



**THE ILLUSION OF CHOICE:
MECHANISMS OF STATE CONTROL
IN DEMOCRACIES AND
DICTATORSHIPS**

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ABSTRACT

This research paper delves into the idea that how much do citizens living in democratic governance systems are able to choose freely or whether they are manipulated in the less obvious manners than that of people who are living in authoritarian or dictatorships regimes. It raises questions on the stereotypical view of democratic governance systems as providing absolute freedom to its citizens and authoritarian or dictatorship regimes as having absolute control over its citizens.

This paper uses a comparative method to analyze the governance systems of Ancient Greece and the Roman Republic who are considered to be the first societies to contribute to the ideas of democracy and republics. In Ancient Greece, Athenian democracy was the system in which the citizens could directly influence the decision-making processes, whereas Rome created the new system of distributed power between various institutions in their governance structure.

These governance systems then are compared with the Nazi Germany, where the Nazi Regime under Adolf Hitler dismantled the democratic institutions, and used propaganda to dictate what people thought, and established a police state that killed all its enemies. This analogy between these governance systems demonstrates that how the dictatorships apply fear, censorship, and manipulation of the law to ensure absolute power.

The paper then discusses the current India and its democratic system with emphasis on the safeguards provided by the Indian Constitution namely: basic rights, autonomy of the courts, separation of power among the branches of government, and federalism. Nevertheless, it also examines areas of constitutional pledges and constitutional reality, such as employing emergency powers, sedition laws, and civil liberties. The analysis of the important Supreme Court cases is used to comprehend the ways in which courts strike a balance between government power and individual freedom,

One of the primary points for consideration in this research paper is on the influence that the media has on the general opinion and the broadcasting of factual or false information. The prime example of this is the Nazi Germany who enjoyed full control of all the media houses in order to promote its propaganda and agenda. On comparison with India, the democratic governments place the media as a watchdog whereby it keeps the government accountable. However, the present media landscape has experienced a considerable change in the light of corporate ownership systems, especially with the advent of social media services.

This paper also examines the probability of misleading the voters with false information, echo chambers, and strategic disinformation campaigns, which makes the issue of whether the citizens have the ability of making informed electoral decision a huge concern. This paper concludes that both democracies and dictatorships use very different methods of control but do use the way of control over their citizens where the dictatorships are based on the use of blatant methods of control such as censorship, physical violence, and coercion whereas democracies use minor mechanisms such as complex legal frameworks, censored narratives in the media and calculated regulation of education and information availability. Both of these governance structures offer an illusion of choice where dictatorships does so through its pretense of choice, which has already been predetermined by strong power structures.



KEYWORDS: *Democracy, Dictatorship, Governance, Control, Mechanism*

INTRODUCTION

Democracy is often described as the picture of freedom, a system of individual rights, where the sovereignty of the people is in power whereas dictatorship is described as the opposite of freedom a place where intimidation and fear shaped by the government prevail but a closer examination will show that this sharp contrast starts to fade away. However, democracies still depend on consent manufacture, perception shaping, and dissent limiting operations that in many ways are more advanced and, hence, more persistent than the coercive appearance common to authoritarian governments. Democratic institutions, elections, free speech, separation of powers, judicial review, are glorified as the protector of freedom but the same processes can justify compliance, making the previously obedience a voluntary one. In these systems, obedience seems to be voluntary, and power is hidden under the discourse of self-determination.

Contemporary democratic nations are more and more relying on narrative legitimacy, in which patriotic identities are made to equate loyalty with obedience. This can be observed in various settings: in the United States, where media polarization is used to persuade people into partisan tribalism; in India, where digital nationalism is being used to discourage dissent by labeling critics as anti-national; in Europe, where securitization of migration has empowered the intrusive surveillance as a matter of course. The fact that propaganda and public information is blurred as well as the corporatization of the press indicates a democracy in which public knowledge is produced and sold and citizens often protect official structures of power even to their own disadvantage.

This study will seek to question the qualitative content of freedom in the democracies through analyzing how

consent is fashioned, surveillance normalized and legitimacy produced. This paper provides a historical-comparative analysis of four political regimes, namely, the Athenian democracy, the Roman Republic, Nazi Germany, and modern India, and proves that all regimes eventually strive to achieve obedience, but democracies are particularly successful in making their citizens emotionally engaged in their control. In case power is best used where least noticed, then democracy is the epitome of domination: human beings struggle to maintain the same system that they are constrained by. Power is not alienated, but it is internalized in the psyche of the citizen¹.

