

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

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

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

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# **A CRITICAL ANALYSIS OF THE CINEMATOGRAPH ACT,1952 AND FACETS OF CINEMATOGRAPHY WITH SPECIAL EMPHASIS ON ITS CONSTITUTIONAL AND LEGAL ASPECTS.**

AUTHORED BY - NEHA CHATURVEDI

## **ABSTRACT**

*Freedom of press and media is vital for democracy which assists in formulating deliberations and public opinion. The strength of a democracy lies in its principles of freedom of thought and expression. The Cinematograph Act,1952 was promulgated with an objective of regulating the certification and exhibition of films and categorically classifying them based upon their content . But, what happens when independent journalism, novelty and creativity are throttled and exhibition of films curtailed owing to unguided,unfettered arbitrary decisions of authorities?The question which needs to be answered in the modern times is , whether the balance which is sought to be maintained between individual rights and public interest is scrupulously maintained ? What are the means and methods by which the executive impinges upon the autonomy of the competent statutory authorities ? What are the constitutional, legal and ancillary questions involved which pertain to a virtual abrogation of powers of regulatory bodies ? This research paper seeks to answer these questions,descriptively as well as analytically.*

*Although public interest cannot be overlooked and towards that end , the legal regulatory framework by bestowing upon powers on statutory authorities regarding certification of films and setting up of advisory panels, has substantially conformed to the concept of reasonable restrictions under Art .19(2), but an unjustified intervention by the executive in the film industry has a high probability of doing more harm than good. Media and entertainment are robust pillars of democracy involving free flow of ideas encompassing varied mindsets and contribute heavily in terms of revenue. An harmonious construction of these two conflicting interests shall supplement free flow of ideas, information and thereby uphold individualism with notions of collectivism running throughout like a golden thread. This research paper makes an attempt to critically analyse the Cinematograph*

***Keywords: Press freedom, Film certification, reasonable restrictions, democracy, entertainment***

## 1 INTRODUCTION

Cinema is one such platform which paves the way for propagation of ideas, social, political, economic, cultural issues and enhances the ability of the audience to formulate informed decisions. Cinema serves a multitude of functions. It is not only a source of entertainment and hero worship, but also a vital tool to express novel and creative ideas as well as express dissenting views upon debatable subject matters. Individual and collective perceptions about society and burning issues are shaped by cinema. Encompassing a plethora of languages, it caters to the recreational needs of a wider audience thereby comprehensively engaging them as active participants in the affairs of state. Certain provisions in the Cinematograph Act have time and again been regarded as draconian by stakeholders in the filmmaking industry. There have been umpteen such cases where the whims and fancies of the political regime were allowed to penetrate this vast industry, subjecting them to vague and unreasonable restrictions in the garb of public interest. Where such an ubiquitous art form is restrained within ill defined contours and excessive surveillance of the executive pervades its smooth exhibition, there lies unjustified curtailment of freedom of speech and expression showcasing dictatorial tendencies.

India's ranking in the World Press Freedom Index, 2023 slipped to 161 out of 180 countries. Such a poor performance indicates unnecessary curbs on free flow and exchange of information. Drawing a comparison, many South Asian countries fared better in terms of press freedom than India, and yet India is regarded to be the mother of all democracies in the world. Press freedom including fearless exhibition of films bolsters pluralistic views on one hand and enhances tolerance and integration amongst communities on the other. The Cinematograph Act, promulgated with an objective of regulating the certification of films, has values of colonial mindset deeply ingrained and reflected on a bare perusal of its text and impact. A robust entertainment industry not only elevates the reputation of a country on an international level, but it also fosters cultural exchanges and linkages between various states. The Film industry having such an expanse has social, economic, political, cultural impacts over its targeted audience, leaving space for critical and reflective thinking.

The amendments to cinematograph Act have engulfed screen players, directors, producers, actors in a state of chaos, confusion and uncertainty. Allegations have been made by the political community that these platforms have been endorsed for the purpose of lampooning them. But such averments lack form and substance. Disparate views and opinions are the backbone of a democracy, and cinema invigorates such incommensurate impressions. A film which has been cleared for exhibition by the censor board, cannot be denied an audience owing to law and order issues in the state. Such sweeping responsibilities are that of the concerned Government and measures in the form of preventive and mitigative should be espoused rather than abridging the exhibition of film. A convivial societal ambience provides the necessary impetus for the seamless exhibition of film thereby boosting democratic norms, values and traditions.

