

Blog : The remedy to bad speech is good speech, not censorship!

by Horatio Caine (Guest Author) on 2011-06-25 13:32:00

Last week self-mutilation carried out by several students of a primary school grabbed the headlines among several media organisations. Some pointed out to a potential connection to self-harm activities performed by Marilyn Manson on stage in front of 'impressionable teenagers' but failed to remind the readers of Manson's answer to his fans mutilating themselves: "I never said be like me. I say be like you and make a difference".

It is important to remember that it is never reasonably justifiable in a democratic society that certain kinds of information should be banned to protect children from harm. Like John Stuart Mill fittingly declared, over 150 years ago, "there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it might be considered."

Section 12 of the Mauritian Constitution grants to all citizens a right of freedom of expression which is defined and delimited, inter alia, to holding opinions and to receiving and imparting ideas and information without interference. If and when government prohibits the dissemination of the performances of Manson or Manson-related activities within the territory, for example, it will be the right of freedom of expression of audience that will be violated by government. Furthermore, since Section 3 and 16 of the Constitution grant a right of equality (although qualified) and since tertiary-level students should have no more constitutional protections than primary students do, then child censoring violates the constitutional right of freedom of expression of its audience.

It can be plausibly derived from Section 12 that "every person must be his own watchman for truth" for the founding fathers of the Mauritian Constitution would never have given the custody of public opinion to "any government to separate the true from the false for us" (Justice Jackson in *Thomas v. Collins* 323 U.S. 516 [1945]). Therefore, government need to refrain from acting on the basis of their own assessment of Manson-related speech's or expression's veracity or worth in general. It is fundamental to remember that with the banning of the dissemination of such 'expressive' activities is a crucial setback to democracy and Mauritian values. Is there really a compelling government interest to protect the physical and psychological well-being of minors by shielding them from such contents? It is central to remember that custody, care, and nurture of the child reside first with the parents. Finally, the prohibition of Manson-related speech or expression does not eradicate self-mutilation - incidentally, it might have the reverse effect.

Yet, a right to freedom of expression in a democratic political system is contradictory to the extent that democratically-enacted regulations are supposed to be eliminated on behalf of democracy when they contravene on the right to freedom of expression, as indicated by Frederick F. Schauer. Although, this line of reasoning directly points to the thorny question of the boundaries of freedom of expression: who is to decide what people needs to know in order to perform the role of democratic citizen; and, more important, its basis; shouldn't our exclusive focus be on the fact that the trustworthy remedy to bad speech is good speech, not censorship?