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Critical Analysis of Film Censorship in India

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ABSTRACT

This research paper presents a comprehensive critical analysis of the film censorship landscape in India. Film censorship has long been a subject of controversy, with its implications on artistic freedom, cultural expression, and societal values. The objective of this study is to analyse the evolution, processes, and effects of film censorship in India, shedding light on its historical context, underlying principles, and contemporary challenges. It also clearly outlines the historical background, legislative changes, and the role of the Central Board of Film Certification (CBFC). The paper discusses the categories of film certification and the CBFC's authority to make decisions regarding film scenes and even entire films. Furthermore, this analysis delves into the complexities and controversies surrounding film censorship. This paper highlights the potential risks of allowing a few individuals to decide what is suitable for public consumption in a medium as interpretive as cinema. This paper explores the recent Cinematograph amendment bill 2023 along with its multifaceted repercussions for the film industry while also offering valuable insights into the intricate relationship between creative expression, cultural norms, and governance. It calls for a balanced approach that upholds artistic freedom while accounting for the diverse perspectives that contribute to the rich tapestry of Indian society.

Keywords: Film Censorship, India, Artistic Freedom, Societal Values, CBFC.

I. INTRODUCTION

Undoubtedly, cinema stands as the most potent contemporary medium, possessing a profound ability to evoke emotions and performances. It has transitioned from myth to modernity, from ritual to theatre, and now occupies both mental and physical spaces.

Cinema wields a dual influence on society, serving as a reflective mirror and a conveyor of emotions, encompassing past, present, and future experiences. Enduring through time, films stimulate our intellectual capacities, frame by frame, displaying verisimilitude. Movies bridge the literacy gap, capturing the attention of the uneducated and illiterate. Beyond mere entertainment, films can educate, inspire, and reshape perspectives. While the origins of cinema trace back to the nineteenth century, its true transformation into a twentieth-century

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phenomenon has revolutionized human expression and communication.³

The role of filmmakers is pivotal in this journey, from script to screen, as they encapsulate their genuine vision and passion. However, compromising this raw self-expression for the sake of discipline, social standards, or public interest can be an intricate and challenging path.

The ongoing debate around censorship highlights concerns that it curbs the creativity and voice of filmmakers. Often, movies are judged based on isolated elements such as songs, dialogues, or scenes, without understanding their contextual placement⁴.

Many controversies concerning free speech and expression in India revolve around state censorship attempts and interventions in newspapers, films, and electronic media. Film censorship operates in a realm without strict boundaries, relying heavily on viewers' subjective sense of morality. This leads to divergent opinions - some argue for more censorship, while others call for less.

Modern India witnesses a rise in intolerance, as filmmakers face limitations in exercising full creative autonomy due to external pressures from political and civil authorities⁵. This situation contradicts the democratic ideals of the country, as voices are silenced, hindering the gift of self-expression. The paradox lies in a democracy's emphasis on awareness while tolerating ignorance.

II. THE PHENOMENON OF FILM CENSORSHIP IN INDIA

Film censorship in independent India has its roots in the colonial era and has continued to evolve as a social-political phenomenon. During British rule, censorship was a clear manifestation of state intervention in social interactions within the subject community⁶. Following India's independence and the establishment of a political democracy, film censorship persisted as a complex and contentious issue.

In 1950, the Indian Constitution's Article 19(a)⁷ granted citizens the right to freedom of speech and expression. However, the provision also allowed for "reasonable restrictions" on this right in the interests of various factors such as the sovereignty and integrity of India, national security,

³ Dheeraj Kumar, "Evolution of Indian Cinema", *Times of India*, 26 June 2019, available at: <https://timesofindia.indiatimes.com/readersblog/seethroughmyeyes/evolution-of-indian-cinema-4289/> (last visited on May,2023)

⁴ Someshwar Bhowmik, *Cinema and Censorship: The Politics of Control in India* 4 (Orient BlackSwan, New Delhi, 2009)

⁵ Rajeev Dhavan, *PUBLISH AND BE DAMNED: Censorship and Intolerance in India* 219 (Tulika Books, New Delhi, 2008)

⁶ Dr. Archana Chanuvai Narahari & Mr. Kaushik Garasiya, "CENTRAL BOARD OF FILM CERTIFICATION (CBFC) – SPECTATORS' PERSPECTIVE ON CENSORSHIP PROCESS IN INDIA" 6 *JETIR2* (2019)

⁷ The Constitution of India, art. 19(a)

public order, decency, morality, and more. Despite this fundamental right, film censorship remains a part of contemporary society. The interpretation of "reasonable restrictions" has led to debates, particularly considering the subjective nature of films and their potential to be interpreted in various ways.

Justice Mahajan's description of "reasonable restriction" emphasizes that limitations imposed on the right to freedom of speech and expression should not be arbitrary or excessive. The term implies a balance between public interests and individual freedoms, avoiding unjustified encroachments on rights.

The compatibility of censorship with the constitutional provisions of a democratic nation raises questions. Censorship not only restricts speech but also shapes authorized forms of truth. This issue extends beyond cinema, touching on broader aspects of human creativity⁸. While the struggles over free speech and governance dynamics have regional and national histories, cinema's history is global. Examining its evolution in relation to censorship reveals a disciplinary technology that molds normalized perceptions of subjectivity, sexuality, and citizenship, as conceptualized by Michel Foucault.

