A CRITICAL OVERVIEW OF CENSORSHIP IN INDIAN CINEMA IN LIGHT OF THE ROLE OF CBFC

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Abstract

If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.[1]

– George Washington

Cinema is an artistic expression of ideas, stories and often opinions, sometimes inspired by reality occasionally set to music, designed to enthral, enchant, or simply to entertain.[2] There are hardly any other mediums of expression that can actually claim foe levels of insidious influence and presence in our daily lives.

It has been one of the most potent tools of expression since its inception years back. It has been seen as a medium through which a larger picture of the society is depicted on the screen. It has been a source of introspection where in it has brought or tended to bring a positive change in the society.

In the introduction, the author 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 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.

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1 George Washington, *National Gazette*, http://www.mountvernon.o Feb 12, 2016.rg/digital-encyclopedia/article/national-gazette/ (July 12, 2016, 09:00 pm).

2 *Report of the Committee of Experts to examine issues of certification under the Cinematograph Act, 1952,* http://www.mib.nic.in/writereaddata/documents/Report_of_Expert_committee.pdf (July 10, 2016, 05:00 am).

As a conclusion, the author 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.

Cinema as a medium of expression

Cinema or motion picture has been defined as the art of colourful moving images.[3] Since the days of its inception, cinema has been one of the important tools of expression of ideas. It is a miniature of the societal values and prevailing trends of the society. A source of ideas and values, it has served as a carrier of transformation and revolution. It provides for a platform where in the society can crave for introspection for a positive change.

As a vehement and a potent tool of expression of free idea and thoughts, free cinema can be seen as a touchstone of freedom of expression. By the term free cinema, one can easily attribute to it a reference to a platform where in ideas can flow freely without restriction of any kind. Freedom of expression as understood in its entirety can encompass within itself a broad inclusive list of all the mediums of its movement. Expression through mediums like speech, art form, literary work, music etc can be considered as few of the many wings of this benevolent idea of free thought. Apart from these, cinema today serves as one of the most significant contrivance of the propaganda of free thought and reasoning.

Cinema and legal framework

Freedom of speech and expression is one of the most sacrosanct rights guaranteed under the Indian Constitution. It is the concept of being able to speak freely. It is often regarded as an integral concept in modern liberal democracies[4]. Article 19(1)(a) of Part III of the Constitution states that all citizens shall have a right to freedom of speech and expression[5]. It has been widely accepted that cinema being a mode of expression of thoughts gets

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3 Gabe Moura, *What's Cinema*, Elements of Cinema, www.elementsofcinema.com/cinema/definition-and-brief-history, (July 14, 2016, 04:00 pm).

4 Subhradipta Sarkar et al., *Banning Films or Article 19(1)(a)*, Legal Services India, http://www.legalserviceindia.com/articles/fban.htm (July 09, 2016, 05 :30 pm).

5 THE CONSTITUTION OF INDIA, 1950.

construed under the protection provided under Article 19(1)(a). However, Article 19(2) lays down reasonable restrictions on the freedom guaranteed under Article 19(1)(a). Reasonable restrictions which can be imposed over these rights can be on the grounds which include 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.[6] The same restrictions are articulated under the Cinematograph Act under which guidelines are laid down on the basis of which film certification is to be done.[7] Regulatory power over cinema is vested to the Union Parliament under Entry 60 of the Union List of the VII Schedule. The states enjoy limited jurisdiction with regards to regulation of motion pictures under Entry 33 of the State List.

Cinema in India is regulated under the Cinematograph Act of 1952. The Act makes provision for the certification of cinematograph films for exhibition and for regulating exhibition by means of cinematographs.[8]

The Act under Section 3, establishes a regulatory body called as Central Board of Film Certification which is primarily assigned the task of certifying films for public exhibition. The Board which works as a subsidiary body under the Ministry of Information Broadcasting has been vested with wide powers under section 4 of the Act under which it can regulate the exhibition of films.

Whether censorship is permitted

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

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6 INDIA CONST. art. 19(2).
7 Cinematograph Act, 1952, § 5 B(1).
8 Cinematograph Act, 1952.

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,

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 scrutiny.

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 pronouncements and censorship

In the case of *K.A. Abbas v. Union of India*[9], censorship under the Cinematograph Act and Rules framed thereafter in 1983 was challenged on the ground of it being violative of Article 19(1) (a) of the Constitution. The appellant claimed that such provision as articulated in various sections of the Act, i.e., section 5(1) (B), Section 4 and the CFBC's refusal to grant certificate to his film without several cuts, are in clear violation of the fundamental right of freedom of speech and expression. However in this case, the Supreme Court took a stand in favour of reasonable censorship and tested the said provisions of the challenged Act on the touchstone of reasonable restriction provided under Article 19(2) of the Constitution. The Supreme Court observed that censorship is a valid exercise of power in the interest of the public morality and decency.

However one of the landmark case, where in the Supreme Court zealously protected the freedom of expression is that of *Rangarajan v. P. Jagjivan Ram*[10]. In this famous case, the Supreme Court overturned the Madras High Court judgment which had revoked a U certificate awarded to the film *Ore Oru Gramathille*. This film which was based on the critical aspect of the government's reservation policy was seen by the Madras High Court as portraying a theme which could cause widespread unrest and law and order problem in the state of Tamil Nadu. But the when the matter went to the Supreme Court as an appeal, the

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9 K.A. Abbas v. UOI, A.I.R. 1971 S.C. 481.

