

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

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CENSORSHIP AND CINEMATOGRAPH AMENDMENT BILL, 2021: AN ANALYSIS

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Abstract

One of the most sacred rights granted by the Indian Constitution is freedom of speech and expression. It is also considered an essential idea in most modern democracies around the world. Cinema is a means of expressing one's thoughts, ideas, and opinions, and it is protected under Article 19(1)(a) of the Indian Constitution. However, the same reasonable constraints that apply to Article 19(1)(a) can be applied to the method of expression – cinema. The Cinematograph Act outlines the restrictions on cinema, including all certification guidelines as well as provisions to avoid arbitrariness. The Cinematograph Act regulates cinema in India, and the Act establishes a regulatory agency called the Central Board of Film Certification, whose primary responsibility is to certify films for public screening. Thus, a set of rules and regulations can be said to have been established, but arbitrariness and impartiality continue to reign, and the court serves as a legal protector to defend the rule of law and give justice. This paper seeks to analyse the amendments which are proposed to the existing Cinematograph Amendment Act and whether it curbs the fundamental right to freedom of speech and expression enshrined in the constitution.

Introduction

India was given the film censorship mechanism which was forced by the British in 1920. In any case, the *raison d'être* of the censorship apparatus was totally redesigned to suit the new rulers. Also, it says a lot about their mobility.¹ In 1950, the Right to Freedom of Speech and Expression (I.e, Art 19(1)(a)) was enshrined in the new Constitution of India as one of a few Fundamental Rights accessible to the Indian citizen. Special cases were anyway allowed under Art 19(2), which read: Nothing in sub-provision (a) of clause (1) will impact the activity of any current regulation to the extent that it relates with, or keeps the state from making any regulation relating to , libel, slander, defamation, contempt of court or any matter which outrages the moral or ethical quality or which sabotages the security of, or will in general defeat, the state. In this manner establishment of regulation with chief powers to manage the media was admissible, provided that they restrict their exercise of those powers to grounds which are mentioned under Art 19(2).²

Against this backdrop, throughout the 1950s, there was a flurry of litigation, particularly involving the press (both books and newspapers) and dramatic performances. In the immediate aftermath of independence, the Indian judiciary was inclined to believe that any statute or provision not compatible with the Constitution's specific intentions or directions would be declared null and void. It followed its duty not only when the offending act stated authorised limits outside of Art 19(2), but also when it was silent but may be understood that way if read literally^{3 4 5}. The state quickly evaded the original Art 19(2) by introducing the Constitution (First Amendment) Act 1951, seeing this as a threat to future schemes. It allowed 'censorship' statutes to be passed, giving executive branch officials the power to impose restrictions' on the press (and other forms of expression) "in the interests of state security, friendly relations with foreign states, public order, decency, morality, or in relation to contempt of court, defamation, or incitement to an offence."

The 14th Constitutional Amendment, passed in 1963, established a new rationale for imposing "reasonable restrictions" on freedom of speech and expression in the shape of India's sovereignty and integrity. The breadth of the stated fields of exception was thus extended, both in terms of phrasing and scope. The changes also added that the limits should be 'reasonable' both 'substantively' and procedurally' to counteract this expansion of the restrictive powers. The specific aims or instructions of the Constitution served as the foundation for reasonableness.

The judiciary have focused on two other key consequences of the reasonableness requirement:

-To overturn statutes that, under Art 19(2), did not provide for an appeal against executive directives.⁶

-To overturn executive directives that did not specify why something was prohibited⁷.

¹ S T Baskaran, *FILM CENSORSHIP AND POLITICAL CENSORSHIP IN BRITISH INDIA : 1914-1945*, 19 (2021).

² INDIA CONST. art. 19, cl. 2.

³ Amar Nath Bali vs The State 1951 CriLJ 261

⁴ Romesh Thappar vs The State Of Madras 1950 AIR 124, 1950 SCR 594

⁵ Brij Bhusan vs Delhi 1950 AIR 129, 1950 SCR 605

⁶ Rajasthan vs. Madan Lal Kapur AIR 1953 Raj 162

⁷ The State vs Baboo Lal AIR 1956 All 571, 1956 CriLJ 1143

However, there were some conservative judgements as well:

- Incitement or solicitation to commit violent crimes such as murder was deemed to jeopardise state security and fall under the purview of a statute sanctioned by Art 19(2).⁸
- In general, courts have refused to assess the gravity of any disputed scenario. The government's judgement and discretion were to be used in determining when and to what degree restrictions should be applied.⁹

The press was able to break free from the clutches of censorship as a result of these lawsuits, as well as its growing political clout. Despite its lack of political appeal, the stage was also exempt from censorship provisions, owing to the fact that the Dramatic Performances Act of 1876 had far too many loopholes to be considered "constitutionally" tenable, such as a lack of clarity regarding directives and insufficient provisions for appeal against censorship decisions. However, films Remained Susceptible Due To Its Lack Of Prestige And Weight.¹⁰

