FREEDOM OF EXPRESSION VERSES CENSORSHIP IN CINEMA

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ABSTRACT:
The film being a piece of art, is entitled protection under Article 19(1)(a) of the Constitution especially when it has been duly certified by the Central Board of Film Certification. But there is a constant debate that the freedom of expression is being curtailed by the censor board. This paper tries to deal with the issue of freedom of expression in cinema and the need of censorship in it for communal harmony. The role of CBFC & Judiciary has also been discussed in this paper. The impact which the cinema influences in the mindset of people has a greater role in the development of the Nation. This paper aims to bring the balance and tries to analyze the solution for the existing problem in this aspect.

KEYWORDS: Censorship, Indian cinema, CBFC, Cinematograph Act, 1952.

INTRODUCTION
A cinematographic film can be defined as a motion picture. A film consists of moving pictures/frames which are recorded to be exhibited. A film may depict a story or a real situation.1 Cinematograph film means any work of visual recording and includes a sound recording accompanying such visual recording and a cinematograph shall be construed as including any work produced by any process analogous to cinematography including video films.2 The freedom of expression in cinema is often criticized to be suppressed by reason of censorship. But the censorship on other hands claims to maintain the peace and harmony of the society by following the constitution mandate. Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have a proximate and direct nexus with the expression.3

IMPACT OF CINEMA IN THE SOCIETY
Cinema has a greater influence on an individual’s daily life and the society at large. Cinemas are expressions of reality and comprise the elements happening in society. It is a visual medium that helps in telling a story. Cinema is the most collaborative and the most expensive expression of art where millions are spent to portray a story to the audience. Indian audience surely cannot imagine their lives without cinema similarly they relate their life scenarios to the incidents and scenes from any film. They even idolize, admire, and adopt certain movie characters, just like the early day stage plays. Cinema depicts the crude reality and society’s indulgences most significantly; it connects different cultures and introduces us to the various forms of art and culture in the world.4

1 Film, Collins Dictionary (10th ed. 2010).
Cinema adds unknown information and facts to people’s lives. Through purposeful cinemas, the public’s attention and opinion against social injustices and stigma were created.

A film motivates thought and action, assuring a high degree of attention as well as retention. It creates impact simultaneously arousing the visual and aural senses. The focusing of an intense light on a screen with the dramatizing of facts and opinion will make the ideas more effective. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have an impact in the minds of spectators. In certain situations, it will have a complete and immediate influence on and appeal for everyone who sees it.

Cinema is a break from stressful hours and provides with entertainment and amusement. Movies is an escape mechanism for people who hope to forget about their fears, frustrations and stress, even if the effect last for only a short period of time. It entertains them and makes them focus on things which have nothing to do with their own personal lives. The movie industry has played a huge part in creating valuable employment for large number of people. Naturally, making and producing a movie, has a varied scope for fresh talent. However, it requires specialized training and knowledge, in order to work for a movie. The society is modernizing, Indian Cinema is evolving too, now it is giving us movies like “Padman”, “Dangal”, “Hindi Medium”, “Article 15”, etc, which are creating awareness and breaking negative stereotypes of the society. Some movies like “Zindagi Na Milegi Dobara” are influencing youth to concentrate on their career but at the same time live life to its fullest.7

NEGATIVE IMPACT BY CINEMA:
Firstly, it stereotypes religious practices, communities, gender roles, and many more. Certain cinemas destroy moral values. Cinema portrays certain dark, undesirable, and vulgar connections that inbreed contaminated thoughts in the young mind. Most importantly, Cinema portrays crime, violence, and sexual content hideously. It contributes to the present day eve-teasing and vulgarity problems. It has a significant impact on young minds. It leads the youngsters of today to go astray and inflicts impure thoughts in youth minds. Fundamental right to free expression cannot be the lowest common detriment of debase or pornographic scenes undermining the social fabric to degenerate cultural values. Innovations may be good, but those innovations should not be at the cost of culture and traditions of this great country.8 Cinema has also often objectified women and has shown false cases through its content. We know that in many movies a big actress is signed to just star in a flashy song to advertise the movie. It might be helpful to sell the movie but it objectifies women. Scenes degrading or denigrating women in any manner should not be taken9.

permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. The depiction must be just sufficient for the purpose of the film.

**FREEDOM OF EXPRESSION IN CINEMA:**
Freedom of expression and speech has been recognized as one of the pre-eminent rights in a democratic Government, the touchstone of individual liberty. Freedom of speech and expression is a fundamental right guaranteed under the constitution of India. This right is however not absolute and is subject to reasonable prohibitions and restraints. The scope of the fundamental right to freedom of speech and expression has been expanded to include a filmmaker’s right to express their thoughts and ideas through the medium of a cinematographic film.

