

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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ARTICLE 19 IN FRAME: LAW, LIBERTY, AND THE POLITICIZATION OF CINEMA

AUTHORED BY - DARSHI SHARMA GUHEY & TITHI VERMA

Abstract

Movies are the provenance of stimulation as well as, are basis for one of the principal guides for the society. They outline the public and society in a constantly subject to transmute, so are the films. Hence, it is essential to examine the portrayal of society in the movies as it impacts mentally. This article investigates the cinematographic qualities and how it is investigated by the Censor Board. It additionally centres around the Cinematograph Act, 1952 and its provisos. It covers the point of view of legal executive as decisions in a video form restriction.

Its base is the right to speak freely and articulation given under Article 19(1) (a) of constitution of India and how it is docked by control as a burden of sensible restrictions as layer down under Article 19(2) of the Indian Constitution. Further it elucidates the job and holds of the Censor Board, to what degree the power utilized by the Board is objective and because of the dormancy of the law what issues are happening which should be settled with appropriate corrections in the law.

Keywords: Censorship, Freedom of Speech and Expression, Political interference
Reasonable Restrictions, Societal norms

1. INTRODUCTION

*“Censorship is telling a man he can’t have a steak
just because a baby cannot chew it.”*

— [Mark Twain](#)

India has turned out to be very renowned as of late to end up excessively strict on seems to be true to life freedoms. Be it the North or the South, India has had a considerable number of films like later questionable intriguing issue, considering the whole controversy over “*Padmavat*”. Additionally, aside from confronting bans certain films need to manage (generally) unjust, control strategy taken up by Central Board of Film Certification (alluded to as CBFC).

1.1 BACKGROUND

With different inquiries being raised based on these bans and edits the genuine test lies when it is co-ordinated with the aspects of law. The right to speak freely and articulation is an essential bit of the enactment in the Indian constitution which fills in as the final proposal in such manner. A couple of ongoing happenings have constrained the general population to scrutinize its inert presence and the "opportunity" it for all intents and purposes ensures. Down the line this part of law needs prompt consideration for the vital advancement of our nation regarding unhindered quality filmmaking.

As indicated by a statistics, India have one of the biggest film ventures on the planet regarding number of movies with around 1,500 to 2,000 movies created each year in excess of 20 unique dialects. With such huge assorted variety of items goes along a decent amount of quarrels as well. Movies are permitted to uninhibitedly talk about delicate suppositions and thoughts which when ordinarily communicated through different structures will confront genuine resistance. Such is the exceptional benefit films possess in enlivening the concealed, the unheard and the ignorant in the 3 hours individuals spend watching them. Indian Filmmakers have never shied far from investigating the purported "touchy" subjects and are urged to take up issue-based film that has turned out well both basically and financially.

In any case, these sorts of movies are regularly left with just two conceivable outcomes - getting rave thankfulness from the significant lump of gatherings of people for its striking substance or result in the motion picture attempting to get monitored leeway or much more dreadful - getting prohibited.

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. The issue of film and book censoring is getting a hot oil, the parameters are questioned and the criteria is under lots of variations depending upon the gener of the work. The major objective to study this area of media law is to have a detailed analysis and overview about the step, process, and reasoning behind censorship.

The issue is common in almost every family dinner table. May it be a historical flick or a socio-cultural motion picture, the concept of censorship and role of various cinematographic authorities is always in news. In recent years, the number of movies

becoming prey to illogical and baseless cuts and alterations is what has been accessed in this paper. The undisputed powerful role of political system in entertainment industry is a subjected matter with lots of criticism.

2. CENSORSHIP AND LEGAL STRAINS

In various nations, films are blue-penciled to screen for differing dimensions of social and political issues, the presentation of which can be meant as aggravating for the general population. Brutality, sexual substance, injurious language, sedate use, harsh substance, progressive substance, and human rights infringement are regular factors that gone under the oversight.