RESEARCH QUESTIONS

The following are the core questions that will define this research and question the issue of democratic legitimacy outside of the formal institutional structures.

1. Are citizens in democracies substantively autonomous or is the state through the help of the media and social-political systems crafting or manipulating the menu of choices presented to them in such a way that they will comply?
2. What creates the illusion of choice that replicates in the form of freedom and strengthens structural domination?
3. What are the mechanisms of behavioural guidance, identity-based political stories and manipulation of information? How far is the experience of political freedom under present-day democracies to be contrasted with the coercive mechanism of the dictatorships and are the key distinction to be found in technique and not in intent?
4. Lastly, is it the continuation of democratic ritual that conceals the shift of government to a docile authoritarianism, in which dissent is suppressed by prompting legality, persuasion and psychological conformity instead of by coercion?

¹ Hannah Arendt, *The Origins of Totalitarianism*, Harcourt, 1951



METHODOLOGY

The study utilizes a historical-comparative approach coupled with the analysis of the law of the people and the media-political psychology study. The methodology is designed in a trifold manner and is interdependent, focused on three approaches, that are in operation concurrently, but not defined by time.

This paper uses the institutionalism of the past to discuss the functioning of power in the government systems of Ancient Athens, Rome, Nazi Germany and India which altogether demonstrate the development of compliance mechanisms implemented by the governments. Another element of analysis is the constitutional and legal analysis which delves into structural vulnerabilities in liberal democracies that show signs of authoritarian tendencies. Using India as an example, this paper presents a unique case where the country is both a constitutional democracy and an institutionally fragile state. The Basic Structure Doctrine which was established in the landmark case of *Keshavananda Bharti v. State of Kerala* strengthened the judicial authority in order to prevent legislative overreach and protect democratic principles.

Another element of analysis covers the media and surveillance studies, which investigates that how modern technology has changed the relationship between state, citizens and private entities. Soshana Zuboff terms this as “instrumentarian power” which means the transformation of human behaviour into the form of data that can be further analyzed and manipulated in order to produce politically desired outcomes, therefore, making digital control both invisible and voluntary as modern digital platforms collect behavioural data of the citizens that is then used in the prediction and influencing the civic conduct. This paper challenges the common and conventional notions of democracies being inherently liberating and dictatorship as inherently oppressive and examines how both of these governance structures regulate autonomy and instill obedience among its

citizens, thereby making the compliance appear rational and morally justified.

THEORETICAL FRAMEWORK: POWER, AUTONOMY AND BUILDING OBEDIENCE AMONG CITIZENS

The Illusion of Free Consent

Consent which is supposedly the baseline of democratic legitimacy only makes sense when people have the necessary epistemic autonomy to assess and dismiss options. There is however, a loss of authenticity of consent when the context that forms choices is built on power. Raw political reality seldom reaches the citizens; they are exposed to interpreted reality, selectively filtered by the state-oriented media, educational systems, cultural institutions, and the digital platform. This phenomenon, of which French theorist ²Guy Debord wrote, is the spectacle: a mechanism whereby society ceases to engage with reality but with images that are provided by those in power. What is important to note is that when political creativity turns towards production, choice is no longer a sign of independence but a performance.

Inclusiveness, Hierarchy and Democratic Obedience

Democracy asserts inclusiveness, but rather than being inclusive, its implementation is usually characterized by domination of participation. According to ³Jacques Ranciere, equality of democracy is only on paper, and actual politics is established on the basis of structures that dictate who is visible, credible, and significant in the public space. Groups that would issue a challenge to dominant norms are not treated as the participants of democracy but as the threats to it. It is the force of this dynamic that protests are only left unchecked when they are non-violent, that the media accepts that the majority voice is large and loud, whereas the voice of minorities, especially those that invoke the national identity, is marginal, and that no other discourse is left

² Guy Debord, *The Society of the Spectacle*, Buchet-Chastel, 1967.

³ Jacques Ranciere, *Hatred of Democracy*, Verso, 2006



without resistance. Inclusion therefore, becomes a process of ideological conformity.

