

THE ROLE OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC) IN THE PRESENT DEMOCRACY AND THE CHALLENGES AHEAD

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Introduction

Cinema most particularly appears to have always grabbed the attention of millions of masses across the globe. Projecting itself as one of the most pivotal sources of entertainment and information, the cinema not only rejoices a very prime positioning in the public domain but also serves as a tool in impacting the minds and hearts of people worldwide. Different age groups be it the children, teenagers, matured individuals, or the aged ones, cinema is cherished by almost everyone and is also identified as the mirror of the society. Cinema secures a crucial stand in the societal perspective as it is considered to be one of the most significant portrayals of ideas, belief, culture, perceptions, norms etc by way of providing amusement to everyone. This portrayal if lacks appropriate supervision and not brought forth in a responsible manner, would hamper the peace, order and discipline of the society. Therefore, associating ourselves with the above factor, we can deduce that censorship and certification of films would play a major role in this context.

Indian film industry is the largest in the world producing more than 900 feature films as well as great amount of short films every year. Theatres witness audiences as huge as the country's population every two months. Films involve a vast amount of investment as lakhs of people make a living out of it. Due to the competition increasing globally coupled with the urge to sustain in the longer run, the film-makers try to put their best effort to ensure that the product they endeavor to bring forward is sufficient to earn them their returns. In this process, they sometimes due to over-excitement and zeal induced in them end up producing films which

might be appealing and liked by a certain group or even result in strong opposition and revolt by some as a consequence of dissatisfaction or contradiction of views.¹

Freedom of Speech and Expression

Freedom of Speech and Expression is a fundamental right guaranteed to all the citizens residing within the territory of India under article 19 (1) (a) of the constitution. It gives the ability to each and every citizen to take a step forward and voice their opinion from every nook and corner of the country. This right enables the people to think and also gives them the privilege of making their views and ideologies acknowledged by everyone in the society. Thus, encouraging different propositions to be heard which motivates in boosting the growth and development of the country.

The press and cinema also come within the purview of Article 19(1) (a). Article 19(2) of the constitution imposes reasonable restrictions on this right. These restrictions are incorporated within the ambit of this article in 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 in relation to contempt of court, defamation or incitement to an offence. While utilizing this right guaranteed by the constitution one should bear in mind that this right is not taken for granted and in order to confirm the same the constitution has set certain restrictions as mentioned above.

When we talk about the right to freedom of speech and expression, we can say that the various aspects of media including the print as well as the electronic especially in this era are playing the role of key contenders, in keeping the people informed and updated about everything happening around them. It is essential for the media to take into account the repercussions that might take place in the country, whether it is writing an article in the newspaper, giving a speech in the public sphere or screening of a movie in a theatre.

Film makers too have the right to enjoy the freedom of speech and expression but the question which arises is whether any conditions be imposed when they are exercising this right in the

¹ http://theatreworld.in/wp-content/uploads/2017/01/Film_censorship.pdf

process of the production of their films or the imposition of conditions would be viewed as an attempt to curb artistic creativity?

What is Censorship?

According to the Black's Law Dictionary censorship is defined as the restrictions on publications and the presentation of books, plays, films, etc to the public.²

Significance of Film Censorship

When the media exercises the right allotted to them under Article 19(1) (a), it becomes extremely crucial to scrutinize and review the product before it reaches the public. The masses greatly seem to get influenced and carried away by the combination of both the effects including audio and visual in comparison to the printed word.

The process of film censorship or certification is the last stage in examining a film and it contains a decision whether a particular film should be permitted for the viewing of the spectators, or it should be allowed for the viewing but with alterations and eliminations. It is necessary to confirm that the citizens are not exposed to content which might disturb their mental peace and stability and leave them traumatized.

Film Censorship in India

The Central Board of Film Certification (CBFC) is a legal censorship and categorization body established under the Ministry of Information and Broadcasting, Government of India. The board has been allocated the authority of controlling the public presentation of films as per the provisions of the Cinematograph Act 1952.