2.1 CINEMATOGRAPHIC ACT,1952

In India, under the Cinematograph Act of 1952, there is a next to no point of control. In India, all forms of movies or cinema is ruled by this act. The act makes sure that all the movies exhibited are adhering to the common moral guidelines established. No place in the Act does the Board have been vested with the ability to blue pencil the films past the conditions gave under the ground of sensible confinement and according to the arrangement under Section 5(B) of the Act. Just if the film or the part/parts of movie remain infringing upon Section 5(B) of the Act can the Board request that the candidate survey and change the protested piece of the motion picture.

In any case, the forces conceded to the CBFC under the Act has been generally abused as on various events it has gone past its statutory forces to over direct film which unmistakably remains infringing upon the central soul of opportunity of thought and articulation. Note that the intensity of the Board under the Act stretches out just to direction of the movie through confirmation. In a perfect world, the CFBC's prime and just obligation ought to be to guarantee that appropriate endorsement for presentation must be given to films subject to sensible examination.

Nevertheless, as a rule, the stand taken by the Central Board of Film Certification has been exceedingly faulty and one assaulting the base of articulation of musings and thoughts. Each of these advancements have excited significant concern. As far as scholastics point of view, the essential issues of film oversight are in question in India. Interestingly, the renunciation scene explicitly places film control against the portrayal of fragile topics/matters in movies.

However, the extent of film restriction/affirmation as such isn't bound to intercession over good and sexual issues in film. At a global dimension, the Film control works in three regions; *indecenty, savagery, and governmental issues*. India is no unique case in such way. However, mediation over portrayal of mercilessness in India seems to have been finished more by loosening up than by acknowledgment. The blood spread scenes of stunning viciousness or sensible portrayal of ambush on cinema for realness is announcement to this effect. It has not made as much conflict as that over sexual portrayal.

2.2 CENTRAL BOARD OF FILM CERTIFICATION

The Act under Section 3, establishes a regulatory body called as Central Board of Film Certification which is primarily assigned the task of certifying films for public exhibition. The Board which works as a subsidiary body under the Ministry of Information Broadcasting has been vested with wide powers under section 4 of the Act under which it can regulate the exhibition of films.

A movement film is affirmed by Central Board of Film Certification (CBFC), the administrative specialist in India, under Section 5A and B of the Cinematograph Act, 1952. Likewise, powers are given to the Central Government to suspend or allowed endorsement for such period as it might suspect fit or it might deny such testament in the event that it is fulfils the conditions under Section 5E of the above-mentioned act.

2.2.1 CERTIFICATES ISSUED

There are 4 sorts of certificated to be given:

- **U certificate:** Sanctioned for unhindered open show for all age groups.
- **U/A certificate:** Sanctioned for unhindered open show aside from any youngster beneath the age of twelve years might be permitted to see such a film after the thought of parents or guardians.
- **A certificate:** Sanctioned the film for open presentation limited to grown-ups
- **S certificate:** Sanctioned the film for open display confined to individuals from any calling or any class of people, having respect to the nature, substance, and topic of the film, e.g.: specialists, ranchers and so on.

3. FREE SPEECH- LEGISLATIVE MANDATE

Freedom of speech and expression is the concept of being able to speak freely. It is often regarded as an integral concept in modern liberal democracies. It is the backbone of democracy. Such freedom of expression is a cornerstone of functioning of the democracy. It promotes certain values, as noted by Professor Emerson in 1963:

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

In *American Communication Association v. Charles T. Doud*², the issue of free exchange of ideas and views was considered. Justice Jackson in the case held that, “...The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all...Thought control is a copy right of totalitarianism, and we have no claim to it...”. Freedom of thought is useless except if a platform is given to express the thoughts. Along these lines the right to speech and expression is a vital attending of opportunity of thought. Without such opportunity, the freedom of thought will remain be a hollow shell.