## **Research methodology**

The researcher has adopted a doctrinal research methodology in the process of formulating the study. An analytical approach has been undertaken by the researcher for the purpose of critically examining the multifaceted aspects of cinematography and an interpretation of the Cinematograph Act, 1952. In the pursuit of understanding reasons behind opposition from the film industry to certain provisions of the Cinematograph Act and relevance of cinematography, the researcher has also taken recourse to the descriptive research methodology. Constitution of India, Legislations, subordinate legislations, and judicial decisions were relied upon as primary sources for the purpose of data collection & websites, journals, newspaper reports and e-books were relied upon as secondary sources.

## **Research Objectives**

1. To undertake a multifaceted analysis of Cinematography.
2. To analyse the reasons for poor performance of India at the World Press Freedom Index, 2023.
3. To critically analyse the Cinematograph Act, 1952 and its amendments thereto.
4. To formulate solutions for strengthening the inalienable right of freedom of speech and expression through cinema.



## 1.1 Cultural Aspects of Cinematography

Cinema is reflective of the collective mindsets of the society and responds to their cultural and moral values. Garnering public support in the form of a value based, needs based and behavioural based approach, it envisions a normative system and feelings of cultural solidarity. People relate to films in their way of life and evaluate them based on their cultural tendencies. Such is the dynamic relationship between them, that to separate them in strict watertight compartments without any scope for overlapping, would often render them meaningless and ineffective. The cultural attitudes and adherence to social customs have a direct and proximate link with movies being cast and exhibited<sup>1</sup>. Therefore, the cultural aspects are inextricably woven around cinematography and play a profound role in shaping one's personality. Significance of history is also highlighted through the platform of cinema, which not only reflects our current trends but also informs us of diverse and distinct cultural manifestations in the past<sup>2</sup>. Such is the power of cinema, that cultural pluralism is comprehended utilising a functional- liberalism approach building resilient societies.

When arbitrary and unguided restraints are imposed on the film industry and unreasonable modifications and cuts authorised, people are devoid of an opportunity to appreciate cultural linkages of the past and hence denied their vital right to know and participate in the cultural process of a state. The International community is also deprived of a perspective of a wider horizon reflecting the divergent cultural values of a society and state, thus indirectly hampering soft diplomacy of a nation. A robust and independent film industry portrays and solidifies ethnocultural values of a group thereby promoting tolerance amongst groups and communities<sup>3</sup>. In the era of globalisation and liberalisation, showcasing the cultural heritage and cultural dominance of India through the medium of cinema will also foster cultural exchanges in the form of tourism and its allied sectors.

Therefore it is evident that from a cultural standpoint, it is in the interests of a society and progress of

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<sup>1</sup> Subhra Rajat Balabantaray, *Impact of Indian cinema on culture and creation of world view among youth : A sociological analysis of Bollywood movies* 2 J.PUBLIC AFF.1, 2-4 (2020), [https://www.researchgate.net/publication/344275832\\_Impact\\_of\\_Indian\\_cinema\\_on\\_culture\\_and\\_creation\\_of\\_world\\_view\\_among\\_youth\\_A\\_sociological\\_analysis\\_of\\_Bollywood\\_movies](https://www.researchgate.net/publication/344275832_Impact_of_Indian_cinema_on_culture_and_creation_of_world_view_among_youth_A_sociological_analysis_of_Bollywood_movies)

<sup>2</sup> A.Rahimi et. al., *Impacts of economic, cultural, social, individual and environmental factors on demands for cinema : Case study of Tehran* 8 AFR.J.BUS.MANAGE,480,481-484(2014), <https://academicjournals.org/journal/AJBM/article-full-text-pdf/9C7593145828>

<sup>3</sup> Asma Ayob & Marisa Keuris, *Bollywood Cinema : A Transnational/Cultural Role* 33 J.LIT.STUD.35,42-45(2017), <https://www.tandfonline.com/doi/abs/10.1080/02564718.2017.1334863>

a nation-state, that cinema continues to depict artistic expressions and cultural variations despite there being tendencies displayed by the institutional machinery to curb such a free depiction resorting to mechanisms which are neither legitimate nor proportionate to the object sought to be achieved.

