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# A CRITICAL OVERVIEW OF FILM CENSORSHIP IN INDIA VIS-À-VIS FREEDOM OF SPEECH

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## Introduction

In a modern liberal democracy like India, freedom of speech and expression mentioned in Article 19 (1) (a)[1] is the cornerstone. But far from what seems apparent, a closer examination reveals many hideous truths. Films are a valuable medium of speech and expression that have the ability to contribute to areas of good governance, rule of law and democracy concern.[2] Films play a vital role in inspecting and analysing the actions of those in power. This makes them vulnerable to censorship or political ban. Film censorship in India is very stringent and politically motivated. As long as one makes commercial movies with dance numbers and follows the customary notion of entertainment- there is no harm but the minute filmmakers voice a political opinion or be critical of the government the censor's scissors are applied arbitrarily. A caretaker attitude has been embraced by our lawmakers and politicians which is nothing but an attempt to curtail this fundamental right through motion pictures. Government of India clearly fears political cinema and this is where a cat and mouse game begins between Central Board of Film Certification and film makers to find out how much is too much. Censor Board in India curtails this fundamental right by indulging in moral policing. Lengthy, archaic and pointless cuts are made to films and this goes against the whole fabric of motion pictures and article 19(1) (a). The prestigious article 19 (1) (a) freedom of Speech and expression has lost itself in the culture of repression and censorship, and this call for an immediate reform of the Censorship Board is of paramount importance.

Political and social groups are major forces behind deciding what's politically correct for the Indian audience to watch. Any film that is against their belief or offensive in their eyes faces an unofficial political ban. Guidelines for film makers are bizarre. Their films are not only censored on the basis of violence, eroticism and obscenity but also denigration of those in power. The politician who condemns vulgarity in films uses the opportunity to make sure that his own vulgarities and worse are not exposed to public censure.[3] Films like 'Final Solution', 'The Da Vinci Code', 'Ram ke Naam' have been restricted in the name of public interest. This shows the callous attitude of our government and the fact that they are resolute to safeguard us from the very truth that our constitutional emblem guarantees. Govindu V said "India's worst brush with censorship occurred during the spurious emergency declared by the government of Prime Minister ' Indira Gandhi on 25 June 1975".[4]

[1] The Constitution of India, 1950, Art. 19(1)(a)
[2] Govindu, V. "CONTRADICTIONS IN FREEDOM OF SPEECH AND EXPRESSION." The Indian Journal of Political Science, vol. 72, no. 3, 2011, pp. 641–650., www.jstor.org/stable/41858840. Accessed 28 Apr. 2020.
[3] Noorani, A. G. "Film Censorship and Freedom." Economic and Political Weekly, vol. 29, no. 39, 1994, pp. 2521–2521. JSTOR, www.jstor.org/stable/4401808. Accessed 28 Apr. 2020.
[4] Govindu, V. "CONTRADICTIONS IN FREEDOM OF SPEECH AND EXPRESSION." The Indian Journal of Political Science, vol. 72, no. 3, 2011, pp. 641–650., www.jstor.org/stable/41858840. Accessed 28 Apr. 2020.

'Aandhi' by Gulzar was banned because it called out Indira Gandhi for her inequitable policies. This may be termed as a political gimmick but in reality it leads to abuse of freedom of speech and expression. 'Kissa Kursi Ka' remains the prime focus of the decade.[5] It was India's first political spoof, a satire on Indira and Sanjay Gandhi's power. This Shabana Azmi starrer could not see the light of the day as it was rejected a Censor Board certificate. Congress Workers had seized the film reel from the CBFC Office and burnt it.[6] The entire film fraternity was under tremendous pressure during the emergency and were threatened to support the government. Any filmmaker who dared to voice his opinion was refused a certificate by the censor board. Although the emergency period is over, films on controversial or sensitive topics still bear the brunt of getting banned by political parties and censor board. 'Rang de Basanti' ran into trouble when Aamir Khan exercised his right to free speech in support of those who got displaced during the Sardar Sarovar Dam project.[7] BJP Youth Wing tried to instigate a ban on his film. Motion pictures are a great medium to bring a wave of change, to force the government to make amends and set policies in a just manner. Political parties should not have the power to pass a verdict of ban on any film. The Supreme Court has ruled on numerous occasions that article 19 (1) (a) fundamental right to speech and expression applies to films. Reasonable restrictions can be imposed on any of the grounds mentioned in article 19 (2) like "defamation, public order... decency or morality". [8]Portrayal of the wrongdoings of those in power does not fall within the categories of article 19 (2). These incidents are a proof of the anti-democratic nature of political groups and their hard core efforts to curtail one of the most celebrated fundamental rights.

