

## Exercises

### Comprehension

- 1 What is the difference between a patent and a copyright?
- 2 Why has technological change caused problems for intellectual property law?
- 3 Why are developed countries more likely than developing ones to sign international intellectual property agreements?
- 4 True or false?
  - a Copyrighted property cannot be copied.
  - b Copyrighted property can only be copied if money is paid.
  - c Some property can be copied even without asking permission.

### Discussion

"Copying audio and video tapes at home is just as bad as stealing them from a store."

Write a paragraph containing two arguments for and two against this statement. Then discuss your answer with other students.

## Part Four

### Law, Politics and Society

# 16 Freedom of speech and expression

In 1988, Penguin Books published *The Satanic Verses*, a novel by the Indian-born British writer Salman Rushdie. Many Muslims found the book offensive to their religion, and, by the end of the year, Saudi Arabia, India, Pakistan, Egypt, Somalia, Sudan, Malaysia, Qatar, Indonesia and South Africa had all forbidden its publication in their countries. A campaign began to ban the book in Britain. The Islamic Foundation called for prosecution under the UK laws against **blasphemy**—denial of or insults against God. But the government argued that this rarely-applied law refers in Britain only to the Christian religion.

The issue of *The Satanic Verses* encouraged a debate about freedom of speech which continues today. Rushdie himself lives in hiding because the late Ayatollah Khomeini of Iran called for his death, and Iranian authorities offered a reward to anyone who killed him. The French government argued that Rushdie had the right to publish his book, that no one had the right to call for his death and withdrew diplomats from Iran. Some prominent people in Britain called for greater understanding of the religion and culture of minority ethnic groups, arguing that the blasphemy laws there should be extended to cover all religions. Others argued that we should tolerate someone else's views even if they attack our deepest beliefs and called for the abolition of the blasphemy laws altogether.

The consultation of almost every country guarantees freedom of speech. In practice, however, every government puts legal limits on what its citizens may say, as well as on what they may write, the films they may make, and even on the pictures they may paint. Why is this?

### Political censorship

Despite the English saying, "Sticks and stones may break my bones but names can never hurt me," many people feel that words can hurt and need to be controlled just as actions do. The extent to which free expression is



Figure 16.1 Burning The Satanic Verses: testing the right to freedom of speech and expression.

controlled varies greatly from country to country.

At one end of the scale, in some countries, the law bans the expression of any ideas that are against the interests of the State. This may mean any criticism of government policy or government officials. This used to be typical of many of the socialist countries of Eastern Europe before 1989. In Romania, for example, all public meetings had to be authorized in advance and criticism of the government was punishable by imprisonment. All schools and colleges were tightly controlled. Both teacher and staff risked expulsion if their ideas were unorthodox. In Bulgaria, the Turkish minority was not allowed to use Turkish names; the content of all newspapers had to be approved and sometimes changed (**censored**) before publication; and artists were allowed to paint and write only works that "served the people." In the former Czechoslovakia, all radio and television networks were owned and controlled by the state, and private individuals were not allowed to own photocopiers in case they distributed "unauthorized" ideas. Similar restrictions still exist in other parts of the world. In North Korea, for example, it is a crime to listen to a foreign radio station, to write a satirical play or to play Western music. In Ethiopia, all journalists must be state employees.

Many governments admit that they restrict expression but justify their actions as being in the interest of the majority of the people. In answer to criticisms of its human rights policies, the Chinese government argues that freedom to say and write anything at all is not as important a freedom as economic well-being, and the former must be restricted in favor of the latter. The Taiwanese government has claimed that the special position of their island country next to the Chinese mainland as the home of the true government of the whole of China justifies the existence of the death penalty for anyone who argues in favor of Taiwanese independence. In practice, however, calls for independence are now commonly made.

Governments often restrict information in the interests of national security. Passing military secrets to a foreign government, for example, may bring prosecution for **treason**—the crime of trying to betray or overthrow a state (which in Britain is still theoretically punishable by death, unlike murder). Some people have criticized the British Official Secrets Act, which can be used to restrict information about government dealings even when there is no risk to national security. For example, in 1988 the act was used to ban publication of *Spycatcher*, a book about the intelligence services written in breach of his duty of confidentiality by a retired member of the secret services. The book was considered harmless, and, in any case, could be bought legally in many foreign countries.

B

Every country controls its news reporting when it is at war, even if it admits this is an unfortunate necessity. During the Falklands campaign in 1982, the BBC, which takes pride in its reputation for independent reporting, was not allowed to report certain facts about the war while it was taking place. South Korea is still technically in a state of war with the North, and, therefore, the South Korean government does not tolerate views sympathetic to the North.

It is interesting that the countries which restrict freedom of expression least tend to be those which are the most economically developed. But it would be wrong to think that free speech is the privilege only of rich countries; Costa Rica, for example, with a per capita GDP of only just over \$1,000, allows considerable freedom to its journalists, writers, artists and teachers, whereas Singapore (GNP \$16,000) requires annual licenses for journals, has a three-year jail penalty for seditious tendencies, and sometimes bans foreign publications critical of the government.