## 1.2 Economic Aspects of Cinematography

Film industry is assessed to be one of the finest sources of revenue for the purpose of GDP of a country. The vast array of services provided by cinema to its consumers heavily contributes to revenue generation and consequent economic growth of a country. Contracts involving exorbitant pecuniary interests are the source of employment generation and enhance the standard of living of many such workers engaged indirectly in serving the industry<sup>4</sup>. The trickle down approach adopted by this industry distributes its benefits equitably rendering a multiplier effect ,thus indirectly benefiting other sectors .

Unfettered discretionary power of the executive in defining the limits of restrictions according to facts and circumstances of a case on flimsy grounds, hampers economic growth of this much cherished industry leading to job losses and a sense of despair. The outright banning of a film , leaves the entire industry in a sense of despair as they are unable to recover the costs of production, let alone accrual of profits. Also such frequent bans lead to apprehensions in the minds of investors which ultimately deteriorates financial soundness of the entire system involved<sup>5</sup>.

Having understood the complexities involved in such vexatious actions adopted by the state, it is imperative to acknowledge the repercussions involved when such hasty administrative measures are taken and espouse a nuanced understanding of the same.

## 1.3 Socio- Political Aspects of Cinematography

Cinema is regarded as representing innumerable socio-political issues pervading a defined time frame and area. Social issues like poverty, rising crime rate,rampant and unplanned industrialization, urbanisation and encroachment, illiteracy, extremism , radicalisation and terrorism , unemployment ,

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<sup>4</sup> Tanishq Arora, *A Study on the Contribution of Film Industry on Economy* 4 IJLMH 2089,2090-2093(2021),<https://www.ijlmh.com/wp-content/uploads/A-Study-on-the-Contribution-of-Film-Industry-on-Economy.pdf>

<sup>5</sup> Frederic Sojcher, *The Economics of Cinema : History, Strategic Choices & Cultural Policy* 1CONTEMP.EUR.HIST.305,307-3016(2002),<https://www.jstor.org/stable/20081835>

state of affairs pertaining to education and healthcare services, poor infrastructure, pollution, etc. are closely related to policies, programmes and interventions of the Government. Filmmaking dedicated to the cause of a socio-political issue, will certainly be met with stiff resistance as there are speculations about societal unrest and ideological considerations being challenged. In such a scenario, the role of cinema is regarded to be significant in the ways in which reality is depicted and portrayed. Also, the concepts of social hierarchies, social mobility, forced and bonded labour, discrimination, untouchability, denial of equal rights and opportunities are showcased with their intricate details<sup>6</sup>. If such is the case, then orders of modifications and cuts in a particular film, renders it less effective with its ultimate message compromised.

The other key issue plaguing a state is corruption in every sphere which jeopardises the progress of a nation. Exposing the various means and methods of corruption by seeking transparency and accountability, cinema is an appropriate platform to assess the on-ground situation and devise robust legal frameworks in order to tackle this ever growing menace. The proletariat are apprised of their political rights and duties in a democracy. Active participation in the decision making process along with demands pertaining to reforms in various governance models, shapes the political consciousness of a society<sup>7</sup>. Owing to power politics, there are scores of cases where censorship is brought into service to suppress associations and demonstrations questioning the legitimacy of a Government. Blocking access to information owing to vested interests in the garb of classifying them as political gimmick, hinders political and social transformation<sup>8</sup>.

The close link between executive power and film certification is at its zenith when bureaucrats are appointed as Chairman and members of the Central Board of Film Certification. The question which comes into play is, if there is any autonomy bestowed upon the board to take objective and independent decisions? If the answer is in the affirmative, questions arise relating to the power of the Central Govt. to review, reassess, revise and overturn such independent decisions diluting the concepts of separation of power and principles of natural justice. Such colourable exercise of political power

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<sup>6</sup> Vineet Kaul, *Representation of social issues in films* 19 MADHYA PRADESH J.SOC.SCI.139,140-142(2014),<https://link.gale.com/apps/doc/A436230259/AONE?u=googlescholar&sid=bookmark-AONE&xid=8c2f7031>.

