



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Censorship Law and Its Effects on the Freedom of Speech and Expression of Indian Cinema and Television

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Received 03 August 2022; Accepted 25 August 2022; Published 01 September 2022

The paper analyses the censorship laws and the restrictions it imposes on Article 19(1)(a) of the Indian Constitution, and it raises essential questions concerning the same. The most important question is the validity of such censorship that restricts the fundamental right of freedom of speech and expression of the individuals associated with making the movie. The paper seeks to explore the process involved in censorship and the guidelines for allowing a particular film for public display. The researcher also questions the meaning of the term 'reasonable restrictions' under the Constitution's Article 19(2) from the judiciary's point of view. To place things in order, the researcher has referred to the previous Supreme Court and High Court judgements and how the Hon'ble Court(s) have tried to balance an individual's fundamental right and the collective moral rights of the society and the sentiments of the people. The Court, in doing so, has avoided the public dissatisfaction and chaos that had/could occur due to the concerned movie's exhibition. The paper also examines how the government regulates Indian Cinema through the Cinematograph Act 1952, providing the guidelines certification rules and deciding whether the film should be certified for public viewership. The researcher has acknowledged the violation of the fundamental right from the producers' and filmmakers' perspectives. Apart from this, the paper also discusses the issue relating to the telecast of advertisements that are subject to criticism by the public. Lastly, how these movies and advertisements regulate public behaviour and what makes them subject to censorship.

Keywords: *censorship, Indian cinema, cinematograph act, violation, fundamental rights.*

INTRODUCTION

India is the second oldest film industry and the largest producer of films globally. The movies are made not only in Hindi but also in other regional languages. With approximately 2000 films a year, the film industry costs (in the financial year 2020) about 184 billion Indian rupees¹. The movies contribute not only to entertain but also to educate society about various social norms and constraints, help build an individual's character, and reflect society. But even after these contributions, the film industry is often argued to have lacked the basic fundamental right of freedom of speech and expression, granted under article 19(1)(a)². Nevertheless, this right is not unconditional, i.e., prone to regulations. Therefore, both Cinema and television are regulated under the Cinematograph Act, 1952, to see if they adhere to the norms that have been prescribed under the law.³

WHAT IS CENSORSHIP?

Censorship is the action of preventing a part of a whole film, book, work of art, document, or any other form of communication from being seen or made available to the public because it is considered to be offensive or harmful, or because it contains information that someone wishes to keep secret often due to political reasons; a system in which an authority limits the ideas that the people are allowed to express and prevents books, films, work of art, document or any other form of communication from being seen or made available to the public because they include or support specific ideas.⁴

The Cinematograph act requires establishing a regulatory body, the Central Board of Film Certification, for films in India that issues certificates to filmmakers that enable them to exhibit their movies to the masses. As per the guidelines⁵, the board, after examining the film –

¹ Tanushree Basuroy, 'Value of the film industry in India for the financial year, 2014-2024' (*Statista*, 23 July 2022) <<https://www.statista.com/statistics/235837/value-of-the-film-industry-in-india>> accessed 01 August 2022

² MP Jain, *Indian Constitutional Law* (Lexis Nexis 2018)

³ Cinematograph Act 1952

⁴ Cambridge Dictionary, 'Censorship' (*Cambridge*, 2022)

<<https://dictionary.cambridge.org/dictionary/english/censorship>> accessed 22 July 2022

⁵ Cinematograph Act 1952, s 4

- a) Grants authorisation of the film for open, public presentation.
- b) Permits a film for its exposition that is restricted to adults.
- c) Directs for removal or moderation of certain scenes before sanctioning the film.
- d) Denial of permission for public exhibition.⁶

REASONS FOR BANNING/CENSORING OF FILMS IN INDIA BY THE CBFC

The Censor Board in India has not only censored certain scenes in a movie but there have also been instances when the movie was banned in the country altogether. The movies are mainly prohibited for six reasons⁷ that are -

