

# Role of central board of film certification: A critical overview of film censorship in India

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## ABSTRACT

*If freedom of speech is taken away, then the dumb and silent we may be led, like sheep to the slaughter.*

-George Washington

The Indian Constitution by virtue of its Article 19(1)(a), provides freedom of speech and expression through various modes and one of such prominent and influential implement is cinema, which provides freedom of speech and expression through ideas, stories or even one's views, it provides the film makers the liberty to discuss even the sensitive issues freely. The cinema commonly termed as films had been a potent tool of expression since its inception in 19<sup>th</sup> century.

The Indian cinema being one of the largest film industry, produces more than 2000 films in various languages every year and with such diverseness comes along certain restrictions too, in the interest of public and the State. The freedom of expression is not an absolute one, the sensitive ideas and issues which are being discussed through films are subjected to opposition by the citizens many times due to the kind of content or issues it is based upon, for example the film 'Padmaavat' which faced a huge outrage before it could be exhibited publicly.

The Cinematograph Act, 1952 has been constituted by the legislation for the imposition of censorship on films that is, for suppression of the part which is either objectionable or offensive or which is inappropriate or sensitive and for grant of certification but unfortunately there is misuse of the power of censorship by intervention of higher authorities, politicians etc. for suppressing the freedom of expression and as a result there arises a need for regulating such laws in order to neutralize the balance of freedom of speech and expression and the restrictions being imposed.

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## 1. Introduction

Films has been an integral part of Indian society from the era of its beginning as it has always enjoyed immense popularity between the common masses. A lot has transformed from standing in queues for hours to booking tickets online in a click. India produces thousands of movies every year in different languages and with such diverseness comes along a good amount of restrictions too. Films enjoy special privilege in bringing out to the public what they haven't seen or heard about, this is because films are allowed to freely discuss sensitive issues and ideas which if expressed in normal ways will face serious objections and criticism.

It was in the year 1913 when a first full length feature film was made in India named Raja Harishchandra as most of the film during earlier time were based upon mythology and newly invented medium were not known so censorship wasn't necessary nor was need of any regulations for the same.<sup>1</sup> Until 1918 cinema and its maker had full liberty, it was in 1918 the censorship began with the cinematographic Act, 1918, the Act was amended in 1949 but was not sufficient to curb the shortcomings and it was the Cinematographic Act 1952 which

contained the actual purpose that is separation of the provisions relating to sanctioning of films for exhibition from that of provisions relating to licensing for reanalyzing the system.

The Central Board of Film Certification formed under the Cinematographic Act 1952, is a statutory body constituted under the Ministry of Information Broadcasting which regulates the censorship. Censorship basically is suppressing or controlling the ideas, opinions etc. The freedom of speech and expression is subjected to restrictions if it is objectionable or offensive or can cause communal violence. The Board removes anything or part being offensive or objectionable, besides this the Board assigns certification as Universal, Adults, and Parental Guidance to films before they are exhibited before public.

## 2. Freedom of expression via cinema

Cinema or motion picture, has been defined as the art of images which are in moving form.<sup>2</sup> Since the time of its evolution in India cinema has been an important implement in the Indian democracy for expression of ideas and opinions.

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<sup>1</sup>Government of India, Report: The Report of the Enquiry Committee on Film Censorship (Ministry of Information Broadcasting, 1969).

<sup>2</sup>Gabe Moura, *What's Cinema*, www.elementsofcinema.com/ (last modified December 15, 2014).

Freedom of speech and expression acts as the spine of a democratic set up. It portrays the norms and recent existing trends in the society and promotes certain ethics. According to Professor Emerson in 1963:

"Maintenance of a system of free expression is necessary (1) as assuring individual fulfillment, (2) as a means of attaining the truth, (3) as a method of securing participation by the members of society in social, including political, decision making, and (4) as maintaining the balance between stability and change in society."<sup>3</sup>

Freedom of exchange of ideas is necessary for the development of society.<sup>4</sup> The term free cinema provides for platform for free flow of opinions without any opposition or restraint. Expression by way of art, music, literary work etc. are parameters of free opinions and ideas thus making cinema a touchstone of the Indian democracy where there is diversity and freedom of expression is an important mode of establishing a connection between the masses and their opinions.

### 3. Legal framework

Article 19(1)(a) of Part 3 of the Constitution provides that all citizens shall have a right to freedom of speech and expression.<sup>5</sup> It is one of the most inalienable rights guaranteed by the Indian Constitution as it is medium of being at liberty to speak and express oneself freely. It is considered as an integral concept in modern democracy, hence liable for protection by the Constitution but there are certain reasonable restrictions imposed under Article 19(2). The grounds for such restrictions involves that of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality in relation to contempt of court, defamation or incitement to an offence.<sup>6</sup> The same grounds are laid down under the Cinematographic Act, 1952 under which provisions as to the certification of films are given.<sup>7</sup>

The Cinematographic Act of 1952 regulates the cinema. The Act provides for provisions in relation to the certification of films and for regulation of its exhibition in public.

