



ISSN 2582 - 211X

# LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - [journal@lexresearchhub.com](mailto:journal@lexresearchhub.com)

VOLUME II, ISSUE I  
OCTOBER, 2020

<https://journal.lexresearchhub.com>

Lex Research Hub  
Publications

## **DISCLAIMER**

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

**[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]**

## **EDITORIAL BOARD**

### *Editor-in-Chief*

**Mr. Shaikh Taj Mohammed**

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

### *Senior Editors*

**Dr. JadavKumer Pal**

Deputy Chief Executive, Indian Statistical Institute

**Dr. ParthaPratimMitra**

Associate Professor, VIPS. Delhi

**Dr. Pijush Sarkar**

Advocate, Calcutta High Court

### *Associate Editors*

**Dr. Amitra Sudan Chakraborty**

Assistant Professor, Glocal Law School

**Dr. Sadhna Gupta (WBES)**

Assistant professor of Law, Hooghly Mohsin Govt. College

**Mr. KoushikBagchi**

Assistant Professor of law, NUSRL, Ranchi

*Assistant Editors*

**Mr. Rupam Lal Howlader**

Assistant Professor in Law, Dr. Ambedkar Government Law College

**Mr. Lalit Kumar Roy**

Assistant Professor, Department of Law, University of GourBanga

**Md. AammarZaki**

Advocate, Calcutta High Court

## **ABOUT US**

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**A CRITICAL ANALYSIS OF THE FILM  
CENSORSHIP LAWS IN INDIA: AND THE NEED  
FOR REFORMS**

*Author –*

**Gaurav Naveen Kumar Thejasvi**

Advocate

Kesvy & Co., No.7/3, E-block, Unity Building, Bengaluru-560002

## **ABSTRACT:**

“Cinema is an expression of one's expression of thoughts and cinema is closely related to the social fabric of Indian society. It is used for socio-political awareness, propaganda and entertainment distribution. Cinema, with a tremendous influence on people's minds, is one of the most powerful media of the modern age. Cinema has built a room in the minds and lives of people, from forms of art that grow from myths to modernity, from tradition to theatre. Cinema as a medium of speech is covered under 19(1)(a) of the Constitution of India. Directors of movies are free to discuss ongoing issues such as caste discrimination, reservation, LGBT rights, atrocities against women, and backward people of society. And they need to make sure that the films do not encourage communal violence, affect public order, sovereignty and integrity of India, morality and decency in doing so. In order to avoid such violations, the concept of film censorship was introduced.

This study aims to solve problems in India linked to film censorship. And it will demonstrate how, due to film censorship, the Indian film industry faces issues. It would lead to misuse of power by giving the Central Film Board Certification enormous power to censor film. And try to emphasise how, by banning movies, pre-censorship will impede the ingenuity of filmmakers by restricting their freedom of speech and expression. It will also illustrate the shortcomings found in the Cinematograph Act, 1952, The Cinematograph (Amendment) Bill, 2019. The paper will also discuss the relationship between cinema and freedom of expression and speech, the need for film censorship, the limitations placed by the Cinematograph Act of 1952, and the need for reforms.”

### **Keywords:**

Cinema, Freedom of Speech and Expression, Film Censorship, Reasonable restrictions, Public order, morality, decency, Defamation, Obscenity Test, Hicklin's Test, Likely Audience Test.

### **RESEARCH QUESTION:**

1. Whether pre-censorship violates freedom of speech and expression under Article 19(1)(a)? And whether such restriction is within the meaning of reasonable restrictions under Article 19(2)?
2. Is there a need for Amendment to the Cinematograph Act,1952?
3. Is Judiciary upholding right of Freedom of speech and expression of film making?

### **OBJECTIVES:**

1. This Research will be reviewing film censorship laws in India.
2. This Research will go through all the laws, guidelines, test and process involved in Film Censoring.
3. This Research will also highlight lacunas that exist in Cinematograph Act and Central Board of Film Certification guidelines and suggest possible changes that can be brought in the existing Act.

### **RESEARCH METHODOLOGY:**

The methodology adopted for research is doctrinal as there is data available in the form of primary and secondary sources. The area of research is, broadly, constitutional and media law. The research involves examining case laws, books, commentaries, articles on film censorship.

### **RESEARCH PROBLEM:**

The main focus of this study is Film censorship in India. And the emphasis would be on how the Indian film industry faces difficulties because of film censorship. Granting of Immense power to the Central Board of Film Certification to censor film may lead to misuse of powers. And will try to highlight how pre-censoring will hamper film makers creativity by suppressing their Freedom of Speech and Expression by banning films. And the lacunas existing in the Cinematograph Act,1952, The Cinematograph (Amendment) Bill,2019, will also be highlighted. In addition, the paper discusses the relationship between cinema and freedom of speech and expression, the need



for film censorship, the limitations laid down under the Cinematograph Act, 1952 film law and the need for Reforms.

### **SCOPE AND LIMITATION OF THE STUDY:**

The main objective of this research is to address issues and controversies revolving around film censorship in India. The present research looks into the ramification and effectiveness of film censorship in post-independent era in the light of constitutional provisions.

