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SOCIO- LEGAL PERSPECTIVE OF CENSORSHIP IN MOTION PICTURES

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ABSTRACT

'I disapprove of what you say, but I will defend to the death your right to say it.' – Voltaire.

The cumulative reading of both the quotation represents the intention of the researcher in this research work. India is currently becoming very famous spot for too unjust in cinematic liberties whether you talk about Padmavat or the Accidental Prime minister everyone has some attached controversy of arbitrary use of power by Central Board of Film Certification. The present research paper will also deal with these types of controversy in motion pictures as well.

Article 19 (1) (a) of the Constitution guarantees freedom of speech and expression which brings in to its contours the freedom of the press. Films as a medium of expression also are put in the same footing and accordingly granted the equal status. Both the press and films are considered as strong mediums of communication. Both the mediums cater to the needs of a vast number of people. Thus the films and the press enjoy the same status and right so far as constitutional freedom relating to expression of ideas and spreading the messages are concerned. But when a comparison comes the press enjoys a bit more freedom because the films are subject to censorship as per the provision of existing law. Press is immune from such censorship.

The Research paper will analyze different provisions of cinematography Act, 1952 and how does it function with reference to issue of censorship in which the print media has immunity. The research paper will also examine landmark judgments in the field of Indian cinematography laws. The research paper will also focus on the relation between Right to privacy and motion pictures and special emphasis will be given on famous Phoolan devi Case.

Keywords- *Censorship, Unfair treatment, Constitutionality, Reasonable restriction, Motion pictures, Harmonious construction.*

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INTRODUCTION

Cinema has gained popularity till the time of its inception i.e. 1913. In that time doordarshan was the only channel that used to telecast films and then slowly they reached around 250 movie channels in India. In India almost 1500 to 2000 films released every year in different languages which is a record in itself. But there are several altercations as well. Indian Filmmakers have never shied away from exploring the so called “sensitive” subjects and are encouraged to take up issue based cinema that has come out well both critically and commercially. But these kinds of films are often left with only two possibilities - getting rave appreciation from the major chunk of audiences for its vivid content or result in the movie struggling to get censor clearance or even worse - getting banned or getting censored³.

Censorship is defined by the Oxford Dictionary as the *'prohibition or suppression of any part of the news, books, films, etc. that are considered politically unacceptable, obscene, or a threat to security'*, but this not an exhaustive definition because Censorship can't be defined in one attribute its definition changes with changing discourse and practices. The whole debate revolve around that Censorship is antithesis to freedom of speech and expression guaranteed under Article 19(1)(a) but there are several other jurists who favor Censorship either pre or post telecast by supporting their argument with reasonable restriction clause under Article- 19(2) of India Constitution.⁴

Film censorship usually takes place under the Cinematograph Act (No. 37 of 1952). This statute established the Board of Film Censors, which later became the Board of Film Certification, (the “Film Board”). Section 4 (1) requires every film scheduled for public screening to obtain a certificate from the Film Board. Section 5B (1) declares that a film shall not be certified if it violates certain provisions. These provisions are a word-for-word reproduction of the permissible restrictions on free speech under Article 19 (2). But as we have seen in the recent cases in Tamil Nadu (Vishwaroopam case) and West Bengal (Kangal Malshat case) were” the politicians have shown zero tolerance to the opinion of the film industry and even lower political tolerance to their critical movies.⁵

³ 1 Central Board of Film Certification Home Page, <http://www.cbfcindia.tn.nic.in/> (last visited 01/22/2020-5:30p.m.)

⁴ R.S. Chauhan, “Clamping down on creativity” The Hindu [http://www.thehindu.com/opinion/op-ed/clamping-down-oncreativity/](http://www.thehindu.com/opinion/op-ed/clamping-down-oncreativity/article17739798.ecen) article17739798.ecen accessed 01/22/2020 6:00 p.m.)

⁵ Boyd, B. (1972). FILM CENSORSHIP IN INDIA: A “REASONABLE RESTRICTION” ON FREEDOM OF SPEECH AND EXPRESSION. Journal of the Indian Law Institute, 14(4), 501-561. Retrieved from <http://www.jstor.org/stable/43950156>

In ***K.A. Abbas v. Union of India***⁶ is the leading Supreme Court decision on film censorship. It gave the Court its first opportunity to discuss constitutional protection for free speech in the media outside the traditional context of newspapers and magazines. Abbas, the petitioner, was an award-winning film producer. The Film Board refused unrestricted screening of his documentary, *A Tale of Four Cities*, because it included scenes from a Bombay red-light district. The board asked Abbas to edit certain scenes if the documentary was to qualify for a screening certificate. Abbas refused and complained to the Supreme Court that the board was violating his freedom of expression. In this Chief Justice Hydaitullah has held the censorship to be constitutional and within the framework of the Article-19(2). He referred Censorship as a valid exercise of power in the interest of the society and does not violate freedom of speech and expression. He mentioned that Cinema create a powerful impact on the mind and soul of human being so it's important to treat electronic media differently from print media.

In ***Bobby Art International v. Om pal Singh***⁷ This petition was filed by one of the member of Gujjar community who restraining the telecast of movie “Bandit queen” which is a written documentary on the life of Phoolan devi the famous dacoit of India on the ground that it contains several scenes which is abhorrent and slur on womanhood and depicting the moral depravity of gujjar community. The Supreme court rejected the contentions of petitioner opined that the film levels an accusing finger at members of the society who had tormented Phoolan Devi and driven her to become a dreaded dacoit filled with the desire to revenge.

