

AN INTROSPECTION OF FILM CENSORSHIP IN INDIA

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ABSTRACT

Cinema has been considered to be one of the most potent instrument of expression over a considerable amount of period. It is often considered to be a magnificent medium to communicate with people and impart knowledge and awareness. A traditional theatre system existed much before screen cinema could assert its authority in India and is said to have played a major role in nurturing emotions of freedom struggle through its plays in the pre-independence era. It was in 1913 India produced its first full-length feature film Raja Harishchandra. Cinema gradually became a powerful medium and went on to impact the lives of people, thoughts and even their political views. The medium has been witnessed to gain huge popularity and at present has become an integral part of common man's leisure. Various statistics claim that India constitutes one of the largest film industries in the world in terms of number of films produced every year. Freedom of speech and expression is one of the most sacrosanct rights and is regarded as an integral concept in modern liberal democracies³. Society can develop only by free exchange of ideas⁴. However, since the drafting of the Constitution in 1947, freedom of speech and expression was considered controversial and received periodical dissent. According to Article 19(1) (a) of Part III of the Constitution of India, citizens shall have a right to freedom and expression. Films enjoy the same status and right so far as constitutional freedom relating to expression of ideas and spreading of ideas and messages are concerned but at the same time it places certain necessary restrictions on the content, with a view towards maintaining integrity of the state, public order, decency and morality and also communal and religious harmony, given the history of communal tension in the nation. The CBFC governs the Censorship of films. The article aims to introspect the role of Censor board in film certification and the procedures and rules lay down by the law. An attempt to highlight the misuse and evils of censorship has also been made.

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³ Subhradipta Sarkar et al., Banning Films or Article 19(1)(a), Legal Services India, <http://www.legalserviceindia.com/articles/fban.htm> (July 09, 2016)

⁴ John Stuart Mill, On Liberty (1947) 61

INTRODUCTION

The term 'censorship' has been derived from the Latin term 'censere' which means to give one's opinion. In ancient Rome, the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens⁵. The idea of censorship extends to suppression of speech, public communication, or other information, on the basis that such material is considered objectionable, harmful, sensitive, or "inconvenient."⁶

Films are censored in different countries to regulate different levels of social and political issues, the exhibition of which can be a disturbance for the people. Violence, sexual content, abusive language, drug use, abusive content, revolutionary content, and human rights violations are common factors that fall under the scope of censorship. Provisions for freedom of speech and expression are also enshrined under Article 19 of the Universal Declaration of Human Rights (UDHR) as well as the International Covenant on Civil and Political Rights (ICCPR).

According to Supreme Court of India, "Film censorship becomes necessary because a film motivates thought and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instil or cultivate violent or bad behaviour. It cannot be equated with other modes of communication. Censorship by prior constraint is, therefore, not only desirable but also necessary"⁷.

⁵ SUMIT MATHEW on "Censorship of Films" <http://www.legalserviceindia.com/legal/article-351-censorship-of-films.html>

⁶ "Definition of censorship in English". oxforddictionaries.com. Oxford Living Dictionaries. Retrieved 30 January 2019.

⁷ Central Board of Film Certification, www.cbfcindia.gov.in, August 26,2009.

LEGAL FRAMEWORK

Cinema in India is regulated under the Cinematograph Act of 1952 which makes provision for the certification of cinematograph films for exhibition and for regulating exhibition by means of cinematographs. This act provides for the establishment of a 'Central Board of Film Certification' also known as CBFC a regulatory body for films in India to issue the certificate to the makers of the film for public exhibition. Despite the claims of some of the proponents to the contrary⁸, it is well established in India that Film censorship in India is one of the strictest in the world⁹.

Section 5(B) (1) of the Act lays the grounds for certifying or not certifying a film for public exhibition. A few out of the 20 guidelines that must be ensured by the CBFC are:

1. Anti-social activities such as violence are not glorified or justified
2. The modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted;
3. Human sensibilities are not offended by vulgarity, obscenity or depravity;
4. Scenes degrading or denigrating women in any manner are not presented;
5. Visuals or words contemptuous of racial, religious or other groups are not presented.

Moreover, the Censor Board has also released a list of banned words which includes Hindi English curse words, abusive language and the mention of Mumbai not Bombay as per Government's Official Notification dated 04/08/1996. If the applicant is aggrieved by the order of the CBFC he may appeal to the Appellate Tribunal which is chaired by a retired High Court judge or any person so qualified to be a High Court Judge. Further, Revision powers are given to the Central Government to call for the record of any proceeding in

⁸ Mr. Raj Bahadur Ministry of information and broadcasting said in 1966 that the government would “continue a liberal censorship” in the era of licensing films for public exhibition in India. Journal of the film industry of Feb 25, 1966 at 3 quoted in N.Hunnings , ‘Film Censors and Law’ 18 (1976) .

⁹ Supra note 6 at 226-27.

relation to any film which is pending before, or has been decided by the Board and may make a decision as it deems fit, after giving the applicant an opportunity for representing his views in the matter.

