

INDIA-CENSORSHIP FOR A GOOD CAUSE?

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ABSTRACT

Censorship in general terms can be said to be an act in which certain parts of speech through different platforms are controlled by the authority. The Constitution of India has guaranteed every citizen of India the freedom for the exercise of speech and expression, but at the same time, citizens must not misuse the rights granted to them. Sometimes the citizens fail to perform the duty on their part and that is when the government intervenes in these matters and the concept of Censorship arises. Also, censorship has been a very prominent issue in India from the very starting, not only in films but also in newspapers, and other forms of media that have been made available from time to time in this country. Due to the diverse nature of India, mainly in matters of religion, there are many instances where the government has come to the rescue if something has been made available in the public domain through the various platforms of media like Cinema, TV or the most recent one, Over the Top (OTT) services for entertainment purposes. In the year 2018, Freedom House's "Freedom in the World Report" rated India 2.5 for freedom overall, 3 for civil liberty, and 2 for political freedom, awarding it the free category. The scale of scores ranges from 1 (most free) to 7 (lowest free),¹ In this particular paper, the authors have tried to examine what all steps have been taken by the government and the Apex Court in India for the various censorships, which has become the hottest debate of the 21st Century.

Keywords – *Censorships, Films, Freedom of Expression, India*

INTRODUCTION

Censorship is an act in which certain parts of information are controlled by the institution as they do not comply with the information and ideas which have been circulated within a society.

¹ Freedom House <<https://freedomhouse.org/report/freedom-world/2018/india>> accessed 29th June 2020.

Generally, the government is the one which is controlling the flow of certain parts of a book, movie, or anything which is out for the general public to view. These generally include Television Channels, Radio, Newspapers, and Over the Top (OTT) platforms like Netflix, Hulu, etc. The basic idea behind the censorship of something is that these different platforms of media don't create a negative impact on the general public. Examples of a negative impact can be certain Sexually Provocative Acts, Graphic Acts, Seditious Acts, or even acts that would hurt the sentiments of any religion or race. In democratic countries like India, people do enjoy the benefits of free speech and expression for themselves, but usually, they come with certain restrictions.

“The term ‘censorship’ comes from the Latin ‘censere’ meaning to give one’s opinion, or to assess. In ancient Rome, the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens.”² “The Oxford Dictionary of English defines censorship as the suppression or prohibition of any parts of books, films, news, etc. that are considered obscene, politically unacceptable, or a threat to security.”³ Movies are known as superb mode of contact with the public at large. Technological progress has produced a wave of a shift in the way films could hit the Public in all parts of India. It has improved the ability of films to contribute greatly to the national, cultural and social growth. “India’s Censor-Board and the relevant statutes are evolved replicas of film censorship machinery introduced by the British in 1920. But, the raison d’etre of the censorship machinery was thoroughly overhauled to suit the new rulers. And it speaks volumes of their maneuverability.”⁴ The exhibition of films is governed by The Cinematograph Act of 1952 which was preceded by the Act of 1918. This 1952 Act now controls the process of certification of films for box-office exhibition.”⁵ Not all repression is equivalent, nor does it always come from government or outside authority. Poster Illustration by the designer Ben Shahn He, reads: “You haven’t converted a man, because you’ve silenced him.” Censorship and ideology must be recognized to support as it goes back to ancient times and every society has customs, tabulations, or laws by which they control vocabulary, clothes, religious observance, and sexual activity. In Athens where there’s freedom, censorship was, at first, well known as a means of enforcing the prevailing orthodoxy.

² Sumit Mathew, ‘Censorship of Films’ <<http://www.legalserviceindia.com/legal/article-351-censorship-of-films.html>> accessed 27th June 2020.

³ Dictionary, Oxford English. “OED online. Oxford University Press. <http://www.oed.com>, Accessed April 21, 2016.”