It further stated that the object behind the depiction of such nudity was not to titillate the cinemagoer's lust but to arise in his sympathy for the victim and disgust for the perpetrators. Also, the revulsion that the Tribunal referred to was not at Phoolan Devi's nudity but at the sadism and heartlessness of those who had stripped her naked to rob her of every shred of dignity. It has evidently been opined that the nakedness does not always arouse the baser instinct. It laid emphasis on understanding the circumstances which led Phoolan Devi to become what” “she did and that rape and sex are not being glorified in the film but rather what it shows is terrible and terrifying and the impact it leaves on the victim. It focuses on the trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist. It also opined that a film that illustrates the consequences of a social evil must show that evil and Court allowed the movie to be telecasted with “A” certificate.

⁶ AIR 1971 SC 481: (1970) 2 SCC 780.

⁷ (1996) 4 SCC 1

In *Kaleidoscope (India) Pvt. Ltd v. Phoolan Devi*⁸ the petition is related to seek injunction for the exhibition of the movie “Bandit Queen” in India and Abroad, although she has signed copyright agreement with the production house. The allegation is that her personal life should not be commercially exploited. The Court also accepted the contention of Phoolan Devi. Court held that if we consider Phoolan Devi as a public figure then also her private life should not be made part of commercial exploitation or any news item. Public figures also have their personal space and privacy which should not be violated.

STATEMENT OF PROBLEM

The Cinematograph Act is riddled with colonial and statist traces that encourage political censorship. These anachronisms are incompatible with the spirit of the Indian Constitution, which was inspired by the Western liberal belief that political speech must not be suppressed. Indian courts, by adopting the functionalist-liberal ideology of Mill and Meikles John, have emphasized the need to allow free and frank criticism of the state-the “counter-view”, as the Bombay High Court described it in *Anand Patwardhan's* case.⁹ Political censorship not only restricts the artistic freedom of Indian filmmakers, but also inhibits their chances of catering to international audiences that would pay to watch political films about other countries.

Censorship generates important cultural, social and economic losses, deprives artists of their means of expression and livelihood, creates an unsafe environment for all those engaged in the arts and their audiences, sterilize debates on human, social and political issues, hamper the functioning of democracy and most often also impede debates on the legitimacy of censorship. The fear censorship generates in artists and art institutions often lead to self-censorship, which stifles art expression and impoverishes the public sphere. Artistic creativity demands an environment free from fear and insecurity.¹⁰

RESEARCH QUESTIONS

1. Whether the legal provisions of Cinematography Act, 1952 explain the concept of “Censorship”?
2. Whether the censorship on electronic media is different from print media?
3. Whether censorship of films under the Cinematograph Act, 1952 intra vires? What are the ramifications of *K.A. Abbas v. Union of India* and *Bobby Art International case*?

⁸ AIR 1995 Del 316.

⁹ Anand Patwardhan v. CBFC: (2003) 5 C.R.58.

¹⁰ Siddhartha Bhatia, Censorship in India is Based on the Paternalistic Idea that Citizens are not Mature, THE WIRE (April 28, 2016), <http://thewire.in/2016/01/02/censorshipin-india-is-based-on-the-paternalistic-idea-that-citizensare-not-mature-18461/>, (Last accessed on 11th of March, 2020).

4. Whether the judicial precedents on censorship able to cater all socio-legal aspects of India?

SCOPE AND LIMITATION OF THE RESEARCH WORK

1. The research is totally based on doctrinal mode and has no connection with any field or empirical research as according to the topic it is neither required nor feasible for such research work.
2. The research paper will analyze different provisions of Cinematography Act, 1952 and analyze its application in different case laws in India but it will not analyze any foreign cinematographic legislation for any conclusive requirement. It is only limited to comparative study.
3. The research paper will analyze different judicial precedents throwing special light on K.A. Abbas case and Bobby Art International Case and interpret it in its entirety while from other precedents will only analyze the specific principles/ratios and obiters.
4. The research paper will also analyze the constitutional validity of Cinematography Act, 1952 with reference to censorship. The Cinematography Act will not be analyzed as whole, only specific provisions will be taken into consideration.
5. The research paper will do comparative study of legislation of UK and USA with Indian legislation but will not compare the socio-political situation of foreign countries with India otherwise it will lead to a misleading and impractical conclusion.

RESEARCH METHODOLOGY

The method of the study is doctrinal research. The Study is based on the substantive proposition that pre-censorship is imposed only on motion pictures and not on print media. The Research study is selected by the researcher by keeping in mind the impelling need of the society in modern times, circumstances and socio-legal considerations. The Doctrinal research is one of the best modes to conduct research because the problem at hand directly related to society at large and their related issues. In the present doctrinal research, to give proper justification the researcher has used relevant materials that come from both primary and secondary sources that include legal as well as the scientific/technical documents which includes Law books, journals, original judgments of Supreme Court and High Courts, Law commission reports, Conference Reports, etc.

The Critical Analysis method will be taken to analyze the pros and cons of the Research paper which may be in the form of documents or may be in the form of extracts from the Investigative Report of some cases. The comparative method is adopted for comparing the different case laws and legislation and the difference between Indian System and that of other countries. Judicial Analysis method will be taken to analyze the case laws and different interpretation of the judges.

