversity.in,
ORCID ID: <https://orcid.org/0009-0005-8442-8438>

⁷Assistant Professor, Department of law, Aligarh Muslim University, Centre Malappuram Kerala,
Email: svictor4@gmail.com, Orchid ID: <https://orcid.org/0009-0005-4583-0045>

Received: 11/11/2025
Accepted: 18/11/2025

Corresponding Author: Satri Veera Kesalu
(veerakesalu.s@vitap.ac.in)

ABSTRACT

The study explores the policy frameworks under which cultural sensitivity and artistic freedom is governed in the multicultural democracies where reference is made to United Kingdom, Germany and India. It seeks to learn how such nations have found the balance between the freedom of speech with regard to cultural values and seeks to answer how cultural context and legal interpretation define the protection of artistic expression in the society where freedom of speech is in conflict with the values of society. A qualitative research design was used in the study, and the comparative legal analysis was used in evaluating the regulatory strategies adopted by all the countries. The study has employed both primary and secondary sources of material, including case law, legislation and scholarly articles, in order to establish the legal tools and legal precedents set by courts that are binding to the application of the artistic freedoms within such law frameworks. The interpretation of data was done by a qualitative content analysis method. The research revealed broad gaps with respect to protection and limitation of artistic freedom. Although the United Kingdom provides a broad protection under the European Convention on Human Rights (ECHR), it has some limited expressions that

have been limited by the restrictions of the public order. Germany limits on the basis of memory of the past, whereas, India has the tougher laws of cultural protection and a greater influence on artistic freedom. The case study has shown the difficulties of free expression of art and preserving cultural sensitivities in multicultural democracies. The findings underline the need of the legal frameworks that are flexible and safeguard the personal rights and social values within the multicultural courtroom environment.

KEYWORDS: Artistic Freedom, Cultural Sensitivity, Legal Frameworks, Multicultural Democracies, Freedom of Expression, Legal Analysis, Judicial Precedents, Cultural Protection.

1. INTRODUCTION

Democracy is a democratic principle in pluralistic societies, in which individuals are allowed the freedom of expression and expression in the arts (Bader, 2017). Nevertheless, when such a right is exercised in a multicultural democracy, where there are several cultural beliefs and values, it tends to curtail the expression, when it goes against cultural sensibilities (Hanna, 2017). The conflict between the need to protect the unlimited freedom of artistic expression and the preservation of cultural norms and values is an enormous dilemma to the laws globally (Beiter, Karran and Appiagyei-Atua, 2016). Even though freedom of expression is essential in shaping the democratic discourse and personal freedom, it is an issue when artistic works offend cultural values, religions, or ethnic emotions (Gilani, 2019). The present study looks at different legal orders of multicultural democracies that navigate this fine line, by addressing the freedom of expression and cultural sensitivity are addressed within the legal framework of art (Balkin, 2017).

The major issue that the research seeks to answer is the legal dilemma of balancing between the freedom of expression in art and cultural sensitivities of multicultural democracies. Although freedom of expression is enshrined in international human rights law, the implementation of freedom of expression in the artistic context has a tendency to increase the conflict with cultural practices, which has given rise to legal issues on the extent to which freedom of expression can be restricted to prevent harm to culture (Bussani, 2019). The most susceptible to such conflicts are multicultural countries, that is, countries whose population has various cultural, religious, and social communities, because art, as a rule, operates at the intersection of culture and taboo and can therefore be controlled (Croucher et al., 2018). The above questions are significant questions on legal regimes that should be implemented in controlling these tensions, particularly those cases where the right to the self over artistic expression can infringe upon collective rights of cultural communities (Barnidge et al., 2018). This paper seeks to present a comparative exploration of the various legal regimes which speak on this subject matter in an attempt to develop the knowledge on artistic freedom within multicultural societies.

This study is significant in explaining the delicate and, for the most part, controversial relationship between freedom of expression and sensitivity to culture, particularly in art. Compared to legal regimes of multicultural democracies, the study offers valuable information regarding how law can

be used to protect artistic freedom while addressing cultural interests. As international debate continues on art and cultural values, understanding the legal systems' balance of these often-competing interests is essential to policymakers, legal practitioners, and researchers in the field of human rights and cultural studies (Cabedo-Mas *et al.*, 2017). Besides, the research contributes to the broader field of law and culture by offering potential areas of legal reforms that better protect freedom of expression as well as societies' cultural diversity, hence enriching the existing debate on regulating artistic freedom in modern times (Bleich, 2017).