- Since India is a secular country, it respects all religions; equally, the board has banned movies on the theoretical basis that it was blasphemous and will show that religion or the people of that religion in a bad light. One such example is the movie *Firaaq*, a 2008 movie based on actual events during the Gujarat riots, which was banned initially because it may hurt the sentiments of both Hindus and Muslims. Later the film was allowed for release which invited much criticism.
- There is no doubt that society has changed significantly in the past decade. People today do not hesitate in talking about topics and subjects that were at one time considered to be taboo. Furthermore, this is the second reason why the board banned movies and commercials that did not match society's principles, like the movie *Fire* that came out in 1996, which was banned for its storyline that focused on a homosexual affair between two sisters-in-law of a Hindu family. The Censor Board denied *Pink Mirror* (2004) a rating because of homosexual content.
- A few movies have been censored on the objection of it being obscene or vulgar to the audiences, like the 1994 *Bandit Queen*, which narrated the life of a dacoit, Phoolan Devi. There were many explicit scenes, nudity, and rape scene in the movie. Due to its vulgarity

⁶ *Ibid*

⁷ RS Chauhan, 'Clamping down on creativity' (*The Hindu*, 05 July 2022)

<<https://www.thehindu.com/opinion/op-ed/clamping-down-on-creativity/article62113427.ece>> accessed 01 August 2022

and obscenity, the film was restricted from releasing temporarily by the Delhi High Court.

- Some movies have been censored or banned temporarily as they depicted the country in a bad light. The 1977 movie *Kissa Kursi Ka* was one of those movies set in the emergency period, and it was said that the film mocked the Emergency period.
- Mockery of our leaders (political or freedom fighters) has also been one reason for banning movies like *Gokul Shankar* (1963) that depicted the psychological motivations of Nathu Ram Godse, the assassin of Mahatma Gandhi. The film *Papilio Buddha* (2013) was also banned temporarily due to its criticism of Gandhi. Its release was only allowed after the anti-Gandhi speeches and remarks were muted.
- There have been cases where a particular movie was speculated to have defiled the country. A 2003 movie, *Hawayein*, was set in the background of the 1984 Sikh genocide, banned in Punjab, Haryana, and Delhi.⁸

LITERATURE REVIEW

- *Detailed Analysis of Film Censorship in India and Contemporary Issues* by Abhinav Bishnoi and Suyash Vijayvergiya⁹

In this article, the authors have discussed the censorship of films in India and why it is considered to be one of the strictest film censorship methods in the world that are done to protect the sentiments of the citizens. In order to understand the regulation method of censorship, the authors have discussed the Indian case laws and judgements.¹⁰ In the later part of the article, the reasonability of the government's restrictions has been discussed. This has helped in understanding the very nature of censorship in India and how the regulation of films works.

⁸ *Ibid*

⁹ Abhinav Bishnoi & Suyash Vijayvergiya, 'Detailed Analyses of Film Censorship in India and Contemporary Issues' (*Legal Button*, 29 September 2020) <<https://www.legalbutton.com/2020/09/detailed-analysis-of-film-censorship-in.html>> accessed 01 August 2022

¹⁰ *Ibid*

- *Film Censorship in India: A “Reasonable Restriction” on Freedom of Speech and Expression by Bruce Michael Boyd.*¹¹

This paper was written after the Supreme Court’s judgement on KA Abbas v Union of India.¹² To analyse the judgment and censorship criteria prevalent during that time. The author has proposed alternative methods and modifications to the censorship of films prevailing at that time. The paper also questions the constitutionality of the judgment mentioned above, and in the latter half, the author discusses the Detailed Analysis of Film Censorship in India and Contemporary Issues. Recommendations of the 1968 Khosla Committee on Film Censorship. Lastly, the author also talks about the necessity and impact censorship has on a developing country like India. This paper has helped me understand the judgment of the landmark case and the public reaction to the same.

- *Films and Free Speech by A.G.' Noorani'.*¹³

The article refers to the struggles faced by the film industry due to political pressure and control. The author talks about the incident of the BSP leader issuing a notice that the filmmaker would need prior permission from her before mentioning or referring to her in their movies, and they cannot get away with it without her consent. The author refers to the proposal for strict censorship rules, which may cause many difficulties for the directors and producers of the film industry.¹⁴

- *Right to Free Speech and Censorship: A Jurisprudential Analysis by Shameek Sen.*¹⁵

The paper's author has done a comparative analysis and presented arguments in favour and against the censorship of movies. In offering personal views, the author has mentioned that censorship may look like it has evil effects on the expression of thoughts and ideas, hindering

¹¹ Bruce Michael Boyd, 'Film Censorship in India: A “Reasonable Restriction” on Freedom of Speech and Expression' (1972) 14(4) JILI 501–561 <<http://www.jstor.org/stable/43950156>> accessed 01 August 2022

