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CINEMA & CENSORSHIP: THE FORMULA FROM THE PAST AND THE LEGITIMACY OF THE PRESENT

~ Tuhina Deb & Debaditya Chattopadhyay ¹

Abstract

Cinema is literally the heart and soul of Indians. Not just for entertainment, audiences are also drawn to it because of its appeal and gravity. And hence, censorship of movies play a very crucial role in its fair exhibition. Censorship is a reasonable restriction to the freedom of expression of the makers of films and artistic works, as guaranteed under Section 19(2) of the Constitution of India. But how this concept of censorship travelled all the way from the west to the Indian land, is a vast discussion, along with its impact on the current day codes and policies.

While we do so, it becomes important to also discuss cases where aggrieved individuals approached the courts seeking to answer the question as to what sort of censorship is constitutionally valid, and what is not. Our research mainly focuses on this aspect of censorship, its conception, the different interpretations, and how the courts have over the years tried to examine the censorship norms on the touchstone of the Constitution, and draw out its validity through precedents.

Keywords

Cinema, Censorship, Constitution, Independence, Precedents

¹ You may contact the authors at the following email address: db.tuhina@gmail.com & debadityachatterjee5207@gmail.com.

INTRODUCTION

India's cinematic journey is a vibrant representation of its rich history and diversity, from her colonial past to her democratic future. It represents the hopes, dreams and aspirations of billions of Indians on the silver screen. At the core of all this lies the censorship bodies which has shaped and formed it. From the colonial past, focusing on maintaining the British and Western narrative to its post-independence, focusing more on the multi-lateral, power-relation narrative present. The research also traces the landmark precedents along with recent cases, wherein the constitutionality of censorship was questioned, and fairly interpreted by the courts in India. How the formula of the past has seen a lateral shift, to being a more comprehensive structure, and how it draws its legitimacy today, are all questions that one seeks the answers to whenever any new movie or film or show comes under the light of scrutiny.

PRE-INDEPENDENCE

The birth of Indian cinema was marked in 1896 when the Lumiere brothers first arranged for the screening of foreign-made films in the Watson Hotel in Bombay (now Mumbai).² This awe-inspiring event spurred the introduction of motion pictures in India, primarily in Calcutta (now Kolkata) and Madras (now Chennai).³ But it was not until 1913 that the first full-length Indian film was made, when the father of Indian Cinema, Dadasaheb Phalke, made Raja Harishchandra.⁴

During this period, a few local ad hoc nature censorship bodies existed whose primary job was to ensure that the movie did not transgress Criminal Law relating to the publication of obscene materials.⁵ However, no censorship existed until 1918, when the Cinematography Act of 1918 passed. The Act provided mainly for two things- (1) licensing of cinema halls (mainly for safety) and (2) Film Certification declared fit for public exhibition. The Act provided the district magistrates or in a presidency-town to the commissioner of police to issue these licenses.⁶ The

² Roy, S. (2017, July 5). How did two French brothers Inspire Indians to cinema?. Media India Group. <https://mediaindia.eu/cinema/how-did-two-french-brothers-inspire-indians-to-cinema/>

³ Roy, S. (2017, July 5). How did two French brothers Inspire Indians to cinema?. Media India Group. <https://mediaindia.eu/cinema/how-did-two-french-brothers-inspire-indians-to-cinema/>

⁴ Boyd, B. M. (1972). FILM CENSORSHIP IN INDIA: A "REASONABLE RESTRICTION" ON FREEDOM OF SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, 14(4), 501-561. <http://www.jstor.org/stable/43950156>

⁵ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

⁶ Cinematograph Act 1918, Section 4

main idea behind point (1) was to ensure safety for cinema-goers. However, for Point (2), the Act gave wide discretionary power to the censorship boards, but they could only mark the film as suitable or unsuitable. The Act also did not provide guidelines on what elements would call for an unsuitable tag.⁷