However, the filmmaker’s expression through their film may be restricted if the film poses a threat to national sovereignty, 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.

Keeping this in mind, the Cinematograph Act, 1952, and Cinematograph (Certification) Rules, 1983, prescribe the parameters and process for censorship of films and grant of certification in respect of films declared to be fit for public exhibition.

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10 Bobby Art International, Etc Vs Om Pal Singh Hoon&Ors (1996) WITH CIVIL APPEAL NOS. 7523, 7525-27 AND 7524 (Arising out of SLP(Civil) No. 8211/96, SLP(Civil) No. 10519-21/96 (CC No. 1828-1830/96 & SLP(C) No. 9363/96) (India).
11 The Central Board Of Film Certification v Yadavalaya Films 2007 (1) CTC 1
12 Naik & Naik company, Freedom of expression in Indian cinema, Indian business law journal blog, 26 February, 2012
14 PIF 6.242
necessary to prevent infliction of actual harm. If at all, any limiting line is to be drawn in the extreme cases, it shall be left to the judiciary on which the country has enormous faith. In sum, if democracy has to evolve, screening of films and documentaries can never be denied for reasons based on mere speculation. Some developments regarding such subject are encouraging; but others are depressing. Needless to say we still have greater heights to scale in this direction.\textsuperscript{16} 

\textbf{THE NEED FOR CENSORSHIP IN CINEMA:}
Censorship in simple terms means the suppression of words, images, or ideas that are offensive. Censorship is valid and it has to be seen from the purview of due process of law rather than offending freedom of speech and expression because “social interest of the people override individual freedom”.\textsuperscript{17} Freedom of expression is a fundamental right. Censorship is not the moral tailor setting his own fashions but a statutory gendarme policing films under Art. 19(2) from the angle of public order, decency or morality.\textsuperscript{18} Censorship is permitted mainly on social interest specified under Article 19(2) of the Constitution with emphasis on maintenance of values and standards of society.\textsuperscript{19} Censorship by prior restraint, therefore, seems justified for the protection of the society from the ill-effects that a motion picture may produce if unrestricted exhibition is allowed.\textsuperscript{20}

\textbf{ROLE OF CBFC IN REGULATING CINEMA}
The term censure in Latin means “to assess or to give one’s opinion”.\textsuperscript{21} In India this process of assessing the content of cinema and giving out the direction to make it fit for public viewing is done by Central Board of Film Certification (CBFC). The artistic products through visual medium have stronger influence on the viewers and the same penetrate much deep into the mindset of people compared to any other mediums of expression and this made the censorship of the films and certification of the same necessary, as a result of which, Central Board of Film Certification, also called Censor Board, came to be set up and the guidelines for its functioning are prescribed under the Cinematograph Act, 1952.\textsuperscript{22} This Act has provision related certification & regulating exhibitions of films. CBFC is a statutory body under Ministry of Information and Broadcasting. The Board headquarters is situated at Mumbai. It has 9 Regional offices at Mumbai, Kolkata, Chennai, Bangalore, Thiruvananthapuram, Hyderabad, New Delhi, Cuttack and Guwahati. The Advisory Panels assists the Regional offices in the examination of films. The panel members are nominated by Central Government by drawing people from different walks of life

\textsuperscript{17} Ranjit Udeshi v. State of Maharasthra 1965 AIR 881, 1965 SCR (1) 65 
\textsuperscript{20} Life Insurance Corporation of India v Prof.Manubhai D. Shah, (1993) A.I.R. 171, 1992 S.C.R. (3) 595 (India); 
\textsuperscript{21} Definition of censorship, https://www.pbs.org/wgbh/cultureshock/whodecides/definitions.html, ( Last Visited: 2\textsuperscript{nd} August 2021) 
\textsuperscript{22} A.M. Rathinam vs S. Sellapandian Crl.O.P. No.33757 of 2005 (Mad)
for a period of 2 years.\textsuperscript{23} CBFC has a vital role in providing healthy entertainment, recreation and education to the public.

In order to determine the principles to be observed in certifying films, the Board take steps to assess public reactions to films. The CBFC holds symposia or seminars of film critics, film writers, community leaders and persons engaged in the film industry, or such other persons and also undertake local or national surveys to study the impact of various kinds of films on the public mind.\textsuperscript{24}

**WHEN AN APPLICATION IS FILED FOR CERTIFYING A FILM, THE BOARD HAS THE FOLLOWING POWERS\textsuperscript{25},**

1. Sanction the film for unrestricted public exhibition (U); or
2. Having regard to any material in the film, if the board is of the opinion that it is necessary to caution that the question as to whether any child below the age of 12 years may be allowed to see such a film should be considered by the parents or guardian of such child, the board may sanction the film for unrestricted public exhibition with an endorsement to that effect (U/A); or
3. Sanction the film for public exhibition restricted to adults (A); or
4. Sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film (S); or
5. Direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or
6. Refuse to sanction the film for public exhibition.