RESEARCH OBJECTIVE

1. To examine the role and powers of CBFC & Government(s) in censoring and banning films and to analyse the social impact of the Cinematograph Act, 1952.
2. To establish the bridge between law and cinema.
3. To List out the reasons that caused bans in the past and its standing.
4. To judicially and critically analyze the Different cases on Censorship in India and to assess the constitutionality of the Cinematograph Act, 1952, with special reference to *K.A. Abbas v. Union of India* and *Bobby Art International v. Om pal Singh*.
5. To, suggest few practical solutions to tackle the problem of bans and unfair censorship.

SIGNIFICANCE OF THE STUDY

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.¹¹

The freedom of speech and expression embodies the right of individuality. Any threat to such ‘individual thinking’ leads to an aggressive campaign against reasonable restrictions as well. Film is the reflection of society. Sometime true stories are depicted and it is censored with the fear of infuelling communal harmony etc. it is the time to change the society and mindset and not cut the film. It is important that transparency in the functioning of CBFC is ensured by reforming the process for its nomination. If the censorship is curbed from the electronic media will have many significance, the best part is that Artistic creativity will get a bounce which got under threat due to censorship.

Talking about the research work conducted by the researcher will have its significance which is summarized in five points mentioned below.

- It will let the researcher and reader of the research work to understand the concept of “Censorship” in lay man as well as in law man term. This study will provide different definition of “Censorship” and the reader will also able to understand the change in

¹¹ Union of India v. Naveen Jindal and Anr. Appeal (civil) 2920 of 1996. 84.

approach of censorship with the change in social dynamics. They will also know about different kinds of Censorship in India and in what circumstances it took place.

- The researcher and reader will understand the Concept of Censorship from the view of Cinematography Act, 1952 and get to know about different provisions of cinematography Act, which deals with censor process, certification and approval of films.
- This study will let the reader and researcher to understand whether the censorship under Cinematography Act, 1952 is constitutionally valid or not. In this part the researcher and “reader will understand different judicial precedents and its view towards censorship whether pre or post telecast.
- This study will let the reader to get the key points of two land mark judgment in the field of cinema i.e., *K.A.Abbas v. Union of India* and *Bobby Art International v. Om Pal Singh*, both will clear the concept of reader on the issue of “**Censorship**” and why it is so much debatable in present scenario.
- This study will give insight on the relationship of “Right to Privacy” and “Censorship of Cinema” through famous case law i.e. “*Kaleidoscopic (India) private ltd v. Phoolan Devi*” in which the reader will get to know that public figure also has their private domain in life which can’t be commercially exploited.

REVIEW OF LITERATURE

Sreejita Mitra in her work “**Socio-legal Aspects of Cinematography Act, 1952**”¹² has analyzed the social outlook of Cinematography Act in which he explained the power of government under Entry 60 of Union list and other powers of Central board of film certification. The author has also commented in his analysis that “*Censoring movies in the name of maintaining public peace, respecting emotions of people and similar reasons are simply ridiculous. It may give wrong message to the public through indirect interpretation. It is always the best that the viewer’s themselves watched it and form their own opinion.*” The author also explained the tryst between competition law and cinematographic Act, 1952.

Dr. B. Shiv Rao in his book “**Framing of India Constitution**” [Volume IV] [1968] has covered the aspects in the favor of pre-censorship and explained that how the motion pictures effect the mind and soul of a person and held pre-censorship to be constitutional. The author has put forth many arguments in favor of censorship and concluded that it is necessary to have pre-censorship

¹² Visit- <https://www.ijlmh.com/wp-content/uploads/2019/05/A-SOCIO-LEGAL-PERSPECTIVE-OF-THE-CINEMATOGRAPH-ACT-1952.pdf> (last accessed on 01/23/2020 at 11:30 a.m.)

on motion pictures. The author has also explained certain criteria which the makers of the motion pictures must take care of before producing a film.

In Khosla Committee Report [1969] on “Critical evaluation of Indian film Regulations” it has explained that Censorship should be exercised not by department of the state whose decision are subject to revision, appeal, or interference by the government but by the independent body which has given sufficient authority and sufficient sense of responsibility to deal with the matter finally and irrevocably and the committee also recommended the compilation of **“Censor code”** which yet not formed.

Sudrapita Sarkar in her work **“Right to free speech in censored democracy” [2013]**¹³ has elaborated the historical background of freedom of speech and expression of India which started from 1931 by Bal Gangadhar Tilak in Karachi Convention where they included press and individual both has liberty to express their thoughts. The Author also explained the different scenario in which the publication of movie is banned even though it is based on true events; she quoted the movie **“Deshdrohi”** in which Kamal khan wanted to show the plight of north India in Mumbai due to adverse environment created by MNS Leader Raj Thackrey and his followers but government refused to telecast the film even after the order of Supreme Court. There are several other examples which researcher will quote in Research paper.

Dr. Sukanta K.Nanda in his research article **“Media freedom, film censorship and freedom of expression – an evaluation”[2015]**¹⁴ has analyzed the constitutional validity of censorship under Article 19(1)(A) in which he referred several cases starting from K.A.Abbas v. Union of India to S.Rangrajan and bobby International Case. He also talked about different examination and test method to check the validity of the films. The Author also put stress upon concept of reasonable restriction and their scope.