**Cinema and Legal Framework**

Today it is more important than ever to protect this prestigious fundamental right of speech and expression.[9] After the commencement of the constitution, the parliament enacted the Cinematograph Act of 1952[10]. This act was responsible to certify films and regulate their public display. The central government had the power to establish a censor board which comprised of around 12-25 members. After viewing and scrutinizing the film, the board either allows the film for public exhibition or refuses. The board can also recommend modifications. This act is critically related to Article 19. Section 5B (1) is a restatement of article 19(2) of the Indian constitution.[11] Whereas section 5 B(2) vests immense power in the central government and issues guidelines to

[5] Pathak, Devang. "Understanding India's Dangerous History Of Film Censorship & Its Implications." Homegrown, Homegrown, 13 Mar. 2017, homegrown.co.in/article/25265/understanding-indias-dangerous-history-of-film-censorship-and-its-implications/.

[6] Ibid.

[7] BISWAS, MOINAK. "For a Political Cinema to Come." Economic and Political Weekly, vol. 49, no. 33, 2014, pp. 23–26. JSTOR, www.jstor.org/stable/24480442. Accessed 29 Apr. 2020.

[8] Supra,2

[9] Fa, Wencong. "Remembering Why Free Speech Is Important." Pacific Legal Foundation, Pacific Legal Foundation, 13 Sept. 2019, pacificlegal.org/remembering-why-free-speech-is-important/.

[10] Cinematograph Act, 1952

[11] Boyd, Bruce Michael. "FILM CENSORSHIP IN INDIA : A 'REASONABLE RESTRICTION' ON FREEDOM OF SPEECH AND EXPRESSION." Journal of the Indian Law Institute, vol. 14, no. 4, 1972, pp. 501–561. JSTOR, www.jstor.org/stable/43950156. Accessed 30 Apr. 2020.

advise the censor board in consideration with Section 5B (1). This allows the central government to decide which content is satisfactory for the audience to watch. This is the area where the problem lies. Government uses its power in a ruthless manner and sanctions only those films which do not disparage its beliefs. The Cinematograph (Amendment) Act, 1974 created an autonomous Film Certification Appellate Tribunal (FCAT). It is headed by a chairman and 4 other members.[12] The powers of the central government in relation to any film were transferred to this tribunal. However this did not last long as Cinematograph (Amendment) Act, 1981 was enacted and it reduced the powers given to FCAT. After this amendment central government had the power under section 6(1) to order the recording of proceedings in relation to films and give certification as it deems fit. This amendment was very arbitrary in nature as central government could act according to its own whims and fancies. This was considered to be erroneous in the case of Union of India vs K.M. Shankarappa [13]where the Supreme court said that the government acted arbitrarily and ultra vires the constitution when it enacted section 6(1). It further upheld the status of FCAT and said that the tribunal's decision would be binding in all cases.