⁴ SomeswarBhowmik, “Politics of Film Censorship Limits of Tolerance”, Economic and Political Weekly, August 31, 2002

⁵ “Sanctioning of cinematography films for exhibition” falls under item 60 of the Union List (list I) under the seventh schedule of the constitution

In reality, Plato was the first recorded thinker to formulate intellectual, religious, and artistic censorship rationales. Inside his ideal condition illustrated in *The Nation*, government censors would prevent moms and nurses to tell the stories deemed evil or bad. Plato also proposed that unorthodox ideas about Heaven or the afterlife be regarded as crimes and the setting up of systematic processes to eradicate heresy. Ancient Rome: freedom of expression was reserved for people in government posts. Both the poets, Ovid and Juvenal were arrested, and the authors of the seditious works were harshly disciplined. Emperor Nero exiled his opponents and set fire to flames their books.

“Censorship is a phenomenon found in the context of authority and its exercise of freedom over its subjects. An authority interacts with its subjects through various media (print media in the form of newspapers, books, documents, or audio-visual media like tv programs, films, etc.). Media are the ways to control, to motivate, to inform the subjects. No medium has a static function and a medium is not merely a medium. People watch a film may be for entertainment, but a film provides information or motivation while entertaining them. A medium exists in a plural-sphere, it has more than one purpose, it has more than one element, it has more than one structure, more than one reading. A film as a medium may record a history, may produce a new tradition, may write geography newly, may create awareness, may add to a scientific discovery so on and so forth. As it is one of the most alluring audio-visual mediums, it has the maximum effect on the people. If the effect violates the prescribed norms of authority, the authority censors the effect-producing films.”⁶

CENSORSHIP OF MOVIES

When studying the history of film censorship in India, we can state the following explanations why a film is prohibited or censored:

i) “Sexuality”, ii) “Politics”, iii) “Religion”, iv) “Communal conflict”, v) “Incorrect portrayal of someone or something”, vi) “Extreme violence”.

SEXUALITY

Indian culture has adopted a strict social system. Marriage is a sacred institution where consensual sex between men and women is permitted, even though people have other types of sexual contact, such as homosexuality, lesbianism, that have been abandoned by the Indian

⁶ Aditya Kumar Panda, “CASE STUDY: FILM CENSORSHIP IN INDIA’ (2017)” Scholedge International Journal of Business Policy & Governance 4 Issue 02 Pg 7-11.

culture or the Freudian concepts of Oedipal longing. Any means, whether published or audio-visualized, that is not tolerated publicly by Indian culture is forbidden because it may weaken the values of the Indians. In this argument, “Kamasutra” was banned in India because of its pornographic and homosexual imagery. The film “Fire”⁷ by Deepa Mehta was banned because of its homosexual ties. This was one of the first films to depict overt homosexuality. There were major protests from the Hindu fundamentalists against the film. It was submitted back to the Censor Board, but later it was released with the character’s name Sita changed to Nita. The “Pink Mirror (Gulabi Aaina)”⁸, a film of 2004, was censored in India for its transgender subject representation. “The Girl with the Dragon Tattoo” was banned for its sexual abduction and abuse scenes. During filming, the film “Water”, which portrayed divisive topics like “bigotry and ostracism”, encountered protests from several Hindu groups in Varanasi. Sexuality in India is still not publicly debated. Many sects entirely oppose all aspects of sexuality. It’s a fact that is kept hidden in our everyday lives.



POLITICS

As long as censorship is bothered, political movements cannot be separated. A democratic state’s censorship of a movie is often sponsored by others who are explicitly or implicitly with the jurisdiction. A medium that allegorically or straightforwardly describes a political situation is prohibited by an administration that is a party to it. This may be a strategic foreign matter like Neel Akasher Neechey, a Bengali language film produced by Mrinal Sen, Neel Akasher Neechey was the first film to be barred by the Indian government for its blatant political oversights.⁹ The history was built in the last stages of British Rule when independence tussle in Calcutta was at its crest. The film concerned Wang Lu, a Chinese man who was a salaried migrant and his friendship with Basanti, a housewife in Calcutta. The government of India barred Gokul Shankar¹⁰ in 1963, suggesting political reasons behind the execution of Mahatma Gandhi by Nathuram Godse. M.S. Sathyu directed Garam Hawa¹¹, a 1973 Hindi-Urdu movie. It was centered on Ismat Chughtai’s unpublished short tale. In the unfortunate time of partition, it was the fate of a North American Muslim businessman and his family. The Indian Censor board suspended it for 8 months fearing that it might spark urban violence, but later it was

⁷ Jain, Madhu, Raval, Sheela, “Ire over Fire *India Today* (December 1998)”