The psychological motivation and self-regulated power

Democracies are based on emotional obedience unlike dictatorship that is founded on body harm. The experiments conducted by ⁴Stanley Milgram concerning obedience proved that common people are obedient to the authorities only when this obedience is justified by the sense of morality or even social order. This psychological habit is taken advantage of by democratic institutions: citizens believe that by obeying the authorities they save national security, social order, and economic development. What is obtained is the voluntary submission disguised in the patriotic language. Similarly, the Patriot Act in the United States was supported by fear before and after 9/11, and this shifted mass surveillance to become a normal practice of authoritarian regimes. The citizens welcomed the annihilation of privacy owing to the fact that it guaranteed security. It was with fear but not through coercion that freedom was exchanged.

From protection of law to domination of law

The rule of law has been used by democracies to offer moral superiority over authoritarianism. But coercion can also be promoted by law. When the legislatures empower the executive with wide powers of national security or of emergency, the executive tends to misinterpret these powers. A good historical example of India was the Emergency of 1975, where the suspension of the fundamental right to life was upheld by ⁵ADM Jabalpur v Shivkant Shukla after it was stated that it was not the law that permitted liberty but it terminated it. Law does not have to quash dissent illegally under democratic conditions, it can do so in a procedurally valid manner.

⁴ Stanley Milgram, *Obedience to Authority: An Experimental View*, Harper & Row, 1974
⁵ ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521

CLASSICAL DEMOCRACIES AND ORIGINS OF STATE MANUFACTURED OBEDIENCE

Athens: A Democracy of Controlled Participation

⁶Athens is widely recognized as the cradle of democracy but this story hides the advanced compliance systems inherent in the Athenian city state. The Assembly (Ekklesia), Council (Boule), and law courts were created not only as the governing institutions but as the means of the ideological reinforcement since citizens incessantly proved their loyalty by means of participation.

It is important to understand that Athenian citizenship was only available to a minority born male who were part of the native population and were exposed to a system of civic education called paideia which was meant to instill the allegiance to the state. The democratic citizen was not just a rightsholder but a subject of politics, who had been trained to be a carrier and reproducer of communal values. As soon as the very act of taking part turns into civic virtue, the autonomy can turn into conformity as citizens become democratic because this is what democracy dictates. This is shown through Ostracism. Although ostracism was believed to protect against tyranny, it also acted as a method of punishment to nonconformity and dissent. The demos did not only eliminate possible threats but also directly punished dissent linking social belonging with political compliance. Exile posed a risk of exile thus making the community a self-governing institution where obedience was a question of life and death.

Therefore, Athens was not only a legitimate state but also one that adapted and conformed to its institutions yet it was the psychological domination, the fact that citizens were not subjugated to democratic order but rather the best form of citizenship. Athens shows that since its beginning, democracy needed structured obedience, in which citizens were only allowed to serve within the ideological confines of the polity.

⁶ Mogens H Hansen, *The Athenian Democracy in the Age of Demosthenes*, Blackwell Publishing, 1991.



These boundaries of political subjecthood were predetermined: to dispute Athens was to renounce the nature and soul of citizenship. The ideal of democracy as being liberating in nature is historically unsound since domination in Athens was not eliminated but perfected. Citizens considered themselves to be in the control of themselves whereas the collective identity that was characterized by the state controlled them.

Rome: Compliance through Economic Dependency

⁷Roman Republic came up with a constitutional structure that blended aristocracy with some aspects of the populace. Nevertheless, the political agency of Roman citizens was under structural constraint because they depended economically on the possessors of material resources. The hierarchical system of state involved the distribution of grain, land, patron-client relations and military pay, which incorporated the survival of citizens in the state. There was no use of force to provide obedience but made it rational because failure to obey posed a threat to livelihood. An example of this is the Annona system, which linked food security with obedience making obedience a food currency. Notably, Roman law and magistracies gave the impression that citizens had the legal power in principle, but they were in practice subject to the decision of the Senate and those of the elite who dominated the political agenda. This was the system which enabled the republic to have the pretence of popular governance, but the optimates to make sure that results were such that specified to oligarchic interests. Popular sovereignty was privatized effectively with dominance being centralized to elite families and when there was a choice, there was little that was substantively significant.