The Central Board of Film Certification (CBFC) has the duty to ensure that any film before getting released must adhere to certain guidelines which involves maintaining positive atmosphere, must be according to the expectation of the society and projected in subtle way where freedom of an individual shouldn't be restrained. A movie must not be communicating a distorted view to its audience with regard to certain scenes involving drinking/smoking/drug addiction, scenes criticizing women, violence against children etc. Once the film is reviewed by the Central Board, it has the authority to either approve the film by certifying it, or it may direct to make the required changes, or it may decline to release the film. However, there have been instances where such power is often misused by the Certification board because of which a question arises if we are losing more to censorship than we are gaining. An incident occurred in 2002 where a film called 'war and peace' directed by Anand Patwardhan which criticizes nuclear weapons tests conducted by India as a lot of people suffered staying nearby and discussed about victims of nuclear bomb blast which was considered as an achievement by the nation and how corruption and state has been a part of it. The film makes an influential request to maintain peace and harmony but still the censor board asked to make 21 cuts in order to get the film certified for release.[14] It is an evidence of censor board functioning as an organization of state protecting its interests to make sure that no opinion other than state should exist when such cuts are made as they do not want people to doubt their decisions relating to violence, which infringe freedom of speech and expression provided under Article 19 of the constitution

[12] "Film Certification Appellate Tribunal: Ministry of Information and Broadcasting: Government of India." Film Certification Appellate Tribunal | Ministry of Information and Broadcasting | Government of India, mib.gov.in/film/film-certification-appellate-tribunal.

[13] ILR 1990 KAR 4082

[14] Waldman, Amy. "A Brahmin Filmmaker's Battle to Tell India's Story in India." The New York Times, The New York Times, 24 Dec. 2002, www.nytimes.com/2002/12/24/movies/arts-abroad-a-brahmin-filmmaker-s-battle-to-tell-india-s-story-in-india.html.

of India. A Similar incident happened with film 'Udta Punjab'[15] where censor board declined to certify the film so that film could not be demonstrated or projected to the people as some of the scenes were too explicit and vulgar to be presented to general public and it depicted drug abuse in the state of Punjab and therefore was asked to make 89 cuts. It was observed how censor board misused their power and was also criticized by the court for their biased actions. It was later reduced to cutting of a single scene and granted 'A' certificate.[16] In 2004, a documentary 'final solution' by Rakesh Sharma was rejected to be screened in the country for supposed concerns as it might trigger communalism and also stated that "it might threaten the safety of the state and not be in the interest of public"[17] as it was based on Gujarat riots which took place in 2002 and many Hindus and Muslims were attacked after the main incident where train caught fire at Godhra railway station. The ban on the film was finally removed in October 2004 with the concerted effort involving online petitions, thousands of letters sent by the people addressing the government and many protests.[18] Often the excuse made by the state or the board to justify censorship is 'security of state'. A similar situation appeared with 'Chand Bujh Gaya' produced by Faaiz Anwar, portraying a love story of Hindu man and Muslim woman where they got apart due to Gujarat riot, which was not granted certificate by the censor board as riot continued to be a major issue by then which may promote violence in the community. Such refusal to sanction the film leads to the infringement of the right of the filmmaker.

**Judicial pronouncements and censorship**

Censorship has been misused to curtail the right to express opinions or ideas with respect to films, documentaries, television serials etc. and this sacred constitutional right has been vigorously taken care of by the courts in its decisions. The power of censor board to certify or censor the film was questioned for the very first time in K.A. Abbas v. Union of India[19] where the court made its judgement with related to the power of the board as per the framework in article 19(2) and also states that movies are considered distinct in nature with any other types of artistic creativity as it may arouse intense emotions than any other product of art. Another foundational case, where we observe the contribution of court safeguarding interest of filmmaker was in S.Rangarajan v. P.Jagjivan Ram[20] where HC refused to provide certificate to the movie named 'Ore Oru Gramathile' under unrestricted demonstration to the people as movie criticizes a controversial topic related to caste based reservation policy in jobs which may provoke audience and may lead to problems related to 'law and order' due to which an appeal was made to the apex court. They exercised their authority by overruling the pronouncement made by the subordinate court and criticized the state and asserted that fundamental right of filmmaker cannot be infringed because of threats related to

[15] Phantom Films Pvt Ltd. v. Central Board of Film Certification, 2016 SCC OnLine Bom 3862

[16] Desk, India Today Web. "Udta Punjab Will Fly This Friday; Supreme Court Refuses to Stay the Film." India Today, 16 June 2016, www.indiatoday.in/movies/bollywood/story/udta-punjab-supreme-court-high-court-cbfc-shahid-kapoor-release-date-14524-2016-06-16.