⁸ Sukumaran, Shradha, “Making the Cuts—On Film Censorship in India YIDFF”

⁹ Bobb, Dilip, “The cinema of ‘bad light’ *The Indian Express* (13 August 2011)”

¹⁰ http://www.gutenberg.us/articles/list_of_films_banned_in_india#cite_note-Roger2004-1

¹¹ Daiya, Kavita, “Violent belongings: partition, gender, and national culture in postcolonial India” Temple University Press 2011

approved. Indira Gandhi censored *Aandhi*¹², a 1975 film that was meant to be an allegory of then-Prime Minister, during the 1975 national emergency. *Kissa Kursi Ka*¹³, a satirical film about Indira Gandhi and her son, Sanjay Gandhi, was censored by the union government during the emergency era. There were 51 complaints and clarification was demanded by the owner. A documentary film of 1971, *Sikkim*, directed by Satyajit Ray, was funded by the King of Sikkim when he found Sikkim endangered by India and China. The Indian government prohibited it when Sikkim integrated with India in 1975. The ban was removed in 2010. *Kuttrapathirikai*¹⁴, a drama movie of Tamil Nadu was not screened until 2007 as the problems of the assassination of Rajiv Gandhi and the Sri Lankan Civil War had to be resolved. *Aarakshan*¹⁵, a Hindi film was prohibited by Andhra Pradesh, Uttar Pradesh, and Punjab explaining that it may disturb the lower segment of the society in terms of politics over reservations in institutions. We saw a debate over the film *Udta Punjab*, directed by Abhishek Chaubey, in the early weeks of June 2016. CBFC agreed to release the film with a few adjustments. It was a drug-based movie with a particular connection to Punjab. The high courts of the Punjab and Haryana gave notice of the showcase to the Indian government, the CBFC, and the makers. The film was assumed to have some derogatory Punjabi's and Punjab portrayals.

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RELIGION

Religion as an entity does not tolerate any disrespect to the ideals it promulgates. Every means which obscures a religious character is condemned and forbidden by the same. Movie censorship in India is triggered by religious opinion. *Indiana Jones and Temple of Doom*¹⁶, a 1984 American adventure film were temporarily banned by the Indian government, for portraying goddess Kali as an underworld paradigmatic. The Censor Board noticed religious opinion and banned the same. *The Da Vinci Code* has been outlawed in 2006 in Andhra Pradesh, Tamil Nadu, Nagaland, Goa and Punjab with a view of harming the Christians religious feelings. The dispute over the film *PK* also comes under this bracket.

¹² Sinha, Sayoni, "Controversial Films, <https://in.movies.yahoo.com/blogs/24fps/controversial-films-061836779.html?page=all> accessed 28 June 2020"

¹³ Kumar, Anuj, "Ban Culture goes back a long way" *The Hindu* (February 2013)

¹⁴ "High Court judges to see *Kuttrapathirikai* <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/article3050604.ece> accessed on 28 June 2020"

¹⁵ "Lift the Ban, *the Hindu*, <http://www.thehindu.com/opinion/editorial/lift-the-ban/article2351412.ece> , accessed on June 28 2020"

¹⁶ Signore, John Del, "Brewery Apologizes To Hindus For Temple Of Doom-Inspired 'Kali-Ma' 'Beer'. www.gothamist.com (May 15 2012)"

COMMUNAL CONFLICT

A film is often banned if it causes any form of group dispute in a diverse country. Heterogeneity is a country trait of India. The Censor Board of India censored a 2004 documentary film focused on the Gujarat riots titled *Final Solution*¹⁷. The film was alleged to introduce major communal protests. *Hawayein*¹⁸, a 2003 Bollywood movie, was banned in Delhi, Haryana, and Punjab as it was against the background of the Sikh massacre¹⁹ in 1984. The Censor Board of India approved another film, *Amu* based on the November event of 1984 Sikh riots²⁰. *Vishwaroopam* was barred in 2013 after Muslim organizations raised protests over their image.