The article contains several main sections to provide a thorough overview of the intersection of artistic freedom and cultural sensitivity in multicultural democracies. The Introduction section sets the context, outlining the purposes of the research, the significance of examining legal frameworks in the United Kingdom, Germany, and India, and the research questions focused on freedom of expression and cultural norms. The Methodology is where the qualitative research design is described, and in which the comparative legal analysis approach used to compare case law, statutory provisions, and secondary sources is detailed. In the Results section, the legal frameworks applicable to artistic freedom in the three states are contrasted and compared, with tables being employed to display an ordered summary of the constitutional guarantees, key legislation, and judicial precedents. The Discussion compares findings to the literature and talks about the implications for artistic freedom. Finally, the Conclusion contains the main points and suggests future research directions.

This study is mainly aimed at comparing and analyzing the legal systems used to address the issue of artistic freedom and cultural sensitivity in multicultural democracies, particularly how these systems balance the values of cultures and individual rights. It involves making the distinction between the various legal jurisdictions that weigh the freedom of expression and the respect of the cultural norm. Moreover, another issue that will be studied is the influence that the legal interpretation and the cultural context has on the protection of artistic expression and the balance between the two in the spheres where the freedom of speech may collide with the values of the society. Through the discussion of how law can help soften the impact of such conflicts, the paper would offer great insights into the issues and possible solutions to the preservation of both cultural sensitivity and artistic freedom in the multicultural democratic societies.

2. LITERATURE REVIEW

Freedom of expression is a fundamental attribute of democratic regimes of states and it is stated in different international legal documents, including Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). It accords citizens the freedom of expression of their thoughts and ideas. The right is especially relevant in the field of arts where artistic creations tend to disrupt social conventions. The right however is not absolute and has exemptions or restrictions such as national security, public order and morality (McGoldrick, 2016). Freedom of expression can be limited by the states through their national values based on the doctrine of margin of appreciation, an important doctrine used in the European Court of Human Rights, and it is highly relevant in multicultural democracies where societal norms are very diverse.

The meaning of being culturally sensitive is to be conscious and respect the values, beliefs and practices of other cultural groups (Menzner and Traunmuller, 2023). Cultural sensitivity in artistic liberty is based on the fact that some works of art may criticise or challenge such societal values.

In multicultural democracies, the line between protecting artistic freedom and not suffering cultural harm is not obvious. According to Polymenopoulou (2016), this balance must exist so as to safeguard the freedom of expression and at the same time avoid offending cultural norms which would be insulted by controversial or offensive works. Art can be an effective social commentary but at a level that it intrudes into some areas then it can be in conflict with cultural values of the group. This has legal implications, particularly in those instances that have reached the European Court of Human Rights, where the Court has had to decide when artistic freedom has to yield to cultural issues.

Legal norms of artistic freedom are guided both by national constitutions and by international human rights law. In multicultural societies, such norms are often strained by the need to balance freedom of expression with public order and the protection of cultural values. For instance, in Indonesia and Malaysia, laws regulating artistic expression are often prompted by religious and cultural sensitivities (Najib *et al.*, 2024). Similarly, Matei and Saluja (2024) describe cultural relativism as discouraging the protection of artistic freedom in international law. They argue that while international law seeks to safeguard artistic expression, its enforcement varies based on the surrounding culture and existing values within a community, so that artworks can be

censored in certain societies.

The intersection of law, culture, and freedom of expression is a complex area of study for multicultural democracies. The law must negotiate the imperative of safeguarding individual rights with that of embracing cultural diversity. Romainville (2015) believes that the right to participate in cultural life, for instance, the right to express oneself in an artistic form, is an inalienable human right, thus linking cultural rights and freedom of expression. However, such a right is generally qualified by the need to protect individuals or societies from harm. According to Pettersson (2019), the speech law and freedom of expression can be juxtaposed in such a way that the regulation of offensive expression should take into account the rights of individuals and the interests of society. The high wire act is to legislate artistic expression but not to stifle creativity, or the cultural identities.