3.1 UNIVERSAL DECLARATION ON HUMAN RIGHTS

Article 19 of the Universal Declaration of Human Rights states: Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers³

The same right is also stressed by the Article 10 (1) of the European Convention on Human Rights in 1950⁴. Constitutions of various states provide for freedom of speech and expression. Film is unarguably the most dominant vehicle of the present with gigantic full of feeling and performative potential. Regarding execution artistic expressions developing from legend to innovation, from custom to theatre, film has gotten the space inside and outside the human personality.

¹ *Union of India v. Naveen Jindal and Anr.* Appeal (civil) 2920 of 1996.

² 339 US 382 (1950) 442

³ Adopted by the General assembly of the United Nations in 1948.

⁴ The European Convention on Human Rights (1975) 151-157.

Little miracle that inside a couple of long stretches of its development, the medium has quickly leaked through the edges of the open edge of mass attention through its performative agreements, to be specific the component of secrecy that describes any open correspondence in the period of mass open: as in what makes true to life correspondence open isn't simply that "it tends to me" by method for open channel, yet in addition that "it tends to me seeing that it likewise, and by a similar token, addresses obscure others" in the mutual open circle.

3.2 CONSTITUTION OF INDIA

Article 19 (1) (a) of the Constitution of India certifies to each native the key appropriate to the right to speech and expression. The said Article assurances to each native of country, the essential appropriate to the right to speak freely and articulation. In a law-based society each native has an option to talk as without a doubt, the privilege to know. Information of the undertakings of administration and the summon of quiet types of difference is an essential precondition to the presence of a steady society shaped of educated residents. Nothing can be as damaging of the social texture in a fair society than the endeavour of the individuals who administer to avoid access to data to those whose security relies on the protection of request.

As condition in which human rights are regarded is sustained by a dynamic progression of data and roads for a basic appraisal of administration.

Different decisions of the Supreme Court have alluded to the significance of the right to speak freely and articulation both from the perspective of the freedom of the individual and from the perspective of our majority rule type of government.

For instance, in the early case of *Romesh Thappar v. State of Madras*⁵, the Supreme Court stated that "freedom of speech lay at the foundation of all democratic organizations". In *Sakal Papers (P) Ltd. v. Union of India*⁶, a Constitution Bench of the apex Court said freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved.

⁵ (1950) SCR 594

⁶ (1962) 3 SCR 842

In a separate concurring judgment, Justice Beg, in *Bennett Coleman & Co. v. Union of India*⁷, said that “the freedom of speech and of the press is the *Ark* of the Covenant of Democracy because public criticism is essential to the working of its institutions.”

Equally, in *S. Khushboo v. Kanniamal*⁸, the Court stated that “the importance of freedom of speech and expression though not absolute was necessary as we need to tolerate unpopular views. This right requires the free flow of opinions and ideas essential to sustain the collective life of the citizenry.” While an informed citizenry is a pre-condition for meaningful governance, the culture of open dialogue is generally of great societal importance.⁹

The Judiciary has frequently demarcated between the expression and abuse of freedom of speech. It has always tried to maintain a balance between rights of artists and the need of censorship wherever required. In *S. Rangarajan v. P. Jagjivan Ram*¹⁰, the Court opined, censorship by prior restraint is not only desirable but also necessary in case of motion pictures as it has a strong impact on the minds of the viewers and can affect their emotions. In this case the ban on this movie was lifted. Similar cases in which Supreme Court passed an order in the favour of artists are *Raj Kapoor v. Laxman, and Patwardhan*.¹¹

*Cent. Bd. of Film Certification, Life Insurance Corporation of India v. Prof. Manubhai D. Shah*¹² and the most recent was the lift of ban on Padmavati.

4. CINEMA, CENSORSHIP AND POLITICS

The Central Board of Film Certification, the regulatory body for films in India, routinely arranges chiefs to evacuate anything it regards offensive, including sex, brutality or subjects thought about politically incendiary. Film censorship becomes necessary because a film motivates thoughts, music and action and assures a high degree of attention and retention as compared to the printed word. As known visual measures of media has wider and major impact than non-visual aid.