INCORRECT PORTRAYAL OF A POPULAR FIGURE

Often it is a common man who opposes a medium's representation and censors it. *Bandit Queen*, a Phoolan Devi's biographical film, was barred by the Delhi HC after Phoolan Devi sued its genuineness. *Main Hoon Rajinikanth*²¹ was ridiculed by Rajinikanth and approached the High Court to avoid the launching of the film. Rajinikanth felt his reputation might be tainted by the film. The film, *Jodhaa Akbar*, was prohibited after Rajput's uprising against Jodha Bai's portrayal as Akbar's wife. It was released later.

EXTREME VIOLENCE

The portrayal of violent brutality disturbs the conscience of the human being. The amusement is one of the key reasons for viewing films while aggression is a fact in existence. The subconscious impact of portraying violent brutality in films disturbs people. *Paanch* is an unreleased Indian film. The CBFC objected to its brutal portrayal but later it was authorized to release with cuts but could not be cleared. It was directed by Anurag Kashyap. These prohibitions come from an authority, an institution, a committee, or a court or a popular figure. The first question that arises is: do things subsist that films portray in India? We can not consider biographical films since the writers are their authority. But take into account reservation politics, religious disappointment, altering sexual conditions in India, community riots, changing the way people live in India. An Indian who observes all this in everyday life, when it is presented in a film, cannot repudiate it. The film is above all an important means,

¹⁷Patwardhan, Anand, "Freedom of Expression and the Politics of Art, Films of Anand Patwardhan 2014"

¹⁸ Tyagi, Rajeev, "Winds of Change Midday Infomedia Ltd (20 February 2010)"

¹⁹ *ibid*

²⁰ Deshpande, Sudhanva "The Children of 1984" *The Frontline*, (Vol 22 Issue 04 February 2005)"

²¹ Subramani, A, "Superstar Rajinikanth gets stay on release of Bollywood movie named after him", *The Times of India* (17 September 2014)

and as amusement attaches to it, everyone from a child to an old man is appealed. Although freedom of speech is a fundamental right in the Indian Constitution, it does not permit the individual the right freely, the clause-2 of Article 19 of the Indian Constitution limits the freedom of speech on the following topics: I. "State Security", II. "Friendly foreign relations", III. "Public order", IV. "Decency and morality", V. "Court disdain", VI. "Defamation", VII. "Incitement to a crime", and VIII. "Sovereignty & integrity of India". According to IT Regulations 2011, the contents of which "threatens the unity, integrity, protection, stability or the supremacy of India, foreign relations and the public order" must be refused.

CONSTITUTIONALITY OF CENSORSHIP UNDER ARTICLE 19(1)(A)

In India, all the various platforms of media enjoy the same liberty as related to the Constitution of India, and constitutional freedom related to expression and spreading of an idea is concerned.²² Article 19(1) of the Constitution of India guarantees the people of India freedom of Speech and Expression. Accordingly, this provision regulates both Press and Films. It is relevant to remember the right above is not utter and will have other drawbacks. Matters which are targeting foreigner's links, foreign policies, the dignity and honor of government, honesty, justice, public order, and so forth several limitations to the above, as stated in Article 19(2) of the Indian Constitution.

For the first time, the Supreme Court dealt with the issue of censorship of films under Article 19(1)(a) of the Indian Constitution, in *K.A. Abbas v. Union of India*. In this case, the Supreme Court upheld the film censor on the ground that films have to be treated separately from other forms of art and expression because a film's image can stir up emotions more deeply than any other product of art. Therefore, a film will be banned on the grounds provided for in Section 19(2) of the Constitution.

The Supreme Court held the view that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency, etc. This is not to be construed as necessarily offending the freedom of speech and expression."²³

²² Tulika Kaul, "Censorship of Films in India"(2019) 6 Ct Uncourt 37

²³ *K.A. Abbas v. Union of India*, (1970) 2 SCC 780 at p. 797

JUDICIAL INTERPRETATION OF CENSORSHIP IN INDIA

It has previously been mentioned that the issue of the legitimacy of censorship requires an interrelation between Article 19(1)(a) “ensuring freedom of speech” and Article 19(2) which “allows reasonable restriction on that right”. Under the Constitution, the courts have ruled that the restrictions on the exercise of rights under Article 19(1)(a) must be instituted by a rational and legitimate law²⁴, closely connected to the reasons referred to in Article 19’s respective sub-clauses²⁵.