In 1920, on the basis of the act, four censorship boards were formed in Bombay, Calcutta, Madras, Rangoon and later in 1927 in Lahore.⁸ Since the Act failed to provide any guidelines, the censor boards themselves drew up suggestions and guidelines for inspecting the films. But these themselves were just a copy of the forty-three rules formulated by T.P.O. Connor of the British Censor Board. They reflected the Victorian morals of the time such as familiarising young people with crime, undermining the teachings of morality, suggesting abnormal sexual relations, etc.⁹ The rules also attempted to stifle any criticism of the regime in India through Cinema.¹⁰

With the growth of the Indian Cinema and diversification in themes and nature of films, there also grew the number of complaints against the leniency of the Boards by both British and Indians alike. The British were more concerned that many of the films depicted the Western morals and life in a more tainted and more derogatory manner, which would in turn lower their esteem in India, whereas the Indians complained about the deteriorating morals depicted in the movies. In response to these complaints, a committee was established in 1927 to examine the principles and methods of film censorship. After examination, the committee was satisfied with the censorship bodies and found that the films certified in no way demoralised the Indian public or Western morals. The committee also suggested for a Central Board of Censors for the whole of British India. But these suggestions were finally put to use only in 1949.¹¹

⁷ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

⁸ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

⁹ Boyd, B. M. (1972). FILM CENSORSHIP IN INDIA : A "REASONABLE RESTRICTION" ON FREEDOM OF SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, 14(4), 501–561. <http://www.jstor.org/stable/43950156>

¹⁰ Someswar Bhowmik. (2003). From Coercion to Power Relations: Film Censorship in Post-Colonial India. *Economic and Political Weekly*, 38(30), 3148–3152. <http://www.jstor.org/stable/4413826>

¹¹ Boyd, B. M. (1972). FILM CENSORSHIP IN INDIA : A "REASONABLE RESTRICTION" ON FREEDOM OF SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, 14(4), 501–561. <http://www.jstor.org/stable/43950156>

After 1927, not much happened except the continued growth of the Indian Cinema Industry. Only after Independence did significant acts occur in formulating policies and organisations to direct modern Indian film Censorship.

POST-INDEPENDENCE DEVELOPMENT

India finally gained independence from the British in 1947. However, the Cinematograph Act 1918 was still in use. But it saw some significant changes made to it. Firstly, in 1948, the Bombay and Madras Board of Film Censors published a “Production Code” with the aim “to ensure Cinema plays a proper role in the building of a healthy national life”.¹² Producers were also suggested to submit their film script to the Censor Boards before production.¹³ However, this was promptly rejected as it was seen as an attempt to stifle creativity and a mode of pre-censorship. As things stood, Producers kept the Production Code in mind when choosing themes for their film, but it did not stop them from selecting themes that went against the Code.¹⁴

In 1949, finally, amendments were made to the Cinematograph Act 1918 to allow the censorship boards to mark the movies suitable for specific age groups instead of just suitable or unsuitable. A “U” certificate for universal viewing or an “A” certificate for viewing for only those who were above the age of 13 was added.¹⁵ This is a much better form of certification than the previous model as it allows producers to release their films with much fewer changes to the script if they focus on getting the “A” certificate. Another amendment was added based on the 1927 Committee report to form a central board of film Censorship. These amendments came into effect from January 1951. During this time the Patil Enquiry Committee also submitted its report recommending a Film Council similar to the United States of America.¹⁶

Finally, in 1952, the Cinematograph Act of 1952 was passed which repealed the Cinematograph Act of 1918. The act empowered the central government to appoint a full-time paid Chairman and