The fact that Rome was transformed into an Empire under Augustus shows the final aggregate of this illusion of democracy. Elections were made, offices crammed, and republican symbolics maintained, but

served as the decorations of power not its content. ⁸Citizens were willing that they should be subject to imperial rule, since they were not made to realise that they had lost their freedom of action - the ritual of participation had been maintained. Already ingrained in the Republic by means of economic and social dependence, obedience passed over with a natural transition into a government of the many to the rule of the one. Rome thus shows how a political community may feel itself free living within a carefully regulating framework as it shows that elite hegemony is maintained best when disguised in democratic legitimacy.

The Athenian and the Roman political traditions indicate that the processes of control which are inherent in democracy are much older than the modern criticisms may imply. Obedience reflections in both cultures were reworked to be more of a civic virtue whereby the citizens were influenced to make decisions that were consistent with the ideals approved by the state without necessarily feeling, they were making one. This conversion of coercion into a nurtured sense of dependency depicts how the aspects of democracy participation can cover structural inequalities: individuals internalize the power of the authority and hence voluntarily obey the demands made to them. Therefore, autonomy which is promised by democracy is more a figment than a reality which is nurtured by socialization, institutional design, and rhetoric of civic responsibility. The classical experience then shows that the illusion of choice is not a new democratic failure, but a structural feature, an inherent part of the very DNA of the democratic government- it was brought about in its very founding, and it has remained an unresolved, irreconcilable paradox of citizen liberty and the state authority.

⁷ Peter Garnsey, *Food and Society in Classical Antiquity*, Cambridge University Press, 1999.

⁸ David Shotter, *Augustus Caesar*, Routledge, 2005.



The Nazi State: The Intersection of Law, Myth and Complete Obedience.

Naziism regime was founded on ideological and psychological ideological approach that had never been witnessed in the earlier regimes. ⁹Propaganda that was centrally orchestrated by Joseph Goebbels was not a persuasion but it threatened the imagination and it was a mixture of national identity, racial purity, and political loyalty. A citizen that wanted to obey was worked out in all the movies, radio broadcasts, school curriculums and even in the ceremonies. Domination did not exist in the component of fear but of the component of persuading tenderness, of subordination to the Fuhrer not only as a legal but in something approaching to the moral. The rise of the Nazi regime can serve as the best historical example of how democratic institutions may be turned into the scaffoldings of the totalitarian domination. It is through constitutional rhythms of the Weimar Republic that Adolf Hitler came to the power and it was initially through elections, alliance-making by the parliament. Once in power the Enabling Act transformed the executive powers into the tool of the legalized dictatorship that demonstrates how it is the very engine of democracy that can be switched on itself to extinguish the lights of the very freedoms it is designed to protect.

According to one of the works on the Nazi ideology by ¹⁰Claudia Koonz, the regime transformed individuals into the law enforcers of the Nazis. The thematic neighbours became voluntary spies of the Gestapo and they betrayed their neighbours in numbers not due to fear, but due to an ideological euphoria in the state, the people had become the means of control, the state and the society were confounded. The effect was some sort of obedience that was self-defeating because it was now a belief system. The holocaust based upon bureaucratic order and mobilisation of cultures reveals the most horrible form of political obedience. The holocaust with its origins in painstakingly well-organized bureaucracy

and mobilisation of cultural sentiment shows the most frightening variant of political obedience: when a society engages in atrocities on the pretext that obedience is a virtue of moral conduct. In this type of system, the line between the enforcers and the followers disappear, and regular people are state violence instrument not by force but by belief. The aim of total control is not reached when the state only controls behaviour, but when it influences the consciousness, namely, colonises minds to make it impossible to think differently. The Nazi regime demonstrates that law and propaganda are not the opposite poles but technologies of control that are interrelated: law gives a pretense of appearing legitimacy to the oppression, and propaganda makes people feel better to say, excited with the same oppressive policies. This relationship is an effective reflection of the modern democracies and indicates the implicit totalitarian character of liberal institutions. The state takes control of narrative power, be it via concentrated media ownership, electronic surveillance and data manipulation, increased hyper-nationalism, criminalisation of political dissent, or the covert application of so-called neutral legal processes to eliminate dissent, compliance is no longer imperative but desirable.