Comparative studies on artistic freedom unveil various mechanisms or ways with which nations regulate freedom of expression especially in arts and they are culturally sensitive in their regulations. Kanojia (2023) compares the regulatory models of the UK, India, and China regarding Over-The-Top (OTT) content and the methods of harmonizing artistic freedom and censorship used in the countries. The paper shows the difference between the UK and India/China where the former is relatively free to artistic expression, whereas the latter has a more restrictive system of artistic governance due to cultural and political reasons. Reitov and Whyatt (2024) go further and map the global topography of artistic freedom, detailing how the legal regimes vary depending on geography and how global organizations work to promote the rights of artists. These textual works offer shrewd observations of the legal regimes that pit artistic expression against cultural sensitivity, with shrewd attention to a role that context plays in determining legal results.

Despite the fact that the literature on artistic freedom and cultural sensitivity is extensive, it has certain gaps. One of them is an analysis of effects of globalisation in regulation of artistic expression. With the internet further distributing artistic material to the entire world the conflict between international freedom of expression and national culture grows more apparent. This incompatibility is more apparent in the online artistic realm, whereby the material is usually borderless, and the question that arises is whether cultural sensitivity is captured in international laws. Moreover, there is no comparative study of the various law codes that can guarantee artistic freedom and balance the cultural

peculiarities of the respective populations. According to Portol es and S e si c (2019), cultural policies should be adjusted to the current issues, and cultural policies are rarely analysed in the context of legal regulations of artistic freedom in multicultural countries. More research in this field would give a better insight on the dynamics involved in achieving artistic freedom in the globalised world.

3. METHODOLOGY

3.1 Research Design

The article has adopted a qualitative research design in the analysis of the legal codes of artistic freedom, cultural sensitivity in multicultural democracies. The research was based on the differences in how different legal systems negotiated between freedom of expression and cultural norms. The comparative legal analysis was applied to evaluate the regulatory patterns that were adopted within the countries with the selected case law and legislations being considered. The structure helped in gaining a clearer picture of how the law system dealt with the issue of law, culture, and the freedom of speech.

3.2 Comparative Legal Analysis Approach

A comparative legal analysis method was adopted in conducting the research of commonalities and differences of legal regimes of artistic freedom in the multicultural democracies. It looked at the legal instruments, the precedents, and the rule-making policies in selected jurisdiction with an aim to establish to which scale the artistic freedom is balanced with cultural sensitivity. The approach allowed and organized the process of comparing legal protection of artistic freedom, considering the cultural context and the legal culture of countries. It was analyzed through a careful study of international law, the constitutional safeguards and the regional statutes.

3.3 Data Collection Methods

Both primary and secondary sources were used to extract data in an attempt to give a comprehensive understanding of the law behind artistic freedom and cultural sensitivity. Major sources were formal case law, statutes, and legislation, whereas academic articles, legal journals, and statements by international human rights organisations were the second-level sources. The comparative analysis had an immovable premise in the two-source technique. The data collection was also to capture the legislative background and the academic opinions on the issue so that this study would fall under the theoretical law

and practice.

3.3.1 Primary Sources

Primary data included the judicial decision, case law, national and international legislation that covers artistic freedom and cultural sensitivity. These sources have been selected carefully in order to describe the legal responses which are embraced by other multicultural democracies. The study analyzed the case law in other jurisdictions to include the European Court of Human Rights, domestic laws on censorship and freedom of expression. This legal document gave a first-hand observation of how the courts and the legislatures continue to interpret and implement the balance between artistic freedom and cultural sensitivity.

3.3.2 Secondary Sources

The secondary data consisted of academic articles, books and legal reviews that touched in the territory of artistic freedom and cultural sensitivity. The sources were used to place the main legal material in context and give it theoretical frameworks of analysis. Reviews and articles published in well-known legal publications and journals and on the law of human rights were checked in order to facilitate comparative legal analysis. The secondary sources assisted in critically questioning the practical working of the legal doctrines and wider implications of the freedom of expression in multicultural countries.

3.4 Data Analysis Strategies

The qualitative content analysis strategy was used to conduct data analysis. The legal documents and the case studies were reviewed to determine whether there are any commonalities, trends, and contrasts between handling artistic freedom and cultural sensitivity. The question of the comparison was concerned with legal ground of court decisions, the reason of regulatory restraint, and the overall implications of artistic and cultural expression. The information was classified along precepts of law, diversity in jurisdiction and cultural settings and they also enabled it to have a thorough comparison of the different legal regimes that addressed such complex issues.