The Cinematograph Act 1952 (Act 37 of 1952) does not only include the various provisions regarding the process of functioning and framework of the Central Board of Film Certification (earlier referred to as the 'Central Board of Film Censors') but also lays down various

² <http://thelawdictionary.org/censorship/>

directions to be followed by certifying films. During the initial phase it constituted only two kinds of certificates U- (Unrestricted public exhibition) and A(Restricted to adult audiences), but in the year 1983 in the month of June two other categories were included - UA(Unrestricted public exhibition subject to parental guidance for children below the age of twelve) and S(restricted to specialized audiences such as doctors).

The current censorship of films is governed by the 1952 Act, the Cinematograph Certificate Rules broadcasted in the year 1983 accompanied with the instructions given on a timely basis, the last issued in the year 1991 on 6th December. The directions are issued under Section 5B of the act which says “a film shall not be certified for public exhibition, if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the States, friendly relations with foreign State, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence.”

Till June 1 1983 recognized as the Central Board of Film Censors, initially was formed in Mumbai and had its regional offices at Mumbai, Chennai as well as Kolkata. Currently there are nine such offices based in Mumbai, Chennai, Calcutta, Bangalore, Hyderabad, Thiruvananthapuram, Delhi, Cuttack and Guwahati.

Under the scope of section 5D of the 1952 Act, a Film Certification Appellate Tribunal has been established for the purpose of hearing appeals against any order passed by the CBFC. This tribunal is situated in New Delhi.

It is the centre who is vested with the duty of investigating the matters relating to the certification of films while the state has the authority to execute the penal provisions against the offenders if they come across any sort of contravention of sections within the scope of the act.

The cinematograph act 1952 and cinematograph (certification) rules 1983, both together formulate the organizational structure of the Central Board of Film Certification. The CBFC consists of a chairperson and also not less than twelve and not more than twenty five other members which are appointed by the Central Government. The appointment is for a time span

not exceeding three years. The board also constitutes other renowned and prestigious personalities from diverse arenas of life including social sciences, law, education, art, films etc. Various advisory panels which are based in the regional offices assist the board and the management of each of these panels is administered by the head who is the regional officer. The members of these panels are authorized to hold the office for a term of not more than two years. But the re- appointment of members is permissible.

The CBFC divides itself into the Examining and Revising Committees to grant a two- tier system of jury for the purpose of certification of films. If at all there is any sort of conflict of judgment in the Examining Committee or relating to the applicant not being satiated in regard to the order of the examining committee, the chairperson is empowered to inform the revising committee for a reference of the film.

The certification rules are also applicable to the foreign films which get imported into India, including the movies which are dubbed as well as video films. The CBFC does not enjoy any censorship rights in the matters relating to dubbed films. The certification is also inapplicable to the movies particularly made for doordarshan. An exemption is granted to the doordarshan programmes from the provisions of censorship and doordarshan has its own procedure and technique for analyzing the film.

The CBFC has to ensure that any movie before it is screened has showed compliance to the following requisites:

1. The medium of the film remains answerable and sensitive to the societal morals and standards.
2. Artistic expression and the liberty of creativity are not excessively restrained.
3. Certification is responsive to social changes.
4. The movie provides clean and healthy entertainment.
5. The film is of aesthetic value and of good standards.

When all the mentioned conditions are complied with as per the Cinematograph Act 1952, only then the board would certify the film and grant grades as it deems fit.³ The

³ <http://www.shareyouressays.com/116176/essay-on-the-film-censorship-in-india>. Article shared by Pragati Ghosh

Cinematograph(Certification) rules 1983 explains the procedure that has to be compulsorily followed by a producer in order to get his film or video film certified ,along with clearly mentioning the steps he has to follow, the fees which has to be paid and other materials which has to be submitted by him.

The Shyam Bengal Committee was formulated on January 1 in the year 2016 to lay down certain rules and instructions for film certification that would take into cognizance the best practices all over the world and also to advise different practices which would provide a helping hand to the CBFC in the process of certification .Some of the recommendations of this committee are as follows. But however only some progress has been seen in this regard.