Transition to Modern Democratic Control

The historical path of classical Athens to imperial Rome and finally to the totalitarian rule of the Nazi Germany shows a process of perfection of the political control in the systems which outwardly proclaim to empower the citizens. Democratic participation is rather slowly turned into a disciplinary mechanism, civic activity, and social conformity are interwoven; economic dependence is shifted to an insidious means of political obedience, staying alive to being loyal; and propaganda is internalised into patriotic feelings, so that even belief becomes a tool of regulation. The pretense of choice is reinforced in this development, just as obvious force falls out of sight, and people begin to view their obedience as voluntary. This

⁹ Ian Kershaw, *Hitler: A Biography*, Penguin Books, 2008

¹⁰ Claudia Koonz, *The Nazi Conscience*, The Belknap Press of Harvard University Press, 2003.



legacy takes new, more technologically advanced forms in the modern constitutional democracies like India: there are data-oriented behavioural monitoring that directs citizen behaviour; there is algorithmic curation that is both a source and a constraint of popular discourse; there are judicial bodies that tend to legitimize the growth of state power; there is the effect of cultural nationalism that serves as moral and social discipline, prescribing the acceptable identities and ideologies. These tendencies do not indicate that India is unusually authoritarian, but simply that India is a symbolic figure of a wider world change where freedom is formally present, but freedom of meaningful autonomy is increasingly diffused - washed away in the refined forms of the contemporary democratic regulation.

INDIA'S CONSTITUTIONAL DEMOCRACY: LAW, POWER AND MANAGED ILLUSION OF RESTRAINT

The Indian context is an especially illuminating case study on the illusion of choice in a constitutional democracy since it is a country that has both an ostensibly strong rights culture and a politics where the state has highly effective instruments of coercion, surveillance and control of the story. The Constitution of India states itself as transformative and emancipatory, which is devoted to liberty, equality and fraternity. Part III fundamental rights are intended to put the state to check and leave the individual in charge. Nevertheless, the architects of the Constitution also incorporated powerful centralising devices in the very first place: broad emergency powers, vast preventive detention, a strong Union executive, and broad authority of the legislature to limit rights under the pretext of preserving order, state security and decency or decency. The constitutional process in India illustrates the presence of a constant conflict between these liberating and disciplinary urges. The Constitution does not only limit the state, it also endows it with arms.

This strain manifested itself very early in the constitutional practice.¹¹ In the case of preventive detention laws, such as legislation, it was passed in the same months of the inception of the Constitution. The law of detention and security laws were constantly turned to by parliament and state legislatures to suppress political dissent, especially in places where there was separatist or ideological rivalry. The courts, which were technically empowered to declare such laws invalid on the basis of their violation of fundamental rights, tended to relinquish to the judgment of the executive about what was threatening their order. The right of people to vote and elect their representatives was thereby maintained, and the extent of possible opposition politics and dissent was controlled by the lawful coercion.

The declaration of the Internal Emergency in 1975 is the most dramatic expression of how plainly constitutional democracy can tend to slip into utter authoritarianism without formally forsaking legality. The suspension of the basic rights, mass arrest of political dissidents, the blocking of the press and the centralisation of power in the Prime Minister office were all done under the provisions of the constitution. When the Supreme Court in the ¹²ADM Jabalpur v Shivkant Shukla case sanctioned the argument by the government that even the right to life could be suspended in case of the Emergency, it was sanctioning a chilling principle, that formal democracy would co-exist with a black hole in the statute that allowed individuals to have no protection of their rights in the state. It is generally a narrative of constitutional resurrection and judicial renewal, the post-Emergency age. These rulings were properly hailed as landmark in the safeguarding of liberty in ¹³Kesavananda Bharati v State of Kerala, in which the Supreme Court promulgated the fundamental structure doctrine in which the amending power of Parliament could not be invoked to wipe out the essential characteristics of the Constitution, namely, democracy, the rule of law, and fundamental rights

¹¹ A. G., Noorani, "Preventive Detention Under the Indian Constitution", (1961) 3 Journal of the Indian Law Institute 195.

¹² Supra Note 5

¹³ Supra Note 6



and ¹⁴Maneka Gandhi v Union of India, in which the Court broadened the meaning of the right to life and personal liberty, discontinuing the formalism of previous cases. But they will only work to maintain judicial readiness to interpret them with force against executive and majoritarian pressure. The doctrines do not dictate themselves, and they need institutional boldness.