Mr.Satyam Rathore in his work **“A critical overview of Censorship of Indian Cinema” [2016]** has puts forward the role of cinema as a medium of expression of ideas and free thought. The author further tends to assert the need and scope of regulation which is being provided under the Cinematograph Act, 1952. In subsequent paragraphs, the author further explains the role of the

¹³ Fears of MNS backlash prompted ‘Deshdrohi’ ban, EXPRESSINDIA.COM, Nov. 13, 2008, <http://www.expressindia.com/latest-news/Fears-of-MNS-backlash-prompted-Deshdrohi-ban/385263/>

¹⁴ MEDIA FREEDOM, FILM CENSORSHIP AND FREEDOM OF EXPRESSION – AN EVALUATION, Dr. Sukanta K. Nanda Reader, Madhusudan Law College, Utkal University, Cuttack, Odisha, (India) , Volume No.04, Issue No. 01, January 2015, International Journal of Science, Technology & Management (last visited on 01/22/2020- 10:30p.m.) Visit- https://www.ijstm.com/images/short_pdf/1422000190_P77-83.pdf

Censor Board in the certification of the films as defined under the law. The author also” “supplements it with various case laws as decided by the Courts in India. The author also throws light upon the misuse of censorship as done in this regard to curb the freedom of expression through cinema and how this sacred fundamental right has been zealously guarded by the Supreme Court through its decision. the author also puts forward his suggestion as to which the delicate balance between freedom of expression and reasonable restriction should be maintained and the censor board itself should be regulated through law in order to uphold the fundamental right of expressing free thought and idea for the betterment of the society in the larger public interest.

Vijay G. in his work **“A study on bans and censorship issues in Indian Cinemas [2018]”**¹⁵ has explained about the establishment of Censor Board and its historical background and how the Central Board of film certification function and what does are the grounds and provisions for granting of film certificate. The work has also commented that CBFC is restricting creativity of the makers of the films by chopping off the scenes from the films which are on true events and there are several films which are banned due to political pressure which questions the autonomy of the Board.

Madhavi Goradia Divan in his book **“Facets of Media law” [2018] [262-310]** has explained about difference in impact of print media and visual media and she explained the concept of pre-censorship and its pros and cons in Indian Scenario. She highlighted the guiding principles of censorship and connected it with cinematographic Act, 1952. She also explained different test laid down to check the credibility of movie to be telecasted.

Arpan Banerjee in his research article **“Political Censorship and Indian Cinematographic Laws: A Functionalist-Liberal Analysis” [2019]**¹⁶ represents a modest endeavor to contextually study Indian cinematographic legislation. The Article examines the political censorship of Indian cinema amid a wider historical milieu. The author argues that certain colonial and statist traces in Indian cinematographic laws have enabled political censorship to take place. Proceeding along functionalist liberal lines, the researcher also asserts three arguments against the political censorship of films in India: it (1) impedes "political accountability", (2) is vitiated by more liberal television laws, and (3) harms the Indian film industry's global diversification ambitions. He thus

¹⁵ Michael Safi, “Censors order bleeping of 'cow' in film on Indian economist Amartya Sen” The Guardian <https://www.theguardian.com/world/2017/jul/12/indian-film-censors-demand-removal-hindu-cow-film-nobel-amartya-sen> accessed 01/22/2020.

¹⁶ Banerjee A, Political Censorship and Indian Cinematographic Laws: A Functionalist Liberal Analysis, (2010) 2 DREXEL LAW REVIEW 557, (April 26, 2016), <http://ssrn.com/abstract=1672409> (last visited 01/23/2020 at 1:40a.m.)

submits that Indian cinematographic laws should be remodeled to conform to a more liberal framework that reduces state intervention.

The **committee** formed under **Ministry of Information and Broadcasting** headed by **filmmaker Shyam Benegal** recently submitted a report to the government suggesting certain amendments of the Cinematograph Act, 1952. The committee was constituted to lay down a holistic framework for certification of films and lay down guidelines to ensure that artistic expression and creative freedom are not unduly curbed in the process of classification of films. The committee in its report suggested that the CBFC should only be a film certification body and its scope must be restricted only to the issuance of certificates on the basis of age and maturity. The committee also suggested a sub division of categories for certification under the UA category as UA12+ and UA15+ and also under the Adult category as A and AC (Adult with Caution).

STA Law firms in their reputed blog of Modaq have mentioned the objectives of film certification and why it is necessary in Indian scenario, they also referred to US and UK legislations on censorship. The blog also contains the common reason of banning or censoring a film by comparing different case laws and legislations, sexuality, communal conflicts, political pressure etc. are reason for most of the censored movies. The report summarized its analysis in few lines that “In India, the basis on which a film is censored or banned has been evidently traditional norms. That being said, what is censored today may not be censored tomorrow. The socio-economic dynamics of a country is continually evolving. Hence, all regulations must try to adapt to the same

LEGAL ASPECTS OF THE TOPIC

In different countries, films are censored to monitor for varying levels of social and political issues, the exhibition of which can be connoted as disturbing for the people. Violence, sexual content, abusive language, drug use, abusive content, revolutionary content, and human rights violations are common factors that come under the censorship.

In India, under the Cinematograph Act of 1952, there is a very little scope of censorship. Nowhere in the Act does the Board have been vested with the power to censor the motion pictures beyond the specific conditions provided under the ground of reasonable restriction and as per the provision under section 5(B) of the Act. Only if the motion picture or the part/parts of motion picture stand in violation of section 5(B) of the Act can the Board ask the applicant to review and modify the objected part of the movie, According to the Information Technology Rules 2011,

objectionable content includes anything that “threatens the unity, integrity, defense, security or sovereignty of India.”¹⁷

The Constitution of India guarantees freedom of speech and expression with certain restrictions such as that of morality, decency, public order, etc. The Indian Penal Code allows cramping free speech on grounds of outraging religious feelings, making statements creating or promoting enmity, hatred or ill-will between classes. Section 5 B (1) of the Act sets out the principles for guidance in certifying films. The Section is more or less a replica of Clause 2 of Article 19. The Supreme Court while upholding Section 5 B (1) of the Act opined that the absence of the term “reasonable” in the section would not make any difference at all and the court could still look into the reasonableness of the action taken by the Board. The scope and ambit of the grounds mentioned in Article 19 (2) of the Constitution has been judicially expounded. Since Section 5 B (1) uses the very same terms, the interpretation given to these terms in other cases can be used for expounding the scope of the section.

