

Legal Limits on Creativity: Understanding Film Censorship in India

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Abstract:

Censorship in India is governed by a complex framework of legal provisions designed to balance the freedom of expression with considerations of public order, morality, and national security. The primary legislation includes the Constitution of India, which guarantees freedom of speech and expression under Article 19(1)(a) but also allows for reasonable restrictions under Article 19(2). These restrictions can be imposed in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency, morality, or in relation to contempt of court, defamation, or incitement to an offence. The Cinematograph Act, 1952, provides for the certification of films by the Central Board of Film Certification (CBFC), which has the authority to demand cuts or deny certification to films that violate the Act's guidelines.

Despite these legal provisions, the enforcement and interpretation of censorship laws in India have been subjects of controversy and debate. Critics argue that the laws are often used to suppress dissent and control the narrative, while proponents assert that they are necessary to maintain social harmony and national security. Judicial oversight and the role of the media and civil society in challenging arbitrary censorship practices remain vital components of the ongoing discourse on the limits of free expression in India. While the legal framework for censorship in India aims to strike a balance between freedom of expression and societal needs, its application continues to evoke significant debate about the extent and legitimacy of state control over speech and content.

Keywords: Cinematograph Act; Central Board of Film Certification; Art.19(1)(a); Film Censorship; Certification Categories (U, UA, A, S)

Introduction:

Film censorship in India has been a subject of significant legal, social, and political discourse. The regulation of films in India is governed by a background of laws and guidelines designed to balance creative expression with societal norms and values. The primary legal provisions on film censorship are encapsulated in the Cinematograph Act of 1952, which established the Central Board of Film Certification (CBFC), the body responsible for certifying films for public exhibition. This Act, along with various amendments and guidelines issued over the years, forms the backbone of film censorship in the country. The Cinematograph Act empowers the CBFC to scrutinize films before their release and decide whether they are suitable for public viewing, imposing cuts or modifications as deemed necessary. This regulatory process is aimed at preventing content that may be considered obscene, inflammatory, or against public morality from reaching the masses. Despite its intention to safeguard public sentiment and maintain social

order, film censorship in India has often sparked debates about freedom of expression, artistic liberty, and the subjective nature of censorship standards.

Several landmark court cases have further shaped the landscape of film censorship, highlighting the tension between regulatory authorities and filmmakers. The judiciary in India has played a pivotal role in interpreting the provisions of the Cinematograph Act, often balancing the need for censorship with the constitutional right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. This article explores into the legal provisions governing film censorship in India, examining the historical context, key legislative milestones, and notable judicial pronouncements that have influenced the practice. It also explores the ongoing debate over the need for reforms in the censorship framework to better align with contemporary societal values and the evolving nature of media consumption.

The popularity of film as a medium of expression lies in the fact that film creates better impact than other media of expression. In the famous case of *K.A. Abbas V. Union of India (1971)*, Justice Hidayatullah aptly described the immense influence of film, that the motion picture is able to stir up emotions more deeply than any other product of the art. Its effect on children and adolescent is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. Justice V.R.Krishna Iyer also observed that cinema is a great instrument for public good if geared to social ends and can be a public curse if directed to antisocial objectives (*Raj Kapoor V. Laxman, 1980*). It awakens both visual and aural senses of viewers and contains a complete and immediate appeal for everyone. In India, the impact of films on the lives and habits of people was duly recognized by the judiciary and has been well acknowledged by various committee reports. The report on the Working Group on National Film Policy (1980) hailed that despite the growth of television and availability of other means of entertainment, cinema remains the most popular audio-visual medium of entertainment for the masses which is a basic necessity. Similar observation is also made by the report of the Enquiry Committee on Film Censorship (1969).

Though Art.19(1)(a) of the Indian Constitution does not specifically mention freedom of speech and expression through the medium of film, it was judicially settled that films fall within the protection of Art. 19(1)(a). The question of Constitutional protection of motion pictures was indirectly considered by the Supreme Court in *Hamdard Dawakhana Vs. Union of India (1960)*, *K.A.Abbas Vs. Union of India (1971)* and *Raj Kapoor Vs. Laxman (1980)*. In the words of Supreme Court:

Freedom of speech and expression would include freedom to hold opinions to seek, receive and impart information and ideas either orally, by written or printed matter or by legally operated visual or auditory devices, such as the radio, cinematograph, gramophone, loudspeaker etc.

On the account of its instant appeal and pervasive impact on viewers film must have been specifically guaranteed constitutional protection. Even in the absence of specific protection, the full matrix of its rights can be worked out by judicial interpretation of the right to freedom of speech and expression.

