

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 3

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2023

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# Censoring Art by the Process of Law: A Philosophical Study

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SANJAY K<sup>1</sup>

## ABSTRACT

*In this paper, the philosophy of creative expression is examined, with an emphasis on the value of artists' ability to create without being constrained by the rules of society or habit. It emphasises how everyone has the freedom to engage in and take part in a variety of artistic works since artistic expression is seen as a fundamental human right. The capacity to appreciate the arts and to disseminate artistic expressions are also seen as unlimited. This paper claims that creative freedom, a fundamental tenet in a democratic system that protects and preserves people's rights to express their thoughts, is crucial for the cultural and political well-being of society. Many human rights organisations are aware of and work to uphold the freedom of speech in the arts. It defines censorship as the imposition of limitations or prior approval on the public transmission of content, frequently justified by worries about public order, state security, or the preservation of others' reputations.*

**Keywords:** *Censorship, Artistic expression, Freedom of art.*

## I. INTRODUCTION

The philosophy of artistic expression states that an artist should be free to create his or her work without regard to law or custom. Everyone has the right to artistic expression and creativity, as well as the right to freely experience it and participate in artistic expressions and works, either individually or collaboratively. Moreover, enjoyment of the arts, as well as the ability to share their expressions and works is also an unrestrained one. Our society's cultural and political health depends on artistic freedom. It is fundamental in a democracy to value and preserve an individual's right to express his or her ideas. Many human rights bodies acknowledge and aim to preserve the right to artistic freedom of expression, as a result of this. Censorship is defined as the imposition of restrictions or the demand of previous state authorization on the materials that are to be posted or conveyed in public areas. This repression is frequently justified as a matter of public order, state security, or a breach of others' reputation.

### (A) Research questions

- How film censorship curbs the freedom of artistic expression?

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<sup>1</sup> Author is a student at TNNLS, India.

- In India's current illiberal systems, how has restriction of artistic freedom evolved?
- Do the artists believe that censorship and self-censorship create new forms of aesthetics? If yes, how do they describe this new aesthetics?

### **(B) Statement of problem**

The nature of censorship on artistic freedom has been moulded by conservative regimes in contemporary days. Censorship on movies at times being a barricade for an artist to convey his or her thoughts which gives life to the art, it's not only a restriction but also infringement of constitutional and human rights mechanism.

### **(C) Scope and limitations**

The term artistic expression here means every artwork like literature, drama, performance, film etc., However, the subject matter here is censorship of films and the role of central board of film certificate and its censorship regime. The goal of the study is to determine the evolution of censorship on artistic freedom under India's current conservative regimes. The theoretical framework will be used to analyse the laws, cases, and socio-political events.

### **(D) Research methodology**

This research is doctrinal in nature by way of analysing the existing interpretation, journals and articles.

### **(E) Review of literature**

- *Censorship and free speech: some philosophical bearings, P. Ingram*

This book examines censorship and free speech as an issue of notions, looking at the difficulties as part of a larger social problem. This novel method challenges the notion of censorship as something abnormal, examining where the boundaries of free expression are in maintaining individual growth and community harmony.

- *Censorship on artistic freedom on contemporary illiberal regimes: A comparative analysis between Bangladesh and India, T Sabera*

This article studies the nature of artistic freedom censorship and how it has been changed by the current illiberal governments in Bangladesh and India. It also seeks to comprehend the socio-political factors that have led to suppression of artistic manifestations in Bangladesh and India.

- *Arguing for art, debating censorship, Liviu Malita*

This study examines the validity, value, and functionality of art censorship as a social practise and an autonomous discourse, using a sociological and philosophical perspective. This paper

undergoes roman period to finds the roots of art censorship.

## **II. ARTISTIC FREEDOM**

The medium of film and the field of philosophy can interact in two important ways. First, cinema philosophy is a well-established subdiscipline that explores philosophical issues surrounding the nature of movies. The philosophical questions maybe, what are the essential and sufficient criteria for a film to exist? How do moviegoers engage with films creatively? What cognitive or emotional benefits can watch movies provide? The philosophical approach of clarifying notions and examining abstract problems is simply applied to movies in this case. Second, the more contentious idea of film as philosophy proposes that films can address philosophical questions and may add to a variety of philosophical discussions. The concept of artistic expression is that an artist should be free from legal restrictions or convention in the creation of his art. Everyone has the right to creative expression and artistic expression. It encompasses the freedom to participate in and experience artistic expressions and creativity, to have access to and enjoy the arts through individual or combined practise. Our society's cultural and political body relies on artistic freedom. It is fundamental in a democracy to amount an individual's right to express his or her ideas. It is for this reason that many international human rights treaties acknowledge and aim to defend the right to artistic expression. Article 15 of the ICESCR, for example, protects artistic expression and creativity. Depending on the theory, the extent of protection given to artistic expressions varies.