The exhibition of films is governed by the Cinematograph Act, 1952 and Cinematograph Rules, 1983. The statutory body which is assigned the task to certify films for exhibition is called the Central Board of Film Certification (CBFC), colloquially known as the Censor Board. The broadcast of films on television, including broadcast of film songs, film promos, film trailers”, “music video and music albums is governed by the Programme and Advertising Code (PAC) prescribed under the Cable Television Network Rules, 1994.¹⁸

Section 4 of the Cinematograph Act, requires all films to be submitted to the CBFC for certification, while Section 7 provides criminal penalties for noncompliance with Section 4. Therefore, uncertified films essentially cannot be legally released in India. Section 7 of the 1952 Act provides that if there is violation of censorship provisions or if there are interpolations or tampering of certified films or if non-certified films are exhibited, or where films meant for adult audience are shown to non-adults or where an “S” certificate film is shown to persons other than those for whom it is meant, then penalties specified therein can be imposed. Penalty can also be imposed for failure to comply with section 6A which required that any person delivering a film to

¹⁷ An enquiry committee on film censorship headed by Justice G. D. Khosla (1968). Available online at <http://saveourcinema.in/history.html> (last accessed 11th of March 2020).

¹⁸ Prasad, Madhava. 1998. “Guardians of the View: The Prohibition of the Private.” In *Ideology of the Hindi Film: A Historical Construction*, 88-113. New Delhi: Oxford University Press.

an exhibitor or a distributor will also give to him details of all cuts, certification, title, length and conditions of certification¹⁹.

Under section 7, a person guilty of violation is punishable with imprisonment for a term which may extend to three years, or with fine which may extend to Rs. 1 lakh or with both, and with a further fine upto Rs. 20,000/- for each day for a continuing offence.

Showing of video films which violate the rules in the manner prescribed in this section will attract imprisonment of not less than three months but which may extend to three years and a fine of not less than Rs. 20,000/- but which may extend to Rs. 1 lakh and a further upto Rs. 20,000/- for each day for a continuing offence. Furthermore, the trial court can direct that the offending film be forfeited to the Government. Under section 7A, any police officer can enter a hall where an offending film is being screened, search the premises and seized the print.

All the members of the CBFC are appointed by the union government under Section 3 of the Cinematograph Act, and are often serving bureaucrats. Section 22 of the Cinematograph Act solves the problem of a shortage of censors by empowering larger Advisory Panels to certify films in conjunction with the CBFC. Rules 22 through 26 of the Cinematograph (Certification) Rules of 1983 delineate the censorship procedure followed by the CBFC. Section 5B of the” Cinematograph Act specifies the grounds on which films shall be denied certification by the CBFC.

However, the powers granted to the CBFC under the Act has been widely misused as on a number of occasions it has gone beyond its statutory powers to over regulate cinema which clearly stands in violation of the fundamental spirit of freedom of thought and expression. It is vital to note that the power of the Board under the Act extends only to regulation of the film through certification. Ideally, the CFBC’s prime and only duty should be to ensure that proper certificate for exhibition must be given to films subject to reasonable scrutiny²⁰.

However in many cases, the stand taken by the Central Board of Film Certification has been highly questionable and one attacking the very base of expression of thoughts and ideas.

JUDICIAL APPROACH OF THE TOPIC

Films are considered as a great medium of communication with the people. With the development and progress of the society and also with the progress in the field of science and technology the

¹⁹ Court rejects petitions seeking ban on film, THE HINDU, June 13, 2006, available online at <http://www.hindu.com/2006/06/13/stories/2006061314410100.htm>. (last accessed 11th March 2020).

²⁰ Kerala HC declines to ban The Da Vinci Code, THE TIMES OF INDIA, May 25, 2006, available at <http://timesofindia.indiatimes.com/articleshow/1568062.cms> .(last accessed 12th March 2020).

films have undergone a sea change and by adopting all the available technologies have been able to reach the masses and also significantly contributed to the social and cultural development of the country. In this way the films are equated with the Press as Press is also considered as a great medium of communication. Both the films and the Press enjoy the same status and right so far as constitutional freedom relating to expression of ideas and spreading of ideas and messages are concerned.

As is known Article 19(1) (a) of the Constitution guarantees freedom of speech and expression which is extended to the Press also. Therefore, both these mediums are regulated under this provision of the Constitution. Simultaneously as these freedoms are not absolute and subject to constitutional restrictions, both these mediums are also to adhere to this. As mentioned above, we have the Cinematograph Act, 1952 to see the films fulfill the norms prescribed by the law. The Act provides for the establishment of a 'Central Board of Film Certification', the regulatory body for films in India to issue the certificate to the makers of the film for public exhibition.

As per the provision of the law, the Board after examining the film or having it examined could

- (a) sanction the film for unrestricted public exhibition;

- (b) sanction the film for public exhibition restricted to adults;

- (c) direct such excisions and modifications in the film before sanctioning the film to any unrestricted public exhibition or for public exhibition restricted to adults; and

- (d) refuse to sanction the film for public exhibition.