Concerning the scope of limitations, the Court unequivocally held that limitations must be rigidly and meticulously viewed. Because of the existence of regulations on the enjoyment of the right, they are required to be treated with scepticism and thus place heavy burdens on the entities who attempt to enforce them.²⁶

The Constitution only provided reasons for prohibitions and thereby gave the courts the authority to decide if the limitation placed, complied with the purpose of the law. To understand the abolished censorship concept, a study of three cases, namely “K.A. Abbas v. Union of India”²⁷, “S. Rangarajan v. P. Jagjivan Ram”²⁸ and “LIC v. Prof. Manubhai D. Shah”²⁹ are a necessity.



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K.A. ABBAS V. UNION OF INDIA

The concise details that contributed to the trial were that by analyzing the four cities of “Calcutta, Mumbai, Madras & Delhi”, the plaintiff (a filmmaker) created a documentary entitled “A Tale of Four Cities”. The complainant demanded a “U” certificate, but an “A” certificate was issued. An appeal was lodged against the classification and instead a certificate of “U” was given on condition that other reductions and improvements were made. The complainant was not happy with this ruling and moved to the Supreme Court. The petitioner contended that censorship itself breached the “freedom of speech” set out in Article 19(1)(a) of the Constitution. The Court, communicating via, Chief Justice Hidayatullah, for the first time abolished certain regulating censorship standards in India.

²⁴ *State of Madras v. V.G. Row* AIR 1952 SC 196 : 1952 SCR 597.

²⁵ D.D. Basu, “*Shorter Constitution of India*” 77 (1981)

²⁶ *LIC v. Prof. Manubhai D. Shah*, (1992) 3 SCC 637 (hereinafter “Manubhai”).

²⁷ (1970) 2 SCC 780 (hereinafter “Abbas”).

²⁸ (1989) 2 SCC 574 (hereinafter “Rangarajan”).

²⁹ (1992) 3 SCC 637.

The Court ruled that, as per age groups, censorship of movies and their categorization is a legitimate exercise of control in the name of collective moralism, modesty, etc.³⁰ It is not to be interpreted as breaching freedom of speech. Part of the ruling was mostly relying on the inference that a person who reads a novel or hears or writes a speech or sees an art or a work of art is not as profoundly touched as by viewing a film.³¹ This interpretation by the Court was the reasoning for the limitations and censorship of the films by the government.

S. RANGARAJAN V. P. JAGJIVAN RAM

Given the Conservative opinion of the supreme court in Abbas's case, the courts have generally adopted a pro-liberal attitude towards movies. In "S. Rangarajan v P. Jagjivan Ram", this case emerged as a plea against the verdict of the High Court of Madras revoking a "U certificate" awarded to a Tamil film entitled "Ore Oru Gramathiley." The film criticized public employment reservation policies, which showed the "Brahmins" plight in light of the same. The High Court's justification was that the response to the movie in "Tamil Nadu" was bound to be unstable, given that Tamil Nadu had been subject to prejudice based on caste for a long time. Some remarks have also been made against "Dr. B.R. Ambedkar" and various Tamil figures. Lawfully, the Court was not incorrect, as Rule 11 obliges the CBFC to analyze public reactions to movies before the awarding of the certificate³², and the Court merely upholds the legislative purpose.

The Supreme Court however swept this dispute aside and condemned the State for recognizing the possibility of protests and processions. The Court held that:

"If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of the threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation. The State must protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression".³³

³⁰ *Abbas*, (1970) 2 SCC 780.

³¹ *ibid*

³² Cinematograph (Certification) Rules, 1983, R. 11.

³³ *Rangarajan*, (1989) 2 SCC 574, pp. 598-599.

LIC V. PROF. MANUBHAI D. SHAH

The SC interfered again to ensure freedom of speech in Professor Manubhai's case. A video has been made by the producer on the Bhopal Gas Tragedy which went on to achieve the esteemed Golden Lotus Awards. However, as the tour came to be launched in India, the national TV channels declined to air it, stating the obstruction of the political parties. The Court dismissed the argument and stated that there is no basis to reject release only because a documentary criticizes the Administration. The Court has adopted a similar viewpoint in films such as *Aarakshan*³⁴, *Udta Punjab*³⁵, *Padmaavat*, etc.

