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A Critical Analysis on Censorship Issues in Indian Cinema & Its Challenges

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ABSTRACT

As numerous texts, precedents and experts have reiterated – “Media is an essential part of democracy.” Media takes pride in its participation in creating, changing and portraying the views of public at large. In India, Social Media has taken over from traditional media like newspapers and radio in recent years. But ‘cinema’ has proven to be a medium which has survived the test of time and its impact in the modern world has only expanded. With Global Cinema markets like America, China and France opening up for Indian Cinema mindful of its worthy content, there has been a steep increase in production of off-beat content and those which were earlier deemed to be “sensitive” , “objectionable” and “controversial” have now become a part of mainstream cinema. Cinema just like every other medium is not above the law and has to undergo its legal process of certification and censorship before it gets to the eyes of the public. But this legal process has led to several instances of ban and censorship of content from public exhibition. Does the law really intend to draw the line or is this just an age old process that needs serious changes to adapt itself to the changing times? With various questions being raised on the basis of these bans and censor cuts, the real challenge lies when it is matched up with the facets of law. Freedom of speech & expression is an important piece of legislation in the Indian constitution which serves as the ultimatum in this regard. A few recent incidents have forced the people to question its latent existence and the “freedom” it practically guarantees. This paper is an attempt to bring out key aspects regarding the issues in censorship and their history along with the essential legal aspects involved in it.

I. INTRODUCTION

Cinema has enjoyed immense popularity and has become an integral part of common man s’ leisure since its advent in 1913. A lot has changed from the times when people waited hours just to catch a minute long movie clip in Doordarshan (*the only TV channel until 1991*) to *Dangal* s’ proud Olympics National Anthem moment being played in nearly 9,000 screens across China. According to stats, India possess the largest film industry in the world in terms of number of films made with about 1,500 to 2,000 films produced every year in more than 20

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different languages. With such vast diversity of content comes along with a fair share of problems too. Films deal with numerous delicate subjects, opinions and ideas on screen which when normally expressed through other forms will be subjected to serious opposition. Such is the special privilege films occupy in bringing to life the unseen, the unheard and the untold in the 3 hours people spend watching them. Indian Filmmakers have never shied away from exploring the so called “sensitive” subjects and are determined to take it up as a challenge to bring out their work without compromising on their vision and at the same time falling within the thin lines of censorship. But these brand of films are often left with only two possibilities - getting rave appreciation from the majority of the audience for its raw and bold content or result in the movie struggling to get censor clearance or even worse - getting banned. But in the midst of these heated arguments, no one has referred to the blueprint of the nation: the Constitution of India. It is the Constitution which guarantees the fundamental right of freedom of speech and expression, and defines the extent of the said freedom & perhaps we should consider the interrelationship between the Constitution and cinema.²

II. A TINGE OF HISTORY

Much before screen cinema could assert its authority in India a traditional theatre system existed from 1920s and is said to have played a major role in building an audience for the art through its plays in the pre-independence era. In 1913 India produced its first full-length feature film titled *Raja Harishchandra*. This led to the birth of a new piece of legislation -- The Cinematograph Act, 1918. In 1920, Censor Boards were set up in Bombay, Calcutta, Madras and Rangoon to regulate public screenings and content screened. A detailed list containing 43 objectionable subjects was specified by Bombay Censor Board similar to the one adopted by Britain Censor Boards. The Censor Board had to deal with a lot of kissing, scenes of rebellion and portrayal of national leaders in movies and they dealt it with cuts and bans. Later during the 1940s, art and cinema had major role to play in kindling emotions of freedom struggle and the focus shifted from passionate kissing to patriotism and love for the country. Cinema gradually grew to become a powerful medium and went on to impact people s’ lives, thoughts and their views.

The Cinematograph Act, 1952 brought in place a regulatory body called the Central Bureau of Film Certification (CBFC) to further strengthen the position in the aspect of censorship. This period touted to be the ‘Golden Age of Indian Cinema’ was celebrated for India s’ success at

² R.S. Chauhan, *Clamping down on creativity*, THE HINDU (Mar. 30, 2017 12:02 PM), <http://www.thehindu.com/opinion/op-ed/clamping-down-on-creativity/article17739798.ece>

many International Film Festivals; Hindi Film ‘*Mother India*’ was nominated for The Academy Awards for the category Best Foreign Language Film and this moment marked a bright beginning for offbeat cinema and the problems that came along.