<sup>7</sup> Edward Sankowski, *Film and the Politics of Culture* 33 J.AESTHET.EDUC.81,83-84(1999),<https://www.jstor.org/stable/3333740>

<sup>8</sup> C.M.Vinaya Kumar et.al. *Coalition between Politics & Entertainment in Hindi Films* 1 J.EDUC.POLICY29,30-33(2014),[https://jespnet.com/journals/Vol\\_1\\_No\\_1\\_June\\_2014/6.pdf](https://jespnet.com/journals/Vol_1_No_1_June_2014/6.pdf)

fosters partisan decision- making, enabling authorities to circumvent the provisions of law .

## 2. Constitutional and Legal Aspects of The Cinematograph Act,1952.

An analysis of the legal aspects of the Cinematograph Act,1952 reveal that many provisions of the statute are loosely defined , leaving scope for wider interpretation by the administrative machinery. The first legal aspect is, the advisory panels constituted under Sec.5<sup>9</sup> of the Act. The appointment of advisory panel officers is left at the sole discretion of the Central Govt.It mandates that such officers who are ‘in the opinion of Central Govt,qualified to judge the effect of film on the public’. It is clear that such a wide connotation, leaves ample scope for the advisory panel members functioning under the dictates of the Central Govt. without due application of mind and reasoned judgement. There is every possibility that the allowances , fees and terms of condition of service of panel members are modified to their disadvantage by those in power, in order to achieve desired results as panel members are not entitled to salary. Also, association of regional officers for the purpose of examination of films , is also determined by the Central Govt. Therefore , these panels can actually be regarded as puppet institutions of the Government , as right from their appointment and distribution of business to budgetary allocations made towards their functioning , these panels have no autonomy in their day to day functioning and decision making. Another lacuna is,failure to provide for the procedures of advisory panels for discharging their functions. Yet another constitutional and legal disparity which can be pointed out is establishment of regional centres of advisory panels, as there is plausibility of conflict of opinion between the State Govt and Central Govt in matters of cinema as such regional centres would be physically located in different states and states might forward the argument of inclusion of theatre, cinema and entertainment in Entry 33 of State List.

Another legal aspect to be taken into consideration is the constitution of the Central Board of Film Certification under Sec.3 of the Act. The Chairman and other appointees are under the ultimate control of the Central Govt , again as mentioned in the aforementioned case of advisory panels, their appointment, service conditions and other allowances would be as prescribed , i.e., according to rules made by the Central Govt on this behalf<sup>10</sup>. On perusal of the above framework, it is clear that such hierarchical relationship between the Central Govt and other regulatory bodies would hamper their

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<sup>9</sup> The Cinematograph Act,1952,S.5,No.37,Act of Parliament,1952(India).

<sup>10</sup> The Cinematograph Act, 1952,S.3,No.37,Act of Parliament,1952(India).

work in a manner free of fear or favour. Another key safeguard omitted from the provisions, is the security of tenure of the Chairman and members of the CBFC, implying that they continue in office at the pleasure of the Central Govt. This provides leeway to the Govt. to further their vested interests and objectives in matters of certification of films.

Focusing on Sec.5B of the Act<sup>11</sup>, it lays down principles for guidance pertaining to certification of films. The word 'Principles for Guidance' suggests that these are principles formulated for the purpose of merely guiding the Board and not obliging it, again leaving a realm for arbitrariness and abuse of power. The wordings are formulated precisely as those found under Art.19(2) of the Constitution. Now, there are certain genres of movies which are based on contentious issues. In those cases, sanction would be refused to such films owing to restrictions which do not even strictly fall within the ambit of Art.19(2). Also, a lack of explanation appended to the said provision regarding restrictions, makes it cumbersome to arrive at a clear-cut formula. Sec.5B(2) of the Act also empowers the Central Govt. to issue directions in the nature of principles which 'shall be complied' by the board, thus making it a requisite onus on the Board to streamline their assignment in tune with the Government's satisfaction. Examining Sec.5 D of the Act<sup>12</sup>, the constitution of the Appellate Tribunal is also indirectly subject to the powers of the Central Govt. The Chairman, mandated to be a retired HC Judge or person qualified to be a HC Judge by the Act, is subservient to the executive in terms of service conditions, appointment, etc. Where then, is the independence and neutrality of the tribunal in disposing appeals? Clearly, lack of transparency and accountability in the functional aspects of statutory and regulatory bodies, plagues the entire legal framework<sup>13</sup>.