## **I. HISTORICAL DEVELOPMENT OF FILM CENSORSHIP IN INDIA:**

Cinema in India first began with the Lumiere Brothers projecting films such as "cinematograph," and "Train Arrival," And Indians have joined the world of film making and production within a short period of time. The movie "Raj Harishchandra", produced by Dadasaheb Phalke and released in the year 1913, was the first Indian feature film ever to be shown publicly. During the early history of the cinema, there was no need for censorship. As most of the films were made on religious themes like "Ramayana", "Mahabharata" etc. which were projected to the public at large. People consider these films to be just a source of entertainment. Indian Freedom Fighters were using films and movies to promote national independence and nationalism. The British made laws to support film censorship and exhibition. In November 1917, the Imperial Legislative Council proposed an ordinance that would create a screening law for film in India. The primary objective of this Bill was to restrict the showing of inappropriate and offensive films to the general public.<sup>1</sup>

### **LEGISLATIONS REGULATING FILM CENSORSHIP IN INDIA:**

#### **1. Pre-Independence Development of Film Censorship in India:**

##### **The Cinematograph Act, 1918:**

Censorship and Regulation of film exhibition was the principal objective of the Cinematography Act of 1918.<sup>2</sup> This act prevented the exhibition of films elsewhere than the place where they were

---

<sup>1</sup> Someshwar Bhowmik, Cinema and Censorship: The political Control in India, Pg.63(Orient Black Swan,2009).

<sup>2</sup> Report of the Indian Cinematograph Committee, Pg.224(Government of India,1928).

permitted.<sup>3</sup> The interim government was empowered by the Examining Committee to censor and certify films. The act stipulates the regulations and conditions for a license to display the licensee's films. Paragraphs (5) and (6) of Section 9 permit a provincial government to produce its own rules and regulations on film certification.<sup>4</sup> The district magistrate was entitled under this Act to grant film display licenses.<sup>5</sup> The provincial government, district magistrate, police commissioner or any other authority were entitled, under section 7 of the Act, to grant licenses to suspend the exhibition, should a film be violating peace or if it causes breach of peace.<sup>6</sup> One of the drawbacks of the act was that it didn't lay down guidelines that the certifying authority must keep in mind while certifying films. The act empowered the boards to deny or issue certificates.<sup>7</sup> Films which opposed British education and promoted nationalism continued to be prohibited by the boards. "Bhakta Vidhur" the first movie that was banned.<sup>8</sup> The Indian Cinematograph Committee was established in 1927 under the chairmanship of T. Rangachariar, the former High Court judge of Madras. The Committee recommended the creation of a Central Committee for the certification of films, the recruitment of full-time chairmen and non-official members, the appointment of chief and deputy censorship officers to oversee the process of censoring and certifying films, and the adoption of a British model for the issuance of certificates, including two forms of universal and public certificates. In addition, under the concurrent list, the Government of India Act,1935 brought the subject of film censorship and certification.<sup>9</sup>

## **2. Post-Independence Development of Film censorship in India:**

### **A. Cinematograph (Amendment) Act,1949:**

“In order to amend the Government of India Act,1935, which was still in effect, the Act was passed. With regard to section 3(b)(1A) (b) of that amendment, the executive authority of the central government was expanded to the provinces with regard to the sanctioning of films for exhibition. Under the Union List, the subject 'Sanctioning cinematographic films for exhibition'

---

<sup>3</sup> The Cinematograph Act,1918, sec.3

<sup>4</sup> The Cinematograph Act,1918, sec.9

<sup>5</sup> The Cinematograph Act,1918, sec.4

<sup>6</sup> The Cinematograph Act,1918, sec.7

<sup>7</sup> Report of the Enquiry Committee on Film Censorship, Pg.2-5(Government of India,1969).

<sup>8</sup> Report of the Enquiry Committee on Film Censorship, Pg.25(Government of India,1969).

<sup>9</sup> Report of the Indian Cinematograph Committee, Pg.224(Government of India,1928).

was introduced.<sup>10</sup> Two types of certificates were introduced by the amendment act, firstly "U" certificate, which permitted unrestricted film exhibition and secondly "A" which was limited to adults only.”

**B. Film Enquiry Committee,1949:**

“On 29 August 1949, the Film Enquiry Committee was established. It is famously known as the Patel Committee. S.K Patel, who was a member of the constituent assembly, was named as the committee chairman. The committee recommended that a legislative body called the Film Council of India should be set up to advise the central government on issues relating to the production, distribution and exhibition of films. It was composed of the chairman and seventeen other government-appointed members. It also suggested the creation of an Administrative Code for Production, which would go through film scripts and grant approval prior to the start of film production.”<sup>11</sup>

**C. Cinematograph Act,1952:**

“The main objective of the act was to differentiate between the laws relating to the licensing and the laws regulating sanctioning of films for exhibition purposes. It gave the central government the power to lay down rules concerning the constitution of the board, the procedure for the inspection and certification of films, the selection of subordinate boards or officers, and the procedure for appealing against the decision of the board. Section 3 of the 1952 Act dealt with the structure of the Central Film Certification Board, which was granted the responsibility to approve and certify films.<sup>12</sup> Section 4 lays down a comprehensive process for certifying and sanctioning exhibition films, which includes deciding if a film is suitable for unrestricted public screening or if it is restricted to adults only, where 'U' in the previous case or 'A' in the latter case is granted to the film applicant. If the film is not suitable for an open public exhibition or a public exhibition limited to adults, the board shall order that some scenes in the film be omitted or changed and that the examining committee be informed, including the principles to be taken into account before

---

<sup>10</sup> Cinematograph (Amendment) Act,1949, Sec.3-9.

<sup>11</sup> Bruce Michael Boyd, Film Censorship in India: A Reasonable Restriction on Freedom of Speech and Expression, Vol.14, Journal of the Indian Law Institute, Pg.511(1972).