J.S. Mill provided the classic case for free speech. Mill considered press freedom as a safeguard against the government's tyranny.<sup>2</sup> Freedom of expression is an essential component of democracy.<sup>3</sup> Free expression is often restricted in countries with unstable democracies. As a result, defending free expression can be seen as a strategy of achieving modern states' democratic goals. Nevertheless, if democracy is the main objective of free speech, artistic freedom, which is the subject of this study, is not fully protected. Two characteristics of Jeremy Waldron's pragmatic approach to freedom of expression. To begin, one must acknowledge that their group coexists with a variety of other groups in society. Second, one must recognise that acceptance is reciprocal across various social groupings. However, with this approach, artistic freedom may be sacrificed in the name of sustaining a calm and inclusive community. To determine the boundaries and justification of freedom of expression, Ronald Dworkin relies on the legitimacy of legislation. Dworkin claimed that the government or the state can lawfully put

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<sup>2</sup> John Stuart Mill, *On Liberty* (HUP 1859).

<sup>3</sup> Alexander Meiklejohn, *Free speech and its relation to self-government* (Harper Brothers 1948)

limits on dissenters. But any limitations must be enforced in a way that honours the individual's standing as a free and equal member of society. Dworkin prevents tyranny of the majority from silencing dissenting voices in this way. Simultaneously, until individual rights are safeguarded and they are treated equally as members of society, the government has the authority to set some restrictions.

In any democracy, freedom of expression is the most important freedom. It would be hard to derive political facts in public life without it. If free speech is guaranteed, ideas will spontaneously arise in human minds, which is essential for artistic production. If an artist is aware that he'll be persecuted because of his ideas, then this could be harmful to free thinking, and that is a fundamental human right. Taking filmmaking for example, filmmaking is an art form, the filmmaker may be tempted to present specific aspects of the society in which we live. These images may not always be full of gorgeous demonstrations and may occasionally highlight negative aspects. Here, filmmaker is often prevented from doing so due to profanity and vulgarity, thereby limiting his artistic thoughts.

According to Kearns, at least two justifications exist for artistic expression freedom. First, an individual's right to personal fulfilment includes the ability to express oneself artistically. Second, certain truths can be discerned in the course of artistic expression, these realities add towards the noble quest for truth as a universal human endeavour. However, art has additional qualities that are unique to it that help to promote artistic endeavours. It is remarkably easy to quiet those with whom you dispute in India today. Inefficient court systems have created an environment where speech can be silenced swiftly. Art does have its own independent ontology and, as a result, should be treated as a separate entity. One challenge in the art-law relationship is that law, in its public-moral role, has a tendency to dominate. To prohibit ostensibly offending things in an inconsistent, homogeneous manner, which might lead to the cultural autonomy of art being neglected. It is neglected despite the fact that its social and cultural autonomy of characteristics and functioning is recognised. It is vividly clear that, artistic freedom and censorship exist side by side.

### **III. CENSORSHIP IN INDIA**

Censorship laws in India roots to colonial period, The Press Act 1799 was enacted by the British rulers in response to the growing popularity of newspapers in India. It was done to quell rising nationalist rebellion. The Vernacular Press Act of 1878 was enacted to better regulate the content of newspapers published in vernacular languages. By compartmentalising Hindus and Muslims and inciting them against one other, the colonial policy of "divide and rule" helped

justify the rigorous censorship mechanism. This systemic racism against one group over another was nothing more than a religious categorisation that eventually spawned political Islam and Hindutva. Although there is no explicit acknowledgment of artistic freedom in India's constitution, it is tacitly acknowledged under the principles of freedom of expression and press.<sup>4</sup> The right is enforceable in court because it is a fundamental right.<sup>5</sup> It can, however, be disregarded in an emergency.<sup>6</sup> When a statute or executive action infringes the right to freedom of expression, judicial review is available. The requirement is further justified by the recognition in the constitutions of the commitment to observe international law and treaty obligations.

