



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Cinematographic (Amendment) Bill, 2021 - A Clear Menace to the Right to Freedom of Expression

Anshpreet Singh Chowdhary^a

^aNational Law University, Delhi, India

Received 21 July 2021; *Accepted* 10 August 2021; *Published* 13 August 2021

The Central Government has recently proposed amendments to the Cinematographic Act, 1952 (hereafter referred to as 'the act') to curb the increased threats of piracy of the films and to make the process of sanctioning of films for exhibition more effective. Although the purpose of the amendments, prima facie, may look a step in the positive direction against piracy and for making the sanctioning of the films in a better manner, the elements of the proposed amendment indicate that the motive of the government is to have stronger control on what cinematographic films are exhibited to the public and therefore, to restraint the fundamental right to freedom of expression of the people. The original act was enacted in order "to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs"¹. These proposed amendments are not just inconsistent with the initial reason for implementing the act but also are not in consonance with several Supreme Court judgements, portraying a severe stance against the freedom of the citizens, taken by the government.

Keywords: *cinematograph, freedom, amendment.*

¹ Cinematograph Act 1952

INTRODUCTION

Section 6(1) of the act initially provided the Central Government with revisional powers by means of which the government could essentially reverse or revise the decision or order of the Censor Board or the Appellate Tribunal constituted under the provisions of this act. This gave the government powers to scrutinize the actions of a quasi-judicial body formed under the act and was clearly beyond the constitutional role and powers of the executive due to which the Hon'ble Karnataka High Court in the case of *KM Shankarappa vs Union of India* declared it unconstitutional which was upheld by the Supreme Court².

However, the proposed amendment is aimed to bring back the position of censorship to what it was before the judgment of the Hon'ble High Court i.e., aimed to reverse the position and the decision taken by the court which was eventually upheld by the Supreme Court. Through these amendments, the Government has proposed to add a provision under this act granting it revisionary powers by virtue of which "*on receipt of any references by the Central Government in respect of a film certified for public exhibition, it can direct to re-examine the film*". The justification for this given by the government is that section 5B (1) of the Act is derived from Article 19(2) of the Indian Constitution which imposes reasonable restrictions on the freedom of speech and expression of the people and therefore it is 'non-negotiable'.

Under § 5B (1) of the act, a film can be refused to be granted a certificate for exhibition if "*the film or any part of it is against the interests of 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*"³. The ambiguity of this section adds to the authority of the government which can be used by them to control what is to be displayed to the public. The criteria of revisionary powers which is essentially re-censorship are futile and are a method of restraining the exercise of their right by the people. This added provision doesn't provide a specific or a limited ground of receiving a complaint about the re-

² *Union of India v KM Shankarappa* (2001) 1 SCC 582

³ Cinematograph Act 1952, s 5B (1)

examination of the films but it has a wider scope which would lead to the government having regulation over a larger number of films.

§8(1)(c) of the Act prescribes that the Central Government may frame rules for the manner in which a film has to be examined by the board. Along with this, the terms and conditions of service of the members of the board are also decided by the Government⁴ leading to distrusting the autonomy of the board. Despite the existing vulnerable structure, enacting back a provision providing the government a legal authority to reverse the decisions of the board is extremely questionable. Due to this, the cinema can become a medium of propagandizing the government's interest and movies would be exhibited at the government's whim. This is a clear strike on the fundamental right of the people guaranteed under Article 19(1)(a) of the Constitution. The government, who is constitutionally perceived to be the protector of these rights, through such legislations violate their constitutional responsibility.