In *K.A. Abbas v. Union of India* is perhaps the first case where the question relating to the censorship of films arises. In this case, the Supreme Court considered important question relating to pre-censorship of cinematograph films in relation to the fundamental right of freedom of speech and expression conferred by Article 19(1) (a) of the Constitution. The petitioner in this case challenged the decision of the Board of Film Censors in refusing a 'U' certificate²¹ for him" film **"A Tale of Four Cities"**. While the case was pending in the Supreme Court, the Central Government to grant the 'U' certificate provided certain cuts were made in the film. As the petitioner's grievance was completely redressed, the petitioner applied for an amendment enabling him to raise the question of pre-censorship in general, in order that persons who invested money in making films may have guidance on this important constitutional question. The amendment sought by the petition was

²¹ 'U' certificate means it is for universal exhibition. 'A' certificate means it is for viewing by Adults only.

allowed for consideration by the apex court. The following two issues were before the court for consideration:

- a. That pre-censorship itself cannot be tolerated under the freedom of speech and expression; and
- b. That even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action.

Taking into consideration all these, Hidayatullah, C.J. made it clear that censorship of films including pre-censorship was constitutionally valid in India as it was a reasonable restriction within the ambit of Article 19(2). It was also observed that pre-censorship was but an aspect of censorship and bore the same relationship in quality to the material as censorship after the motion picture has had a run. However, censorship should not be exercised as to cause unreasonable restrictions on the freedom of expression. Holding the view that "pre-censorship was only an aspect of censorship and censorship of cinematograph film was 'universal', Hidayatullah, C.J. went on to observe that "it had been almost universally recognized that motion pictures must be treated differently from other forms of art and expression, because a motion picture's instant appeal both to the sight and to hearing, and because a motion picture had become more true to life than even the theatre or any other form of artistic representation. Its effect, particularly on children and immature adolescents was great." The court upheld the general principles which had been laid down for the guidance of the censors and said that the test of obscenity and principles laid down in *Udeshi's case*²² applied mutatis mutandis to an obscene cinematograph film.

In *S. Rangrajan v. P. Jagjivan Ram*²³ the Supreme Court again confronted the question of censorship of films vis-a-vis Article 19(1) (a) of the Constitution. In this case, the Madras High Court revoked the 'U' certificate issued to a film entitled "**Ore Oru Gramathile (In Just One Village)**", and also banned the exhibition of the film as there was some public protest against the film. The film was critical of the reservation policy of the Government of Tamil Nadu. During the pendency of the case, the film received the National Award by the Directorate of Film Festival of the Government of India.

After the decision of the Madras High Court, the matter went to the Supreme Court on an appeal and the court reiterated the importance of the freedom of speech and expression and the role of films as a legitimate media for its exercise. The Court was of the opinion that "*if exhibition of the film cannot be validly restricted under Article 19(2), it cannot be suppressed on account of threat of demonstration and*

²² Ranjit D. Udeshi v. State of Maharashtra, A.I.R. 1965 S.C. 881.

²³(1989) 2 S.C.C. 574.

processions or threat of violence. That would tantamount to negation of the Rule of Law and surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression”.

Again, in *Bobby Art International v. Om Pal Singh* case, better known as the Bandit Queen case, the Supreme Court considering the censorship issue upheld the freedom of expression through films and removed the restrictions imposed on the exhibition of the film "Bandit Queen"²⁴ on the ground of obscenity. In this case, the petitioner Om Pal Singh filed a petition asking the court to quash the certificate of exhibition for screening the film "Bandit Queen" and also to restrain its exhibition in India. It was contended in the petition that the depiction of the life story of Phoolan Devi in this film was "abhorrent and unconscionable and a slur on the womanhood of India." The way the rape scenes were depicted and the manner in which such scenes were picturized was also questioned and it was also contended that the depiction of Gujjar community in those scenes amounts to moral depravity of that particular community. The Delhi High Court quashed the order of the Tribunal granting 'A' certificate to the film on the ground that the rape scenes were obscene. When the matter went to the Supreme Court by way of "appeal, allowing the appeal, the Supreme Court reversed the decision of the High Court and upheld the decision of the Tribunal in granting the 'A' certificate to be valid. The court was of the opinion that: "*The film must be judged in its entirety from the point of overall impact. Where theme of the film is to condemn degradation, violence and rape on women, scenes of nudity and rape and use of expletives to advance the message intended by the film by arousing a sense of revulsion against the perpetrators and pity for the victim is permissible.*"

The court rejecting the challenge under the provisions of the Cinematograph Act, 1952 went on to observe that: "*We do not censor to protect the pervert or to assuage the susceptibilities of the over sensitive. „Bandit Queen' tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did, her rage and vendetta against the society that had heaped indignities upon her*".

Shankar v. State of Tamil Nadu²⁵, This case has put forth that sometime censorship become important because sometime content of the film make the viewer heavy hearted, sensually aroused and mentally disturbed which may lead them to indulge in dangerous activities. This case also quoted some advantage of censorship- It keeps religious conflicts at bay, this can hold especially true in a country like India. If the 'Censor Board' notices a part of a film that can offend a certain

²⁴ '**Bandit Queen**' depicts the life story of Phoolan Devi, the dreaded dacoit of yester years who was brutally gang raped and sexually assaulted. Subsequently she retaliated and took the revenge by killing many people who were involved in the assault.