Therefore, it has as much potential for shrewd as it has for good and has an equivalent potential to impart or develop vicious or violent conduct.

⁷ (1973) 2 SCR 757.

⁸ (2010) 5 SCC 600

⁹ *Shreya Singhal v. Union of India* (2013) 12 SCC 73.

¹⁰ 1989 SCC (2) 574

¹¹ 1980 SCR (2) 512

¹² 1992 SCR (3) 595

4.1 MAJOR COMMITTEES

“When you tear out a man’s tongue, you are not proving him a liar, you’re only telling the world that you fear what he might say.”

–George R.R. Martin

In the Bombay Calling column in the February 1949 issue of Filmindia, Baburao Patel praised, in his combative way, a recent development. “We have been asking for this for the last 15 years,” he wrote of the move to centralize film censorship, before suggesting a politician of puritanical tendencies, Morarji Desai, as a possible chairman. Over the next few years, a Central Board of Film Censors (CBFC, renamed as Central Board of Film Certification in 1983) was set up, regional boards were abolished, and U and A were adopted as certification categories.¹³

The scrapping of the Indian Press (Emergency Powers) Act, 1931 after independence effectively abolished newspaper pre-censorship in India. Yet, as Arpan Banerjee notes in his essay Political Censorship and Indian Cinematographic Laws: A Functionalist-liberal Analysis, there was no corresponding move to free cinema of that restriction. “The Act of 1918 was repealed, but it was later replaced with a law not dissimilar in scope,” he writes. This was the Cinematograph Act of 1952, the cornerstone—and, in many ways, the millstone—of film censorship in India.

The government appointed **Mukul Mudgal Committee Report (2013)** and recently-formed **Shyam Benegal Committee (2016)** on film censorship.¹⁴ Around the world the utmost concern of censors is the depiction of bloodshed, violence, and sex. Intention in censorship is simple yet complex as we are unable to decide what we want from a particular motion-picture, where on one ground we appreciate to know the ground-reality about the movie and if it contains the true existing picture of society and at the same time, we want to avoid conflict between makers of movie and a section of intolerant members of society.

Shyam Benegal Committee was formed to propose certain insights with respect to censorship. It recommended that CBFC¹⁵ should no longer have the power to suggest/make cuts but have

¹³ Bhatia Uday, *100 years of film censorship in India*, Mint India Wire journal

¹⁴ Insight Mindmaps <www.insightsonindia.com> accessed on 5 April, 2019

¹⁵ Central Board of Film Certification (CBFC) is a statutory body under the Ministry of Information and Broadcasting, Government of India regulating the public exhibition of films under the provisions of the Cinematograph Act 1952. Available online at <<http://cbfcindia.gov.in/>> accessed on 8 April, 2019

the right to deny certification to films if they are contrary to reasonable restrictions under article 19. However, these restrictions are very broad and give the board the power to refuse certification for the film if there is an issue with just one scene, instead of suggesting a cut. This may curb the 'space for artistic expression' of film makers.

4.2 A NECESSARY EVIL OF CENSORSHIP

Censorship is a necessary evil, but that does not negate the freedom of speech and expression completely. The chief problem is that it seems that Censor Board does not investigate alternative options before banning a film and fails to consider a lot of mitigating factors involved in the making of the film. While public interest needs to be protected, private interest of the parties involved cannot absolutely be forgotten.

Right from the script to music, to production and advertising, a lot of effort and money has gone into films which when banned enormously impacts the economic status of people involved, which in turn comes under the ambit of their fundamental right of livelihood.

This repeated pattern of Board or Government banning or halting the release of movies, thereby consequently an appeal being filed to High Courts and Supreme Court where the ban is lifted is getting quite tedious. Since the scope of grounds are quite wide it calls for some stringent measures to be taken by authorities, to clarify the objectivity with which a film must be granted a certificate. The struggle between the necessity of censorship and freedom of speech must be met with a right balance.