PROGRAM AND ADVERTISING CODE FOR TELEVISION

TV networks, broadcasting, and associated activities are managed by the "Cable Television Networks (Regulation) Act, 1955" and the "Cable Television Network Rules of 1994" ("Cable Television Laws"), which prohibit, inter alia, propagation of programming not in compliance with the cipher of programming (the "Program Code") and of any commercial that is not following the advertisements (the "Advertising Code") set out in the "Cable Television Networks Rules, 1994".

The Program Code lays out several requirements for cable providers and programming. For eg, it guarantees that the cable channel does not insult decent taste or morality, ridicule foreign governments, include assaults on faiths or cultures, or provide something offensive, defamatory, intentional, misleading, or provocative innuendos.

It also greatly limits the broadcasting of films, whether made in India or abroad, by broadcasters and television network operators unless it is classified as "U" by the CBFC, suited for unregulated public displays in India.

Cable providers do have extra obligations, such as guaranteeing services that respectfully represent people and do not include hateful words and abuse in the children's programs.

Concerning commercials, and other aspects, the Advertising Code (which is identical in large part to the Program Code) specifies that certain promotions are in compliance with local legislation and do not violate subscribers moral dignity and religious feelings.

³⁴ *Prakash Jha Productions v. Union of India*, (2011) 8 SCC 372

³⁵ "*Phantom Films (P) Ltd. v. Central Board of Film Certification*, 2016 SCC OnLine Bom 3862"

Thus, though no pre-censorship provisions occur with regards to material distributed on TV, as in the context of movies, “broadcasters and cable providers” are expected to comply with the conditions set out in the “Cable TV Law” as regards the quality of information and advertising that may be made freely accessible via cable services.

REGULATION OF ONLINE CONTENT

Although films are licensed and television show distributors are regulated by the “Program Code” and “Advertising Code”, web shows, movies and other copyright owners with rights shown on streaming or internet channels (such as “Netflix, Amazon Prime, Hotstar”) are generally exempted from restriction or code enforcement, subject with course to restrictions. The MIB (“Management Information Base”) reiterated this status in response to a complaint under the RTI Act of 2005, in which the MIB claimed that the CBFC only authorizes theatre films, and does not have power over the online content.

Given the growing prevalence and desire for web content as compared to television and movies, MIB formed a committee in 2018 to recommend a managerial system for electronic content businesses, including online medium, and knowledge pages. The commission was eventually disbanded. As the “National Critical Infrastructure and Digital Broadcasting Investment Committee,” set-up by the “Ministry of Electronics and Information Technology” (the MeitY), has also been responsible for resolving similar problems and also issues beyond the range of the MIB’s scope.

Also, web advertising has been introduced specifically within the framework of the “Indecent Representation of Women (Prohibition) Act of 1986’, which forbids the indescribable depiction of women in commercials, novels, movies, etc. A modification was tabled in the “Indecent Representation of Women (Prohibition) Amendment Bill, 2012”, which explores to extend the reach of the law to cover modern types of media.

Ironically, some “OTT players” have proposed “self-regulation” on their sites, in particular with regards to language, abuse, and sex by way of a collective code for digital content. However, on their account, certain OTT players provide compliance credentials before a movie starts, “render disclaimers in the scenes” portraying the use of cigarettes and drug items, offer consumer choice information, depending on age and content, even though the legislation for online advertising does not require them.

This want of self-regulation comes from many reasons, including local and regional sensitivities in India, escaping legal proceedings from controversial material and preventing any other type of regulation that might theoretically curb the ingenuity of online service providers.

The digital advertising business, nevertheless, seems to be split on the requirement for a standardized cipher. It is because most “OTT players do not want to self-impose” any standards or rules and retain their ability to build material on their digital program. It then looks that “certification” or other sorts of digital content censorship can be reversed by stakeholders.

CBFC AND LAWS RELATING TO CENSORSHIP IN INDIA

Historically, the relevant legislation about the “pre-censorship” of movies in India has been challenged on the grounds of freedom of speech and expression as it is at the core of every creative impression. In the prior case, when “censorship of films” was questioned because it breached “freedom of speech and expression”, the Supreme Court contended that people’s collective heed outweighs a person’s rights and therefore defends film inspection because it is an effective means of communication. In the same decision, though, the Supreme Court has recognized the value of establishing a precedent for “censors” to guarantee that a reasonable provision is rendered in favor of creative expression, thereby providing imagination with enormous possibilities and potential.