In consideration for ratifying the ICCPR and ICESCR, India must defend freedom of expression. Furthermore, being UNESCO members, they are bound by the organization's Recommendation on the Status of the Artist. The ability to produce without censorship, as well as the right to have artistic work promoted, distributed, and reimbursed, are covered in its concept of artistic freedom. India has also ratified the 2005 Convention on the Protection and Promotion of Cultural Diversity. The report identifies policies and practises that limit the freedom of artistic expression. The Indian constitutions allow reasonable restrictions as the basis for imposing them. The ICCPR, on either hand, applies the proportionality and necessity standards to cases under Article 19 of the Convention. In the case of *State of Madras v. V. G. Row*, the Indian Supreme Court related proportionality and reasonableness. In issues of artistic freedom and obscenity, the Miller test was devised in the United States.<sup>7</sup> For censoring artistic expressions, this test needs the fulfilment of three conditions. To begin, the court evaluates if the work would be considered obscene by the average person. The court also would look to establish if the art depicts sexual or excretory activities in a way that is clearly offensive. Ultimately, the work's literary, aesthetic, political, or scientific worth would be considered by the court. This test has been criticised for granting the court art evaluation authority, it remains the most frequently accepted standard in the field.

#### **IV. FILM CENSORSHIP AND CBFC**

Article 19 of India's constitution guarantees citizens the fundamental right to freedom of speech and expression. However, such liberty is not unfettered and is subject to reasonable limitations. It refers to the ability to freely express oneself through language, literature, art, or any other kind of communication. In modern liberal democracies, it is frequently viewed as an essential

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<sup>4</sup> Mahmudul Islam, *The Constitutional Law of Bangladesh* (Mullick Brothers 2012) 330

<sup>5</sup> Article 13 and 32 of the Constitution of India.

<sup>6</sup> Art 141A and the Constitution of India, Art 352

<sup>7</sup> *Miller v. California*, 413 U.S. 15 (1973)

principle. Regardless of the fact that motion pictures are not explicitly mentioned as a means of speech and expression in the Indian Constitution, they were recognised in this regard by the Supreme Court in the case of *Rangarajan v. P. Jagjivan Ram*.<sup>8</sup> The court concluded that, movie doubtless enjoys the safeguard under Article 19(1)(a). The movie inspires thought and action while maintaining a high level of interest and retention. It has an impact on the visual and auditory senses at the same time. It will have a total and immediate impact on, and appeal to, everyone who sees it in some situations. As a result, the film has an exceptional ability to unsettle and provoke emotions. As a result, prior constraint censorship is not only acceptable but also necessary. The censorship of films in India is done by Central Board of Film Certification which act as justification of film certification. The paternalistic belief that the Indian viewer is immature is one of the most prominent reasons for film censorship in India.<sup>9</sup> The Delhi High Court overturned this premise, ruling that a film is a work of fiction and the audience and someone disturbed by the content make a conscious decision to see a feature film is free to not watch the film.<sup>10</sup>

The UN's 'Report of the Special Rapporteur on Cultural Rights' acknowledged the issue of censorship to be destructive to the right to artistic expression and creativity. According to the paper, censorship causes significant social, cultural and economic drop. Artists are deprived of their form of expression and subsistence, and all those involved in the arts are put in danger. Fear of censure among artists and groups frequently leads to self-censorship, which stifles artistic expression. Fear and insecurity are incompatible with artistic creation.<sup>11</sup> Censorship is not enforced and exercised only by the CBFC in India. There were situations where the government has imposed a film ban. It was on the basis that such films could jeopardise social harmony and religion, consequently jeopardising a state's peace and harmony. Government advisories or announcements are used to impose such restrictions.<sup>12</sup> In the case of *Rangarajan v. P. Jagjivan Ram*, the court ruled that freedom of expression cannot be restricted only because of the possibility of demonstrations, rallies, or violence. Such an activity would be a rejection of the rule of law and a submission to blackmail and terrorizing. Since freedom of expression is a liberty protected against the state, it is the state's responsibility to preserve it. The government cannot claim that it is unable to deal with the hostile audience issue, it is their legal

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<sup>8</sup> 1989 SCR (2) 204