Some governments see freedom of speech as a basic human right and take pride in their own tolerance of different forms of expression, even when these forms are critical of them; clearly, Swedes, Canadians and Japanese have more freedom to say what they want than Chinese or South Africans. Nevertheless, restrictions exist even in apparently liberal countries, and it is interesting to consider what purpose these serve. C

### Words of violence and racism

Most societies prohibit speech and writing which they think will directly provoke physical violence or other illegal behavior. In January 1992, Mark Hopkins was executed in Wyoming for telling others to murder four people. In such a case, perhaps it is not so much that the words are illegal as that the person who gives the orders is just as guilty as the one who does the killing. But "threats to kill" and "threatening behavior" are examples of crimes in which the words themselves are illegal, whether or not they lead to an act. The latter, not part of the 1986 Public Order Act in Britain, outlaws threatening, abusive or insulting words (as well as behavior) which are likely to cause another to believe that immediate violence will occur. Most people accept the need for such limitations on speech; however, there is a danger of inhibiting a professor who holds peaceful views and expresses them peacefully but knows that certain people will react violently to them.

More controversial is the area in which people hold political beliefs that involve violence. Some governments attempt to tolerate the opinions of any political groups but not the direct advocacy of violence. In Spain, where

the paramilitary group ETA is seeking independence for the Basques, Basque nationalists may sit in parliament, but it is illegal to encourage "pro-terrorist sentiments." In Britain, membership in the Irish Republican Army (IRA) is illegal, but membership in its political wing, Sinn Fein, is not. In 1989, the British government tried to restrict Sinn Fein's publicity; its spokesmen were allowed to appear on television, but their views regarding the overthrow of British rule in Ireland could not be expressed in their own voices—written words, or another person's voice, had to be substituted. Amnesty International campaigns for the release of people imprisoned because of their opinions—as long as they have not advocated violence.

Another disputed area is censorship of views that discriminate against specific groups in society, especially on the grounds of race or sex. In Britain, it is a crime to "incite racial hatred." In many ways, this is similar to the legislation against threatening words, referring to situations in which members of a racial minority are subjected to verbal abuse. But legislation to prevent racial discrimination also goes beyond this. Advertisements for jobs cannot specify race. Racist views may be banned from television and radio. In January 1993, an historian was fined by a German court for calling into question the number of Jews who died in concentration camps during World War II. And a 1972 French law against racism permits the banning of newspaper articles which provoke discrimination. While many people welcome such legislation, there are others who feel all views, even disagreeable ones, have the right to be heard. D

### Art, literature and pornography

In addition to controls on political and religious ideas, almost every country attempts to control art and culture. Policies seem to range widely from country to country. In the 1970s, a picture by the artist Gengei Akasegawa was banned in Japan because it incorporated a very realistic copy of a ¥1,000 note—technically the crime of forging (copying) bank notes! Visitors to Japan from Scandinavia, where sex scenes are permissible in the media (but violence is controlled) are surprised to learn that very violent films and comic books are widely available, yet nudity is so heavily censored that a picture in a *Time* magazine of a woman breastfeeding her baby was blanked out.

In many countries there is great debate as to whether pornographic or violent material encourages criminal behavior. Some convicted rapists have been found to have read magazines depicting violent sex scenes. On the other hand, Japanese society appears to be relatively non-violent despite the availability of violent literature. It has been argued that sex and

violence are two different forms of behavior and, to avoid association between the two, violence should be discouraged, not sex. People have a variety of motives for seeking censorship, and they are not all conservative. Both conservative and radical women's groups in Britain and America have complained about pictures of nude women in daily newspapers. This is not necessarily because they feel such pictures increase sexual assaults against women (although many feel that they do); some object to the growth of free sexual behavior in society altogether. Others have liberal views on sex but believe such pictures encourage the attitude that women are passive sex objects rather than active and independent individuals.

Few legal systems clearly specify what kind of literary and pictorial expression is acceptable. (Although in Japan a rather rigid law banning "pubic hair" was made, apparently because the lawmakers did not want to use the word "genitals," and this has been interpreted literally). In general governments lay down certain guidelines and apply them according to their own views or the apparent opinion of the majority of the public. The important question behind all of this seems not to be what is and isn't harmful for us, but rather, to what extent governments should make these decisions for their citizens. J E

### Defamation

Most of the above issues have been matters of public (constitutional or criminal) law. There are also restrictions upon speech in civil law. If a person feels that someone has said something about him which is not only untrue but has seriously harmed his reputation, he may sue that person in the tort of **defamation**. In Anglo-American law this is known as **slander** if the words were spoken; **libel** if they were written. Journalists and other writers have to be particularly careful to check their facts before publishing. If the case is proven, the defendant is ordered to pay damages to the plaintiff. In the case of some famous entertainers or public figures the amount of money has sometimes been very high. Sometimes a high award is made against a newspaper as **punitive damages** if the court feels that the newspaper knew it was printing something defamatory but went ahead and did so in the belief it would increase its readership and thus its profits. Some people in Britain feel that the laws of defamation do not provide enough protection for ordinary people who may not be able to afford to sue a newspaper or television company. Others believe the media should be free to print stories without the fear of a libel action every time they make a mistake. F

## Exercises

### Comprehension

- 1 After *The Satanic Verses* controversy, what two contrasting suggestions were made for changing Britain's blasphemy laws?
- 2 Briefly list restrictions on speech and expression which existed in Eastern Europe before 1989.
- 3 According to the Chinese government, which right is more important than freedom of speech?
- 4 True or false?
  - Costa Rica is richer than Singapore.
  - There is more censorship in Singapore than Japan.
  - China and South Africa place many limits on free speech.
- 5 Give an example from the U.S. of speech constituting a crime.
- 6 In what ways do France and Britain control expressions of racial antagonism?

### Discussion

"Governments should restrict the availability of sex-related material." Write a paragraph containing two arguments for and two against this statement. Then discuss your answer with other students.