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Testing the Constitutionality of the Draft Cinematograph (Amendment) Bill, 2021 on the Touchstone of Article 19

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“A film motivates the thought and action and also assures a high degree of attention and retention as compared to the printed words.” - The Supreme Court Judgement 1989.¹ Cinema has influenced our society in several ways for the past few decades. The advancement of technology has ushered in a major shift in the way movies are distributed to audiences across India. Therefore, it becomes crucial to ensure that the content supplied through it should be ethical for the public of different age groups. To ensure this, the government enacted The Cinematograph Act, 1952,² which provides certification to the films produced to protect the sensitivity of standards and societal values. This Act also established the Central Board of Film Certification (CBFC), which provides the certification to the films and ensures that the content provided is suitable for public viewing. In other words, it is the Indian regulatory agency that grants certificates to filmmakers for public exhibitions. But a few months back, the Ministry of Information and Broadcasting, Government of India, proposed the draft Cinematograph (Amendment) Bill, 2021,³ which raged a wave of anger in the whole film industry as along with the several amendments made, the new Bill also gave the Central government revisionary powers even if the film is certified by CBFC. This government step is being criticized by most filmmakers and artists and is seen as a way to suppress their freedom of Speech and Expression.

Keywords: *revisionary powers, public exhibition, societal value, ethical.*

¹ *S. Rangarajan Etc v P. Jagjivan Ram* (1989) SCR (2) 204

² Cinematograph Act, 1952

³ Draft Cinematograph (Amendment) Bill, 2021

INTRODUCTION

Films are widely regarded as an excellent medium for reaching out to the general audience. Movies mirror society, and movies, in turn, impact the community through changes in representations, moral challenges, and the transformation of viewers' ideas. The film mixes music, storytelling, and images into one package that allows audiences to forget about the actual world for 2 hours or more while also providing a reality check. In India, the press and films have the right to the constitutional freedom of expression and dissemination of ideas under Article 19(1)⁴ of the Constitution of India. But this right is not absolute and has some restrictions. These restrictions are mentioned in Article 19(2) of the Constitution, which imposes restrictions on such freedom if the same is against India's sovereignty and integrity, the state's security, defamation, or incitement to an offense, as determined by law. Also, at the same time, it is necessary to ensure that the content provider is ethical and not against any religion or individual. Thus, the government enacted The Cinematograph Act, 1952, which provides certification to the films produced to protect the sensitivity of standards and societal values.

Moreover, the government has recently introduced The Draft Cinematograph Bill, 2021, under which The Ministry of Information and Broadcasting proposed a few changes that have opened up a debate and discourse among experts in the field about the media's autonomy and government censorship. Many changes are made in the proposed Bill, such as protection against film piracy, providing age-based certifications, and a few others. But the significant amendment that was presented was that the Bill provided revisionary power to the Central Government, i.e., it gave the government the authority to cancel or recall the Censor Board's certification of films that have previously been approved. This has raised a massive controversy in the film industry, where many experts are also calling this Act "another blow to the film fraternity."

⁴ Constitution of India, 1950, art. 19(1)

THE CINEMATOGRAPH ACT, 1952:⁵

The Cinematograph Act of 1952 is an Act to make provisions that provide certification to the films that are adequate for public consumption. Part III of the Act provides for the regulation of exhibitions through Cinematographs.

- Section 3 of the Act gives the power to the Central Government to establish a board for film certification by notification in the Official Gazette, which consists of a Chairman and a minimum of 12 and a maximum of 25 members, who are appointed by the Central Government.
- Section 4 deals with the examination of the films. Under this, any person willing to exhibit a movie needs to apply to the board to get its movie certified. There are four major categories for the film certification:
 - ✓ "U"- Unrestricted Public Exhibition
 - ✓ "A"- Restricted to Adult Audiences
 - ✓ "U/A"- Unrestricted Public Exhibition subject to parental supervision for children below the age of twelve
 - ✓ "S"- Restricted to specialized audiences such as doctors or scientists.
- Section 5 allows the government to establish advisory panels at such regional centers as it deems appropriate, consisting of people who have the relevant knowledge to judge films' effect on the public.
- Section 5B of the Act says that a film shall not be certified for public exhibition if it causes harm to the integrity and sovereignty of India.
- Section 7 provides for penalties such as three years of imprisonment or a fine of up to one lakh rupees or both for the contravention of this part.