The Supreme Court of India has emphasised the pertinence of Article 19(1)(a) of the Constitution and the importance of protecting artistic freedom in the country. In *K.A. Abbas v. Union of India*, though the court held that pre-censorship isn't directly a violation of freedom of speech and expression of an individual, it also stated that "*freedom of speech and expression admits of extremely narrow restraints in case of clear and present danger...the censorship should be based on the precise statement of what may not be the subject-matter of film making and should allow full liberty to the growth of art and literature*"⁵. The court has also stated that the excuse of a law-and-order situation cannot be used to prevent a film from being exhibited once the certification has been granted⁶. If any film portrays the harsh reality of the society contrary to the majoritarian opinion, which may question the perception of the masses, it would still be covered under the ambit of freedom of expression and the government cannot prevent conflicting opinions from being shown to the public on account of threat of unlawful activities from one section of the society. This was also explained in the case of *S. Rangarajan v. P. Jagjivan Ram and Ors.* The court held that- "*If the film is unobjectionable and cannot constitutionally*

⁴ *Ibid*, s 8(1)(b)

⁵ *K A Abbas v Union of India* (1970) 2 SCC 780 [33]

⁶ *Union of India* (n 2)

be restricted under Article 19 (2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would be tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem”⁷.

Through these judgments, the Court has tried to portray that an intolerant approach towards people’s freedom of expression must be avoided. This human right holds an immense value that must not be lost at the cost of protecting the interests of the government. The state must ensure that people are freely able to exercise their rights without the fear of being suppressed by government actions on the ground of a skewed interpretation of the provision of the right. The court has several times drawn attention to the fact that a broad interpretation of the fundamental right to expression is essential in order to further the purpose of its enactment⁸. The ability of the people to freely express their ideas is in the benefit of democracy, where the role of the executive shouldn’t be to promote its own interests at the cost of others’ rights.

The constitution and the courts in India alone haven’t emphasised the importance and the permanence of this fundamental right to freedom of expression, but it has been globally recognised that this right must be protected and suppression of the ideas of the people must be prevented. The Universal Declaration of Human Rights (UDHR) states that- *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”⁹*. Along with this the International Covenant on Civil and Political Rights also states that everyone shall have a right to freedom of expression and the right to hold opinions without interference and these must be subject to restrictions only in situations necessary for the protection of national security or of public order.¹⁰

⁷ *S Rangarajan v P Jagjivan Ram and Ors* (1989) 2 SCC 574 [51]

⁸ *Life Insurance Corporation of India v Prof Manubhai D Shah* (1992) 3 SCC 637 [6,7]

⁹ Universal Declaration of Human Rights 1948, art 19

¹⁰ International Covenant on Civil and Political Rights 1996, art 19

All forms of opinions and expressions must be protected despite their political, historical, or religious nature and even any statement that may be prescribed as deeply offensive should not be restricted from being expressed¹¹. Even Article 10 of the European Convention on Human Rights as well as Article 13 of the American Convention of Human Rights have largely followed the model of ICCPR. This shows that internationally, the scope of freedom of expression is wide and it is paramount. The restriction on this right must not be subject to the whim of the party in power in the state, but it is the government's duty to prevent the infringement of this right.

The marketplace of Ideas, John Stuart Mill's theory, also emphasised the importance of allowing people to freely express their opinions and ideas. The theory stated- "*if we suppress an opinion, it may turn out to be true. To assume otherwise is to assume that we are infallible, which is not the case*". He also propagated the idea that the 'mental wellbeing of mankind was dependant upon allowing freedom of speech¹². Even if an opinion might be erroneous, it shouldn't be suppressed because that is what the right is about. Unnecessary restrictions imposed on this right become the cause of an environment unsafe for democracy to flourish¹³.

Actions of the State exercising their authority are not without any judicial oversight but are controlled in the regime based on the rule of law. Therefore, any act through which the State debars an individual from the constitutional guarantee of liberty and freedom must not be pursued and should be subject to judicial action. A provision that allows the government to re-censor a film already certified for public exhibition demonstrates overreach of the statutory powers in an attempt to curb expression by means of cinema. These political freedoms impose a restraint on the powers of the State by carving out an area in which it cannot interfere. Such interference through arbitrary actions forms a threatening environment for democracy in the country. Prevention of open discussion and open expression of matters conflicting with the interests of the government weakens the roots of a democratic society.