¹⁵The state still had strong legal tools to punish political life even during the post-Emergency period.

¹⁶Section 124A of the Indian Penal Code became still applied to journalists, activists and protestors even though it had colonial roots and was frequently condemned as being inconsistent with the modern democracy. Anti-terrorism legislation such as ¹⁷TADA, ¹⁸POTA, and then the ¹⁹Unlawful Activities (Prevention) Act UAPA, were overly broad, highly restrictive about bailing, and so pre-trial imprisonment itself was punitive. It is not the person who has been formally impoverished of the right to vote or to political expression, but rather is put in an environment of law, in which political expression can make him or her susceptible to be charged under indistinct national security categories. The Constitution is not infused; but the room to hold substantial opposition becomes smaller.

THE DIGITAL STATE: SURVEILLANCE, BEHAVIOURAL CONTROL AND DATAFICATION

When law offers a formal structure of punishing dissent, the digital revolution of governance offers its technological platform. The rapid adoption of digital identification and biometric authentication and mass collection of data in India has once again placed the citizen in the role of a constantly surveilled subject. The Aadhaar project which was initially introduced as

an instrument of efficient delivery of welfare, in effect produced a centralised biometric database which encompassed more than a billion individuals, connecting identity with a variety of services. The group that supported civil liberties claimed that such centralisation eases profiling, which is targeted exclusion and possible surveillance. The state however packaged Aadhaar as benign and essential with its discourses focusing on inclusion, leak reduction and modernisation. By allowing the right to privacy to be understood as a fundamental right when cases of constitutional challenge came before the Supreme Court, the Court in ²⁰Justice K S Puttaswamy (Retd) v Union of India unanimously affirmed the use of Aadhaar in core welfare schemes and allowing PAN-Aadhaar linkage but has effectively legalised a national surveillance system. Controllingly speaking, the importance of Aadhaar is not in its current applications but in its potential applications in the future. The more spheres of life are connected to Aadhaar identity the banking, telecommunications, welfare, taxation, etc. the less the individual can live without exposure to state surveillance. The opportunities to access vital services are now based on submissiveness to this system. To give his or her consent, people do not have to be shot at gunpoint; it becomes impossible to make the choice. The freedom of the citizen is formally restored when his existence, well-being and participation in the economy demand constant digital readability to the state, but is conditionally determined in practice. ²¹This change is described by Zuboff in terms of his concept of instrumentarian power: power is no longer exercised through the threat of physical punishment but instead by organizing the behavioural space in which individuals have to exist.

¹⁴ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

¹⁵ K. Balgopal, "Erosion of Civil Liberties", (1990) 25 (24) Economic and Political Weekly 1317.

¹⁶ Indian Penal Code, 1860, s.124A

¹⁷ Terrorist and Disruptive Activities (Prevention) Act, 1985.

¹⁸ Prevention of Terrorism Act, 2002.

¹⁹ Unlawful Activities (Prevention) Act, 1967

²⁰ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

²¹ Supra Note 7



²²The example of India and the use of digital tools in policing and protest management can serve as an example of the way this architecture may be utilized to control and suppress dissent. The case of facial recognition at the protest locations, the connection of phone metadata to the work of the investigators, and geo-location tracking of the COVID-19 pandemic demonstrate that emergency measures and policing practices can set precedents of the normalisation of online control. Applications developed on smartphones to track health or governance-related functions gather large amounts of data, which is frequently not informed by any meaningful consent, and organize the behaviour of the citizens by providing nudges, alerts and notifications. Surveillance is not only everywhere, but people are willingly ready to be watched, as they carry in their pockets what are the same tools that track them and manipulate them.

The concept of democratic choice is a very problematic concept in this regard. A citizen can vote, make criticism against government online or go to the court, but their actions can always be measured and traced and analysed. The state (and the players of politics which are on the same side with the state) acquire the ability to foresee and pre-empt opposition. The control is no longer about prohibition of the opinions; it is able to profile and isolate those opinion holders. The fear of being used against them, i.e., either legally persecuted, tax-investigated, or socially harassed, makes people self-censor, which proves how digital governance promotes the illusion of freedom and eliminates its reality.