Section 3 of the Act provides for a statutory regulatory body known as Central Board of Film Certification also generally termed as Censor Board, certifies films for exhibition before public. It functions under the aegis of Ministry of Information Broadcasting. Under section 4 the Censor Board can regulate the film's exhibition.

The Act also provides for Appellate Tribunal for hearing appeals by the aggrieved party. Section 13 of the empowers Central Government or the Local Authorities to ban the films from exhibition if it violates law and order in any part of India.

### 4. Should censorship be allowed

<sup>3</sup> *Union of India v. Naveen Jindal and Anr.* Appeal (civil) 2920 of 1996.

<sup>4</sup> John Stuart Mill, *On Liberty* (1947) 61.

<sup>5</sup> THE CONSTITUTION OF INDIA, 1950.

<sup>6</sup> Article 19(2) of The Constitution of India

<sup>7</sup> Cinematograph Act, 1952.

In various regions censorship is used for controlling the issues and content related to drug issues, sexual content, violation of human rights etc. that is going to be exhibited so that the public is not disturbed by its exhibition. The Cinematograph Act, 1952 provides for very little scope for censoring, nowhere the Board had been vested with the power to exercise its authority arbitrarily for suppressing the freedom of speech and expression exercised through a film except in case of reasonable restrictions given under section 5(B) of the Act. In case any film violates the provisions of section 5(B) only in that situation only the objected part can be removed on the order of the board and not the entire film be restricted for its exhibition.

However this power had been often misused by suppressing the freedom of speech and expression by the Board. The primary function of the Censor Board is to provide certification to the films for its exhibition and it should ensure the same instead of exercising discretionary power for censoring a film.

We had fought for our freedom of speech and expression and imposing censorship on it leads to the hustle into vain, censoring this freedom restricts us from being aware about the incidences happening around us and if we are not aware of what is happening around us we would not be able to take action for the same. No doubt censorship has a purpose but when the power goes beyond there arises questions on the functioning of such authorities.

So the Board should exercise its power in compliance with what it had been entrusted upon with and should not indulge into the politics by oppressing one's freedom of expression.

### 5. Judicial pronouncements

Besides the statutory provisions the Courts through various judgments had played important role in dealing with the issues related to the censorship being imposed and they are as follows:

In case of **K.A. Abbas v. Union of India**,<sup>8</sup> the powers of censorship under the Cinematographic Act, 1952 were challenged, under which the Censor Board had required the petitioner to delete certain shots of his film in order to be exhibited without restriction for public exhibition. The Supreme Court upheld the Act by dismissing the petition and added that films have to be treated separately from other forms of art and expression because a motion picture has the ability to stir up the emotion more deeply than any other form of art and also mentioned that it should be in the interest of the public morality and decency.

In case of **Rangarajan v. P. Jagjivan Ram**,<sup>9</sup> in the given case the Madras High Court had revoked the 'U-Certificate' issued to a Tamil film named as 'Ore Oru Grammatical', the movie was challenged on the ground that it was based on reservation policy in jobs as such policy is based on caste and

<sup>8</sup> AIR 1971 SC 481.

<sup>9</sup> (1989) 2 SCC 574.

was unfair to the Brahmans. It was argued that economic background and not caste should be the criterion, the Supreme Court overruling the High Court's decision held that "freedom of expression cannot be suppressed on account of threat of demonstration or procession or threats of violence". That, the Court noted, would be tantamount to "negation of rule of law and a surrender to blackmail and intimidation"

In case of **Ramesh v. Union of India**,<sup>10</sup> in this case an appeal was made against the judgment by the Bombay High Court for allowing the screening of a serial depicting communal violence, restrain the same as being violating of section 5 b of the Act of 1952. It was argued that screening of the serial on TV would result into violation of public order resulting into incitement of people to commit offence. Supreme Court dismissed the petition and upheld the decision of High Court and stated that the serial is a medium of providing information to the public as to learn from the past mistakes and not repeat it such acts in future. Eventually, 'U-Certificate' was granted to the serial.

In **Odyssey Communication Private Limited v. Lokvidayan Sanghatana**,<sup>11</sup> the telecasting of serial 'Honi Anglophone was restricted on the ground of likely to generate blind faith and superstitions. The Apex Court vacated the injunction granted by the High Court and held right of a citizen to exhibit a film would be curtailed on the ground set out under Article 19(2) of the Constitution.

In case of **Sri Raghavendra Films v. Government of A.P.**<sup>12</sup> the exhibition of film 'Bombay' in its Telugu version was suspended under the exercise of section 8 of the A.P Cinemas Regulation Act, 1955 as it may hurt sentiments of certain communities, despite of the fact that the film was certified by the Censor Board. The Court found that the authorities passing the order did not even watch the movie, as a result the Court quashed being of arbitrary nature and based upon improper matter.