<sup>9</sup> Sidharth Bhatia, Censorship in India is Based on the Paternalistic Idea that Citizens are not Mature, *THE WIRE* (April 28, 2016)

<sup>10</sup> W.P (C) No. 112/2015

<sup>11</sup> Fareeda Shaheed, Report of the Special Rapporteur in the Field of Cultural Rights, UNITED NATIONS GENERAL ASSEMBLY (A/HRC/23/34, March 14, 2013), (April 27, 2016)

<sup>12</sup> Press Trust of India, Ram Rahim Singh's 'Messenger of God' screening banned in Punjab, § 144 Imposed in Sirsa after Protest, *INDIAN EXPRESS*, (April 28, 2016)

obligation to prevent it and safeguard freedom of expression.

The case of *Ajay Gautam v. Union of India*,<sup>13</sup> which involved the film 'PK,' Its depiction of God men as degrading to Hindus, in violation of Articles 19(2) and 25 of the Indian Constitution. The Supreme Court ruled that free speech cannot be restricted on the grounds that its viewers will adopt harmful notions. The threat should not be speculative, hypothetical, or far-fetched, it should have a close and direct relationship to the expression. The CBFC has imposed and applied censorship, which is a violation of the right to freedom of expression, impeding the writing vision and artistic freedom. The CBFC is a governmental organisation in India that oversees public cinema screenings. The Ministry of Information and Broadcasting established it in compliance with Section 3(1) of the Indian Cinematographer Act of 1952. Only once the CBFC has certified a film may it be shown publicly in India. For the purpose of film certification, the CBFC is organised into a two-tier jury system, the Examining Committee and the Review Committee are the two stages. It also contains the Film Certification Appellate Tribunal, which is an appeals body. 5A<sup>14</sup> of the Act specifies the various types of film certification, including:

- **U** - Films that can be shown in public without restriction.
- **UA** - Films with scenes deemed inappropriate for children under the age of twelve, but generally suitable for public display without restriction.
- **A** - Only adults are allowed to see films that are deemed suitable for showing.
- **S** - Films that are only available to members of certain professions or classes of people.

In line with Section 5(B) of the Cinematograph Act,<sup>15</sup> this authority certifies films. It's worth noting that the Cinematograph Act of 1952 only regulates films through certification or non-certification, there is no specific mention of the Censor Board's power to censor films anywhere in the document. Rule 26 of The Cinematograph Rules of 1983 gives the CBFC the authority to censor films. This states that if the condition is met, the regional officer can provide a certificate, that a specific segment or portions of the film be eliminated, and that the component objected to be excised from the film's negative as well as all copies of it.<sup>16</sup> The Act also gives the Central Government the authority to provide directives outlining the principles that would guide the CBFC.<sup>17</sup> The supreme court held that 5B is a legitimate exercise on the exercise of the right to

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<sup>13</sup> Delhi High Court, W.P.(C) No.112/2015.

<sup>14</sup> The Cinematograph Act, 1952, § 5A

<sup>15</sup> The Cinematograph Act, 1952, § 5B.

<sup>16</sup> Cinematograph Rules, 1983, Rule 26

<sup>17</sup> The Cinematograph Act, 1952, § 5B.



freedom of speech and expression as anticipated by Article 19(2), and hence constitutional.<sup>18</sup>

## **V. RESTRICTION OF CREATIVITY**

Various courts in our country have attempted to curtail the CBFC's powers on numerous occasions, the CBFC's persistent enforcement of censorship was regarded as a barrier to artistic expression. For this reason, the case of Bobby Art International v. Om Pal Singh Hoon<sup>19</sup> is significant. The point that was raised was about an objection based on decency and morals concerning various explicit parts in the film Bandit Queen involving rape and foul language, it follows the life of Phoolan Devi, a former dacoit. The court emphasised the relevance of the Central Government's directives to the CBFC to certify films while requiring film certification agencies to be sensitive to the ideals and societal standards, as well as social changes. They must ensure that "artistic freedom and artistic expression are not unnecessarily restricted." The court also highlighted the view of CJ of the Supreme Court, Hidayatullah, in the case of K.A. Abbas v. Union of India,<sup>20</sup> case to define the censor's responsibilities in order to protect artistic freedom. The court emphasised the value of artistic freedom in a democratic society in the case of.<sup>21</sup> Concluded that in order to appreciate the plaintiff's ideas represented in the play, the law does not have to embrace them, the petitioner's freedom to express their opinions as a playwright.