⁵ Sanjana, 'An Outlook On The Cinematograph (Amendment) Bill, 2021' (*Mondaq*, 1 September 2021) <<https://www.mondaq.com/india/broadcasting-film-tv-radio/1107304/an-outlook-on-the-cinematograph-amendment-bill-2021>> accessed 05 April 2022

THE DRAFT CINEMATOGRAPH (AMENDMENT) BILL, 2021

The Ministry of the Information and Broadcasting Government of India released a draft of the Cinematograph (Amendment) Bill, 2021, on June 18th, 2021, and sought the public's opinion on the same. The following are the amendments made in the new draft bill:

- The proposed amendment suggests that a film should be certified for perpetuity instead of the tenure of 10 years.
- The proposed amendment bill would give the union government the right to review a film after being certified by the CBFC.
- Moreover, The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, also abolishes the Film Certification Appellate Tribunal. Following the ordinance, any filmmaker dissatisfied with a CBFC decision has only one option: appeal to the relevant High Court.
- Another significant change advocated in the drafted amendment bill is the criminalization of film piracy. It punishes piracy with a three-month sentence that can be extended up to three years, as well as a hefty fine.
- According to the ministry, the laws relating to the certification of films under the unconstrained public exhibition category are planned to be altered so that the current UA category might be further subdivided into age-based groups. Such as U/A 7+, U/A 13+, and U/A 16+.

CENTRAL BOARD OF FILM CERTIFICATION (CBFC)

- It is a legislative organization within the Ministry of Information and broadcasting that is responsible whose role is to regulating the public screening of films under the Cinematograph Act, 1952.
- The Board of Directors is made up of non-official members and a Chairman and is based in Mumbai.
- It aims to make the certification process transparent to ensure recreation, education, and healthy entertainment.

- Also, through its workshops and meetings, it tries to raise awareness of the certification requirements and contemporary film trends among members of the advisory panel, the media, and filmmakers.
- Its mission is to maintain transparency regarding the Board's actions through voluntary disclosures, e-governance implementation, timely responses to RTI requests, and the release of an annual report.
- It also tries to adopt new technologies for the certification process through the digitalization of the certification process infrastructure improvements.

WHY IS CERTIFICATION OF A FILM NECESSARY?

- Despite the fact that the media in our country is free, it is thought important in the public interest to analyse the product before it is released for public consumption.
- While there is no certification for published content, it was considered that certification for films was necessary due to the significantly greater influence that the audio-visual medium can have on people than the printed word, particularly on the vulnerable minds of youngsters.
- In a 1989 decision, the Supreme Court stated that cinema certification is required because films drive thought and action and ensure a high level of attention and retention when compared to printed words.
- The blending of act and speech, sight and sound in a semi-darkened theatre with the elimination of any distracting thoughts will have a great impact on the minds of the audience and can affect emotions.
- As a result, it has the same potential for good as it does for evil, and it has the same ability to develop violent or good conduct.

GOVERNMENT'S OPINION

- The government in this matter says that there had been many instances in the past where the complaints have been received alleging an infringement of Section 5B(1) of the Cinematograph Act, 1952, even after the certification of the film. Thus, the

government becomes just a spectator and is unable to do anything as courts have ruled that once the films have been certified by CBFC, then the government has no power to act upon the same.

- Also, to justify utilising its powers as a super-censor for films over which it gets complaints, the ministry uses the constitution's "reasonable constraints" under Article 19 of the constitution.
- Another argument given by the government in favour of the bill is that now because of the revisionary powers given under Section 6, the government will have the power to call for the record of any proceeding which is decided by the Board anytime.
- Moreover, this was the first time when Section 6AA was introduced, which made piracy a punishable offense and prohibits unauthorised recordings.
- The central officials stated that the bill was misinterpreted and that the ministry would have no authority to censor any film. Only the ministry is allowed to return the film for re-certification under the bill.⁶

WHY THE PROPOSED DRAFT BILL IS CONTROVERSIAL, AND IS IT AN INFRINGEMENT OF ARTICLE 19 OF THE CONSTITUTION?