<sup>12</sup> The Cinematograph Act,1952, sec.3.

deciding.<sup>13</sup> In order to give effect to the provisions of the Act, Section 8 requires the central government to make laws.<sup>14</sup>”

#### **D. Cinematograph (Amendment) Act,1953:**

“In order to improve the central government's revisional powers and make the penalty provision more deterrent, the Amendment Act was passed. It waived the two-week notice period requirement; the central government could suspend the film exhibition for a period of two months at any time.<sup>15</sup> The CBFC set up a 'Directives Review Committee' which set out guidelines or standards to be taken into consideration when determining whether or not a film is appropriate for public exhibition, which includes, first, that the film should not lower the moral standard of those who see it; second, that the standard of life portrayed should not deprave the viewers' morals; third, that the film should not break the moral standard of those who see it.<sup>16</sup>”

#### **E. Cinematograph (Amendment) Act,1959:**

“The Amendment Act brought significant changes to the old Act by introducing sections 3,4,5,5A,5B,5C & 6. These sections explained the functions of CBFC in an elaborate manner. Section 3 specifies that the CBFC would consist of Chairman and not more than nine members appointed by the central government. Section 4 lays down the procedure for examination of films and subsequent course of action open to the CBFC. Section 5 conferred statutory status to the advisory panels attached to the regional centers under the act. Section 5B stated that the film will not be allowed for public exhibition, if the competent authority feels that the film or any part of it violates public order, defames any person, incites a person to commit a crime.<sup>17</sup>”

#### **F. Khosla Committee:**

“The Enquiry Committee on Film Censorship, also known as the Khosla Committee, was formed under the chairmanship of G.D Khosla in 1968 in the midst of mounting criticism of the censorship system to examine current procedures for certification of cinematographic films for public exhibition in India.<sup>18</sup> The Committee proposed that the Regional Boards should be abolished and

---

<sup>13</sup> The Cinematograph Act,1952, sec.4.

<sup>14</sup> The Cinematograph Act,1952, sec.8.

<sup>15</sup> Someshwar Bhowmik, Cinema and Censorship: The political Control in India,Pg.78(Orient Black Swan,2009).

<sup>16</sup> Someshwar Bhowmik, Cinema and Censorship: The political Control in India,Pg.79(Orient Black Swan,2009).

<sup>17</sup> Arpan Banerjee, Political Censorship and Indian Cinematographic Laws: A Functionalist-Liberal Analysis, 2 DREXEL L. REV.557, Pg.27(2010).

<sup>18</sup> Report of the Enquiry Committee on Film Censorship, Pg.18-22(Government of India,1969).

that all censorship powers should be exercised in their place by the Central Board. The board should be composed of twenty members from various regions. The board's decision should be final. It suggested hearing appeals against the directions of the CBFC for the creation of the Appellate Tribunal.<sup>19</sup>”

#### **G. Working Group on National Film Policy,1979:**

“A conference of State Information Ministers, under the chairmanship of Dr. K.S Karnath, recommended a revival of efforts to formulate a National Film Policy.<sup>20</sup> It recommended that, except on grounds of sovereignty and integrity of India, the central government's revision and appellate powers over the CBFC's decisions should be revoked and granted to the judicial tribunal.<sup>21</sup> It suggested the creation of an additional censorship category, which is called "UA," to be used by children under twelve. It proposed that three regional boards should be set up to strengthen implementation of the act.<sup>22</sup>”

#### **H. Cinematograph Act (Amendment) Act, 1981:**

“The Amendment Act extended the dual classification of films, namely "U" and "A," to an unrestricted public exhibition “UA”, which was further incorporated into two additional categories, one with a precautionary policy for parents/guardians to be able to see a film or "S" in public exhibitions limited to any profession or group of people with a special interest in the existence, content and theme of a film.<sup>23</sup> Under Section 5B of the main act, the principles of film certification were extended to include an additional restriction that was "interest in sovereignty and integrity of India." The committee also recommended that an appellate tribunal consisting of a chairman and no more than four members appointed by the central government should be created.<sup>24</sup> The 1983 Cinematograph (Certification) Regulations were adopted, which introduced major modifications. There were requirements under Rule 3 for sufficient representation of women on the board. A new position of Chief Executive Officer to carry out administrative functions was created under Rule 9.<sup>25</sup>”

---

<sup>19</sup> Report of the Enquiry Committee on Film Censorship, Pg.100(Government of India,1969).

<sup>20</sup> Report of the Working Group on National Film Policy, Pg.75 (Government of India,1980).

<sup>21</sup> Report of the Working Group on National Film Policy, Pg.77 (Government of India,1980).

<sup>22</sup> Report of the Working Group on National Film Policy, Pg.78 (Government of India,1980).

<sup>23</sup> Someshwar Bhowmik, Cinema and Censorship: The political Control in India,Pg.235(Orient Black Swan,2009).

<sup>24</sup> Someshwar Bhowmik, From Coercion to power relations: Film Censorship in Post-Colonial India, Vol.38, No.30, Economic and Political Weekly (2003).

<sup>25</sup> Someshwar Bhowmik, Cinema and Censorship: The political Control in India,Pg.239(Orient Black Swan,2009).