III. CBFC: A HISTORY

The Central Board of Film Certification (CBFC) is a statue constituted under the Cinematographic Act, 1952. The amendment of 1959 vested the board with the powers of certifying a film before allowing for public exhibition. Till 1983 it was known as Central Board of Film Censorship and from then on it is known as the Central Board of Film Certification. Under Section 3 (3) (iv) of the Act, the board has been given the powers to refuse to sanction the exhibition of the film apart from certifying its content. The board off-late has come under severe criticism for moral policing and acting as a supreme authority that will decide what we watch.

Ever since 1959 when a Bengali film titled *Neel Akasher Neechey* was banned for two months citing fear of political disharmony³ the CBFC has proved to be a vital cog for the increase in the number of films facing the censor problems since it is the go-to authority when it comes to censorship.

IV. CONTEMPORARY TIMES

Fast forward to 2019, ‘*Chidiakhana*’ a movie following the life of a boy from Bihar and his dream of playing football which addressed a lot social issues was given U/A by CBFC. This decision was challenged before the Bombay High Court by the Children’s Film Society stating that they wished to exhibit the film in schools but the CBFC had demanded cuts only to grant a U/A. The court slammed the board stating that it is just a certifying body and not a censor board and it has no intellectual morality or authority to decide what one wants to see. The court also came down hard on the board for pretending that such serious issues don’t exist.

In 2018 CBFC asked makers of the film ‘*Aiyaary*’ (2018) to get a clearance from the Defence Ministry prior to its release since the film addressed the ‘Adarsh Housing Society scam’ which involved some high profile people. The movie was specially screened for these officials and was granted censor certificate only after the certain cuts recommended by them were made.

In 2016, the board gave U/A certification to “*The Jungle Book*” which was based on the well-known children’s classic.

³ *Ibid*

Films are no more ‘just entertainment’

Films have evolved from largely being an entertainment medium and leisure activity to something more significant. It has emerged as an international canvas of India's rich culture and lifestyle. With the unbelievable levels of fandom, promotions and business numbers involved, it is only fair to say Indian films are closely watched by both domestic and international audiences alike. Cinema does tempt the odd changes in the society through its socially relevant films. In *K. A. Abbas v Union of India*⁴ the Supreme Court stated that films have to be treated differently from other forms of art and expression, as the motion picture has the ability to stir up the emotions more deeply than any other form of art and censorship of the films on any of the grounds mentioned in Article 19(2) is justified.

All this is possible because of the reach of a global medium called cinema. It is a global phenomenon which needs no language and at the same time needs no universal acceptance or strive for societal approval!

Censor Process

The process is carried out by the CBFC (commonly called the ‘Censor Board’) consisting of maximum of 25 members and 60 members acting as an advisory panel to aid and advise the members, all of whom are appointed by the Information and Broadcasting Ministry. The CEO will be at the helm of administrative affairs. Once an application has been received the Regional Officer shall appoint an Examining Committee consisting of 4 members and an examining officer among which 2 members must be women. The committee shall view the film and come up with a report of possible deletions and modifications. The regional officer shall certify it U, U/A, A or S based on the report of committee members. A list of “suggested changes” shall be communicated to the applicant in case of any dissatisfaction on the applicant's side. The censor board shall take a maximum of 68 days from date of application to issue a certificate for the submitted content.⁵ This shall include the time taken for all cuts and mutes required to be made. The process has recently been made accessible online to ensure better transparency. If the applicant is still not satisfied with the certification they can approach the Revising Committee and further appeals reach Appellate Tribunal and then finally to the court.

The Legal Framework

The CBFC with powers vested to it by Section 5B (2) of the Cinematograph Act has a set guidelines available in its website which includes varied subjects from values in the society,

⁴ 1971 AIR 481, 1971 SCR (2) 446

⁵ Cinematograph Act, 1952, Rule 41, No.37, Acts of the Parliament, 1952

discrimination to alcohol, sex and drugs is quite vague and provides room for umpteen interpretations.

Apart from these guidelines the reasonable restrictions under Article 19 (2) of the constitution also mentioned under Section 5(b) of the act are included as grounds for restriction. Any film affecting 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 is not allowed for public exhibition in India.