Sec.5(E) of the Act provides for suspension and revocation of certificates already granted in respect of films. The grounds under which such an action might be taken are ambiguous. For Eg., what will be the nature and level of inquiry to be conducted to arrive at a finding that the film was being exhibited in a manner which is inconsistent with the grant of certificate? It fails to provide for investigative or other agencies which shall be competent to conduct such an inquiry. In case, there is an alleged contravention, what shall be the appropriate procedure to search the premises and what

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<sup>11</sup> The cinematograph Act, 1952, S.5B, No.37, Act of Parliament, 1952 (India).

<sup>12</sup> The Cinematograph Act, 1952, S.5D, No.37, Act of Parliament, 1952 (India).

<sup>13</sup> LEGAL SERVICE INDIA, <https://www.legalservicesindia.com/article/2490/The-Role-of-Central-Board-of-Film-Certification.htm> (Last visited May 7, 2023).

safeguards shall be available to the delinquent ? The Act and the rules appended thereto fail to address these crucial questions. Also, wide discretionary powers are conferred on the Central Govt, pertaining to suspension & revocation of certificates granted, without clearly stipulating certain , precise and unambiguous circumstances which shall attract such punitive actions .

The term ‘satisfaction’ of the Central govt is vague and debatable. Whether it is a personal satisfaction of a few office bearers or a thorough detailed consultation with stakeholders? Such unanswered questions , including the question of justiciability of such satisfaction is a major stumbling block in just and equitable implementation of the said provision. Failure to mention the maximum period for which suspension of certificate shall be in operation, arbitrarily empowers the Central Govt. to suspend it for an indefinite period of time, thereby revoking the said certification in effect , which shall deleteriously impact the free expression of thoughts , idea and creativity of filmmakers. When the Censor Board has already scrutinised the film before its exhibition and certification, subjecting such certified films to rigorous and unguided scrutiny by the Central Govt. on frivolous grounds yet again, is nothing short of a vicious circle ,undermining free expression and dissent.

Sec.5 F of the Act which empowers the Central Govt., with power of review of its orders of suspension and revocation , is flawed. If CBFC is the statutory authority for granting certification to films according to the letter of the statute, why have powers of suspension , revocation and review been attributed to the Central Govt ? Such erroneous division of power leads to inefficiency and duplicacy. Proponents argue that a safeguard is enunciated in the provision, in the form of representation by the applicant or a person to whom rights have been passed subsequently. But the nature , form and substance of representation is not spelt out clearly in the provision , which renders it a mere formality. Even if the Board has a divergent opinion pertaining to the above mentioned matter, it is bound to act in conformity with the Central Govt’s final order<sup>14</sup>.

Revisional powers of the Central Govt . stipulated under Sec. 6(1) wherein the Govt. has absolute powers to call for record of proceedings from the Board or Tribunal ( in a case where the matter has

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<sup>14</sup> Orit Kamir, *Why ‘Law-and-Film’ and What Does it Actually Mean? A Perspective* 19 CONTINUUM J.MEDIA CULT.STUD 781. 790-791(2005), <https://www.tandfonline.com/doi/citedby/10.1080/10304310500084558?scroll=top&needAccess=true&role=tab&aria-labelledby=cit>

been finally decided ) , is a colourable exercise of power and a virtual dilution of powers of the Board and Tribunal<sup>15</sup>. Exercise of revisional powers by the Central Govt., over and above a final decision of the Tribunal is surpassing the quasi-judicial functions of the Tribunal and hence against the doctrines of separation of powers , basic structure of the Constitution , rule of law and absolute usurpation of power and functions. Ultimately, this provision is a leeway for the Central Govt. to exercise adjudicatory functions thereby jeopardising the basic tenets of constitutionalism. The proviso sets forth that in exercising revisional power , the Central Govt. is under no bounden duty to disclose any fact which in its opinion is against the public interest to disclose . It has certainly provided immunity to the Govt. to conceal facts under the nomenclature of public interest. A due consideration of Sec.7F points out to the bar of legal proceedings against the Central Govt, Board , Tribunal or its members thereof , in respect of action taken in good faith . Again , how will good faith be determined ? Clearly , there lies no remedy for the affected filmmakers to seek restitution , reparation or compensation from the erring authorities .The Act provides that the Central Govt. has the power to exempt films or certain classes of films from operation of this Act and rules<sup>16</sup>. But what shall guide it in granting such exemptions is not discussed and this might lead to unreasonable classification and violative of Art 14.of the Constitution.