Pre-Censorship

The first film produced in India was in 1913. But even before the production of Indian films, foreign films were being exhibited in India. As the production of Indian films increased, the state thought it necessary to impose restrictions keeping in view the powerful impact of films on society. Thus, regulation of cinematographic exhibition is adopted by almost all countries There may be difference in degree but some sort of censorship of movie films is adopted by almost all countries (Hunnings, 1967). Film Censorship is necessary because the social interests of the people override individual freedom. In India, censorship of cinematographic exhibitions Is prevalent from the very introduction of the Cinematograph Act, 1918. The

overall objective of censorship is to safeguard generally accepted standards of morality and decency, in addition to the well-recognized interests of the state. As far as motion pictures are concerned, censorship was considered as amounting to pre-censorship or prior restraints on freedom of speech and expression. Pre-censorship means censorship on freedom of speech and expression in advance of its being exhibited or published (Rajeev Dhavan, 1989). The rationale for pre-censorship of cinema arises mainly on account of the well-recognized nature of this medium for pervasive impact upon all sections of society including children and adults, literate and illiterate. Further, considering the speed with which films are able to reach out to the people, any restriction to be imposed on it after its release would be meaningless.

But artists and intellectuals challenge the system of pre-censorship of cinematographic exhibition. Supported by market manipulators who demand complete freedom to exhibit anything which is likely to sell. But the argument against pre-censorship is that it is inconsistent with the right to freedom of speech and expression. There are other forms of speech and expression besides the films and none of them is subject to pre-censorship, so pre-censorship is inconsistent with the equality clause provided with the constitution. But in spite of these arguments, pre-censorship of films has been accepted without demur.

In India, pre-censorship of films has long been a subject of criticism. In case, other than those pertaining to censorship of films, Supreme Court of India had held that pre-censorship amounted to violation of freedom of speech and expression (*Brij Bhushan V. State of Delhi, 1950; Express Newspapers Vs. Union of India, 1958*). But approach taken by the Supreme Court as far as pre-censorship of films. The petitioner contended that while other forms of speech and expression are not subject to prior restraints, the differential treatment of motion pictures is not a valid classification under the equality clause.

Justice Hidayatullah justified pre-censorship as he found no qualitative distinction between pre-censorship and censorship after the motion picture has had a run. The only difference is one of the stages at which the state interposes its regulations between the individual and his freedom. Beyond this there is no vital difference. Pre-censorship imposed on the making and exhibition of films in the interest of society and therefore censorship of films including prior restraint is justified under our constitution. As there is no consequent case dealt on this issue indicates that film censorship has been accepted by the film industry.

Law on Pre-Censorship of Films

From the very enactment of Cinematograph Act 1978, censorship is known to India. This Act provided only for the licensing of cinema houses and for certifying films declared suitable for exhibition. The act provided that in the absence of prior certification by the proper authority, no film could be exhibited in India. Accordingly, the British government established Board of Censors in Bombay, Calcutta, Madras, Rangoon and Lahore. The Board of Censors had been given wide discretionary powers. A certificate issued by these Boards of Censors was valid throughout the British India. The Film Censors in the British India were mainly concerned with projecting the image of English people in the eyes of Indians. The Government appointed the Indian Cinematograph Committee in 1927 (Rangacharlar Committee, 1927-29) to examine the principles of film censorship in India and the Patil Committee (Film Enquiry Committee, 1951).

After independence, the first noteworthy change in Indian film censorship was affected by the Cinematograph (Amendment) Act of 1952. The object of the 1952 Act is to make provisions for the certification of cinematograph films for exhibition and regulating exhibitions by means of cinematograph. It established a Board of Censors consisting of a Chairman and five other members and six honorary members. The Board may constitute an Examining Committee for the examination of any film or class of

films and a Revising Committee for reconsidering the recommendations of any Examining Committee in relation to any film. When there is no unanimity in the recommendations of the Chairman and other members of the Examining Committee, the Board shall refer the film for unrestricted public exhibition or for public exhibition. The Act deals with the principles for guidance of the censoring authorities. The Central Government is also authorized to constitute an Appellate Tribunal as and when necessity arises from among the panel of members nominated by the government. The appellate jurisdiction is available only to an applicant aggrieved by the decision of the Board. But the practice of conferring appellate powers on the Central Government has been criticized in *K.A. Abbas Vs. Union of India, 1971*. In 1974, an amendment was carried out to set up an independent tribunal to give effect to the recommendations contained in Khosla Report (Report of the Enquiry Committee on Film Censorship, 1969). In 1980, a Working Group was appointed to suggest a National Film Policy which would help the growth of Indian Cinema.