### **I. Certification Guidelines 1991:**

In 1991 the central government issued new guidelines with the objective of providing clean and healthy entertainment and promoting good standard films. Some of the guidelines are:

“1. Anti-social activities are not to be glorified or justified, 2. Scenes which glorify or justify drinking, 3. Scenes degrading women in any manner, 4. Scenes which glorify or justify drug addiction, 5. Human sensibilities offended by vulgarity, obscenity or depravity, 6. Public order is not endangered, 7. Friendly relations with foreign state is not strained, 8. Security of the state is not jeopardized, 9. Sovereignty and integrity of a nation is not called in question, 10. Words or visuals involving defamation of an individual or contempt of court”.<sup>26</sup>

## **II. CONSTITUTIONAL MANDATES AND LEGAL REGULATION OF FILM CENSORSHIP IN INDIA**

Freedom of expression has a constitutional quality that is significant and distinct from any other freedom granted under the Indian Constitution. It is essential in order to make the democratic process work properly. It gives us a chance to discuss the issues freely. It plays an important role in shaping the social, political and economic viewpoint. Freedom of expression involves the freedom to share and exchange thoughts, to disseminate information that helps shape one's perspectives and views.<sup>27</sup> The freedom of speech and expression has four main objectives: (a) strengthening individuals' decision-making rights; (b) achieving an equitable balance among security and social change; (c) giving free exchange of ideas; (d) disseminating knowledge that helps to share opinions and views.<sup>28</sup> "Article 12 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of speech and expression, including freedom to hold opinions without interference and to seek, obtain and impart information through any medium of media, irrespective of frontiers.”<sup>29</sup>

---

<sup>26</sup> Arpan Banerjee, Political Censorship and Indian Cinematographic Laws: A Functionalist-Liberal Analysis, 2 DREXEL L. REV.557, Pg.35(2010).

<sup>27</sup> Shameek Sen, Right to Free Speech and Censorship: A Jurisprudential, Vol.56, No.2, Journal of the Indian Law Institute, Pg.25(April-June 2014).

<sup>28</sup> Indian Express Newspaper Ltd. V Union of India (1985) 1 S.C.C 641.

<sup>29</sup> Universal declaration of Human Rights(1948), Article 12.

### **A. CINEMA AS A MODE OF SPEECH AND EXPRESSION:**

Cinema is an artistic expression of ideas covered under the Indian Constitution under Article 19(1)(a). Motion pictures are regarded by many jurists and thinkers as the most productive way of expressing ideas and thoughts to people. In a variety of ways, films can influence public attitudes and actions, right from the rituals and practices in which they believe.<sup>30</sup>In *Director of Film Festival v Gaurav Ashwin Jain*, the Supreme Court held, “that under Article 19(1)(a) of the Constitution of India, the right of filmmakers to make films and to exhibit films is part of their constitutional right of speech and expression.<sup>31</sup> Although the main object of cinema is commercially oriented, it is also a way of communicating the ideas of a person about a specific subject.<sup>32</sup> Cinema serves as a mirror to society and is protected under Article 19(1)(a) only if it complies with the reasonable restrictions laid down in Article 19(2) of the Indian Constitution and the guiding principles laid down in Section 5B of the Cinematograph Act, 1952.<sup>33</sup>” “The America's constitutional rights are absolute rights that are beyond dispute. What the drafting Commission has done is to invent the doctrine of "Police Power" instead of formulating fundamental rights in absolute terms and relying on our Supreme Court to save Parliament by inventing the doctrine of "Police Power," by which it allows the state to enforce limits on fundamental rights directly.<sup>34</sup>”

### **B. CONSTITUTIONALITY OF FILM CENSORSHIP IN INDIA:**

According to Harold. D. Laswell, censorship, “is the policy of restricting public expression of ideas, opinions, conceptions which are believed to have the capacity to undermine the governing authority or social and moral order which the authority considers bound to protect.<sup>35</sup>” In *K.A. Abbas v Union of India*<sup>36</sup>, the petitioner had challenged the CBFC’s order of refusing to grant “U”

---

<sup>30</sup> Samantha Barba’s, How the movies became Speech, 64 Rutgers L. Rev.665, Pg.667(2012)

<sup>31</sup> Director of Films v Gaurav Ashwin Jain A.I.R 2007 S.C 1640.

<sup>32</sup> Miriam Sharma, Censoring India: Cinema and the Tentacles of Empire in the early years, Vol. 29(1), Sage Publications, Pg.41-73(2009).

<sup>33</sup> Dr. Sukanta. K. Nand, Media Freedom, Film Censorship and Freedom of Expression- An Evaluation, Volume No.04, International Journal of Science, Technology & Management.77, Pg.80 (2015).

<sup>34</sup> Constituent Assembly Debates, Vol. VII, Pg.40-41 available at <https://www.constitutionofindia.net> (Last visited December 17,2020, 1:17 PM)

<sup>35</sup> Dr. Sukanta. K. Nand, Media Freedom, Film Censorship and Freedom of Expression- An Evaluation, Volume No.04, International Journal of Science, Technology & Management.77, Pg.90(2015).

<sup>36</sup> K.A Abbas v Union of India (1970) 2 S.C.C 780.

certificate to his film, “A tale of two cities”. On appeal the central government issued direction to grant “U” certificate provided certain cuts were made in the film. The Petitioner filed the present petition challenging the part-II of the Cinematograph Act,1952 together with the rules prescribed by the central government on February 6, 1960 under section 5 B of the principal Act were unconstitutional and void. The Supreme court

framed the following issue: (1) whether pre-censorship violates right to freedom of speech and expression under Article 19(1)(a)? And (2) Whether the classification of films under the cinematograph act is valid? The supreme court held that “Censorship of films including the prior restraint is justified under the constitution as it is valid restriction upon freedoms guaranteed under Article 19(1)(a) and falls within the ambit of reasonable restriction under Article 19(2) of the constitution of India. Further, the classification of films into “U” and “A” categories are reasonable classification within the meaning of Article 14 of the constitution of India since, the films are classified as one being for unrestricted public access and other which is limited only to adults. The general principles under section 19 and section 5B of the cinematograph Act,1952 are valid and not vague.