¹² KA Abbas v Union of India (1971) AIR 481

¹³ AG Noorani, 'Films and Free Speech' (2008) 43(18) Economic and Political Weekly 11–12

¹⁴ *Ibid*

¹⁵ Shameek Sen, 'Right to Free Speech and Censorship: A Jurisprudential Analysis' (2014) 56(2) JILI 175–201 <<http://www.jstor.org/stable/43953700>> accessed 01 August 2022

human rights. However, it is still necessary for society as it ensures that the rights of the people, as a whole, are not abridged in a democracy. This paper has been helpful while analysing the pros and cons of the censorship of films.

- *Issues and Censorship in Indian Cinema by Shyam Benegal and Geeti Sen*¹⁶.

This is a conversation between the author and one of the most respected filmmakers, Shyam Bengal, about his movie *Mammo*. During the interview, Mr. Shyam mentions that the censorship of films, i.e., pre-censorship, is cruel, especially in a democracy. It is also flawed in its very nature and functioning, which must be updated.

- *Film Censorship and Freedom by A.G. 'Noorani'*.¹⁷

The article talks about the proposed guidelines that require film producers to remove vulgarity and violence from their movies and eliminate the storyline that would result in the denigration of the ministers. Also, the guidelines would want the filmmakers to submit a detailed script to the board before the film shooting starts; this would be called the 'pre-censorship advice'. In this way, the State is trying to control the country's art and artists.

- *T.V. Films and Censorship by A.G. 'Noorani'*.¹⁸

It is a newspaper article that mentions some of the Supreme Court judgements regarding the censorship of movies. The author states that the Court has expanded the scope of the censorship law to films meant for television broadcast. In a landmark judgement, the Court had rejected the plea against the telecast of a movie on Doordarshan on State's contention that it can cause public unrest in the State. The Court called out the State's reasoning as illogical; the Court said, "... The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression."¹⁹

¹⁶ Shyam Benegal & Geeta Sen, 'Issues and Censorship in Indian Cinema' (2004) 31(2/3) IIC Quarterly 292-306 <<http://www.jstor.org/stable/23006232>> accessed 01 August 2022

¹⁷ AG Noorani, 'Film Censorship and Freedom' (1994) 29(39) Economic and Political Weekly 2521-2521

¹⁸ AG Noorani, 'TV Films and Censorship' (1990) 25(6) Economic and Political Weekly 300-300

¹⁹ *Ibid*

- *The Sway of Censorship by A.G. 'Noorani'*²⁰.

The following is a newspaper article in which the author talks about the freedom given to the people in the country for taking a photographs or for making a film. The author mentions a film called Faith Under Stress, for which the state government of Kerala refused to give permission even after the central government had granted the same. And the police, on several occasions, stopped the filmmakers from proceeding with their work in the name of possible public agitation. The author says that the people belonging to the country have been dowered with the right to take photographs or make films to express themselves.

RESEARCH QUESTIONS

The author of the paper seeks to answer the following questions -

- Are the restrictions on the fundamental right of freedom of speech and expression, given under article 19(1)(a), valid?
- How much restriction is reasonably valid under article 19(2)?

THE STAND OF THE INDIAN JUDICIARY ON THE ISSUE OF CENSORSHIP

The judiciary of India has decided on cases about the validity of the censor board's decision to put restrictions on the exhibition of a film for public view. The judiciary, in most cases, has decided in favour of those restrictions stating that the following Cinema may/will hurt the sentiments of a particular group, is explicit, etc. and in some of the other cases, the Court did reiterate the importance of free speech that is vested with every individual. Some of these judgements are -

K.A. Abbas v Union of India²¹ (1970) - In the following case, the Supreme Court opined that the decision of the government to give a 'U certificate' was within the lines of the Cinematograph Act, under the section 5(b), which defines the situations where the restrictions can be imposed and that it is not violative of the article 19(2) of the Indian Constitution. However, the Court also

²⁰ AG Noorani, 'The Sway of Censorship' (1985) 20(35) Economic and Political Weekly 1463-1463

²¹ *KA Abbas* (n 12)

mentioned that the law regulating the censorship of films is vague and needs to be less ambiguous to avoid the broader discretion of its usage. The Court implied that the law ensures that the movie does not spread a wrong message in public, but everything displayed on the big screen cannot be vulgar and can't be subjected to restriction by the authority.