A democratic society is inevitably sustained through respect for and tolerance of a range of perspectives. If the freedom to depict a message is taken away from playwrights, artists, writers, and poets, their rights will be reduced to husk. Popular opinions, no matter how powerful, cannot trump the ideals enshrined in the constitution. A writ petition was filed in Anand Patwardhan v. Central Board of Film Certification to overturn the FCAT's decision. In the plaintiff's documentary film War and Peace, FCAT instructed two cuts and one addition. That was about the path of peace action Face of Global militarization and on the premise that the sights would disrupt public order and offend religious emotions, the war was declared. The Bombay High Court later determined that this had no impact on public order. The cuts were advised solely to annoy the petitioner, and it was up to the petitioner to decide whether or not to add additional sequences. The petitioner's freedom of speech and expression is harmed by the cuts imposed by the FCAT, according to Article 19(1)(a) of the Constitution. In this case, the court also recognised artistic freedom as crucial to the whole creative process. The movie

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<sup>18</sup> AIR 2007 SC 1640.

<sup>19</sup> (1996) 4 SCC 1.

<sup>20</sup> (1970) 2 SCC 780.

<sup>21</sup> Bombay High Court, 2002 (1) BomCR 57.

delivers a strong plea for peace and illustrates the devastating impacts of conflict and nuclear weapons, according to the jury.

## **VI. ANALYSIS AND SUGGESTIONS**

A certificate issued by the Board is valid for 10 years across India, according to the Cinematograph Act.<sup>22</sup> This provision highlights a few significant legal flaws. For instance, it makes no provision for a system or plan that governs what occurs when a certificate expires or is renewed. Does this mean that a director whose film was subjected to the censor board's scissors now can openly broadcast the film with the edits intact? Although such footage is handed to the censor board, it is extremely possible that the director will retain ownership of it. Because of this gap, directors and artists can benefit more from already-released films by releasing uncensored/uncut versions. Movies, documentaries or short films released directly in social media platform doesn't owe any certification from CBFC which is also a matter of question here. This gap benefits those filmmakers, who are frequently subjected to CBFC censorship and it allows such filmmakers to post their work online for unrestrained public access without any deletion or addition of CBFC action. In addition, the Act, in many locations, restricts certification to public screenings of films in India. What remains unresolved here is what happens to Indian movies that are released worldwide, given the size of the market for similar movies? Is it possible for a filmmaker or artist to release their film internationally without the CBFC imposing cuts, considering that accreditation is only available in India? Such legal loopholes, in reality, benefit filmmakers by allowing them to avoid CBFC restrictions. It gives them the opportunity to express themselves artistically. but the lacuna in the law remains unanswered.

## **VII. CONCLUSION**

A committee led by filmmaker Shyam Benegal has presented the government with a report seeking changes to the Cinematograph Act of 1952. It was formed to establish a comprehensive framework for film certification. It established criteria to ensure that artistic expression and creative freedom are not restricted unreasonably during the grading of films.<sup>23</sup> The committee recommended that the CBFC be limited to film certification in its report and its application must be limited to the issuance of certificates based on age and maturity. The committee also proposed dividing certification categories into UA12+ and UA15+ for the UA category, as well as A and AC for the Adult category. In addition, I propose that certification categories be

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<sup>22</sup> 2 The Cinematograph Act, 1952, § 5A (3).

<sup>23</sup> (28 April, 2016), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=142288>.

enlarged not only in terms of age but also in terms of content. 'R' rated films are those that deal primarily with religious matters and then have the potential to disrupt community cohesion. A 'P' certification can be given to films that mock the country's political systems or parties. A system like this would enable for the public screening of any type of film and also aid the audience or viewer in making a sensible decision about whether or not to see a film based on its content. A rating system like this would make for a certification that is flexible framework. Second, the CBFC must work independently, without government oversight or control and establish broader criteria for the substance of films. The YouTube community guidelines are a great area to look for such standards, that enable security while allowing any and all types of material to be distributed. Film censorship restricts artistic freedom and conflicts with the filmmaking process. There must be organisations and mechanisms in place that solely regulate and certify films, not censor them. While regulating the content of films, such procedures and institutions must also uphold the greatest standards of artistic freedom.

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