**CENSORSHIP vs CERTIFICATION**

India's film censor board has been accused of arbitrarily curbing creative freedom of expression. The constant argument by the critics is that the board should be just a certifying board and not a censor board, so a basic certification system should only be followed in keeping with the principles of freedom of creative expression. The Rule 26 of Cinematograph (Certification) Rules, 1983 grants power to CBFC that that a film will not be granted 'U' or 'U/A' or 'A' or 'S' certificate, unless a specified portion or portions thereof be removed from the film. The applicant therefore will make a declaration in writing that he would remove those said portions and CBFC would grant certificate with respect to such endorsement with a specification of the portion or portions required to be removed and a statement of the exact length of each part or parts removed and in the case of reduction of scene or sequences, it shall mention the length of the portion reduced and the length of the portion retained and shall bear a clearly visible indication in the certificate. So for a film to be fit for public exhibition the cinema is being regulated in this aspect by removing objectionable portions. A cut-list is provided by CBFC which directs to delete, trim, defocus/ mute, replace the video or audio. In certain cases the CBFC would direct to add a disclaimer such as “Smoking is Injurios to health/ No animals were harmed”. Only after following

\textsuperscript{23} Central Board of Film Certification, About us, CENTRAL BOARD OF FILM CERTIFICATION (Jul. 31, 2020, 1:46 PM), https://www.cbfcindia.gov.in/main/about-us.html.

\textsuperscript{24} Rule 11, Cinematograph (Certification) Rules, 1983,G.S.R. & O 381(E) (India).

the said changes, the applicant/filmmaker gets the right to exhibit the film. When a film is altered by excision, addition, coloring or otherwise after it has been certified, it shall not be exhibited unless the portion or portions excised, added, colored or otherwise altered, have been reported to the Board and the Board has endorsed the particulars of the alteration or alterations on the certificate.26

GUIDELINES FOLLOWED BY CBFC

In exercise of the powers conferred by sub-section (2) of Section 5B of the Cinematograph Act, 1952 the Central Government directed that in sanctioning films of public exhibition, the Board of Film Certification shall be guided by the principles like Anti social activities such as violence are not glorified or justified, the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted, Scenes which have the effect of justifying or glorifying drinking/drug addiction are not shown and shall also ensure that the film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the films and the contemporary standards of the country and the people to which the film relates provided that the film does not deprave the morality of the audience.27 The 1991 Guidelines are mere a loadstar for the CBFC, and are not binding on them for a reason, which appears to be rather rudimentary. The CBFC is required to keep in mind mainly the provisions of Section 5B(1) of the Act.28

JUDICIARY & CENSORSHIP

The Supreme Court has validated the need of censorship in K. A. Abbas v. the Union of India & anr29 The Supreme court recognized the task of Board as very delicate and their duties are not comprehensive set of commands recognized by prior reasoning. Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. The Court would intervene in the matter which results in trampling upon the constitutional right of freedom of speech and expression conferred upon the aggrieved party.30 When the decision of the CBFC entrenches upon the fundamental right to the freedom of speech and expression, it is the duty and responsibility of the Court to intervene in such matters.31 Similarly if there is any disruption to the society peace and harmony, the court has the responsibility to decide that issue. The Court has also banned the release of a film on the other hand the Court permits the release of a film by over-turning the decision of CBFC.

CONCLUSION:

If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be

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26 Rule 33, Cinematograph (Certification) Rules, 1983, G.S.R. & O 381(E) (India).
30 Pankaj Butalia v Central Board of Film Certification and Ors. (2015) W.P.(C) 675/2015 (India).
restricted on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation. The CBFC should grant the appropriate certificate and 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. In deciding as to whether a deletion is to be ordered or not, the CBFC should view it from the perspective of a reasonable, strong minded, firm and courageous men and not from the point of view of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The film industry wielding huge influence over the masses is a powerful tool of propagation by itself, apart from being in commerce; the industry should also be infused with the social responsibility. Therefore, there should be a balance between three concepts – Social responsibility, tolerance & protection of freedom of expression, in order to normalize the battle between freedom of expression verses Censorship.

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33 Pankaj Butalia v Central Board of Film Certification and Ors. (2015) W.P.(C) 675/2015 (India).
34 V. Ramesh v The Director General Of Police, Crl.O.P(MD) No. 15550 of 2014 (India).