[17] "Entertainment | India Bans Religious Riot Movie." BBC News, BBC, 6 Aug. 2004, news.bbc.co.uk/2/hi/entertainment/3542340.stm.

[18] RAKESH SHARMA - Final Solution, rakeshfilm.com/finalsolution.htm.

[19] 1971 AIR 481, 1971 SCR (2) 446

[20] 1989 SCR (2) 204, 1989 SCC (2) 574

violence as it is expected to be the responsibility of state to safeguard the rights of the citizens provided in part III of the constitution. It also stated that the democratic system requires an informed and active involvement of its people in the civic affairs and the country will not flourish until people overtly express their opinions. The filmmaker may convey his opinion which may not be accepted by others and the state is not permitted to stop people from having discussions openly, no matter how insensitive they are to its policies as censorship is only allowed on the basis of regulations and limitations mentioned under Article 19(2). With regard to movie 'war and peace', when the appeal was made in HC of Mumbai, it hold an opinion that cuts proposed by FCAT were to annoy the filmmaker and in respect of any additions in the film, they stated that "filmmaker can make their own decisions in light of public interest"[21]. One of the most contentious case was the release of Da Vinci code as it faced a lot of criticism by Christians. The court believed that state government should not question the decision made by censor board and central government. The high court revoked the bans levied by the state government in the states of Tamil Nadu[22] and Andhra Pradesh[23] and also charged the government for the loss and damage caused due to the imposition of ban on the film. It also added that 'blasphemy' cannot be ground of censorship with regard to Article 19(2). The court was also inquisitive to know how a film could prevent someone to practice their religion. Another controversial case was F.A. Picture International v Central board of film certification[24] regarding a movie based on Gujarat riot, the tribunal didn't support the opinion of CBFC and FCAT[25], and criticized both as they made a mistake by refusing to certify the film just because movie was based on a controversial issue and involved real situations. The courts have time and again protected the thoughts and expressions of a filmmaker by considering motion picture as an official and relevant tool for dealing with questions of genuine concern.

## Conclusion

Film censorship curbs the freedom to express free thoughts and views. The government should not use film censorship as a tool to propagate it's agendas and put fetters on the films that go against them. With respect to Gujarat riots and other instances, the state governments have usually been incompetent to handle such issues. If a film tries to draw its audience's attention towards issues of public concern then the government refuses to screen such films in the theatres as happened with films such as Da Vinci Code, Deshdrohi, Parzania etc. In films like Rang De Basanti and Da Vinci Code, individuals and ministers from particular realms are invited in order to check the film's credibility which shows that it is infructuous to have a regulatory body of experts in the advisory

[21] Anand Patwardhan v. Cent. Bd. of Film Certification, 2004 (1) MAH. L.J. 856

[22] Sony Pictures Releasing of India Ltd. v. State of Tamil Nadu, (2006) 3 M.L.J. 289

[23] Outlook. "AP HC Quashes Order Banning 'Da Vinci Code'." Https://Www.outlookindia.com/, Outlookindia.com, 21 June 2006, www.outlookindia.com/newswire/story/ap-hc-quashes-order-banning-da-vinci-code/393730.

[24] AIR 2005 Bom 145, 2005 (1) BomCR 5, 2005 (2) MhLj 869

[25] Outlook. "HC Tells Censor Board to Give Certificate to Film on Guj Riots." Https://Www.outlookindia.com/, Outlookindia.com, 5 Nov. 2004, www.outlookindia.com/newswire/story/hc-tells-censor-board-to-give-certificate-to-film-on-guj-riots/259888.

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panel. A lot of loopholes exist within the state government and the censor board. Right to free speech and expression should never be curbed; otherwise we will just be an unquestioning and dying society with no ability to develop further. It is therefore suggested that the government should have a pragmatic approach towards the censorship regime and a strike a balance between upholding the freedom to express opinions and to maintain harmony and security in the society.

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