As it currently stands, the censorship of films in India is undertaken by the Central Board of Film Certification (the CBFC) set up under the “Cinematographic Act, 1952”. The Act along with the “Cinematographic (Certification) Rules 1983”, and the Central Government’s directions dated December 6, 1991, emanated according to “Section 5B of the Act” (the “Censorship Laws”), embarks how movies are to be verified for presentation in our country.³⁶

Currently, “under the Act”, the CBFC is needed to verify movies under any of the following class:

- “U (unrestricted exhibition)”;
- “UA (unrestricted exhibition except for children below 12 years of age)”;
- “A (restricted to adults only)”;

³⁶ Sumit Mathew, “Censorship of Films” <<http://www.legalserviceindia.com/legal/article-351-censorship-of-films.html>> accessed 27th June 2020”.

- “S (restricted to a specified class of persons)”.

Throughout the classification of films, the CBFC’s guiding criteria include judging the movie from the viewpoint of communal safety, justice, propriety, and calumny. However, the CBFC is often expected to examine legislations related to the portrayal of cigarettes and alcohol, the usage of medicines and chemicals, the prohibition of animal abuse, the use of “national emblems” and titles, and certain aspects of federal interest.

The CBFC’s goal is to “ensure certification” without restraining creative speech and freedom of production. Although the classification suggests censorship, the central part of the CBFC is simply “film certification” and not material censorship. The CBFC has also been blamed by filmmakers for behaving outside its licensing authority and taking on the role of moral police.

“An apt illustration of this would be the deletions ordered by the CBFC to the film *Udta Punjab*, which included directions for the deletion of the names of Indian states, references to several cuss words, and inexplicably, the deletion of a name of a dog: 'jacky chain'. The film was granted an 'A' certificate and this decision of the CBFC was challenged by the producers of the film before the Bombay High Court,³⁷ wherein the producers sought that the 'A' certification is granted without any conditions or cuts in the film. The Bombay High Court examined each of the deletions proposed by the CBFC, and sensibly held that the film was not objectionable merely due to the depiction of the use or sale of drugs in a particular state and the political references therein and opined that the story must be viewed in its entirety.”³⁸

Distinctly, the CBFC emanated a proclamation concerning subtitle “certification” in April 2018. In its note, the CBFC claimed that some movies were accredited without subtitles and that claimants could send an assurance that the “final version” contains “subtitles” and that after a film has been approved no subtitles would be applied to it. The Indian Motion Picture Producers Association has contested this order, which is presently pending before the High Court of Bombay,

THE SETTING UP OF THE FILM COUNCIL OF INDIA

³⁷ “Phantom Films Pvt. Ltd. and Ors. v. CBFC and Ors., Writ Petition (L) No. 1529 of 2016 decided by the Kerala High Court on June 13, 2016.”

³⁸ Suneet Katkari, “India: Censorship: The Current Regulatory Framework And The Future Of Digital Content” < <https://www.mondaq.com/india/broadcasting-film-tv-radio/757742/censorship-the-current-regulatory-framework-and-the-future-of-digital-content> > accessed 29th June 2020.”

The Film Council of India (FCI) has become a well-established concern among filmmakers. As specified in its preamble, i.e. classification of films, the proposal was to adhere to the indigenous purpose of the CBFC. The CBFC has over the time gained vast powers to cut, mutilate, and even ban a movie. The FCI shall remove and lay it in itself the powers from the CBFC. Unless the CBFC deems some content unacceptable, it may then appeal to the FCI in the same manner. The Committee of retired judges, attorneys, authors, artists, and writers shall then take responsibility for this content.

Films have been a means that have impacted people for a long time and have been an essential form of representation. Free speech is a fundamental right acknowledged by any nation on this planet, and it is shameful that filmmakers in India are stripped of this right because of political power and causes.

DOES CENSORSHIP EVER WORK?