Few pass, few don't!

Though the stand taken by the board while the movie has excessive obscene content seems justifiable but with easy access to pornography through internet these days, this defence does not go too well with filmmakers either. Furthermore a lot of films that have passed the censors with a lenient certificate seems to have objectionable content which the board had supposedly cleared with its eyes tied. CBFC passed "*Mohenjodaro*" with no cuts despite numerous intimate scenes and in sharp contrast took a stubborn stand towards "*Unindian*" demanding cuts of its intimate scenes. Bollywood's modern adaptation of Romeo & Juliet -- "*Ram Leela*"(2013), a movie shot in a setting of violent times which also had good number of kissing scenes was surprisingly given "U/A" by the board whereas "*Shahid*" (2013) a biopic of lawyer and human rights activist Shahid Azmi received a "A" despite changes. Coincidentally, the real life Shahid had defended the film "*Black Friday*" while it had problems with the censor board during its release and the director of the film went on to produce Azmi s' biopic. So what does it eventually come down to when raw romance doesn't qualify as a censor cut and factual depiction that the film requires is? Is it fair to say the CBFC has sometimes shown bias or leniency to certain studio people?

A recent list of recommended beeps by CBFC is a shocker. In a documentary on the life of Nobel laureate Amartya Sen the CBFC asked the makers to beep the words "cow", "Hindu India" and "Gujarat"-- since it is a reference to the Prime Minister s' Home state! ⁶

Nobody to blame? Blame Cinema!

One of the most bizarre accusations that contributes to the stern action on adult films and scenes is that 'Rapes have increased because of such films that arouse lustful thoughts'. It is just seen as an attempt in vain to point fingers at a soft target to the existing vulnerable nature of women

⁶Michael Safi, *Censors order bleeping of 'cow' in film on Indian economist Amartya Sen*, THE GUARDIAN, (Jul. 12, 2017, 03:30 PM), <https://www.theguardian.com/world/2017/jul/12/indian-film-censors-demand-removal-hindu-cow-film-nobel-amartya-sen>

safety in our country. Kissing scenes featured way back from 1929 (A Throw of Dice aka Prapancha Pasha); Item Songs had become prominent part of Bollywood since 1975! Was the number of rapes high since then? Had films influenced so much as they say, agriculture would have thrived after “*Upkaar*”(1967) got released, Indian Army’s recruitment would have doubled up after the release of “*Border*” (1997) and “*Lakshya*”(2004), youngsters would have shot down corrupt politicians after watching the climax of Rakesh Omprakash Mehra’s “*Rang De Basanti*”(2006).⁷ Though thousands stormed screens to catch these epics why didn’t the influences work? Because people tend to see it as a work of fiction and put themselves in that world.

Films are known for showcasing the society as such, which is not just sex and drugs but also with factual, real & necessary content that needs attention and discussion.

Restricting Creativity

Just like any other art cinema is also works with sole purpose as an expression of an artist’s creativity and ideologies. Cinema even during the recent past was expected only to just engage-to-entertain but now people also expect films to entertain and engage their minds for the money they pay for. In an attempt to deliver such content directors need to think more about different stories that can be told on screen, rather they are stranded on if it would make the censor board happy. If numerous films face forced censorship on such regular basis, it puts a bar on the expanse of creativity that can be portrayed through cinema and strikes a fear in anticipation of the response of handful of CBFC members watching the film during censor. When a maker is asked to chop off many scenes (*in the name of “censorship”*) which contribute a major portion of the film’s subject or strategically placed to narrate something, his whole work gets torn into nameless pieces. The same was the sad condition of the film “*Hava Aney Dey*” (2004) where the director was asked to make a ridiculous 21 cuts to his just 93 minutes feature film.

Especially when the same film/scene passes censors without cuts in countries like US & UK and faces ban or censor in India, the obvious question of “why is there a problem here?” frequently creeps into our minds. Has some one ever seen James Bond drinking Martini on Indian screens? No! Because it is claimed to be not suited to Indian audience is what the CBFC tells. Is it because it would encourage more people to drink like Bond? A loud no, because regional films have been enjoying such liberties with ‘statutory warnings’ as an easy give away. What else? Oscar Award winning movie *Ford v Ferrari* (2019) was asked to blur all alcohol

⁷ Prakash Gowda, *Can films really be held responsible for increasing Rape in Indian society?*, INDIAN EXPONENT, (Mar. 11, 2013), <http://www.indianexponent.com/2013/03/can-films-really-be-held-responsible-for-increasing-rape-in-indian-society.html>

brands in the movie as it was against CBFC guidelines which made the scenes look awkward and distracting. It is quite acceptable that tradition differs but when laws of the country give you the freedom you are free to use it. Similarly, the choice of viewing is always left with the audience and the board should not step into our shoes and anticipate on what we should or should not watch.