Freedom Of Speech And Expression

Article 19(1) (a) of the Indian Constitution guarantees freedom of speech and expression. This liberty includes the ability to openly express one's beliefs or thoughts through speech, writing, printing, or any other means. Because public education, which is so important for the effective functioning of a popular government, is impossible without free public discussion, freedom of speech and expression is the foundation of democracy. In a democratic democracy, media freedom is essential to an individual's existence; the media is one of the most important foundations of a free society and a tool for social and political change. Unlike the United States Constitution, which clearly states 'press liberty,' that is, the freedom to publish whatever one wants without prior authorization, the Indian Constitution does not include the word "freedom of the press."¹¹

However, freedom of expression is inextricably linked to the right to spread ideas, the latter of which is guaranteed by the press's freedom of publishing and circulation. Furthermore, the press is only another form of expression for the individual or citizen. Editors and managers of newspapers are all citizens, and when they write in newspapers, they are expressing their right to free expression. The right to freedom of speech and expression in India, thus, includes the right to freedom of the press as well. Individual and media freedom of speech and expression does not, however, guarantee an absolute right to talk or distribute whatever one likes without repercussions, nor does it grant unrestrained or unbridled immunity to every imaginable use of language, and to prevent those who misuse this freedom from being punished. Unlike the United States Constitution, which states that "Congress shall make no law... abridging the freedom of speech," the Indian Constitution's article 19(2) attempts to strike a balance between individual liberty and state control, authorising the state to impose certain restrictions on speech.¹²

⁸ The State Of Bihar vs Shailabala Devi 1952 AIR 329, 1952 SCR 654

⁹ Virendra vs The State Of Punjab 1957 AIR 896, 1958 SCR 308

¹⁰ Someswar Bhowmik, *Politics of Film Censorship: Limits of Tolerance*, 37 Econ. Polit. Wkly. 3574–3577 (2002).

¹¹ K D Gaur, *CONSTITUTIONAL RIGHTS AND FREEDOM OF MEDIA IN INDIA*, 27 (2021).

¹² Bruce Michael Boyd, *FILM CENSORSHIP IN INDIA : A "REASONABLE RESTRICTION" ON FREEDOM OF SPEECH AND EXPRESSION*, 62 (2021).

The Cinematograph Amendment Act Of 1952

The Act empowers the central government to issue rules that specify, among other things, the exact number of members of the board, the procedure for examining and certifying films, the appointment of subordinate boards and officers, the conditions that may be imposed on a film certificate, and the procedure for appealing a censor board decision. The government produced a set of rules in 1958 as a result of these enabling laws, outlining the institutional organisation and operation of India's film censorship boards in some detail. A Central Board of Film Censors was established under the rules, with a full-time chairperson and six other members nominated by the central government. This Board, based in Bombay, is responsible for submitting annual reports on its activities to the central government, as well as directing and reviewing the work of subordinate regional boards, which are responsible for the actual censorship process. Each of the cities of Bombay, Calcutta, and Madras has a regional and deputy regional officer. Both the Cinematograph Act and the Censorship Rules call for the appointment of advisory panels in each of the above regional centres, consisting of an unspecified number of people "qualified in the opinion of the Central Government to judge the effect of films on the public," to assist in the examination and certification of films.¹³

When a regional officer receives an application to certify a film for public exhibition, he or she must appoint an examining committee to see the film and recommend a certification. The examining committee for newsreels, documentaries, cartoons, and educational films consists of one member from the advisory panel and the regional or assistant regional officer; however, the committee for any other film consists of four members from the advisory panel and the regional or assistant regional officer.

The members of the examining committee meet immediately after viewing the film in question to discuss whether the film should be given a "U" (suitable for unrestricted public exhibition) or "A" (suitable for public exhibition restricted to adults) or no certificate, or whether a "U" or "A" certificate could be given if certain portions of the film were removed. The rules demand that the committee members' opinions on the suggested certification be documented, but the committee's actual deliberations are never recorded. Furthermore, the applicant is barred from both the film's screening and the committee's subsequent deliberations.

Following the general discussion, the regional officer tells the applicant in writing of the committee's "tentative" conclusions; if the applicant is dissatisfied with this conclusion (typically a "A" verdict), he may request an informal hearing with the committee to discuss his viewpoint. The deliberations of this informal conference are once again undocumented. The chairman of the Central Board of Film Censors then sends a copy of the committee's final judgement and each member's vote to the regional officer, who then directs the regional officer to certify the film on behalf of the board as "U" or "A" as the case may be.