Traditionally, it has been a total inability to regulate and ban films to preserve the status quo and avoid the inflow of aberrant thoughts that don't represent majoritarian values. For example, Hollywood introduced a code between 1930 and 1968 which prevented any connection to homosexuality in films. Moviemakers used inventive allegories and references that are illustrated in the documentary "The Celluloid Closet"³⁹ to bypass such a code. Hence, by utilizing subtle methods that the censors cannot prohibit, the usefulness of banning a certain film is made inutile, as filmmakers seek to express the meaning.

Therefore, the government's rationale for policing morality and upholding Indian identity fails if we take into account the volume of sexually suggestive material accessible online. The Omnipresence of pornography and its quick exposure to people with internet connectivity undermines the moral regulation which censors are attempting to execute. This statement shows the inherent irony of the working of censors. The censors are more worried about the government's "legal" stance than its indiscretion.

Throughout the new multimedia age, censorship of "harmful" video scenes and ideas is also on the surge, given their apparent incongruity with the free speech and expression values and ideologies that uphold a contemporary democracy. The law routinely forbids the release of films that are labeled "sexually explicit." The former aims at controlling the morality of a culture, whilst the latter attempts to legitimize the ancient and modern

³⁹ Rob Epstein and Jeffrey Friedman, "The Celluloid Closet (1996)".

socioeconomic occurrences in the world. The unclear terminology of the surveillance requirements aggravates the arbitrariness of surveillance. The word “maintaining the public order”, for example, is vague, which may be viewed as a censor to ban a film where the majority does not like or legitimize. This is the foundation of the censor board’s unilateral authority to agree on “right” films for society.

SUGGESTIONS: MEASURES TO PREVENT “ARTISTIC FREEDOM”

There is a clear legislative mechanism when it comes to film censorship. This clause would preserve the right of creative speech reserved originally for extraordinary circumstances in the Constitution.

a) A CHALLENGE TO ABBAS’S CASE

At present, the judgment of “K.A. Abbas v. Union of India” is the pioneering decision of the Constitution Bench which regulates censorship rule. More than half a century ago, the decision set filmmaking on a very strong pedestal of censorship. Yet time has shifted and films are not the only means that can affect the public. By adoption of technology, virtual media have been developed and availability to television series, plays, standups, and other such actions are freely / minimally accessible online. Ironically, the legal level for such media is weaker than for films. These are often prone to post-censorship in opposition to pre-censorship under which films go through.

New polls indicate that viewers tend to view a film at home digitally in today’s time and that women are more inclined to read the book before they watch the movie edition and videos. This goes on to appear that virtual media is becoming a favored means over traditional movies.

b) THE CURRENT CENSORSHIP REGIME VIOLATES ARTICLE 14

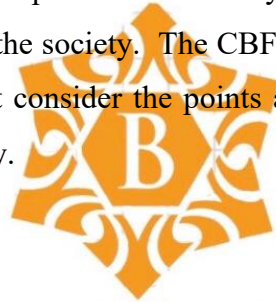
TV and virtual platforms are favored in today’s age over mainstream films. Nevertheless, the disparities between laws, between the two means, and the fact that they are more strict for the conventional media are unequal under Article 14 of the Constitution. The right to liberty is enshrined in Article 14 which allows the government to recognize individuals as equals.⁴⁰ In the current context, there is no fair justification for the stringent supervision of films in comparison to the social media with the latter being simpler to navigate. The classification

⁴⁰ *E.P. Royappa v. State of T.N.* (1974) 4 SCC 3 : AIR 1974 SC 555.

requires clear distinctions and recognizable variations. This was also used as a justification in a pending appeal before the Supreme Court.

CONCLUSION

Media is one of the important instruments which can be used to bring out different ideas of different people in Public Domain and therefore a free and unrestricted media is required and it should be free from any kind of censorship. Curtailment of some sort does not contravene the inherent human freedom to share one's point of view within the culture of democratic communities. Around the same moment, though, we must bear in mind the reality of the culture through which such concepts are being transmitted. The society's harmony and stability in the course of sharing one's thoughts will not be interrupted. Since cinema can influence society as a whole as a public expression, care must be taken while revealing the movie to circumvent any kind of confusion and commination to "national security". Therefore, the stability between these two aspects i.e., the right to express and the duty to do that responsibly should be maintained, to carry on the order in the society. The CBFC must take a "balanced approach" while evaluating the films and must consider the points as stated above, to keep the peace, harmony, and the order of the society.



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