3.5 Ethical Considerations

Ethical reflection featured as a central factor during planning and execution of this research. The study complied with strict ethical standards in making use of legal literature and academic sources. All the information which was used in the research

was publicly known and sourced properly to prevent intellectual property problems. Moreover, the comparative legal study did not ignore the cultural background of the countries being researching to an extent that the research may develop bias or misconception of the legal environments. Ethical integrity was maintained throughout the process of research, particularly in the representation and interpretation of legal cases and scholarly opinions.

4. RESULTS

4.1 Constitutional Provisions and Legal Guarantees in The Selected Democracies

The United Kingdom, Germany, and India each

have specific legal systems that strike a balance of artistic freedom against cultural sensitivity. In the United Kingdom, Article 10 of the European Convention on Human Rights (ECHR) guarantees wide freedom of expression, though laws about hate speech and defamation allow for restrictions as shown in Table I. Germany's Basic Law (Grundgesetz) affords strong protection for artistic freedom, but the Strafgesetzbuch (German Penal Code) penalizes laws against Holocaust denial and hate speech, limiting freedom in specific situations. India affords freedom of expression under Article 19, while cultural protection legislation regulates art regarding obscenity, defamation, and blasphemy.

Table I: Overview Of Legal Frameworks in The Selected Democracies.

Country	Constitutional Guarantee for Freedom of Expression	Cultural Sensitivity Laws	Key Legislation	International Commitments
United Kingdom	Article 10, European Convention on Human Rights	Laws on hate speech, defamation	Communications Act 2003, Public Order Act	ICCPR (Article 19), ECHR (Article 10)
Germany	Basic Law (Grundgesetz), Article 5	Holocaust denial laws, hate speech laws	Strafgesetzbuch (German Penal Code)	ICCPR, ECHR
India	Article 19 of the Constitution of India	Laws on obscenity, defamation, and blasphemy	Indian Penal Code, Cinematograph Act	ICCPR, ECHR

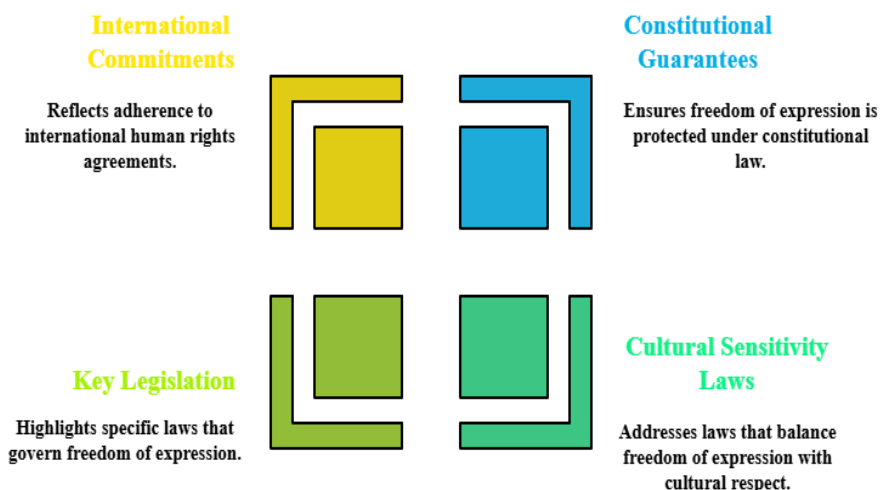


Figure 1: Legal Frameworks of Democracies.

Democratic legal systems previously relied on four columns: international commitments imposed human rights, constitutions protected expression freedoms, laws determined freedom boundaries, and cultural sensitivity laws balanced liberty and respect, as shown in Figure 1. In combination, these systems influenced how nations protected or restricted art expression, charting the negotiated terrain between social expectations and civil liberties.

4.2 Legal Interpretations and Cultural Sensitivity in Artistic Freedom

The United Kingdom, Germany, and India

display different legal interpretations of artistic freedom. In the United Kingdom, Article 10 (ECHR) provided full protection of artistic expression, but restrictions on public order and offensive speech had only moderate impacts, as shown in Table II. Germany maintained strong artistic liberty under the Basic Law (Grundgesetz), but cultural memory and sensitivity to the past ensured that few restrictions were placed, particularly on hate speech and denial of the Holocaust. In India, there was a guarantee of freedom of expression under Article 19, but sensibilities regarding culture, especially religious symbols and morality, tended to curtail artistic

freedom.

Table II: Comparison Of Legal Interpretations and Cultural Sensitivity Approaches.