1. The CBFC should only carry out its functions pertaining to the certification of films and its authority should be restrained when it comes to categorizing of the movies to the audience on the grounds of age and maturity.
2. The board should be sanctioned with the power to deny certification to any particular film if it is in contravention of the provisions of the Cinematograph Act.
2. The applicant applying for receiving the certificate must mandatorily specify the category of certificate being sought and the target audience.

According to the Supreme Court of India *“Film censorship becomes necessary because a film motivates thought and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instill or cultivate violent or bad behavior. It cannot be equated with other modes of communication. Censorship by prior restraint is, therefore, not only desirable but also necessary.”*

Judicial pronouncements

In K.A Abbas v Union of India, the petitioner Abbas was an award winning film producer. The Film Board denied unrestrained screening of his documentary named ‘A tale of four cities’ as it contained scenes from a Red light district situated at Bombay. The board asked the petitioner

to edit a few scenes if he wanted his documentary to get qualified and obtain a screening certificate. The petitioner was not satisfied with the decision given by the film board and therefore he filed a suit in the Supreme Court stating that the board should be made liable for having violated his right of freedom of expression which was granted to him by the Constitution of India under Article 19(1) (a).⁴

The apex court of India in this case had held that the act of censoring films in India involving prior-restraint that is, pre-censorship was justified as per the constitution. The court confirmed the film censorship on the grounds of public morality, decency and in the good interests of the society. The court stated that the imposition of reasonable restrictions on the film before granting approval for screening was valid as per Article 19(2) of the Indian Constitution.

In another landmark case in the year 1989, the apex court exercised its power for safeguarding the freedom of expression. In *Rangarajan v P Jagjivan Ram*, the petitioner Mr Ranjaranjan was a film producer who had filed the suit for releasing “Ore Oru Gramathile”, a movie censoring the caste based reservation policy in the educational institutions situated in the state of Tamil Nadu. The movie was conceived of depicting a subject which would lead to turmoil and also give rise to other law and order issues in the Tamil Nadu state. In this case, the apex court reversed a Madras High Court judgment which had invalidated a U certified allotted to the film. When the case came up for hearing before the Supreme Court as an appeal, the court rejected the argument of the state asserting that the movie should be denied of giving a U certificate as according to them it was capable of agitating the public as well as creating animosity among them. The apex court in its judgment held that it was the responsibility of the state to preserve and protect the freedom of expression as it is a liberty guaranteed against the state. It also declared that the state had no right to plead its incapacity to deal with the antagonistic audience issue.⁵

In *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sangathana & Others*, a TV serial had been officially prohibited to be telecasted by the High Court on the grounds that it had the ability to spread blind beliefs among the public and make them superstitious. When the matter went to the Supreme Court, it held that the imposition of the ban violated the right to freedom

⁴ <https://theconsiglieres.wordpress.com/2013/03/11/free-speech-and-film-censorship/>. AIR 1971 S.C 481

⁵ <https://www.legalcrystal.com/case/659134/s-rangarajan-vs-p-jagjevan-ram-ors.> (1989) 2 S.C.C 574

of expression guaranteed under article 19(1) (a) of the Constitution. The apex court held that there was no sufficient evidence to prove that the program infringed the community interests.⁶

Road Ahead

To conclude we can derive that cinema is one of the most powerful mediums influencing the minds of the people by way of entertainment. It might instill divergent thoughts and ideas compelling them to develop a certain attitude in their heads or provoking them to act accordingly. The impact of the cinema is such that it can indirectly trigger the viewers to behave in accordance to what is exhibited on the screen. It has a greater effect on the hearts and the intellect of the individuals due to the combination of various aspects including drama, music, speech, dance, screenplay etc and therefore censorship becomes important. Vision is one of the most powerful influences on an individual and so it becomes necessary to impose certain restrictions as the depiction might instigate the masses to think and behave in the same fashion. At times, censorship becomes vital for the regulation of the human demeanor for if not, it might result in aiding them to engage in hazardous or unethical activities. But if the film is made for the purpose of giving a social message and if the citizens adopt the message conveyed and utilize it for the betterment and growth of the society or for creating awareness regarding the same, then there is absolutely no harm, till the time it is done lawfully.