In **Prakash Jha Production v. Union of India**,<sup>13</sup> petition was filed asking the Court to set aside the decision taken by the respondent States for suspending the screening of the film *Aarakshan* for specified period. The Court held that: "In the present case, the Examining Committee of the Board had seen the film along with the experts and only after all the members of the Committee as also the two experts gave positive views on the screening of the film, thereafter only the certificate was granted. Thereafter, since the expert body has already found that the aforesaid film could be screened all over the country, we find the opinion of the High Level committee for deletion of some of the scene/words from the film amounted to exercising power of pre-censorship, which power is not available to any high level expert committee or to the State Government. It appears that the State Government through High Level committee sought to sit over and override the decision of the Board by proposing deletion of some portion of the film, which power is not vested with State at all. It is for the State to

maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the present case."

In recent cases we have the film '*Padmavati*' or '*Padmaavat*' as the Censor Board would like to call, based on undiscovered life of Rani Padmavati was banned by the Karni Sena on account of disgrace to their community and historical inaccuracies. It was believed that the Board had asked to cut nearly 300 shots in order to get a U/A certificate. Later the movie was released in month of January 2018, as the Supreme Court refused to put any kind of ban on it on the movie was a great success after its exhibition.

## 6. The need to reform censor board

There is need of reforming the Censor Board on the following grounds:<sup>14</sup>

- Central Board of Film Certification is restricting the freedom of speech and expression of the film producers.
- Films based on contemporary issues and politics prevailing are facing certain objections by the Board while those having indecent and vulgar contents are passed without any cut or suppression.
- There are incidents relating to bribes also going on inside the Board.
- The political intervention is rising in Censor Board's matter and its members appointments.
- The rules or laws of the Cinematographic Act are age old and needs transformation in order to stand by present times need.
- Documentaries, exposing the truth, are also facing cuts and suppression.
- Cinematographic rules vary from State to State. Film passed in one State is objected and not passed in other State etc.
- Beside these suggestion various committee were also set up by the government in recent times for the purpose of suggesting methods for reforming the Board but only little had been done in this context. An Expert Committee was also set up by the Indian Government for reviewing and recommending views for regulating the legislation. The committee in its report had given certain guidelines which are as follows:<sup>15</sup>
- The medium of film shall remain responsible and sensitive to the values and standards of society.
- Certification is responsible to social changes, the artistic and creative freedom are not unduly curbed.
- The film should be examined in the light of the period depicted in the films and contemporary standards of the country and the people to which the film relates

<sup>14</sup>Guidelines for Censorship, *Guidelines*, <https://www.cbfcindia.gov.in/main/guidelines.html/> (last modified February 18, 2019).

<sup>15</sup>Guidelines for censorship, *Guidelines*, <https://www.cbfcindia.gov.in/main/guidelines.html> (last updated February 19, 2019).

<sup>10</sup>(1988) 1 SCC 688.

<sup>11</sup>(1988) AIR SC 1642.

<sup>12</sup>(1995) 2ALD 81.

<sup>13</sup>(2011) 8 SCC 372.

provides that the film does not deprave the morality of the audience.

- The film shall not be certified by the Board if it is against the sovereignty and integrity of India, the security of the States, friendly relations with foreign nations, public order, decency and morality or involves defamation or contempt of court or is like to incite the commencement of an offence etc.

Besides these guidelines the committee had also suggested several reforms that could be initiated by the government.

Government of India had also set up a committee under supervision of renowned film maker Shyam Benegal in the year 2016 to lay down ideas that takes into consideration different modes followed across the world and recommend implements which could help and benefit certification and Censor Board.

Beside these guidelines even an individual can contribute by having a say for a film or a confidential agreements could be made to protect the content, this is what called as public participation, apart from this we can follow voluntary rating as followed in several foreign nations.

## 7. Conclusion

Cinema portrays what is happening around us, it is a mode of connecting people through expression and ideas. It enables them to express oneself freely to other propagating the agendas left untouched. Restriction and suppression of ideas should not restrain the creativity of a person or his basic human right. Advancement of technology can lead to any kind of vulgarity and violence challenging the censorship's credential but what should be emphasized is sufficient opportunity to exhibit the actual picture. The freedom of speech and expression is the cornerstone of the Indian democracy which had been received after years of sacrifice, it should not be used for generating or spreading any violence in the society nor should be against public policy, morality, law and order. The peace should prevail in the society while exercising this freedom and should not effect the public at large. Caution should be taken to avoid any kind of nuisance. A neutral approach should be there between the freedom of expression and peace in the society, the Board should show a neutral approach in order to maintain balance while reviewing a film and taking into account the harmony of the society. The Censor Board should not be biased or exercise discretion while censoring, it should only restrict the content that is violating the provisions of law and should not oppress the freedom of expression a person is exercising except in case of reasonable restrictions that are being imposed by the Statute itself. Let everyone have the liberty to express themselves.