A CRITICAL DISCUSSION OF CENSORSHIP IN INDIA

When films are censored it is always subject to forces of community or a group. These could be religious, political or similar other forces. Portrayal of sexual relationship in films it is not accepted by the Indian society. Deepa Mehta's *Fire*, *The Pink Mirror*, *Water* was banned in India for showing homosexual and transsexual contents or depicted controversial subject like misogyny and ostracism. There were huge protests against these films by the Hindu fundamentalists. Political forces also have a great impact where the topic of censorship is concerned. *Neel Akasher Neechey* was a Bengali language film directed by Mrinal Sen was the first film to be banned by the Government of India because of its overt political overtones¹⁰. Also films like *Gokul Shankar*¹¹, *Garam Hawa*¹², *Aandhi*¹³, *Kissa KursiKa*¹⁴, *Black Friday*¹⁵ was banned by the government as they were said to have portrayed issues which might create political unrest. *Sikkim*, a documentary film made in 1971, by Satyajit Ray was a commissioned film was by then the king of Sikkim. It was made when he felt that Sikkim was under threat from both India and China. It was banned by the government of India when Sikkim was merged with India in 1975. In 2006, *The Da Vinci Code* was banned in the states of Andhra Pradesh, Tamil Nadu, Nagaland, Goa, and Punjab with the concern that the film might hurt religious sentiments of the Christians. The recent controversy over the film *PK* also falls under this category.

¹⁰ Bobb, Dilip. "The cinema of, bad light". *The Indian Express*. 13 August 2011

¹¹ List Of Films Banned In India Id WHEBN0034915596 by World Heritage Encyclopedia http://www.gutenberg.us/articles/list_of_films_banned_in_india#cite_note-Roger2004-1

¹² Id. at 9

¹³ Id. at 10

¹⁴ Id. at 11

¹⁵ Id. at 12

In *K.A. Abbas v. Union of India*¹⁶ the question relating to the censorship of films first arose. In this case, the Supreme Court considered a very important question in regard to pre-censorship of films in relation to the fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution. The petitioner challenged the decision of the Board of Film Censors which refused 'U' certificate¹⁷ for the film "A Tale of Four Cities". While the case was pending in the Supreme Court, the Central Government decided to grant the 'U' certificate provided certain cuts were made in the film. The petitioner applied for an amendment which would enable him to raise the question of pre-censorship in general. The amendment sought by the petition was allowed for consideration by the apex court. The following two issues were before the court for consideration¹⁸:

- “(a) That pre-censorship itself cannot be tolerated under the freedom of speech and expression; and
- (b) That even if it were a legitimate restraint on the freedom; it must be exercised on very definite principles which leave no room for arbitrary action.”

Taking all these into consideration, Justice Hidayatullah, made it clear that censorship of films including pre-censorship was constitutionally valid in India as it was a reasonable restriction under Article 19(2)¹⁹. It was also observed that “pre-censorship was but an aspect of censorship and bore the same relationship in quality to the material as censorship after the motion picture has had a run. However, censorship should not be exercised as to cause unreasonable restrictions on the freedom of expression”²⁰. Justice Hidayatullah, observed "it had been almost universally recognized that motion pictures must be treated differently from other forms of art and expression, because a motion picture's instant appeal both to the sight and to hearing, and because a motion picture had become more true to life than even the theatre or any other form of artistic

¹⁶ *K.A. Abbas v. Union of India* 1970 (2) SCC 780.

¹⁷ 'U' Certificate means it is for universal exhibition. 'A' Certificate means it is for viewing by Adults only.

¹⁸ SUMIT MATHEW on Censorship of Films <http://www.legalserviceindia.com/legal/article-351-censorship-of-films.html>

¹⁹ *K.A. Abbas v. Union of India* 1970 (2) SCC 780.

²⁰ *Supra* note 17

representation. Its effect, particularly on children and immature adolescents was great."²¹

These films are banned by an authority, an organization, a board or a court, or a panel of popular individual people. A question that comes to our mind is: Do the things exist in India that the films portray? The politics over the reservation, deception in the name of religion, changing sexual scenario of India, communal riots, changing life-style in India, etc. an Indian who witnesses all these happening in their day-to-day life cannot deny it, when it is portrayed in a film. The government has on many occasions banned movies like *Vishwaroopam*, *Parzania*, *Bajirao Mastani* etc. under the garb of reasonable restrictions. People who opposed to such bans argued that with the movies should not be banned and they should be given the freedom to form their opinions after watching the movies. The grounds mentioned in Section 5 of Cinematography Act, 1952 are considered to be subjective and broad. The censor board has no jurisdiction over the contents posted on the internet so the filmmakers instead of carrying out the cuts release it on internet or similar OTT platforms where they can express their creative liberty.

However in case of *S. Rangarajan v. P. Jagjivan Ram*²² the Madras High Court revoked the 'U' certificate issued to a film entitled "Ore Oru Gramathile" ("In Just One Village"), and also banned its exhibition as there was some public protest against the film. However, the Court was of opinion that "if exhibition of the film cannot be validly restricted under Article 19(2), it cannot be suppressed on account of threat of demonstration and processions or threat of violence. That would tantamount to negation of the Rule of Law and surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression"²³. Thus, the ban on this movie was lifted. In Similar other cases the

²¹ Supra note 14

²² *S. Rangarajan v. P. Jagajivan Ram*, (1989) 2 SCC 574 at p. 583.