²⁵ 1994 SCC (4) 478.

community on religious grounds, it will go ahead and cut that part out which helps keep religious conflicts out of reach. A country's army is always full of secrets and the secrets are mostly military. This is when censorship steps into the picture to help maintain secrets of a country's army. Books and films that can stir up negative emotions and actions amongst the general public, and are usually not allowed passing through the watchful eyes of the Censor Board.

In *Anand Patwardhan v. CBFC*, A documentary film named Father, Son and holy war was denied telecast by doordarshan on the ground that movie can create law and order situation in the country. The court has framed certain guidelines in this case on which pretext the telecast will be approved for any film. The court has given three questions which has to be answered to get telecast of the film.

1. Average intelligence standard test must pass.
2. Offensive or sexual content or not.
3. Lack of serious literary or artistic work or not.

CRITICAL ASPECTS OF THE TOPIC

As far as censorship of films are considered, censorship is required because of its mass appeal, the way the presentation and above all, the impact it leaves in the minds of the persons both young and adult. Expression of one's own idea, through the medium he likes is permissible under Article 19 (1) (a) of our Constitution. The medium is vast. But using the films as a medium of expression should be treated differently because this medium is not the same as reading a book or reading a newspaper or magazine. So in the larger interest of the community and the country restrictions as envisaged in Article 19(2) can be imposed. The framers of our Constitution deemed it essential to permit such reasonable restriction as they intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19 (2). But there are some critical point is concerned that must come towards the reader of the research paper.

1. **CBFC has not been treating every film equally** - In reference to the comparisons made between censoring of **"Mohenjodaro"** & **"Unindian"** and **"Ram Leela"** & **"Shahid"** apparently shows there is no proper standard when it comes to CBFC s" handling of the process. While big films mostly escape the board's wavering standards it is the small films to which its wrath is unleashed. Of course big films sometimes do come under the scanner as well but that happens when there is a larger controversy like the one in **"Padmaavat"**.
2. **When it comes to cinema it's for the people that they are made and they are the best judges**- Films like **"Fifty Shades of Grey"** which have been brought down by the

board but has received warm welcome from the audience ultimately proves that this is not what people want. Though it is deemed to be a cautious effort fears of revenue loss, thousands who worked for the film left uncredited or cuts hampering the narrative are matters of great concern. In case of such instances post release where action is necessary before things go haywire there is always an option of removing the film or the scenes from screens within no time as everything has been digitalized and is controlled from one central place.²⁶

3. **Bans are sometimes used as a political weapon by governments-** When bans are imposed by governments they are either used to display their political upper hand or just as an effort to please a section of objectors. In a rare case of real law and order problem arising where the state is unable to hold talks nor control the parties the government could then take the issue in its hands and impose a ban if necessary. Instead the governments see this as an opportunity to let the people know that they are still in control and it is a cautious move for common good that the action was taken. **“Vishwaroopam”** is an apt case of government using the film for its political motives using it for their own good.
4. **Modes operandi not proper-** There isn't a special modus operandi when it comes to films getting banned in consonance with procedure. The reasonable restrictions available in Article 19 (2) of the constitution also mentioned under Section 5(b) of the Cinematographic Act is said to serve the purpose but this has been wrongly used²⁷. Any film affecting the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence is not allowed for public exhibition in India but did all these banned films met the above criteria is big question mark.

An example for the apt use of limitations would be the banning of **“Udta Punjab”** saw major opposition by CBFC as it dealt with the inability of the Punjab government to control drug mafia. The film was initially asked to make a mammoth 89 cuts for granting certification. Later the High Court took up the matter and recommended only one cut after which a leaked copy of the film spread online with a “censor” watermark raising further suspicions and quoting other ban on **“Lipstick Under my Burkha”** due to the

²⁶ Comolli, Jean-Louis. 2005. **“Machines of the Visible”** In Technology and Culture: The Film Reader edited by Andrew Utterson, 32-51. London and New York: Routledge/Taylor and Francis, Last accessed on 12th of March, 2020.

²⁷ Srinivas, SV. “Is There a Public in the Cinema Hall?” In Framework, Summer (2000). <http://www.frameworkonline.com/Issue42/42svs.html>

depiction of Muslim women in bad light. Even before its official release in India it had” won 11 International Awards, was shown at over 35 film festivals and was India s” entry at the Golden Globe Awards.²⁸

COMPARITIVE ASPECTS OF THE TOPIC

Culture and lifestyle has drastically changed and hence people have a better understanding of cinema. When the people of UK, US and many other countries have the capacity to handle mature content why can’t we? The existing system literally has no room for grown-up content and has been treating us like kids. India must make way for different content and make sure the right film reaches the right set of audience. The Indian legislature must take into consideration different cinematography legislations of different country.²⁹

Censor Boards across the world approach films differently. The CBFC in a neighboring country like Pakistan are pretty strict in terms of portrayal of its country and Muslims in films which made them ban most of the Indian Films like **“Baby”** (2015) and **“Haider”** (2014) and the list goes on. In contrast, United States & United Kingdom has a slightly direct and clear system of rating films.

The Motion Picture Association of America (MPAA) has a 6 type rating system that includes G – General Audience, PG – Parental Guidance suggested as content may not be suitable, PG-13 – Inappropriate for people of age 13 or below, R – Restricted to people over the age of 18 but allowed to accompany a adult if under 17, NC-17 – No children equal to or below the age of 17, NR (or) UR - Not Rated or Unrated for movies not submitted for rating that can also be played in select theatres. Similarly the British Board of Film Classification (BBFC) has the same system of U, PG, 12A, 15, 18 and R 18 for films that can played only at licensed adult cinema halls³⁰.