¹² Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

¹³ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

¹⁴ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

¹⁵ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

¹⁶ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

up to nine other members who were not full-time and paid as the government prescribed the Central Board of Film Certification (CBFC). The Act also called for appointing Regional Officers and Assistant Regional Officers at the regional centres.¹⁷ The act also provided for the establishment of advisory panels qualified to “judge the effects of the Film on the public” who would actually watch the movie and help in the certification of the films by recommending a certificate.¹⁸ The act provided for an appealing method wherein if the applicant was dissatisfied with the certificate they could appeal the decision after which a revising committee, consisting of the chairman and other members of the advisory panel in the place where the application was received, would again review the movie and then come to a decision.¹⁹ If the applicant was dissatisfied with this decision, he could make a final appeal to the central government (Ministry of Broadcasting and Information) whose decision would be final after making the necessary consultation with relevant ministries and taking in the applicant's views.²⁰ The certificate's validity was ten years throughout India but the government could within its power, uncertify the film, alter its certificate from “A” to “U” or suspend its certificate for two months.²¹ The certificate can also be cancelled and impose criminal liability if it is found that the film was exhibited in a manner other than prescribed by the certificate. The Act also provided guidelines on which a film was to be judged, but it was mostly derived from the 1918 Cinematograph Act.

We do see a significant shift as to how censorship has changed from the Victorian days to the present day. But while we discuss the course of cinema and its perpetual censorship, we are also bound to glance at its constitutional validity. In the further section, we extensively discuss what the Constitution says on matters of censorship through precedents and recent developments.

¹⁷ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

¹⁸ Khosla, G. D. (1969). *Report of the Enquiry Committee on Film Censorship*. INDIAN CULTURE. Retrieved September 13, 2023, from <https://indianculture.nvli.in/report-enquiry-committee-film-censorship>

¹⁹ Boyd, B. M. (1972). FILM CENSORSHIP IN INDIA: A “REASONABLE RESTRICTION” ON FREEDOM OF SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, 14(4), 501–561. <http://www.jstor.org/stable/43950156>

²⁰ Boyd, B. M. (1972). FILM CENSORSHIP IN INDIA: A “REASONABLE RESTRICTION” ON FREEDOM OF SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, 14(4), 501–561. <http://www.jstor.org/stable/43950156>

²¹ Boyd, B. M. (1972). FILM CENSORSHIP IN INDIA : A “REASONABLE RESTRICTION” ON FREEDOM OF SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, 14(4), 501–561. <http://www.jstor.org/stable/43950156>

CONSTITUTIONAL VALIDITY

There are many examples in Post independent India where movies that went against the agenda of the central government were either suppressed or found themselves needing judicial intervention, but jingoistic movies were seen promoted such as “Jung Aur Aman” which promoted a rational approach to war needing judicial intervention from CBFC but movies like “Border” which incite the public to be promoted.²² Another example is the documentary film “Sikkim” by Satyajit Ray, which depicts the life of people of the Himalayan kingdom who fell out of favour with the government when the state merged with India in 1975.²³

Vandalism of theatres and rioting to boycott a film has become a trend among present day audiences and viewers. Anything that is seemingly controversial in any way, or even a slight dissent in thoughts and opinions, results in violence being purported on either the makers of that film or the theatres screening such films. There is always a high chance that such violence was orchestrated by a political authority. Such instances don't take place in isolation of political influence. Indian cinema has plenty of examples, like the ban of the film Fanaa in the state of Gujarat by Bhartiya Janata Yuva Morcha (BJYM), because of the lead actor's comments on the issue of a dam's height being raised above a reasonable limit in the state. Or when Parzania, a movie based on the life of a Parsi boy who got lost during the Bombay riots, was banned by Bajrang Dal and there were strict instructions to not screen the films in the theatres of Gujarat. Or the ban of the film Unfreedom: Blemished Light, due to speculations of a clash between Hindus and Muslims, as the movie had themes like same-sex relationships and religious fundamentalism.²⁴

It has been established clearly by the court time and again with their interpretation of Article 19, that the freedom of speech and expression are not absolute rights and that reasonable restrictions are to be put, so as to ensure that other individuals' rights are not being violated. But more often than not, censorship of movies has been an outcome of either political pressure or mob boycotts.