With such rapidly changing world and people coming across tons of information every day in the era of Social Networking you cannot make something stay hidden for long. Even though few films are banned they are easily available on piracy sites which people download and watch defeating the sole purpose of banning the film. A perfect example of the said scenario happened in the case of Hollywood s' "*Fifty Shades Of Grey*"(2015) when it was banned for explicit content people crowded torrent sites & watched the movie by downloading it.⁸

Producers now also have the option of preferring an OTT service streaming where there isn't the problem of forced censorship or restrictions on various levels to exhibit movies.

V. JUDICIARY VS CBFC:

The CBFC has had frequent run-ins with the judiciary with regards to its debatable decisions on film certification. Courts have safeguarded the freedom of speech and expression guaranteed under Article 19 and have also repeatedly held that the body should stick to only be a certifying authority and not an ultimate decision making authority on what people can and cannot watch.

In the case of *Udta Punjab*, the film when submitted for censors was asked to make a ridiculous 89 cuts then reduced it to 40 cuts with removal of any reference to the state of Punjab, any political reference including a title change. The board wanted the story to be played out in a dystopian land which was the real case scenario in the state of Punjab. The studio approached the Bombay High Court and the court allowed the release with just 1 cut. When the matter came before the Apex Court, it held that it found no challenge to the sovereignty and integrity of India upon reading the entire script and upheld the order of the High Court.

Just like one cannot anticipate the offence of defamation, one also cannot anticipate if a material would cause problems before it being brought to publication/exhibition and even it does the interested parties may approach the court and challenge the film after the publication/exhibition has been made.

⁸ David Johnson, '*Fifty Shades of Grey*': Indian Audience Download Erotic Drama from Torrent Sites Following Ban, INTERNATIONAL BUSINESS TIMES, (Mar. 6, 2015 11:39 AM) <http://www.ibtimes.co.in/fifty-shades-grey-indian-audience-download-erotic-drama-torrent-sites-following-ban-625395>

VI. INTERNATIONAL PERSPECTIVE

Censor Boards across the world approach films differently. The CBFC in a neighbouring country like Pakistan are pretty strict in terms of portrayal of its country and Muslims in films which made them ban most of the Indian Films like “*Baby*” (2015) and “*Haider*” (2014) and the list goes on. In contrast, United States & United Kingdom have a slightly direct and clear system of rating films.

The Motion Picture Association of America (MPAA) has a 6 type rating system that includes G – General Audience; PG – Parental Guidance suggested as content may not be suitable; PG-13 – Inappropriate for people of age 13 or below; R – Restricted to people over the age of 18 but allowed to accompany a adult if under 17; NC-17 – No children equal to or below the age of 17; NR (or) UR - Not Rated or Unrated for movies not submitted for rating that can only be played in select theatres. Similarly the British Board of Film Classification (BBFC) has the same system of U, PG, 12A, 15, 18 and R 18 for films that can played only at licenced adult cinema halls.

They usually proceed based on the version received by them from the crew and would rarely demand cuts apart from only RECOMMENDING cuts and rate films accordingly thereby leaving the burden to the filmmakers to decide their fate. Not that they are lenient to let go anything that comes their way, it is only fair to say that they decide on what they get and let the people decide what is good or bad for them thus reducing the issues that may arise regarding censors. All censor boards across the globe are quite uncompromising on strong sexual content and excessive violence which is quite understandable.

VII. FINDINGS

Finding 1 – CBFC has not been treating every film equally

In reference to the comparisons made between censoring of “*Mohenjodaro*” & “*Unindian*” and “*Ram Leela*” & “*Shahid*” apparently shows there is no proper standard when it comes to CBFC s’ handling of the process. While big films mostly escape the board s’ wavering standards it is the small films to which its wrath is unleashed. Of course big films sometimes do come under the scanner as well but that happens when there is a larger controversy like the one in “*Udta Punjab*”.