Thus, this case is crucial for deciding on freedom of speech and expression. It becomes necessary for the concerned decree and authority to place reasonable restrictions on the content against public morality. The Court also paid attention to the petitioner's, Mr. Abbas', arguments regarding the establishment of an appropriate body to decide on the censorship, and that the central government should not be vested with this power. Also, there should be a fixed period within which the decision should be taken. Chief Justice Hidayatullah commented on the question of reasonability of censorship of films and said, "*Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other from the instant appeal of the motion picture, its versatility, realism (often surrealism) and its coordination of the visual and aural senses. The art of cameramen, with trick photography, vista vision, and three-dimensional representation threw in, has made the cinema picture truer to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore, the treatment of the latter on a different footing is also a valid classification.*"²²

Bobby Art International v Ompal Singh Hoon²³ (1996) - In this case, the Tribunal had granted an 'A certificate' to the film, *Bandit Queen* by the Bobby Art Company, stating that the film consisted of brutal rape and nudity scenes. Later, when the movie was exhibited, Ompal Hoon, the petitioner, appealed to the Delhi High Court, suggesting that the film projects his community in a bad light and that its exhibition should be ceased immediately. The Court quashed the decision of conferring the A certificate and halted the airing of the film. On appeal from the Art company, the Division Court decided against the High Court and remarked, "*a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social*

²² *Ibid*

²³ *Bobby Art International v Ompal Singh Hoon* (1996) 4 SCC 1

evil". The Judge concluded that a scene that is an essential part of the story-telling could not be deleted as it may restrict the freedom of speech.

***Sree Raghavendra Films v Government of Andhra Pradesh*²⁴ (1995)** - The screening of the film *Bombay* in Telugu, the official language of Andhra Pradesh, was interrupted by the exercise of the authority of Section 8(1) of the Andhra Pradesh Cinema Regulation Act of 1955. However, the film was sanctioned by the Censorship Commission for unlimited exhibition. The film was ceased from display as it could offend specific communities. The Court stated that the authorities who issued the disputed order did not watch the movie. Due to this reason, the Court overturned the ruling as arbitrary.

***Shri Anand Patwardhan v Union of India*²⁵(1996)** - In this case, the film, *In Memory of Friends* had been given an 'A' certificate. Still, the public service broadcaster refused to telecast the film on Doordarshan, saying that the film involves sexual violence and communalism. Doordarshan's audience involves people from an illiterate background who may get affected by the film's content. The Supreme Court rejected the reasoning stating that "...the standard must be of a reasonable person with an average, healthy and common-sense point of view". Therefore, the Court allowed the film's screening as it posed no threat to public order stating that the channel was a state institution and came under the ambit of Article 19(1)(a).

***S. Rangarajan v P. Jagjivan Ram*²⁶ (1989)** - In Rangarajan, it was argued that several small groups of Tamil Nadu had threatened violence against the film *Ore Oru Gramathile*. The Supreme Court stated that the State must protect the freedom of expression of individuals, and it cannot be suppressed based on threats of marches and protests. The Court ordered the State to maintain law and order and provide a safer environment for freedom of expression without the accompanying violence.

²⁴ *Sree Raghavendra Films v Government of Andhra Pradesh* (1995) 2 ALD 81

²⁵ *Shri Anand Patwardhan v Union of India* (1997) AIR Bom 25, 32

²⁶ *S Rangarajan v P Jagjivan Ram* (1989) 2 SCC 574

***Ramesh Pimple v CBFC*²⁷ (2004)** - The Film Certification Appellate Tribunal refused to give the certificate to the film *Aakrosh* based on a speculated communal violence. The Bombay High Court allowed the presentation of the film. It said that the Tribunal had not been granted the power to make assumptions about whether a film may or may not incite feelings of agitation and lead to communal violence. The Court conceded that “*the present state of things is the consequences of the past, and it is natural to look into the sources of good or the evils the society goes through.*”

***Srishti School of Art, Design & Technology v The Chairperson, Central Board of Film Certification*²⁸ (2011)** - The following case is related to the display of *Had Anhad*, a series of four films about a filmmaker travelling across India to Karachi in quest of answers. The CBFC had directed to make four cuts in the movie which was also concurred by the FCAT. In its decision, the Hon’ble High Court of Delhi had decided against the CBFC’s decision to cut a scene relating to the Babri Masjid demolition on the contention that it may cause communal distrust. The Court opined that freedom of speech involves the right to narrate a story and that a past event cannot be the reason to demand excision.