²² Someswar Bhowmik. (2003). From Coercion to Power Relations: Film Censorship in Post-Colonial India. *Economic and Political Weekly*, 38(30), 3148–3152. <http://www.jstor.org/stable/4413826>

²³ Someswar Bhowmik. (2003). From Coercion to Power Relations: Film Censorship in Post-Colonial India. *Economic and Political Weekly*, 38(30), 3148–3152. <http://www.jstor.org/stable/4413826>

²⁴ Tnn. (2015, April 18). Films that were banned for political reasons. *The Times of India*. <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/photo-features/films-that-were-banned-for-political-reasons/photostory/46966266.cms>

We know it's a chaotic situation when a political party issues notices, directing filmmakers to get approval of the films being made about the party leader, to ensure that everything is in line.²⁵

The infamous "Bandit Queen" case, or the **Bobby Art International v OP Singh Hoon**²⁶ case, must be seen through the lens of pragmatic censorship and be taken as a good example of how the courts have over the years broadened their horizon of appreciating artistic freedoms as freedom of expression as under Article 19(1)(a) of Constitution of India. Being a biographic film about a real-life child bride turned dacoit, Phoolan Devi, the film contained certain scenes depicting the plight of being a victim of gruesome crimes like rape and violence. This depiction, however, hurt the feelings of certain petitioners, and they filed a petition in the Appellate Tribunal, which ruled in favour of being approved of the 'A' certification and its exhibition in India by the Censorship Board of Film certification, stating that the scenes do not denigrate womanhood, rather instil feelings of sympathy for the victim and repulsion for the perpetrators. In a twist of events, the High Court of Delhi overruled the Tribunal's decision and quashed the certification and license to exhibit in India. When the case went to the Supreme Court of India, it reinstated the decision of the Tribunal and held that a movie should be seen in its entirety and not just in particular scenes or parts. This very case stands as a breakthrough in the practice of censorship and really supports artistic innovations along with the retelling of stories that need to reach the masses. The verdict of the Supreme Court in this case, restores our faith in Article 19 (1) (a).

The Indian courts have also dealt with the questions raised as to whether pre-censorship is against the freedom of expression or not. In both, **KA Abbas v UOI**²⁷ and **LIC v Prof Manubhai D Shah**²⁸, it was established that pre-censorship of films is not violative of any rights under the Constitution, guaranteed as Fundamental Rights, rather it is a reasonable restriction as films or movies can reach wider masses in less time than any other form of entertainment, like books, and can have a greater impact on the psyche of the audiences, and hence, it serves as the most prudent form averting any untoward situation that may arise.

²⁵ A.G. Noorani, *Freedom and Free Speech*, Vol.23 No.18, ECONOMIC AND POLITICAL WEEKLY, 11, 11-12, (2008)

²⁶ *Bobby Art International & Ors. V Om Pal Singh Hoon & Ors.* 1996 AIR SC 1846

²⁷ *KA Abbas v Union of India & Ors.*, (1971) AIR 481; giving a category certificate like U or A to a film before its release is valid

²⁸ *Life Insurance Corporation of India & Ors. V Prof. Manubhai D Shah* 1993 AIR 117; pre-restraint is in general bad because it increases the chances of the decision being arbitrary, however, pre-censorship of films is valid due its mass appeal and ability to stimulate the audiences' emotions.

It is very difficult for any filmmaker to make a film based on historical or mythological context, as it is nearly impossible that the masses won't be triggered by the tiniest of faults they can pinpoint in the film. We all remember the whole façade behind the making, shooting and realising of the film "Padmaavat".²⁹ The Constitution has provisions in place, for when someone's rights are abridged. The appellant approached the court of law with the same thing in mind, as their sentiments had been hurt. Till this point everything was fine. But the moment a political organisation, Karni Sena took charge of wreaking havoc on the sets and destroying expensive equipments, it all went downhill. There were state-wide protests and bandhs, in order to show discontent towards the movie. Issues like the kind of clothes worn by the actress for the film were indecent started doing rounds. In light of such events and recurrent cases, the court ruled that an artistic license has a higher foundation, yet the court of law has the power to objectively judge each case as per the facts and issues at hand.