FREE SPEECH, MEDIA CAPTURE AND FABRIATED CONSENSUS

The liberty of expression has been referred to as the blood of democracy, but in reality it can be associated with far-reaching administrative and organizational

restriction. The constitutional right to free speech of India as guaranteed by ²³Article 19(1)(a) has a long list of reasonable restrictions such as the security of the state, the peace of the country, decency and morality. In ²⁴*Shreya Singhal v Union of India*, the Supreme Court declared ²⁵section 66A of the Information Technology Act invalid on the ground that its imprecise and indiscriminate terms criminalising annoying or grossly offensive online speech could not be squared with the right to free speech. That ruling became an important judicial acknowledgment that imprecise and indiscriminate speech prohibition provisions made the state selectively suppress critical opinions. The larger regulation framework around online and offline expression is, however, very disputed. Even though conviction after conviction is seldom achieved, police still invoke colonial provisions of public order and criminal provisions on hate speech and sedition, which they do in a mechanized manner to avert critics. The punishment itself is the cost of the criminal process targeting, which is arrest, trial, reputational damage. Being advertised as a space of freedom, digital platforms are now regarded as an area of disinformation and manipulated political communication. ²⁶Social media algorithm emphasizes on the content that is friendly to the engagement, as a rule, the content that is emotionally provocative or sensational. Political players do this in the coordinated campaigning, troll armies and targeted advertisements. The Cambridge Analytica crisis in the world and the systematic manipulation of information in Indian elections are instances of how the internet architecture may be made a consent factory, pre-emption of bias and non-conformity. Echo chambers enable the users to be exposed to ideas that reinforce their personal beliefs hence, become open to those stories which equate government criticism with disloyalty. The collective effect is, that the popular will is never the spontaneous self-expression of a free citizenship, but is an

²² Usha Ramanathan, "Aadhaar: From Welfare to Surveillance", (2014) 49(13) Economic and Political Weekly 10.

²³ Constitution of India, 1950, art. 19(1)(a).

²⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

²⁵ Information Technology Act, 2000, s. 66A.

²⁶ Paranjay Guha Thakurta, *Media Ethics: Truth, Fairness and Objectivity*, Oxford University Press, 2019.



atmosphere cultivated by the elites of the state and business.

The attitude of the judiciary is ambivalent. In the case of ²⁷Anuradha Bhasin v Union of India, the Supreme Court observed that the right to access the internet falls under the confines of ²⁸Article 19(1)(a), but it did not immediately grant relief to the wholesale shutdowns of the internet in Jammu & Kashmir but mandated it to be proportional and reviewed periodically. Such a reluctant adjudication is an example of a way the courts can recognize the principle of freedom without overturning the executive methods of control especially when it is accompanied by national security rhetoric. Freedom is therefore there in doctrine but not necessarily in living reality.

CIVILISED AUTHORITARIANISM AND ACCEPTANCE OF CONTROL

Combined, the law, digital and media changes described above represent the presence of what can be called polite authoritarianism. In contrast to the blatant dictatorships where the suppression of the opposition and the abolition of elections is part of the system, the polite dictatorships bear the constitutional forms, regular elections and courts, but use them in a way that makes the opposition structurally non-functional. In theory, citizens can remove incumbents, but their vote is more and more affected by majoritarian discourses, algorithmically mediated information and fear-based discourses of national security or cultural identity. The rights are still enumerated in constitutional documents but their enforcement is limited with the aid of reasonable restrictions, judicial review that is deferential to authority and selective penalisation of nonconformity. Obedience in such a regime will no longer be viewed as subservience to power, this is redefined as a sense of patriotism. The protestors can be defined as urban Naxals, NGOs as foreign agents, and the student movements as anti-national. These labels build moral

clusters of belonging that frighten people not to associate with the voices of criticism. The citizen is insidiously urged not to think of him or herself as a rights-holder, bringing a responsible state to account, but as part of a besieged majority whose only survival is unity in the face of internal or external foes. The further the internalisation of this identity, the less the state has to coerce people into it; obedience is the consequence of belief.