INCIDENTS OF INTOLERANCE FOR ADVERTISEMENTS AND CLAMPING DOWN ON ‘CREATIVITY’

Advertisements tend to influence consumer behaviour and society, as a whole, as much as Cinema does. That is why there have been several controversies revolving around the so-called offensive advertisements on television. The marketing ideas of selling the products were not very well received, and the ad companies were forced to pull down their ads from telecasting on tv. In 2021, the country saw many such examples where advertisements were considered

²⁷ *Ramesh Pimple v CBFC* (2004) (5) Bom CR 214

²⁸ *Srishti School of Art, Design & Technology v The Chairperson, Central Board of Film Certification* (2011) IIIAD (Delhi) 289

misleading and faced backlash because of their contents and how they spread their message to the audience.²⁹

The most recent include the *Fabindia* campaign promoting their clothing line for Diwali festivities. The ad was suspected of hurting the Hindu sentiments because of the tagline describing the Hindu festival. Second, on the list is the *Tanishq* ad where an inter-faith marriage triggered its audience. The ad invited many trollers on social media, demanding its ban and boycotting the brand. Another advertisement grabbed the eyeballs for the wrong reasons, and the *Surf Excel* ad was severely bashed for showcasing Hindu-Muslim unity. The detergent ad showed two children from different religions getting along during the Hindu festival of Holi, and the tagline is '*Rang Laaye Sang*'. The makeup brand *Fem*, while advertising their product, presented a beautiful ad in front of the audience that featured a lesbian couple celebrating their love during the Hindu festival. The public did not receive the ad well and demanded its ban. It seems like even after the decriminalisation of homosexuality under section 377, Indians have still not been able to accept the idea of it.

The list of so-called offensive advertisements will not see an end. The critical question is, what is so nasty about these ads that outraged the Indian audiences? Why can creativity, efforts, and the message that the creators wish to convey be appreciated? Why have the citizens become so intolerant of a progressive India by naming it hurtful? It is ironic how Indians compare India with western countries and adapt their ideology. Still, when the movies and advertisements showcase India in a modern and more tolerant light, it is considered against societal principles. To keep up with the modernisation and constant changes in the lifestyle, we, as a country, need to be more open and broader in our thinking and remodel our ideology. It does not mean defying or questioning one's religion and practices but being broad-minded means becoming more sensitive and respecting varied opinions and traditions.

²⁹ Lifestyle Desk, 'A roundup of some recent ads that hurt Indian sentiments' (*The Indian Express*, 12 July 2021) <<https://indianexpress.com/article/lifestyle/life-style/roundup-recent-ads-hurt-indian-sentiments-hindu-rituals-patriarchy-7601641/>> accessed 01 August 2022

CONCLUSION

The censorship in India has been quite rigorous, barring free speech conferred upon the country's citizens. The judiciary's role is to check that there is no unfair treatment of the citizens and that they are not barred from exercising their fundamental rights. The Supreme Court, at times, has taken a stand and objected to the unauthorised act of banning or censoring a movie by the statutory authority. But there have also been instances when the hon'ble Court has allowed the censors and cuts in a film, keeping in mind that there should be no dissatisfaction among the people on the grounds of it being obscene and violent, something that has the potential to rage the viewers.

There have been debates and discussions about censorship being unconstitutional in a democratic country. However, the fact is that censorship is a requirement in India, to protect the rights of the people at large, and it cannot be removed altogether. Censorship should be done as certain films or ads go against the public morality and decency that must be regulated or rectified. If not, they may affect the sentiments of a larger group of people and may cause unrest in the country. There is no need to remove the censor board altogether for better regulation. What is required is a just and appropriate form of regulation so that the filmmakers get a chance to express themselves freely while adhering to the guidelines of the Cinematograph Act. Even though there are 'reasonable restrictions on fundamental rights no right is absolute although nobody knows what comes under the purview of 'reasonable'. It is only at the discretion of the Court to decide the scope of reasonability when it comes to the censorship powers of the board. The country needs a better and more stringent procedure of adherence to the law that can be done without the abuse of power or the transgression of said right.