### **C. CONSTITUTIONAL RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION:**

The Indian Constitution guarantees freedom of speech and expression in accordance with Article 19(1)(a) of the Constitution of India, which is subject to reasonable restrictions laid down in Article 19(2) of the Constitution of India. In order for any restrictions to be deemed to be legitimate, they must fall within the scope of the appropriate restrictions referred to in Article 19(2), if the restrictions imposed go beyond the restrictions referred to therein, they shall be struck down as unconstitutional by the courts.<sup>37</sup> Any legislation which arbitrarily or disproportionately infringes the law cannot be said to contain the standard of reasonableness unless it strikes a proper balance between freedom of speech and expression under Article 19(1)(a) and social regulation in the form of reasonable restrictions under Article 19 (2).<sup>38</sup> The **Test for Reasonable Restrictions** has been

---

<sup>37</sup> K.D. Gaur, Constitutional Rights and Freedom of Media in India, Vol.36:4, Journal of the Indian Law Institute, Pg.105 (October-December 1994).

<sup>38</sup> Chintamani Rao v State of M.P A.I.R (1951) S.C 118.



laid down by Justice M. Pantanjali Shastri in the case of *V.G Row v State of Madras*<sup>39</sup>, explained the Test of reasonableness as “it is important to bear in mind that the reasonableness, whether prescribed should be applied to each individual statute impugned and not in abstract manner”. For adjusting reasonableness of restriction, the court have to consider the nature of the right alleged to have been infringed, underlying purpose of the restrictions imposed, extent and urgency, prevailing conditions at that time etc.

The Indian Constitution recognizing this very aspect of the reasonable restriction has also enumerated the same in Article 19(2) of the Constitution of India. The reasonable restrictions imposed in on the exercise of Article 19(1)(a) the same is articulated in the same manner under Section 5B of the Cinematograph Act,1952 as guidelines for censoring films.<sup>40</sup>

Some of the Restriction in relation to Cinema are:

**(1) Sovereignty and Integrity of India:**

The constitutional (sixteenth amendment) Act,1963 enacted this limitation. This amendment secured the freedom of speech and expression from being used as a weapon to threaten the territorial integrity and sovereignty of India. The amendment granted broad powers to suppress the right to freedom of speech and expression if it is predicated on the concept of threatening sovereignty and integrity of India.<sup>41</sup> Cinema can be used as a means of propagating ideas of cession or of encouraging people to do any act that would harm the sovereignty and dignity of India, with the above reasons added for the certification of films.

**(2) Friendly Relations with Foreign States:**

This Ground was inserted by the Constitutional (First Amendment) Act,1951. Article 51 of the Constitution of India imposes a duty upon the state to promote and maintain international peace and security and honorable relations between nations. State is empowered to impose restriction for the reason that any publication of any unrestrained malicious propaganda or material likely to affect friendly relations of India and with other states.<sup>42</sup>

**(3) Contempt of Court:**

---

<sup>39</sup> V.G Row v State of Madras A.I.R (1952) S.C 196.

<sup>40</sup> M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edition, Lexis-Nexis Butterworth Wadhwa, Nagpur, Pg.120 (2015).

<sup>41</sup> Madhavi Goradia Divan, Facets of Media Law, 2<sup>nd</sup> Edition, Eastern Book Company, Lucknow, Pg.38 (2015).

<sup>42</sup> Jagdish Swarup, Constitution of India, Vol-1, 2<sup>nd</sup> edition, Modern Law Publications, Pg.25 (2007).

Contempt of Court is another recognized restriction under Article 19(2) to the freedom of speech and expression guaranteed under Article 19(1)(a). The Halsbury's Laws of England defines Contempt of Court as, "Any act done or in writing which is calculated to bring a court or judge in contempt or lowers his authority or interferes with the due course of justice or lawful process of court".<sup>43</sup> In *E.M Sankaran v T. Narayana Nambiar*<sup>44</sup>, the supreme court held that, "the liberty of free expression is not to be compounded with license to make unfounded allegations of corruption against the judiciary. The abuse of liberty of freedom of speech and expression carries the case nearer to the law of contempt."

#### **(4) Defamation:**

Defamation is an injury to a man's reputation by words either written or spoken or expressed in any electronic or digital medium. It is a culmination of the conflict between society and the individual. On one hand lies the Freedom of speech and expression enshrined under Article 19(1)(a) and on the other is the right of the individual to protect his reputation.<sup>45</sup>

#### **(5) Public Order:**

This Ground was inserted by the Constitutional (First Amendment) Act, 1951. One of the reasons for imposing such restriction under Article 19(2) was to reduce the effect of the decision of the Supreme Court in *Romesh Thappar v State of Madras*<sup>46</sup>, in this case section 9(1)-(a) of the Madras maintenance of public order Act, 1949 under which the government had issued an order imposing a ban on entry and circulation of crossroad journal in state. Section 11 of the Cinematograph Act, 1952 empowers the government to suspend the exhibition of film that is likely to cause the breach of peace and affect public order. In *Prakash Jha Production and others v Union of India*<sup>47</sup>, the writ petition was filed seeking a direction to lift the suspension of the screening of the film "Arakshan" in the states of Punjab, Andhra Pradesh and Uttar Pradesh for a certain period. The petitioners sought a relief to strike down the provisions of section 6(1) of the U.P Cinemas (Regulation) Act being ultravires the constitution of India. The Supreme Court held that, "the examining committee decision granting permission for the screening of film all over the country

---

<sup>43</sup> Halsbury Laws of England, 4<sup>th</sup> Edition 2006.

<sup>44</sup> *E.M Sankaran v T. Narayana Nambiar* (1971) S.C.R (1) 697

<sup>45</sup> Madhavi Goradia Divan, *Facets of Media Law*, 2<sup>nd</sup> Edition, Eastern Book Company, Lucknow, Pg.45 (2015).