This trend has continued and recently, many films have been dragged down the same road of boycott and scrutiny. Kashmir Files, Adipurush and Kerala Story are some recent ones.

To understand how politics is deep-rooted in determining the exhibition of a certain film, "The Kerala Story"³⁰ stands as an excellent example today. The film underwent a shadow ban in several states including Tamil Nadu and West Bengal³¹. Both state governments refuted the censor board's decision of its exhibition in India, and went on to put a ban, and stopped the film from being screened in the theatres. The Apex Court, when stepped in, prohibited from banning as it did not follow statutory requirements for a film to be banned. Similar was the case with Tamil Nadu, as it was found out that a political Muslim Organisation was behind the whole façade, and the court ordered adequate security for film distributors in the state.

Censor Board was created with the aim of having a statutory body that specialises in reviewing and certifying films. It is important to create a balance between constitutionally guaranteed freedom of expression and statutorily recognised areas of regulation, which is exactly what the CBFC tried to deal with.³²

²⁹ Sanjay Leela Bhansali & Ors. v. The State, (2018) 1 SCC 770

³⁰ Sunshine Pictures Pvt Ltd & Anr v. Union of India & Ors., AIR 2023 SC 552

³¹ Qurban Ali v. Central Board of Film Certification & Anr., Diary no 18768 of 2023

³² Gajanan P Lasure v. CBFC, 2011 SCC Bom 1074

Political influence over the censorship of films is not a very recent thing. The Indira Gandhi government introduced a tighter form of censorship, focusing on the content of the films. This new policy would require filmmakers to get a “No Objection Certificate” (NOC) before they could start the process of actually shooting it. This saw a slight change during the government of Prime Minister P.V. Narasimha Rao, where the filmmakers were allowed to shoot without an NOC and left the job wholly to the CBFC.

CINEMATOGRAPH AMENDMENT BILL 2023

It is almost after seven decades that the act is now seeing some major changes in its provisions. The bill introduced by the Central Government has been passed in both houses of Parliament, it will be enacted soon. Some significant changes that can be seen in this act include provisions regarding piracy, copyright and censorship. The act provides autonomy to the CBFC by limiting the government’s powers, both at central and state levels. This will allow a more prudent and less biased approach to censoring films.

CONCLUSION

From the nascent stages during the colonial era to its post-independence metamorphosis, we can see how censorship has become a nuanced system that attempts to balance artistic expression with societal norms and individual rights. The trajectory has been both complex and intriguing. The purpose of the Cinematograph Act in the British era was to maintain the esteem of the Raj and paint a rosy picture of Western lifestyle and morals. The censorship guidelines of this era represented the Victorian morality of the time present, and the censorship board only decided whether the movie was suitable for public exhibition or not.

After Independence, the 1918 continued for a while and there were a few improvements made to it. The Independent India Government was also keen on using cinema as a tool for nation-building. But that is not to say that they were comfortable with the freedom of Cinema makers as is relevant from the Production Code and the attempt at pre-censorship by suggesting producers submit their movie script before production began.³³

³³ Someswar Bhowmik. (2003). From Coercion to Power Relations: Film Censorship in Post-Colonial India. *Economic and Political Weekly*, 38(30), 3148–3152. <http://www.jstor.org/stable/4413826>

Through constitutional lenses, this article elucidates the footing between freedoms and the necessity for reasonable restrictions in a diverse and dynamic country like India. In the present day and time as well, we have seen how political organisations have influenced censorship, under the guise of the public. But this does not mean that filmmaking cannot survive in such circumstances. It can and will continue to thrive the way it has for over a century because of its mass appeal and approachability. Artistic work cannot survive in isolation from being scrutinized either by the public or political organisations, but in the end, what matters is a robust mechanism being in place. In a nation where cinema holds an indomitable impact over its population, the dialogue between creative expression and regulatory oversight continues to evolve. The dynamic interplay between creativity and censorship, as witnessed in the realm of Indian cinema, stands as a testament to the endurance and resilience of both art and governance in a democratic society.