10 Rangarajan v. P Jagjivan Ram, (1989) 2 S.C.C. 574.

Court demolished the argument of the state that the film ought to be refused a U certificate on the apprehension that it may create a public stir. The Court stated that: "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".[11]

The most recent case where in the judiciary stepped in and whipped the Central Board of Film Certification on its overreach is that of the controversy surrounding the film *Udta Punjab*. In this case, the Board refused to certify the film Udta Punjab which is based on the drug menace prevailing in the state of Punjab. In addition to its refusal to certify, the board suggested almost 13 cuts in the movie as a mandatory measure to seek certification. However on appeal by the filmmaker, the Bombay High Court criticised the Central Board of Film Certification for its conduct and poor way of handling the issue. The Court made a very important observation that the Board is not necessarily empowered to censor films. The word censor is not found in the Cinematograph Act. The board can make changes in the film but this power must be exercised in consonance with Constitutional Guarantee and Supreme Court orders.[12] It can be rightly believed that the verdict of the Court in this case will definitely serve as a milestone which can pave the way for the long pending reformation of the Certification Board. It can be seen that the Board has wrongly widened its power which actually meant to be restricted to certification of films for exhibition only, to now include within it the power to censor also. Such an attitude of the Board, which many a time is politically motivated, can put the rights of the citizen in danger.

Need for reformation of Certification Board

An urgent reform of the Central Board of Film Certification is a paramount task. The drive to change the certification ages as well as getting filmmakers and industry voices in charge of the Board is an indispensable change which needs to be put into effect as soon as possible.[13]

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11 *Id.*

12 Rahul Bhasin, *Don't be oversensitive, Bombay HC tells CBFC, clears Udta Punjab with one little cut*, INDIAN EXPRESS, http://indianexpress.com/article/india/india-news-india/censor-wanted-13-cuts-court-clears-udta-punjab-with-one-2850991/ (July 13, 2016, 06:50 am).

13 *Understanding India's dangerous history of film censorship & its implications*, Homegrown, http://homegrown.co.in/understanding-indias-dangerous-history-of-film-censorship-and-its-implications/ (July 10, 2016, 03:00 pm).

Various committees had been set up by the government in the recent past with the aim of suggesting measures to bring in reformation in the Boards. However little has been done to implement the suggestions forwarded by these committees. The Government of India did set up an Expert Committee and entrusted upon it the task of reviewing and recommending ideas which can be put forward through legislation which will regulate and certify as well as license the facets of this ever changing and precocious art form. The Committee came up with its report after a detailed study of the area of film certification and changing dimensions of certification of films around the globe. The Committee suggested the following principles for guidance in certifying the films.

While examining a film or causing a film to be examined for certification, the Board should be guided by the following principles: [14]

- The medium of the film should remain responsible and sensitive to the values and standards of society and as far as possible the Film should be of aesthetic value and cinematically of a good standard;
- Artistic expression and creative freedom should not unduly be curbed and certification should be responsive to social change;
- The film should be examined in the light of the period depicted in the film, context, containing theme and people to which the film relates and should be judged from the point of view of its overall impact and the contemporary standards of the country.
- Notwithstanding any stated above, a film should not be certified for exhibition if in the opinion of the Board, the film or any part of it is against the interest 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) Subject to the provisions stated above in sub-section (1), and (2) above the Central Government can issue such directions as it may think fit setting out the principles which shall guide the Board while granting a certificate under the Cinematograph Act for sanctioning films for public exhibition.

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14 *Supra* note 2.

Apart from the suggestions mentioned above, the Committee also recommended various other reforms which can be in initiated by the government in the overhaul of the Certification Board. However as of now, no reformative steps as suggested by the Committee have been taken by the government in order to initiate the reformation process.

Another committee under the head of the renowned film maker Shyam Benegal was setup by the Government of India in January 2016 to lay down norms for film certification that takes into consideration best practices in various parts of the world and to suggest practices which can aid the reformation in the certification process by the Certification Board. Some of the major recommendations suggested by this Board are:

- Certification Board should restrict its domain only to certification of films in order to categorize the suitability of the film to the audience groups on the basis of age and maturity.
- The Committee also suggested that the role of the Chairman of the Certification Board should be curtailed to be of advisory nature only. The Committee also suggested minimising the size of the Board keeping in mind its limited functions.

However, the Committee refrained from touching the restrictions imposed under section 5.1(B) of the Cinematograph Act which in the opinion of the Committee should continue to serve as the ground of refusal of certification by the Board.

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. However at the same time one must keep in mind the practical realities of the society in which such ideas are broadcasted. The peace and security of the society should not be disturbed in the process of expression of one's thoughts. Since cinema as a public expression can influence the society at large, caution must be taken while exhibiting the film to avoid any kind of chaos and threat to national security.

Henceforth, a balance must be maintained between the right of expression and the duty to maintain peace in the society. The Certification Board must take a balanced approach while

reviewing a film and must take into account that the harmony between freedom of expression and sense of security and peace in the society is maintained.

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