A film on the other hand, if perceived in a wrong manner due to the way it is projected to the public, might inculcate evil intentions in the masses, aggravating them along with making them rebellious and restless, thus giving them a push to indulge in unlawful activities which would ultimately lead to generating acrimony among everyone. It might introduce misconceived notions in them by the strong combination of the audio visual effect which actually has the potential of influencing people belonging to all the age groups. India is country with a very high rate of population and comprises of different sections including the rich, the poor, the educated, the uneducated, the atheist, the theist and several others. Everyone would have a different approach when it comes to a film and so censorship at certain times would be acceptable taking into account the reverberations that it may have in their personal lives or in

⁶ <https://zegal.in/judgement/odyssey-communications-pvt-ltd-vs-lokvidayan-sanghatana-ors-supremecourt18660/>
1988 AIR 1642

the society due to watching it. Censorship would be justified if undertaken taking into consideration various important factors like the country's national security, peace, unity and order.

In some cases censorship becomes crucial when the film is related to sexual abuse, rape, violence, war or when it involves obscenity, vulgarity or offensive language with the underlying motto to deter citizens from being infuriated and engrossing themselves in anti-social or any kind of immoral activities after the film. But here also it is to be remarked that censorship to some extent is tolerable, that is, a few cuts which the board genuinely comprehends to be detrimental for the society and an interruption in the nation's progress and development. But if it is solely embraced stating it is for the object of merely preserving and safeguarding the culture, tradition and morals then it would not be tenable.

There might be some who absorb movies to a very large degree and also stand intensely affected by the same. So here censorship would be an essential factor but to a certain scale, because if it is not adopted in such cases, it would pressurize them to think in a particular manner, behave in a definite way, develop a fixed approach towards things and other individuals and correspondingly proceed with their lives.

Cinemas are apprehended by some as instruments of unleashing the truth by exposing them to different scenarios, keeping them abreast with all the different instances taking place in their surroundings and unveiling the incidents and the occasions concealed behind the closed doors by means of refreshment and leisure.

There are variety of genres in films like comedy, realistic, crime, thriller, adventure, romance, drama which if played by very alluring and well known celebrities, would achieve success in winning the hearts of millions, who would watch it with full determination and try resonating and comparing themselves having watched the film. The impact increases also because of the dialogues, music, dance performances etc displayed in the movie and therefore censorship if felt necessary in any of the above realms, should be adopted as it would affect the minds and lives of many.

The CBFC a lot of times exercises the power of censorship to a very unreasonable extent by snipping off all the major and the effective parts of the film. This not only dampens the creativity of the film but also is a mark of disrespect towards the efforts, dedication and the hard work of many years put together by the film maker, the actors and the entire team behind the movie. It would also amount to a violation of the right to freedom of expression under article 19(1) (a) of the constitution. A lackadaisical outlook adopted by the board in consonance with meaningless cuts is unacceptable and viewed as an attempt to have made a mockery of the entire film fraternity. It would also tarnish the reputation of the board in the public eye.

The board should weigh the pros and cons when deciding upon any particular film and ensure that their decision does not give rise to unnecessary controversies and confrontations. It should assure that their pronouncement does not pave way for any arguments and conjectures. It is important for the board to realize the fact that undoubtedly it is their duty to ensure that the movie is viewable by the audience and so is vested with the authority to monitor the impact that a movie can have on the masses. Therefore the board is granted the power of censorship but at the same time it is vital to understand that this power cannot be exercised arbitrarily by it. Sufficient reasons and adequate justifications should be made compulsory in cases of censorship for averting any chaos or confusion in the future.

Some of the major questions which yet remain unanswered are:

1. Should censorship be completely banned?
2. Should the CBFC only limit itself to film certification and remain aloof from the aspect of censorship?
3. Should it be left totally up to the discretion of the society as to what they want to see and what not?
4. Should the film makers be granted complete liberty on producing films?
5. Does the CBFC guidelines amount to prejudiced curtailment of the film maker's right to freedom of speech and expression?
6. Is censorship a violation of Article 19, 14 and 21 of the Indian Constitution with regard to the film producers?