Finally, whimsical exercise of power for the purpose of curtailing freedom of speech and expression through cinema violates fundamental rights<sup>17</sup>. Such capricious conduct also violates Art19.(1)(g) of the Constitution . Therefore not only fundamental rights of film makers are infringed, but also citizens' right to know is transgressed<sup>18</sup>.

### 3.CONCLUSION

In this research paper , we undertook an in-depth analysis of the cultural , economic, socio-political, constitutional and legal aspects of cinematography . We analysed the ways in which cinema plays a vital role in expressing creative and innovative ideas. It is also a pivotal means to express dissent and

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<sup>15</sup> The Cinematograph Act,1952, S.6,No.37,Act of Parliament,1952(India).

<sup>16</sup> The Cinematograph Act,1952,S.9,No.37,Acts of Parliament,1952(India).

<sup>17</sup> INDIA CONST. Art. 19,cl.2.

<sup>18</sup> Mr. Rahul & Shelja Singh, *Freedom of Speech and expression & Indian Cinema : A Journey from 1950 to 2021* 5 IJLMH 1771, 1775-1780 (2022),<https://www.ijlmh.com/paper/freedom-of-speech-and-expression-indian-cinema-a-journey-from-1950-to-2021/#>

divergent attitudes. The citizenry of a state have a right to know and inform themselves on various issues concerning the state through media and cinema. A truly democratic nation ensures promulgation of laws in consonance with a value based approach which emboldens freedom of thought and expression thereby adhering to underlying principles of constitutionalism.

Various loopholes in the Cinematograph Act have bestowed the Central Govt. with ample discretionary powers hindering transparency and accountability . The autonomy of regulatory and recommendatory bodies under the Act have been compromised as a result of loosely defined terms and usurpation of power by the executive in many circumstances . For bolstering the due implementation of the Act , it is imperative that a fine balance be struck between individual and collective rights by laying down a detailed framework , as we have clearly seen numerous lacunae under the current regime .

Although ethical questions pertaining to cinematography manifesting in the form of morality , decency, defamation and contempt of court are also significant and cannot be overlooked owing to collective rights and public interest , but the very fact that there is in place a system of classification for certification of films depending on the content hosted by filmmakers and a licensing mechanism for the purpose of regulating exhibition of films , acts as a safety valve against misuse of freedoms provided under our Constitution. Adequate penalties are also provided under the Act for those found in contravention of the rules and regulations . Therefore , our civil society should vehemently oppose any unjustified restraints on artistic expressions and our Government should be guided by principles of reasonableness ,legitimacy and proportionality in matters pertaining to film certification . Only then , India will stand true to the construction, ‘Mother of all Democracies’.

### **3.1 SUGGESTIONS**

Firstly , the rule- making power of the Central Govt. should be directed towards notifying appropriate and reasonable rules in order to address gaps in the Cinematograph Act. Also, such rules should be subjected to strict scrutiny by the Parliament , Judiciary and other stakeholders in order to ensure that such rules do not transgress and circumvent fundamental rights. Secondly, effort should be made towards making the Central Board of Film Certification more representative in character as it would encompass numerous perspectives relating to film certification and exhibition. Thirdly, in order to



develop CBFC as a resilient regulatory body, it is imperative that the Chairman and members of the board be assured security of tenure and predetermined service conditions according to law made by Parliament in this behalf. Strengthening autonomy of the Board implies safeguarding freedom of speech and expression . Therefore, it is noteworthy that salaries of members be paid out of the Consolidated Fund of India in order to defend this right from being compromised. Fourthly, an active cooperation is demanded between the Central Govt. and State Govt in matters of film exhibition , preventive and mitigative measures to impede any law and order exigency that might arise owing to release of films in states, notwithstanding divergent ideologies and perspectives . Finally, it is peremptory that our civil society maintain cohesiveness and tolerance in order to reap paramount benefits from the freedom of press and cinema.

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