Country	Legal Interpretation of Artistic Freedom	Cultural Sensitivity Approach	Impact on Artistic Freedom
United Kingdom	Broad protection under Article 10 (ECHR), with limits based on public order	High regard for public order, censorship based on offensive speech	Moderate impact, with restrictions on art that causes public disorder
Germany	Strong protection of artistic freedom under the Basic Law (Grundgesetz)	Emphasis on cultural memory and historical sensitivity	Limited restrictions, focusing on historical respect and preventing hate speech
India	Protection under Article 19, with restrictions for cultural protection	Strong cultural protection, especially regarding religious symbols and morality	Significant impact, where cultural sensitivities often outweigh artistic freedom

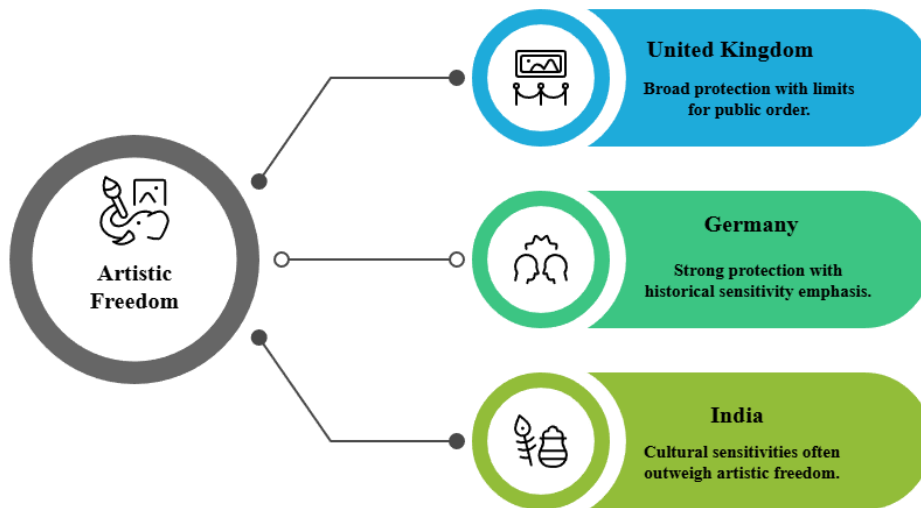


Figure 2: Exploring Artistic Freedom Across Nations.

Different democracies interpreted artistic freedom in different ways. The United Kingdom extended broad protection but circumscribed it to preserve public order. Germany offered robust freedoms, but emphasis was on historical responsibility, as shown in Figure 1. India used to give priority to cultural sensibility over expression. Each nation shaped its stance according to diversified experience and sociopolitical conditions.

4.3 Impact of Judicial Precedents on Creative Freedom in The Selected Democracies

Preminent legal cases in the United Kingdom, Germany, and India have been instrumental in shaping artistic freedom and the balance with cultural sensitivity. In the United Kingdom, the Artist X v. State case set out on censorship on the basis of public order concerns that restrain artistic expression that is offensive in nature. In Germany, the Artistic Expression Association v. Government case centred around artistic freedom with limitations over topics like Holocaust denial. In India, the Religious Art Censorship v. Artist case upheld cultural protection legislation, mandating censorship and disclaimers to protect religious sensitivities.

Table III: Key Legal Cases Impacting Artistic Freedom in The Selected Democracies.

Country	Legal Case	Year	Legal Issue	Outcome
United Kingdom	<i>Artist X v. State</i>	2019	Artwork deemed offensive due to political content	The court upheld censorship based on public order concerns, restricting artistic expression.
Germany	<i>Artistic Expression Association v. Government</i>	2018	Public exhibition on controversial historical topics	The court ruled in favour of artistic freedom, but imposed limitations on specific topics (e.g., Holocaust denial).
India	<i>Religious Art Censorship v. Artist</i>	2020	Art installation deemed offensive to religious groups	The court ruled for censorship under cultural protection laws, requiring disclaimers on the artwork.