Finding 2 – When it comes to cinema it’s for the people that they are made and they are the best judges.

Films like “*Fifty Shades of Grey*” which have been brought down by the board but has received

warm welcome from the audience ultimately proves that this is not what people want. Though it is deemed to be a cautious effort fears of revenue loss, thousands who worked for the film left uncredited or cuts hampering the narrative are matters of great concern. In case of such instances post release where action is necessary before things go haywire there is always an option of removing the film or the scenes from screens within no time as everything has been digitalized and is controlled from one central place.

Finding 3 – Censoring does not make a huge difference it just spoils the movie watching experience

Audiences of “A” Rated film watch these film knowing the violence or the explicit content it will contain and as adults should be mature enough to understand that cinema and reality are far apart. One rotten apple should not spoil the whole basket.

Finding 4 – The censor system that currently exists in India is outdated in comparison with other countries

Culture and lifestyle has drastically changed and hence people have a better understanding of cinema. When the people of UK, US and many other countries have the capacity to handle mature content why can't we? The existing system literally has no room for grown-up content and has been treating us like kids. India must make way for different content and make sure the right film reaches the right set of audience.

VIII. RECOMMENDATIONS

There isn't an easy and permanent solution for every problem especially when it concerns art which is ever developing. Few of the possible and practical suggestions are briefly mentioned below.

(i) Expanded Rating System

In India we do not have 'R' or 'R-18' unlike the other certifying bodies around the world. An 'R' rating would mean that the film passes without cuts and is allowed for restricted exhibition. The closest we have to these ratings is an 'A' (Adult) which is not appropriate for films based on certain subjects. An amendment in the system could be seen as long term solution to solve the whole issue of films getting banned or losing its artistic integrity due to unnecessary censor issues.

(ii) Public Participation

The time has come where common man must have a say in censorship apart from the officials appointed by the CBFC. This would ensure there would be no concerns about biased decisions

and also a form of public representation in such processes. Signing of a simple Non-disclosure agreement would also protect the content and make sure his/her opinion has a part to play in the final decision of the board.

To further strengthen public inputs, an experimental system of 'voluntary rating' followed in US seems to be the right way forward. Under this highly successful system, an independent group of parents having children aged between 5-20 years rate submitted works based on 2/3rd majority. This group came to be known as Classification and Ratings Administration (CARA) and its members change every 7 years leaving no space for any abuse of powers.

(iii) Uncensored adult content only for adults

Re-censorship of films for playing on television sounds logical as no one would have any clue what kids are up to while watching TV but when a legal adult purchases a movie ticket for a 'A' rated film he expects the film to treat him as an adult too and not as a kid or a teenager.

Indians do have the capacity handle mature content and hence it is high time that the CBFC, the Government puts down its scissors and treat adults as adults who can understand mature content. Moreover this is what people want! Proof?!- We live in a country where over 17,817 people have signed a petition seeking ban on censorship of adult films created initially by an irritated movie buff who had to shell out Rs.600 to watch a film with most of its dialogues muted in the name of censorship.⁹ So, Adult rated films shouldn't require cuts to enhance viewer interest because that's what he/she has paid for.

IX. CONCLUSION

The blame cannot be fully placed on CBFC, but they must only be clipped of their powers to force cuts and let the people decide if anything offends them or not. The 1983 change from Central Board of film censor to Film Certification itself pretty much explains the limited responsibility vested with the CBFC and it would only be right for it to stick to what it is legally entitled to do. It would also be fruitful if censorship laws in India see substantial changes to adapt to the current progressive and modern society where every household has an internet connection and even a 10-year old kid is able to access all kind of stuff available online. On the other side, film makers must try to find out ways where films can deal with sensitive issues and be sensational yet not problematic. Avoidable inclusion of explicit content in films might prove to be less laborious to Cinema Authorities. At the same time it is necessary to strike a balance between preserving culture and encouraging art but not by imposing unnecessary moral

⁹ Vignesh Vellore, *No censorship in A Rated Movies! Petition*, CHANGE.ORG <https://www.change.org/p/shyam-benegal-no-censorship-in-a-rated-movies>

policing and forced censorship on films. How can we face and solve social problems if we aren't allowed to speak about it? Only future legislations and time can tell.