4.3 ROLE OF POLITICAL POWERS

In the month of August 2014, CBI arrested CBFC's then CEO, Rakesh Kumar, for purportedly accepting a bribe to clear a Chhattisgarhi film under a provision for emergency certification. The arrest questioned the functioning of the CBFC. This was followed, in January 2015, by the resignation of then chairperson of the CBFC, Leela Samson during debate over clearance for Messenger of God featuring Dera Sacha Sauda chief Gurmeet Ram Rahim Singh. More than half of other board members quitted soon afterwards. The resignation was made amid complaints of interference, coercion, and corruption. The ban of the said movie was revoked by FCAT. Leela and 13 members protested that the government was treating the board in a high handed and cavalier way. Samson did face external pressure in the past also when the CBFC refused a government demand to trim scenes from PK, a movie depicting the emergence

of self-styled gurus in the society. “There was total interference on every film, big and small”, said Samson after resigning.

Soon after resignation of Samson, the Bollywood director Pahlaj Nihalani, who was the mind behind the BJP campaign video “*Har Har Modi Ghar Ghar Modi,*” was designated in her place. Almost every new member which was subsequently appointed to the board was linked with BJP-RSS. The composition of the new board - especially the number of BJP sympathizers on it - does little to allay the accusations made by Samson and her co-workers. During a television interview, Nihalani said he was proud to be a “BJP person”, and called Modi his “action hero” and “the voice of the nation”. One of the newly appointed members of the CBFC even contested the 2014 general elections on a BJP ticket.

Immediately after taking charge, Pahlaj Nihalani focused on cleaning up Indian cinema. He blamed the previous government for all the current problems of the Board. He came up with a list of words and actions that India’s film censorship board sought to enforce their ban in films. Although the list was kept on hold on account of media uproar, but it again questioned the way CBFC works. Although, Nihalani has been propagating his desire to restore the CBFC’s “battered image” but there’s an issue about CBFC and its chief Pahlaj Nihalani virtually every month.

A few filmmakers have whined of arbitrary suggested cuts or objections by CBFC. *NH 10*, produced by Anushka Sharma, had certain words muted out despite its adult certification. *Titli*’s producer Dibakar Banerjee and director Kanu Behl had to mute nearly all cuss word from their film despite being certified Adult.

A kissing scene in the latest James Bond film, *Specter*, has been abbreviated. Notwithstanding deliberate cuts and muting of cuss words, the CBFC examining committee asked the makers of *ANGRY INDIAN GODDESSES* to beep out reference to a man as a woman’s lunch, and obscure visuals of goddesses Lakshmi and Kali. Then recently there was lots of politics over depiction of drug abuse in Punjab in *UDTA PUNJAB*.

The Indian film industry is put under lots of pressure and force to promote and support the propagandas of government. Film-makers and other artists who refused to cooperate with the government were boycotted and the exhibition of their work were denied. As happened with

Kishor Kumar whose songs were banned from All India Radio and *Doordarshan* when he refused to support emergency as imposed by Congress in 1975.

It is an undisputed fact that the impression and the amount of impact films and actors leaves on society is above all other forms of media. But another fact is that government often took the advantage of this. Many leading political parties in history has taken undue advantage of their power and position to impose unreasonable ban or prohibition on movies which nowhere fell within the category on Article 19(2) of Constitution of India. Post emergency period, during the regime of Janta Party the liberties were filtered in the favour of government giving more and unjust edges to the parties. In 2008, Bahujan Samaj Party (BSP) sent a notice to the Indian Motion Pictures Producers Association requesting them to intimate the party before they come up with any film on either BSP founder Kanshi Ram or BSP present head Mayawati.