¹¹ International Covenant on Civil and Political Rights, 'General Comment No. 34' (*Www2.ohchr.org*, 2011) <<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>> accessed 17 July 2021

¹² Stanley Ingber, 'The Marketplace of Ideas: A Legitimizing Myth' (1984) 1984 *Duke Law Journal*

¹³ Shameek Sen, 'Right to Free Speech and Censorship: A Jurisprudential Analysis' (2014) 56 *Journal of Law Indian Institute*

When such arbitrary amendments for a country like India, with diverse ideas and opinions, are made while considering only the stance of the majoritarian population, the freedom of expression of an individual loses its importance and is threatened by those in power. Such actions of the government would further lead to selective dissemination of information, clearly indicating the aim to suppress the interests of the people with contrary ideas.

Films in India have not just been a reason for the entertainment of the people but also have been a strong source of information and awareness. Through this medium, the ills of society are expressed to the public, the voice of the unheard is understood, and the harsh realities of the times in which we live are exposed to the audience. Cinema, other than being a great source of revenue for the country, also has been a strong medium of challenging the unwise and imprudent government policies and decisions. All of this is possible only due to the existence of the unalienable right to freedom of speech and expression. The courage with which such films are portrayed, without the fear of conflicting the ideas of those in power, shows the true sense of democracy. In such a situation, bringing an amendment with the purpose of controlling and regulating such exhibition, unambiguously implies administrative highhandedness, thereby circumventing the democratic process.

The importance of artistic freedom has been several times highlighted by the courts. The Supreme Court had recently opined that - *"If the right of the playwright, artist, musician or actor were to be subjected to popular notions of what is or is not acceptable, the right itself and its guarantee under the Constitution would be rendered illusory. The true purpose of art, as manifest in its myriad forms, is to question and provoke.....every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticize"*¹⁴. In the same judgement, the court observed- *"The Constitution does not permit those in authority who disagree to crush the freedom of others to believe, think and express. The ability to communicate ideas is a legitimate area of human endeavour and is not controlled by the acceptability of the views to those to whom they are addressed. When the ability*

¹⁴ *Indibly Creative (P) Ltd v State of WB* (2020) 12 SCC 436 [46]

to portray art in any form is subject to extra constitutional authority, there is a grave danger that fundamental human freedoms will be imperilled by a cloud of opacity and arbitrary state behaviour”¹⁵.

These strong observations by the court clearly lay down the message that freedom of expression is paramount and curbing the ability and the right of an artist to express by the medium of films, through government influence and the use of authority and power should not be undertaken. The purpose of Censorship should be limited to protecting the human rights of the community and must not extend to advancing the political interests of the government or preventing anything which is in conflict with the desires and views of the state as this extension of the scope of censorship would eventually shatter the freedom of expression and would in every manner be against the constitutional liberty granted to every citizen. Providing legal legitimacy to the censorship having the ultimate purpose of preventing the expression of counter views must be avoided. Giving the authority of censorship in the hands of the State is a manner of expanding the majoritarian views and such kind of censorship is clearly at the cost of freedom of expression of the citizens and is against the constitutional values. Censorship by the State is more of a Political Censorship which is considered as a step to curb creativity.

CONCLUSION

In view of the above observations, it has to be noted that the proposed amendment, of giving revisionary powers to the Central Government, to the Cinematographic Act, 1952 does not serve any purpose other than propagating the undemocratic motives of the State. This amendment not only completely disregards the decision of the highest judicial authority in the country but also adds a provision causing the restraint of the fundamental right of the citizens. The enactment of such a provision is a clear menace to the right to freedom of expression of the people by the government having direct control over the exhibition of the cinematographic films thereby threatening the democratic values of the country. There is a need to establish an independent and autonomous body with unambiguous and transparent functioning, for the

¹⁵ *Ibid*, [46,47]

regulation of film certification, as allowing the executive to perform such a role, especially in an unconstitutional manner is a clear attack on democracy.