<sup>46</sup> *Romesh Thappar v State of Madras* (1950) S.C.R (1) 594.

<sup>47</sup> *Prakash Jha Productions and Ors. v Union of India* (2011) 8 S.C.C 372.

was challenged before the high-level committee constituted by the state government which had ordered for the deletion of certain scenes which could affect public order in the state. The court held that such powers of pre-censorship were not vested with the high-level committee. Once, the movie is cleared for public screening the same cannot be prohibited by the state.”

**(6) Incitement to commit an Offence:**

This Ground was inserted by the Constitutional (First Amendment) Act,1951 to Article 19(2). The Constitution of India empowers the state to impose restrictions on the freedom of speech and expression if it is used as a tool to incite persons to commit offences against the state like waging war against the government.<sup>48</sup> In *Ramesh Pimple v Central Board of Film Certification and Ors.*<sup>49</sup>, a writ petition was filed seeking a writ of certiorari to quash the decision of the FCAT and to direct the respondents to grant certificate to their documentary film “Aakrosh” for public exhibition under the cinematograph Act,1952. The film dealt with communal riots that took place in Gujrat in the year 2002. The petitioner applied before CBFC for “U” certificate which was denied. To which the petitioner appealed before the FCAT which held that the movie violated guidelines under Section 5B of the principal Act as the film would incite people and would lead to further violence. The Supreme Court held that, “while judging a film the board must judge a film from the standpoint of an ordinary man of common sense and prudence and not that of a hypersensitive man. The documentary creates an impression of the message of peace and a compassion for the people suffered in the riots. The decision of the Tribunal, examining Committee, and Reviewing Committee is hereby struck down.”

**(7) Morality and Decency:**

The concept of morality and decency have evolved over a period of time and vary between different societies and cultures. What is moral to one group or society may not be moral to another. Morality means, “the idea about right and wrong which are accepted by the right-thinking members of the society. Decency indicates that the action must be in conformity with current standard of behavior or propriety. Decency must be the absence of indecency.”<sup>50</sup>

**(A) The Test of Obscenity/ Hicklin’s Test:**

---

<sup>48</sup> Jagdish Swarup, Constitution of India, Vol-1, 2<sup>nd</sup> edition, Modern Law Publications, Pg.35 (2007).

<sup>49</sup> *Ramesh Pimple v Central Board of Film Certification and Ors.* (2003) 4 S.C.C 520.

<sup>50</sup> Madhavi Goradia Divan, Facets of Media Law, 2<sup>nd</sup> Edition, Eastern Book Company, Lucknow, Pg.50 (2015).

The Obscenity Test/Hicklin’s Test evolved out of the popular English case *R v Hicklin*<sup>51</sup>, wherein Justice Cockburn laid down the test as, “Whether the tendency of the matter charged the obscenity is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands a publication of this sort may fall., it is quite certain that it would suggest the minds of the young or even to a person more advanced years thoughts of most improve and libidinous character.<sup>52</sup> The Supreme court laid down the Obscenity Test first time in the case of *Ranjit Udeshi v State of Maharashtra*<sup>53</sup>, adopted the Hicklin’s Test with some modifications. The court explained the term “obscenity”. According to the court the test of obscenity,” is the tendency of the material to deprave and corrupt, judged according to the present-day community standards. At the same time court underlines the need for considering the artistic presentation of the material.”

**(B) Likely Audience Test:**

The need for censorship must be adjudged from the point of view of the target audience not the person who might stay up on the film. Most of the films are for unrestricted public exhibition and therefore, appropriate for the children. However, it is not the same for adults.<sup>54</sup> In *Ajay Goswami v Union of India*<sup>55</sup>, the supreme court held that, “right to adult citizens to entertainment notwithstanding that such entertainment may be inappropriate for children. Adults could not be deprived of entertainment within acceptable norms of decency.”

**(C) The Aversion Defense:**

Authors and film makers depict nudity not to arouse sexual desire but on contrary to horror and revulsion in the audience against social evil being depicted.<sup>56</sup> The aversion test was first applied in the case of *Bobby Art International v Om Pal Singh*<sup>57</sup>, where the Supreme court held that, “The object of the scenes of frontal nudity was not intended to titillate the cinemagoer’s lust but arouse in him sympathy for the victim and disgust for the perpetrators.” The CBFC on the basis of the obscenity test tries to determine whether the film contains any sought obscene thing in it. “Duty of censor board is to determine whether the film is contrary to the accepted standards of society

---

<sup>51</sup> *R v Hicklin* (1868) 3 Q.B 360.

<sup>52</sup> Seen.51 *supra*.

<sup>53</sup> *Ranjit Udeshi v State of Maharashtra* (1965) S.C.R (1) 65.

<sup>54</sup> Chahat Abrol, Changing Contros of Obscenity: Form Udeshi to Devidas, Vol.4, International Journal of Research and Analysis, pp.67-73(2016)

<sup>55</sup> *Ajay Goswami v Union of India* A.I.R 2007 S.C 493.

<sup>56</sup> Madhavi Goradia Divan, Facets of Media Law, 2<sup>nd</sup> Edition, Eastern Book Company, Lucknow, Pg.55 (2015).