Today the truth is that we cannot separate film moral inspiration from its political motivation. Directly from the determination of individuals from boards associated with the film oversight, confining and execution of restriction rules, everything is politically roused. This interference in censorship can be traced from 1974 movie *AANDHI*, directed by Gulzar. The movie got U certificate from the board but the political party went against the screening as they felt that the movie gives false impression of Indira Gandhi, the government suspended the film's certificate for exhibition under Section 6 of the Cinematograph Act, 1952.

But the most politicized movie was *KISSA KURSI KA* (1975), a political satire on former PM Indira Gandhi and the Emergency. The film depicted the desperate and corrupt practices adopted by politicians to siege power. There was no unanimity among the committee in granting the U certificate to the movie. The CBFC did not agree with this majority view and referred it to the government under Section 25(1) of the Cinematograph Censorship Rules, 1958 for necessary action.

Between 1995 and 1999, when Bal Thakeray's violently nativist Shiv Sena and the Hindu Nationalist Bharatiya Janta Party (BJP) jointly ruled the state government of Maharashtra, the line between the gravitas of the state and the often-violent performativity of street politics grew blurry¹⁶. The chilling effect of the Shiv Sena's "informal" or "extra constitutional" censorship

¹⁶ Mazzarella William, *CENSORIUM Cinema and the Open Edge of Mass Publicity* (Orient Blackswan 2013).

was such that producers and actors shied away from screenplays that were even mildly critical of the Sena. Cultural politics was at peak.

This was the time when the role of political parties started their limitless interference about censorship. The issue with the screening of **BOMBAY** was in controversy because of its sensitive storyline, the then government wanted it to be the subject of capitulating hindu extremist opinions. After series of meeting among the religious leaders of muslim and hindu groups the movie was released.

The works of Deepa Mehta as director in **FIRE** and **WATER** was highly critised as it depicted the issue of homosexuality, the concept which was still an unacceptable in society, even after its legality, therefore then the files were banned and were only released after various edits. In Punjab and Haryana “Akal Takht” filed PILs against the names of the movie **JO BOLE SONIHAL** and the depiction of Sikhs in a humiliating manner in **SINGH IS KING**, in Patiala house court and demanded either ban on movie or cutting the impugned scenes. The Akal Takht is highest temporal seat for Sikh faith, but the court found nothing wrong in depictions and movies were given clean chit for screening.

The attitude and response of Vishwa Hindu Parishad and Bajrang Dal during the screening of **PK**, **OH MY GOD** and **STUDENT OF THE YEAR** (on the song ‘RADHA’), gave a impression about how immature one has become when it comes to depiction of religious matter. In the first two cases, the movie stated the reality of blind faith of people on sadhus and yogis resulting in fraud and loots. But the issue was dragged as “against the religious sentiments...”. This does not stop here the series of movies by Sanjay Leela Bhansali was critised, blamed to anti-social, wrong in the eyes of historical philosophers and were considered shame. The johar scene in **PADMAWAT** was pin-pointed and demanded cut to promote that anti-social practice when that showcased the reality of that period, previously the same movie was in news for its NAME. yes, this is the level of intolerance that only through names we judge the whole concept of the movie and starts the protest.

5. CONCLUDING REMARKS

The above-mentioned incidents mirror the dictatorial and discretionary nature of the authorities, vested interests of political parties and their endeavors to unnecessary curtail the freedom of expression through films which they cannot digest. To exercise their constitutional

right to expression, the filmmakers have to depend either upon the fantasies of anti-democratic forces or to fight delayed legal battles with lots of unpredictability. Accordingly, it can be pertinently concluded that if democracy has to advance, the screening of films should never be denied for reasons based on mere speculation because such banning amounts to banning the Constitutional right of freedom of speech and expression. It is high time that we wake up to the different manifestations of political manipulation of film censorship in India. The political parties must understand that public in India today is mature enough to handle truth and fiction, understanding the difference between the two. Cinema must be a part of the lives of all of us. It must belong to the masses of our people as well as the few.