The psychological effects are far reaching. Citizens learn the language of power and justify any limitation of freedom as something vital to defend, even should it be. They insist on stricter laws against sedition, surveillance or stricter protest regulations since they have been persuaded that freedom becomes dangerous when it is exercised by the opponents. The traditional authoritarian pattern, where fear has to be obeyed, is slowly yielding way to a democratic one where fear, pride and resentment render obedience to be attractive ideologically. The fact that Arendt uses the example of complete domination, whereby individuals begin to regard the objectives of the regime as their own, becomes frighteningly relatable when considering the state of affairs in democratic circles. ²⁹The higher the citizens are willing to tolerate limitations on other people in the names of stability, the more they become accustomed to restrictions that will be directed at them at some point. Polite authoritarianism is therefore a paradoxical convergence: democracies are taking on a great deal of the behavioural repertoires of dictatorships, such as surveillance, narrative management, delegitimisation of dissent, but in a constitutional and participatory form that does not allow citizens to see it as authoritarian. The pretence to choice is thus self-authenticating: the voting process, the having of courts, the existence of a plural media space all become evidence, in the popular mind, that the system itself cannot be an authoritarian one, however curtailed may be the real power of autonomy.

²⁷ Anuradha Bhasin v Union of India (2020) 3 SCC 637.

²⁸ Supra Note 25

²⁹ Supra Note 1.



SUGGESTIONS TO WAYS FORWARD

The defence of democracy cannot be grounded anymore on the ritualistic connection to elections and institutional discourse to pull the democracy out of this drift. It is an issue of reconstruction of democracy at other conditions which would entail placing the substantive autonomy above the procedural symbolism. On the one hand, this entails re-thinking media pluralism. An engaged democratic state must institute strong anti-concentration policies so as to ward off such a small group of corporate owners who begin to frame the discourse of the people. Broadcasting privately owned by the government must be safeguarded by the independent statutory bodies and the local media where the marginalized can be heard needs to be encouraged.

Secondly, the digital governance must be redirected towards non-opaque data derivation to open citizen-oriented governance. This would also include of comprehensive data protection legislation which is rigorously controlled, clear-cut limits limiting access by the state, and redress rights against citizens whose data is stolen. The principle of minimisation of data should prevail in state databases. It should also be pre-judgmental or parliamentary passed as opposed to the beck and call of the executive on other biometric technologies such as facial recognition. Without these defensive strategies, digital infrastructures will continue to reinforce asymmetrical power that allows the state and business players to affect the behaviour in the background.

Thirdly, civic education must cease to be informed by the traditional constitutionalism by rote but informed by the critical democratic literacy. A citizen cannot only know that s/he is entitled to rights, but also be aware of the way law, media story and technology design can take away rights. The capacity to realise that the majoritarian talk is being played with, oppose the majoritarian discourse and identify with the opposing views is a precondition that cannot be left out in case autonomy is to be restored to its media version. Where individuals cherish domination over liberty then democracy could not flourish.

Finally, the courts and other constitutional watchdogs must not be too comfortable with the majoritarian spirit and the rhetoric of national security. It is only logical that the judicial review would only be effective when the courts are willing to say no to unconstitutional yet popular actions. Without such an institutional resistance, the law could not be any better than merely a measure of putting the fiction of democratic freedom alive at the expense of losing the substantive autonomy.

CONCLUSION

Since Athens and Rome to the Nazi Germany and modern-day India, the articles of control have changed their forms to include social shaming and reliance to propaganda, surveillance and digital behaviour control. But the bottom point is that political regimes have their freedom because of the capability of the citizens to develop, articulate, and take actions on judgments that are not shaped by power structures. In a place where identity is politicised, where legalisation is used to justify suppression and where media and online infrastructure socialise perception the ability of the citizen to make their own judgment is diminished. They still take part in elections, they voice their views and hail constitutional anniversaries but their agency has been redirected in silence. They make their choices, but they make their choices out of choices that are presented to them.

The illusion of choice in democracies is that which is not incidental but a phenomenon of structure which is created by the convergence between legal systems, economic interests, the media systems and psychological motivations. Otherwise, this illusion will escalate to make democratic polities become soft authoritarianism, where control is internalised and tyranny put on the mask of consent of the people. It takes more than a procedural reformation to resist this outcome. It requires a philosophical and political belief in autonomy as resistance - resistance to manipulative discourses, to unreasonable laws and technologies of control in the name of progress. When citizens are able once more to say an informed no to power, not just a directed yes, then and only then will



democracy move beyond its present state and will become something rather than a (seemingly) sophisticated architecture of obedience.