<sup>57</sup> *Bobby Arts International v Om Pal Singh* (1996) 4 S.C.C 1.

and whether or not it is morally object also.<sup>58</sup> An exhibition of cinematograph film may be obscene but when it is exhibited as being permitted by a certificate under section 5A of the Cinematograph Act,1952 the said certificate brings into field the protective umbrella and the court cannot brush aside such certificate in deciding if the accused is immune from criminal charge.<sup>59</sup>”

**(D) Doctrine of Prior Restraint:**

The concept of prior restraint is an official restriction imposed upon speech and other forms of expression in advance of actual publication or exhibition of films. A prior restraint is an administration or judicial order that prohibits speech before it occurs, and it does so on the basis of speech and content. Only content-based restriction on speech before it occurs are allowed.<sup>60</sup> The Supreme Court in the case of *K.A Abbas v Union of India*<sup>61</sup>, held that, “pre-censorship is a valid restrictions under Article 19(2). Pre-censorship is an aspect of censorship and bears the same relationship in quality to the material as censorship after the motion picture has had run. That censorship is prevalent all over the world over in some form or the other and pre-censorship also plays a part where motion pictures are involved shows the desirability of censorship in this field”.

**III. Conclusion and Suggestions:**

Film censorship is a mechanism used to regulate the exercise of freedom of expression and speech. In India, film censorship and certification is carried out under the powers bestowed on the Central Board of Film Certification by the Cinematograph Act 1952. It is the Central Board of Film Certification that decides what should be shown to the audience and what should not be shown. But the very question to be asked is whether the censorship of CBFC's film will infringe freedom of speech and expression, and whether the current rules and criteria used to censor the film make the whole thing more difficult. And the same thing was replied in chapter four. A brief introduction to the subject has been given in the first chapter. The researcher stated the purpose of the study and research questions in the same chapter. The purpose and scope of this research has been clearly set out by the researcher in this chapter. The second chapter deals with the historical evolution of the law on film censorship. Depicting the popularity of cinema, it has been seen how improvements have been introduced from time to time in order to reconcile artistic innovation and cultural norms.

---

<sup>58</sup> Tej Motwani, Obscenity as restriction in India, Vol 2, International Journal for Legal Studies, Pg-167-171(2013)

<sup>59</sup> Raj Kapoor v State A.I.R (1980) S.C 258.

<sup>60</sup> Tej Motwani, Obscenity as restriction in India, Vol 2, International Journal for Legal Studies, Pg-181(2013)

<sup>61</sup> K.A Abbas v Union of India (1970) 2 S.C.C 780.

The Cinematograph Act 1952 and the Cinematograph (Certification) Rules 1983 helped to preserve the balance of power between the central government and the state governments. These acts and the rules of the Committee of Inspecting and State Film Certification Boards have been formed in each State. And the Central Board of Film Certification has been set up in the centre with headquarters in Mumbai, so that all levels of censored film and only those films that are appropriate for public screening are shown to the public. In the third chapter, the Constitutional Mandates and the Legal Control of the Indian Film Censorship have been divided into two sections. The first section deals with Cinema as a mode of censorship of films in India, where the value of freedom of speech and expression has been discussed, and in the very first part there is a strong connection between freedom of speech and expression and cinema. In the second section, the constitutionality of the censorship of films and the fair limitation on the exercise of freedom of speech and expression were discussed briefly. Every fair restriction laid down in Article 19(2) of the Constitution of India has been explained in detail. The numerous tests involved in the determination of obscenity have been clearly clarified with the aid of different case laws. The problem of pre-censorship of films, along with numerous instances, has been dealt with in depth.

The Indian Judiciary has been active in securing the rights of filmmakers. The Indian judiciary has played a major role in the creation of the case law on film censorship. The Supreme Court of India, through its numerous rulings, has clearly explained what can be revealed to the general public and what cannot be shown. Answering this very question is important, because the film could come up with some idea that could turn out to be informative in nature and could, at some point, harm the social harm of the people of India. In order to prevent such conditions, the Central Board of Film Certification and the Supreme Court have been allowed to determine if a film is appropriate for public exhibition.

In the light of all these chapters, the conclusion drawn is that the censorship of films is legitimate and necessary to the regulation of Indian cinema in the manner provided for by the Cinematograph Act.

Before concluding the thesis, there are a few recommendations that the author would like to make: To avoid misunderstanding and error, the film censorship method must be clear, conclusive and rational. CBFC should allow filmmakers to apply for their films through an

online programme that reduces waste of time and resources. Complete movie rights must be given to the filmmakers. All film modification requests must only be made with the permission of the film makers. To ensure that the purpose and principles established under the Act are held in mind, all directives must be updated to that effect.

The Committee must also include the following directions under Section 5B of the Cinematograph Act,1952 (Recommended by the Shyam Bengal Committee)<sup>62</sup>:

1. The artistic and innovative expression of the filmmaker is protected based on objective standards.
2. Inquiries shall have the power to have a rational viewing Judgment
3. The qualification process is open to social change. This is the Requirements also make it possible for the applicant to determine the level of qualification of his application.
4. However, any change to a film can be made only by means of an Applicant shall comply with the credential required for his application.
5. The UA groups must be divided into subclasses UA 21 + and UA 16 + under the CBFC Codes. Taking into account the sociological changes that have taken place since the passage of the Cinematograph Act 1952, UA 21 + caters to young people who have yet to become adults.
6. Exposed to the world of adults and therefore exposed only in a minimal way to adult problems, UA 15+ seeks to bear in mind that young adolescents are at age when introduced to the world of adults and are willing to be excused from 00 being, although in moderation, exposed to various issues and concerns in the world of adults.
  - a. Adult genre films must also be divided into subcategories "A" and "A-C" (Adult with Caution). The purpose of this sub-categorization is to allow adults to make wise decisions about the type of film they want to see. Not all adults choose to watch movies that clearly show various topics, such as violence, race, sexism, language use, etc. The A-C community is intended to direct listeners to a simple image of various topics, so that they can make the correct decision.