The Cinematograph Act, 1952 was amended in 1981. By this Act, the name of the Board of Film Censors has been changed to the Board of Film Certification and number of members on the Board have also been increased. A certificate for unrestricted public exhibition used to be called a “U” certificate is split into two categories – “U” certificate and “UA” is a certificate under which parents are cautioned that they should consider having regard to any material in the film whether their children below the age of 12 years should be allowed to see the film. Another certificate is granted to the film for public exhibition restricted to members of any profession or any class of persons. A certificate of this nature is called “S” certificate. This categorization has been criticized as impracticable.

The Cinematograph Act was again amended in 1984. In 1992, a series of amendments were proposed by the Government of India to amend the Act. This Amendment puts greater curbs on exhibition of violence, sex, exploitation of women etc. It is relevant to consider how to protect the right of creative expression film artists from arbitrary exercise of powers given to the censors by the Act.

The debate over the need for reforms in India's film censorship framework is multifaceted, reflecting broader societal changes and the evolving media landscape. As India progresses socio-economically and culturally, the traditional approach to film censorship has come under scrutiny, raising questions about its relevance and effectiveness in contemporary times.

Shifts in Societal Values

Indian society has undergone significant transformation in recent decades, marked by increased urbanization, globalization, and exposure to diverse cultural narratives through digital media. These changes have led to a shift in societal values and norms, particularly among the younger generation. Issues like gender equality, LGBTQ+ rights, mental health, and political criticism, once considered taboo, are now more openly discussed. Consequently, there is a growing demand for films that reflect these evolving values and push the boundaries of conventional storytelling.

Freedom of Expression vs. Moral Policing

The tension between freedom of expression and moral policing remains a core issue in the debate over film censorship. Filmmakers argue that stringent censorship curtails their artistic freedom and inhibits creative storytelling. They contend that the current framework often imposes arbitrary cuts and modifications based on subjective interpretations of morality and decency. On the other hand, proponents

of censorship emphasize the need to protect societal ethics and prevent the dissemination of harmful content.

Digital Revolution and OTT Platforms

The advent of digital streaming platforms (OTT) like Netflix, Amazon Prime, and Disney+ HotStar has revolutionized media consumption in India. These platforms operate under a different regulatory regime compared to traditional cinema, offering a wider range of content with minimal censorship. This has intensified the debate, with many advocating for a unified censorship framework that addresses both digital and theatrical releases. The relative freedom enjoyed by OTT platforms has also sparked discussions about the obsolescence of the existing censorship model.

Legal and Judicial Interventions

Several landmark judicial pronouncements have highlighted the need for a more nuanced approach to film censorship. The Supreme Court and various High Courts in India have, at times, struck down excessive censorship orders, reinforcing the primacy of free speech. These rulings underscore the judiciary's role in balancing state interests with individual freedoms and have prompted calls for legislative reforms to align censorship laws with constitutional principles.

Calls for Regulatory Reforms

There is a growing consensus among filmmakers, legal experts, and civil society organizations for a more transparent and consultative censorship process. Recommendations for reform include:

- **Clear and Objective Guidelines:** Establishing more precise guidelines that minimize subjective interpretation and ensure consistency in certification decisions.
- **Independent Review Mechanism:** Creating an independent appellate body to review CBFC decisions, enhancing accountability and reducing potential biases.
- **Differentiated Content Rating:** Adopting a comprehensive rating system that provides viewers with detailed information about the nature of the content, enabling informed choices without unnecessary censorship.
- **Harmonization with Digital Platforms:** Developing a cohesive regulatory framework that addresses both theatrical and digital content, ensuring uniform standards across all media.

Conclusion

It reveals that the system of pre-censorship of films confers very wide powers to the Board. The Cinematograph Act which is meant to protect people's fundamental right to freedom of speech and expression in motion pictures is sabotaged by the application wide discretion enjoyed by the Board of the guidelines. Therefore, Cinematograph act should be modified so as to give priority to the freedom of speech and expression subject to socially necessary restraints permitted by the Constitution.

The debate over film censorship in India is emblematic of a broader struggle between tradition and modernity, control and freedom, protection and liberty. As societal values continue to evolve and media consumption patterns shift, there is an urgent need for reforms that reflect contemporary realities while safeguarding fundamental rights. The ongoing discourse offers an opportunity to reimagine the censorship framework, fostering a more open, inclusive, and creative cultural landscape in India.

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