Creativity is considered the heart and essence of filmmaking. But lately, the filmmakers have claimed that the draft bill is robbing their creativity. The new bill proposed to amend the previous Cinematograph Act, 1952, and brings in many changes such as age-based certifications, etc., along with one of the significant changes, i.e., the provision of revisionary power to the Central government. Central Government can now re-examine the film that is already given a clean-chit by Central Board for Film Certification (CBFC). Though the film industry applauds the initiatives taken towards age-based certification and provisions related to the prevention of piracy at the same time, the revisionary power given to the Central government in the film approval has come under intense scrutiny. They see it as an indirect

⁶ Shreya Juyal, 'Explainer | What Is The Cinematograph Act Amendment That's Becoming A Controversy Now' (*Deccan Chronicle*, 8 July 2021) <<https://www.deccanchronicle.com/nation/current-affairs/080721/explainer-cinematograph-act-amendment-all-that-you-need-to-know.html>> accessed 07 April 2022

attempt at filmmaking control in terms of who gets to see what films or series, and this appears to be an acceptance of that behaviour. Censorship benefits the government, but it does not satisfy the audience.

The Bill was criticized by the actors and the filmmakers because the Act gave the indirect powers to the government to take action on any film that had already gotten clearance from the Central Board. The amendment has brought the role of the CBFC, the prime apex body in India that has all the powers about what and how a film should be certified. It has the sole authority for certifying a film, and it has also counted its many shares of controversies in movies like **Udta Punjab** and **Lipstick Under My Burka**.⁷ Another controversy raged with the abolishment of the Film Certification Appellate Tribunal. If the filmmaker is not happy with the certification, then the only remedy left is to approach High Court. Many filmmakers and actors want CBFC to be a certifying body and not a censoring body. Also, the power to recall a film that has already been certified would be a way of undermining the sovereignty of the Censor Board and the Supreme Court.

Many people are also worried that this amendment will suppress freedom of expression, thereby infringing Article 19 of the Indian Constitution. Article 19 of the Indian Constitution provides freedom of speech and expression to India's citizens and foreigners. The sub-clause (1) (a) of this Article states that people have the right to express their views and opinions. But the draft bill is seen as an infringement of this Article. Filmmakers believe that this Bill will make them "powerless at the hands of the state."⁸ The acclaimed documentary filmmaker Anand Patwardhan commented, "This type of suppression will not work forever. People will find the way of talking of telling the truth as they see it." Another senior filmmaker Adoor Gopala Krishnan even called the Bill a "SUPER CENSOR." Thus, many people think that the government will use this Bill, once passed as an Act, to suppress many different ideas and exercise their right over the freedom of expression.

⁷ Harshit Dwivedi Education, 'Why filmmakers are opposing Cinematograph Bill 2021, Is it really violating freedom of making films?' (*You Tube*, 5 July 2021) <<https://www.youtube.com/watch?v=gHOgmqCLGMc>> accessed 08 April 2022

⁸ Sanjana (n 5)

CONCLUSION

After analysing the amendments made in the draft bill, we can conclude that the many provisions made by the government, like age-based certifications, amendments related to privacy protection, and others, are pretty understandable. Though the objectives may be fair enough, many clauses in this draft bill need to be amended. Specific provisions of the Act, like providing revisionary power to the Central government, may curb the freedom of speech and expressions of the artists and the filmmaker. This is because this Act would even ban those films that criticize the ruling government. Also, the punishment prescribed for the piracy in the draft bill is disproportionate as the penalty, up to 5% of the film's audited gross production cost, might vary a lot from one picture to the next. Another question comes instead of reinstating Film Certificate Appellate Tribunal (FCAT), what is the need to involve the Central government in the censorship of a film? What is the need and importance of CBFC? Also, if this Bill is passed, will we be able to get politically controversial movies and series like *Tandav*?