²³ *Id.* At 20

Supreme Court passed orders in favour of artists like in; *Raj Kapoor v. Laxman, and Patwardhan v. Cent. Bd. of Film Certification*²⁴, *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*²⁵ and the most recent was the lift of ban on the movie *Padmavati*.

In a recent case, the CBFC refused to certify the film *Uda Punjab* and suggested almost 13 cuts in the movie as a mandatory measure to seek certification²⁶. The judiciary stepped in and whipped the Central Board of Film Certification because it refused to certify the film. The Bombay High Court criticized the CBFC for its conduct and poor way of handling the issue. The Court observed that the “Board is not necessarily empowered to censor films”²⁷. “The word censor is not found in the Cinematograph Act. The board can make changes in the film but this power must be exercised in consonance with Constitutional Guarantee and Supreme Court orders”²⁸.

This verdict was believed to serve as a milestone and pave the way for the long-pending reformation of the Certification Board. It was observed that the Board had wrongly widened its power which meant to be restricted to certification of films for exhibition only, to now include within it the power to censor also. Such an attitude of the Board was believed by many to be politically motivated.

INDISPENSIBLE NEED FOR REFORMATION

“An urgent reform of the Central Board of Film Certification is a very important task. The drive to change the certification ages as well as getting filmmakers and industry voices in charge of the Board is an indispensable change which needs

²⁴ *Raj Kapoor v. Laxman, and Patwardhan v. Cent. Bd. of Film Certification* 1980 SCR (2) 512

²⁵ *Life Insurance Corporation of India v. Prof. Manubhai D. Shah* A.I.R. 1993 S.C. 171

²⁶ Rahul Bhasin, ‘Don’t be oversensitive’, Bombay HC tells CBFC, clears *Uda Punjab* with one little cut, INDIAN EXPRESS, <http://indianexpress.com/article/india/india-news-india/censor-wanted-13cuts-court-clears-udta-punjab-with-one-2850991/> (July 13, 2016 06:50 am).

²⁷ *Id.* at 24

²⁸ *Id.* at 25

to be put into effect as soon as possible”²⁹. Various committees are set up by the government in the recent past to suggest measures of reformation in the Boards but these suggestions have been hardly implemented. The Government also set up an Expert Committee to review and recommend ideas which can be put forward through legislation which will regulate and certify as well as license the facets of this ever changing art form. The Committee came up with its report after a detailed study in film certification and changing dimensions of certification of films around the globe³⁰

While examining a film or causing a film to be examined for certification, the Board should be guided by the following principles³¹ like; it should remain responsible and sensitive to the values and standards of society; artistic expression and creative freedom should not unduly be curbed; the film should be examined in the light of the period depicted in the film and should be judged from the point of view of its overall impact; the film must not be against the interest of the sovereignty and integrity of India or the security of the State or friendly relations with foreign States or public order, or decency and morality, etc. Apart from the suggestions mentioned, the Committee also recommended various other reforms that can be initiated by the government in the overhaul of the Certification Board.

CONCLUSION

Cinema is one audio-visual medium which has the maximum effect on the people. With the development and progress of the society and also with the progress in the field of science and technology the films have undergone a vast

²⁹ Understanding India’s dangerous history of film censorship & its implications, Homegrown, <http://homegrown.co.in/understanding-indias-dangerous-history-of-film-censorship-and-its-implications/> (July 10, 2016 03:00 pm).

³⁰ A Critical Overview Of Censorship In Indian Cinema In The Light Of Role Of Cbfc by Mr. Satyam Rathore Bharati Law Review, July – Sept., 2016.

³¹Report of the Committee of Experts to examine issues of certification under the Cinematograph Act, 1952, http://www.mib.nic.in/writereaddata/documents/Report_of_Expert_committee.pdf (July 10, 2016 05:00 am).

change and by adopting all the available technologies have been able to reach the masses and also significantly contributed to social and cultural development of our country. But at the same time it is believed that there shall be certain reasonable restrictions too, in order to bring about a positive change in the society.

In India over 17,817 people have signed a petition seeking ban on censorship of adult films created initially by an exasperated movie buff who had to pay Rs.600 to watch a film, that too with most of its dialogues muted in the name of censorship³². Moreover, in a progressive society one should not be deprived of the right to freedom of speech and expression. Censoring movies in the name of adult content and hurting religious sentiment often seem ridiculous and it may often promote wrong message to the public through indirect interpretation. The incidents, judgments and laws, the activities and rationale of the Censor Board are highly questionable. It may also be mentioned in this context that a balance must be maintained between the right of expression and the duty to maintain peace in the society because freedom of speech does not imply right to offend. It is peremptory to enact a new law. Hence, a permanent solution to this entire problem is essential.

³² Vignesh Vellore, “No censorship in A Rated Movies! Petition”, www.Change.org, 28 January 2018