5. DISCUSSION

The comparison across the legal systems of the

United Kingdom, Germany, and India revealed different ways in which artistic freedom and cultural sensitivity are balanced. In the United Kingdom, Article 10 of the European Convention on Human Rights (ECHR) guarantees liberal freedom of expression with few exceptions to hate speech and defamation as evidenced in Table I. Germany's Basic Law (Grundgesetz) grants very strong protection for artistic freedom, but Holocaust denial and hate speech legislation place limits, bearing witness to the country's determination to ensure historical sensitivity. India, although guaranteeing freedom of expression under Article 19, places stringent limitations on art that offends cultural sensitivities or religious feelings in Figure 1. These observations suggest that multicultural democracies favour cultural norms and public morality over unfettered artistic expression, particularly when the public order or national identity is perceived to be under threat. The implications of this study have wide-reaching implications for artistic freedom in multicultural democracies, in particular regarding the tension between freedom of expression and cultural sensitivity. The inclusion of major legal cases in Table III reveals that artistic freedom tends to be constrained by public order issues and cultural values. In the United Kingdom, the *Artist X v. State* case illustrates that the public order may be used to justify censorship of offensive art in Figure 2. In Germany, anti-Holocaust denial and hate speech laws have been utilised to control artistic content that might contradict historical memory. In India, cultural protection laws and the case of *Religious Art Censorship v. Artist* identify that religious sensitivities override, resulting in extensive restrictions on artistic freedom. This finding aligns with, who further stated that majoritarianism impacts speech regulation, restricting artistic freedoms in these democracies.

Comparatively, previous studies, the present study is in support of Shinar (2021), who emphasised that democratic backsliding and majoritarian entrenchment are likely to result in subsidised speech limiting artistic freedom. In Singh (2018), the conflict between freedom of speech and religion in India was addressed, emphasising that religious sensitivities are given more importance than artistic freedom, which is in conformation with the strategy of India. Situmeang *et al.* (2025) indicated that the harmful speech in online spaces is typically regulated for the sake of cultural norms, just as offline art is censored to avoid hurting cultural sensitivities. In addition, Van Noorloos (2017) had explained that hate speech bans in the Netherlands are politicised, a fact attested

by Germany's judicial response to hate speech and artistic material. Lastly, Vlieg (2018) argued that secularism and religious controversies in the United Kingdom dictate the regulation of artistic freedom, particularly where religious symbols are involved.

Despite the significance this study offers, it has several limitations. The study only focuses on three countries, and thus may not comprehensively cover the variety of legal frameworks in multicultural democracies. By limiting the scope to statutory texts and case law, the study also overlooks to which these laws are really enforced in practice. This could impact conclusions, as public opinion and the influence of the media can significantly play a part in interpreting artistic freedom in a nation. Moreover, empirical research based on interviews with artists and law practitioners would provide a clearer understanding of how the law impacts the arts community. Subsequent studies can broaden the scope to include other democracies and analyse the role of digital media in artistic freedom.

Subsequent studies can explore the digital media's influence on artistic freedom in the context of globalisation. As explained, the regulation of digital expression raises new challenges in defining the boundaries of harm on the internet. Similarly, noted that regulation of speech in digital spaces is more politicised than ever before, an issue that is increasingly relevant as artistic expression transitions to the digital space. Future work can also examine the corporate power and how global platforms like social media are implicated in artistic censorship, especially regarding the transnationalization of speech control. A longer cross-cultural comparison can also examine how the cultural values in different regions affect legal approaches to artistic freedom, offering insights into the global frameworks can affect domestic legislation.

6. CONCLUSION

This study has presented a comprehensive examination of the relationship between artistic freedom and cultural sensitivity in multicultural democracies, the case studies being the United Kingdom, Germany, and India. The study demonstrates that while all countries guarantee artistic freedom within their constitutional laws (for example, Article 10 of the ECHR in the UK, Article 19 of the Indian Constitution, and Basic Law (Grundgesetz) in Germany), cultural sensitivity translates to restrictions being placed on artistic expression. While in the United Kingdom, public order legislation curtails offensive art, in Germany,

historical sensitivity around the Holocaust curtails content that deals with hate speech. In India, religious and cultural sensitivities are more restrictive, particularly in art that engages with religious symbols and morality. The study contributes to the comparative legal discourse by demonstrating the nuanced way in which democratic legal systems negotiate the tension between

individual rights and societal values. It also highlights the role of judicial precedents in shaping artistic freedom, demonstrated through landmark legal cases in each jurisdiction. However, the focus of the research on merely three countries limits its generalizability, necessitating further research with other nations and the exploration of the effects of digital platforms on artistic expression in the future.

Acknowledgement: We thank the anonymous reviewers for their constructive and insightful comments that helped improve the clarity and scholarly depth of this comparative legal study. This work was partially supported by the academic resources and research facilities provided by our respective institutions. The authors would especially like to thank the personnel involved in data collection and legal research support for their valuable cooperation throughout the study.

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