---

<sup>62</sup> Shyam Bengal Committee Report, Pg.60-70(Government of India,2016).

- b. For the classification of films in three divisions, the Shayam Bengal Committee<sup>63</sup> recommended: “(a) General; (b) the restricted group;(c) All film forms are subject to general guidelines.”
  - c. The review committee that certifies the film must be a member representing all deprived parts of society, including refugees, backward castes, scheduled tribes and planned castes. Women are also included in the curriculum to make the programme culturally conscious of
7. In the classification of the film. Members of the Qualification Boards shall be selected only on the issue of qualifications. The committees involved in the classification of films must include members from various parts of society
  8. The Government must establish guidelines and conditions for the selection of members of the review committee, which are not established. Religious or political parties should not take part in the election of members in any way whatsoever.
  9. The CBFC website must be updated with all the latest trends in the area of film certification. This site must be collaborative offering facilities such as online input form, online grievance filing, etc.
  10. New channels must be implemented for the release of films, thereby moving the emphasis away from theatres.
  11. Global patterns must be integrated into the censorship process. Guidelines for certification must be revised accordingly.

Thus, the constitution grants them the freedom to make a film on the subject or the concept of their choosing. And while certifying the films, the examining committee has complied with all the guidelines and tests laid down by the Supreme Court in the numerous landmark judgments on the censorship of films.

## **REFERENCES:**

---

<sup>63</sup> Shayam Bengal Committee Report, Pg.60-70(Government of India,2016).



1. Someshwar Bhowmik, Cinema and Censorship: The political Control in India,Pg.63-239 (Orient Black Swan,2009).
2. Report of the Indian Cinematograph Committee, Pg.224(Government of India,1928).
3. Report of the Enquiry Committee on Film Censorship, Pg.2-25(Government of India,1969).
4. Bruce Michael Boyd, Film Censorship in India: A Reasonable Restriction on Freedom of Speech and Expression, Vol.14, Journal of the Indian Law Institute, Pg.511(1972).
5. Arpan Banerjee, Political Censorship and Indian Cinematographic Laws: A Functionalist-Liberal Analysis, 2 DREXEL L. REV.557, Pg.27(2010).
6. Report of the Enquiry Committee on Film Censorship, Pg.18-100(Government of India,1969).
7. Report of the Working Group on National Film Policy, Pg.75-78 (Government of India,1980).
8. Shameek Sen, Right to Free Speech and Censorship: A Jurisprudential, Vol.56, No.2, Journal of the Indian Law Institute, Pg.25(April-June 2014).
9. Indian Express Newspaper Ltd. V Union of India (1985) 1 S.C.C 641.
10. Samantha Barba's, How the movies became Speech, 64 Rutgers L. Rev.665, Pg.667(2012).
11. Director of Films v Gaurav Ashwin Jain A.I.R 2007 S.C 1640.
12. Miriam Sharma, Censoring India: Cinema and the Tentacles of Empire in the early years, Vol. 29(1), Sage Publications, Pg.41-73(2009).
13. Dr. Sukanta. K. Nand, Media Freedom, Film Censorship and Freedom of Expression- An Evaluation, Volume No.04, International Journal of Science, Technology & Management.77, Pg.80 (2015).
14. Constituent Assembly Debates, Vol. VII, Pg.40-41 available at <https://www.constitutionofindia.net> (Last visited December 17,2020, 1:17 PM).
15. K.A Abbas v Union of India (1970) 2 S.C.C 780.
16. K.D. Gaur, Constitutional Rights and Freedom of Media in India, Vol.36:4, Journal of the Indian Law Institute, Pg.105 (October-December 1994).
17. Chintamani Rao v State of M.P A.I.R (1951) S.C 118.
18. V.G Row v State of Madras A.I.R (1952) S.C 196.

19. M.P Jain, Indian Constitutional Law, 7<sup>th</sup> Edition, Lexis-Nexis Butterworth Wadhwa, Nagpur, Pg.120 (2015).
20. Madhavi Goradia Divan, Facets of Media Law, 2<sup>nd</sup> Edition, Eastern Book Company, Lucknow, Pg.38 (2015).
21. Jagdish Swarup, Constitution of India, Vol-1, 2<sup>nd</sup> edition, Modern Law Publications, Pg.25 (2007).
22. Halsbury Laws of England, 4<sup>th</sup> Edition 2006, pg55.
23. E.M Sankaran v T. Narayana Nambiar (1971) S.C.R (1) 697.
24. Romesh Thappar v State of Madras (1950) S.C.R (1) 594.
25. Prakash Jha Productions and Ors. v Union of India (2011) 8 S.C.C 372.
26. Jagdish Swarup, Constitution of India, Vol-1, 2<sup>nd</sup> edition, Modern Law Publications, Pg.35 (2007).
27. Ramesh Pimple v Central Board of Film Certification and Ors. (2003) 4 S.C.C 520.
28. R v Hicklin (1868) 3 Q.B 360.
29. Ranjit Udeshi v State of Maharashtra (1965) S.C.R (1) 65.
30. Chahat Abrol, Changing Contros of Obscenity: Form Udeshi to Devidas, Vol.4, International Journal of Research and Analysis, pp.67-73(2016).
31. Ajay Goswami v Union of India A.I.R 2007 S.C 493.
32. Bobby Arts International v Om Pal Singh (1996) 4 S.C.C 1.
33. Tej Motwani, Obscenity as restriction in India, Vol 2, International Journal for Legal Studies, Pg-167-171(2013).
34. Raj Kapoor v State A.I.R (1980) S.C 258.
35. Shyam Bengal Committee Report, Pg.60-70 (Government of India,2016).