If the applicant objects to the examining committee's conclusion or the chairman of the Central Board wishes to re-examine the film, the latter can refer the film and the administrative decision to a revising committee, which will consist of the chairman and all resident members of the advisory panel of the location where the application was received. After that, the revising committee

¹³ Cinematograph Act, 1952

reviews the film in the same way as the examining committee did. The revising committee's conclusion is decided by a majority vote, and a certificate is issued in accordance with it. If the applicant is dissatisfied with the revising committee's decision, he or she has the right to appeal to the central government.¹⁴

Cinematograph Amendment Bill of 2021

The Ministry of Information and Broadcasting submitted the Cinematograph (Amendment) Bill 2021 to make the process of analysing films more efficient and to combat piracy, which is a danger to the film industry. The following are some of the important amendments that are suggested:

- Subdividing 'unrestricted public exhibition' certification into three age categories: U/A 7+, U/A 13 +, and U/A 16+.
- It is proposed in the amendment bill to abolish the limitation on certificate validity and to give certificates that are valid in perpetuity.
- The Amendment Bill proposes to add a clause to Section 6 subsection (1), which deals with the central government's revisionary powers. It has been recommended that the Central government has the ability to order the CBFC to re-examine any film that has been certified by the board for public exhibition and that the Central government believes violates the principles outlined in Section 5B.
- Unauthorised recording of a copy of a film or any part of a film is prohibited under Section 6AA of the Amendment bill.
- The bill also wants to add sub-section 1A to Section 7 to make it possible to punish or imprison anyone who violate Section 6AA (or both)¹⁵

However the new bill has attracted criticism from almost all corners of the film industry regarding various aspects of the cinematograph amendment bill of 2021. A certificate issued by the CBFC is valid for ten years under current law. They have extended this period indefinitely under the 2021 Bill. Although the intent for making the certification permanent is unclear, it should be noted that a perpetual validity period was also proposed by a notification issued by the Ministry of I&B in 1984, in which the Ministry exempted validation and revalidation of certificates, resulting in perpetual validation.

The allocation of revisionary powers to the Central Government to direct the CBFC to re-examine an already examined (and so certified) film is the most contentious element in the 2021 Bill. As a result, the Central Government will be able to overturn the CBFC's ruling. Despite the fact that Indian courts have been against the Central Government's revisionary powers, the Supreme Court has stated that the Government can overturn or annul such judicial rulings by adopting suitable laws. According to the 2021 Bill, this amendment stems from the Constitution of India's reasonable restrictions, which state that films may not be approved in the interests of India's sovereignty and integrity, security, friendly relations with foreign states, public order, decency, or morality, or in

¹⁴ V Govindu, *CONTRADICTIONS IN FREEDOM OF SPEECH AND EXPRESSION*, 11 (2021).

¹⁵ Cinematograph Amendment Bill, 2021

relation to contempt of court, defamation, or incitement of any offence. However, in recent years, a considerable number of films have been banned from public viewing for no apparent cause (despite being challenged in court under Article 19(2) of the Indian Constitution).

On the other hand, given the growing popularity of Over-The-Top (OTT) platforms that broadcast movies, any prohibition against viewing a film in theatres may not have a significant impact, since viewers or the "public" may be able to watch the 'banned' film on any of the OTT platforms. It is vital to note that the COVID pandemic has resulted in the closure of movie theatres across the country, as well as a significant shift towards OTT platforms—to the point where a return to movie theatres will take some time. It's also worth noting that no significant regulatory-backed procedures for OTT platforms have been developed. However, if restrictions for the operation of OTT channels are enacted in the near future, it may represent a problem for different stakeholders in the entertainment sector (including, among others, the makers of the disputed film) as well as the general public.

This could lead to some issues with India's portrayal of films on the international stage, especially in recent years, when films that were 'banned' in India have appeared to perform at least as well as international standards, if not better, and have received acclaim from a number of international film festivals. What's worse for the entertainment sector is that this decision comes just a few months after the Picture Certification Appellate Tribunal (FCAT) was abolished, which was the stakeholders' last line of defence if the CBFC refused to certify their film. As a result, any appeal will be sent to the High Courts or the Supreme Court, which many stakeholders will be unable to afford. As a result, the proposed inclusion of this provision raises the question of its significance at the ground level, as on the one hand, it will have little impact on public viewing if the same is broadcast on other platforms, and on the other hand, even if the Government imposes stringent regulations on OTT platforms, the Indian entertainment industry will face a massive pushback on good content delivery, loss of business, loss of international acclaim, and so on.

Conclusion

This old censorship regime, introduced during the British era and changed considerably after independence, is itself an antiquated concept in this day of social media and OTT platforms. The appeal tribunal provided filmmakers with a way to challenge Central Board of Film Certification orders and reason with reasonable appellate members, who frequently approved films and reduced the number of cuts. These current efforts appear to be an attempt to ensure that no films critical of the dominant ideology are produced or released. Now, anyone or any organisation can object to a film, and the government can force it to be re-censored, causing even more problems for filmmakers. The decision to dissolve the appellate tribunal was undemocratic and made without consultation. Even now, filmmakers have little input in the certification process, with censor officers carrying out the government's wishes. In an India where movies such as 'Piravi' and 'Amma Ariyan' were released, bills like these stand as a firing squad against the dissent that is raised against the Government through the medium of Cinema. Our national leaders' newfound language about freedom, modernism, and development, for example, were not applicable to the cinema censorship machinery. Even in this new era, cinema remains vulnerable to political malice and administrative constraints.