They usually proceed based on the version received by them from the crew and would rarely demand cuts apart from only recommending cuts and rate films accordingly thereby leaving the burden to the filmmakers to decide their fate. Not that they are lenient to let go anything that” “comes their way, it is only fair to say that they decide on what they get and let the people decide what is good or bad for them thus reducing the issues that may arise regarding censors. So do films

²⁸ Vasudevan, Ravi S. 2010. *The Melodramatic Public: Film Form and Spectatorship in Indian Cinema*. Ranikhet: Permanent Black.

²⁹ Report of the Indian Cinematograph Committee, 1927-1928. Government of India Central Publication Branch, Calcutta, 1928.

³⁰ Vignesh Vellore, “No censorship in A Rated Movies! Petition” Change.org, <https://www.change.org/p/shyam-benegal-nocensorship-in-a-rated-movies> accessed 12th March 2020.

don't face ban on these countries?³¹ As indicated earlier, a freedom has no force unless it imposes some reasonable restrictions. All censor boards across the globe are quite uncompromising on strong sexual content and excessive violence which is quite understandable.

CONCLUSION

Cinema being an important instrument of expression of ideas and free thoughts must remain unrestricted from any kind of censorship. Restriction of any kind must not infringe upon the basic human right of expressing one's view in the community of civilized societies. Censorship is a powerful tool that can work for or against society and the people. It can either result to disseminating balanced information or mask the truth about issues people deserve to know. What is important is for members from both sides of the spectrum, supporters and critics, to continue debating on the issue to achieve a kind of censorship that will work for the majority. Though censorship is required for films, its exercise should be exceptional, transparent and free from political influence.

Despite of a lot of precedents in favor of artistic expression, filmmakers in India still face criticism and their nationalism is questioned time and again. The reason behind is our age old law. Films in India are governed by Cinematograph Act 1952. Under the said law, government has an overriding control over the CBFC's decisions. This power of the government has often been used against films. Owing to which films, these films have been facing cuts, mutes and bans sometimes to an extent that the film loses its essence, for the reasons that CBFC knows the best. **"Fanny Khan"**, **"Lipstick under My Burkha"**, **"The Accidental PM"** is few recent names that have borne the brunt recently.

SUGGESTIONS

There isn't an easy and permanent solution for every problem especially when it concerns art which is ever developing. Few of the possible and practical suggestions are briefly mentioned below.

1. **Proactive and Simple:** There is a need for the CBFC to be proactive in order to reach out to the film fraternity. Interactivity can help the officers of the CBFC to clearly understand the demands of the film makers. There is a need to make the film censorship process simple, accountable and transparent. Online system of application for film certification by CBFC can help in this regard.

³¹ Exploring cinema, censorship and its impact", The Hindu (3 December 2013), available online at <http://www.thehindu.com/books/books-reviews/exploring-cinema-censorship-and-its-impact/article5415198.ece> (last accessed 12th March 2020).

2. **Expanded Rating System:** In India we do not have “R” or “R-18” unlike the other certifying bodies around the world. An “R” rating would mean that the film passes without cuts and is allowed for restricted exhibition. The closest we have to these ratings is an “A” (Adult) which is not appropriate for films based on certain subjects. An amendment in the system could be seen as long term solution to solve the whole issue of films getting banned or losing its artistic integrity due to unnecessary censor issues.
3. **Public Participation:** The time has come where common man must have a say in censorship apart from the officials appointed by the CBFC. This would ensure there would be no concerns about biased decisions and also a form of public representation in such processes. Signing of a simple Non-disclosure agreement would also protect the content and make sure his/her opinion has a part to play in the final decision of the board.
To further strengthen public inputs, an experimental system of voluntary rating followed in US seems to be the right way forward. Under this highly successful system, an independent group of parents having children aged between 5-20 years rate submitted works based on 2/3rd majority. This group came to be known as Classification and Ratings Administration (CARA) and its members change every 7 years leaving no space for any abuse of powers.
4. **Uncensored adult content only for adults:** Re-censorship of films for playing on television sounds logical as no one would have any clue what kids are up to while watching TV but when a legal adult purchases a movie ticket for a “A” rated film he expects the film to treat him as an adult too and not as a kid or a teenager.
Indians do have the capacity handle mature content and hence it is high time that the CBFC, the Government puts down its scissors and treat adults as adults who can understand mature content. Moreover this is what people want! Proof?! We live in a country where over 17,817 people have signed a petition seeking ban on censorship of adult films created initially by an irritated movie buff that had to shell out Rs.600 to watch a film with most of its dialogues muted in the name of censorship. So, Adult rated films shouldn’t require cuts to enhance viewer interest because that’s what he has paid for.
5. **Expansion of Jurisdiction-** Jurisdiction of the Appellate Tribunal must be expanded to permit any person aggrieved by a decision of CBFC to file an appeal against it. This will reduce the burden on the High court’s dealing with issues related to film censorship.
6. **Obsolete laws and process** - Lots of provisions under the Cinematograph Act 1952 have past their expiry date considering the pace at which technology is developing. In this scenario various definitions like ‘film’, ‘cinematograph’, ‘exhibition’ etc. must be amended

in order to broaden their scope. The CBFC must act as a certification body. It must do away with the censoring of any sort of the movies.

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