III. LEGISLATIVE DEVELOPMENTS AROUND FILM CENSORSHIP OVER THE YEARS

Film censorship can be traced back to its origins as a colonial construct. In the early days of British India, silent films were a form of private entertainment. However, as time progressed, cinema gained popularity within India itself, necessitating the implementation of regulations for film exhibitions.⁹ The initial move towards regulation was marked by the proposal of the first Cinematograph Bill in 1917. This bill aimed to protect public morality by restricting objectionable films from being shown. Interestingly, despite concerns over personal liberties, the Indian Legislative Council opposed the bill. Regardless, the colonial authorities enacted The Cinematograph Act of 1918,¹⁰ which took effect on August 1, 1920, introducing the concept of film censorship to India.

The 1918 Act centered on two key aspects:

1. The licensing of cinema establishments.
2. The certification of films for their suitability for public screening.

⁸ Someshwar Bhowmik, *Cinema and Censorship: The Politics of Control in India* 4 (Orient BlackSwan, New Delhi, 2009)

⁹ Alolika A. Dutta, "Brief Analysis of Censorship in India", *Youth Ki Awaaz*, 17 March 2019, available at: <https://www.youthkiawaaz.com/2019/03/a-brief-analysis-of-censorship-in-todays-india/> (last visited on Dec 3, 2021)

¹⁰ The Cinematograph Act, 1918

To ensure compliance, a dedicated authority was established, granting permission for film exhibitions. Following India's independence in 1947, the new government recognized the need for continued film censorship. Amendments were made to the Cinematograph Act of 1918 in 1949. This included the creation of two certification categories: the 'A' certificate, restricting viewership to adults, and the 'U' certificate, allowing unrestricted exhibition. The 1949 amendment also led to the establishment of a central censorship board to replace regional bodies¹¹. In 1951, the Ministry of Information and Broadcasting established the Central Board of Film Censor, which was later renamed the Central Board of Film Certification on June 1, 1983.

In India, public film exhibition requires certification from the Central Board of Film Certification (CBFC), a statutory body under the Ministry of Information and Broadcasting. Operating under The Cinematograph Act of 1952,¹² the CBFC consists of non-official members and a chairman appointed by the Central Government. The board operates from its headquarters in Mumbai and has regional offices in various cities. Advisory Panels assist these offices in evaluating films. Certification is based on specific parameters, and films can be categorized as follows:

1. S - Restricted to specific professions or groups.
2. U - Unrestricted public exhibition.
3. A - Restricted to adult viewers.
4. U/A - Unrestricted with caution for children under 12.

The CBFC can decide not to certify a film or to disapprove certain scenes, potentially leading to the deletion of scenes or even an entire film, as authorized by the Act.

Critics argue that film censorship poses challenges to free expression, as it limits the diverse interpretations that cinema can convey. The CBFC has faced criticism for allegedly exercising its censorship power unreasonably, resulting in the removal of significant portions of films. Such actions stifle creativity and undermine the efforts of filmmakers and their teams. Detractors view these actions as disrespectful to the film industry and a waste of resources.¹³

In essence, film censorship's historical roots lie in colonial times, and while it serves to regulate public exhibition, it also raises concerns about free expression and creativity within the

¹¹ Rajeev Dhavan, *PUBLISH AND BE DAMNED: Censorship and Intolerance in India* 219 (Tulika Books, New Delhi, 2008)

¹² The Cinematograph Act, 1952

¹³ Dr. Archana Chanuvai Narahari & Mr. Kaushik Garasiya, "CENTRAL BOARD OF FILM CERTIFICATION (CBFC) – SPECTATORS' PERSPECTIVE ON CENSORSHIP PROCESS IN INDIA" 6 *JETIR2* (2019)

cinematic medium.

IV. JUDICIAL APPROACH VIS A VIS FILM CENSORSHIP

Indian courts have consistently upheld and championed the fundamental right to freedom of speech and expression as enshrined in the Constitution. This encompasses the right to present diverse and opposing viewpoints, whether they are accurate or not. Rulings from the Supreme Court of India and various High Courts have provided clarity on matters related to freedom of expression and state-imposed censorship.

Several landmark judgments have played a pivotal role in shaping the current censorship regulations and laws in India. One such case is "**K.A. Abbas v. Union of India**"¹⁴:

(A) Facts of the Case:

In this case, K.A. Abbas, a journalist, playwright, writer, and film producer, created a short film titled "A Tale of Four Cities." The film depicted contrasting realities of life in major Indian cities, highlighting the contrast between opulent lifestyles and abject poverty. Abbas sought a U certificate from the Censor Board, which would allow unrestricted public viewing.

However, the Censor Board's Examining Committee recommended a certificate that limited the film's viewing to adult audiences. This decision was upheld by the Revising Committee. Following an appeal, the Central Government suggested granting a U certificate if a scene set in the red-light district was removed. This scene portrayed immoral activities such as trafficking, prostitution, and exploitation by pimps, and it was deemed unsuitable for children.

Abbas filed a writ petition with the Supreme Court, contending that his freedom of expression was violated. He argued against prior censorship, stating that if any censorship was permitted, it should be based on non-arbitrary grounds. He also requested fixed time limits for Censor Board decisions and an alternative appellate mechanism. The government granted these requests without Supreme Court discussion.

(B) Decision Overview:

Chief Justice Hidayatullah delivered the Court's opinion, representing justices Shelat, Mitter, Vidyalingam, and Ray.

The Court rejected the distinction between prior censorship and censorship in general, considering both subject to the reasonable restrictions outlined in Article 19(2) of the Indian Constitution. The Constitution acknowledged that freedom of speech and expression wasn't an

¹⁴ AIR 1971 SC 481

absolute right and could be subject to reasonable limitations. The absence of the term 'reasonable' in The Cinematograph Act, 1952,¹⁵ was deemed inconclusive. The Court highlighted the judicial role as guardians of citizens' rights in preserving public interest.

Regarding the lack of clear guidelines in the Act and arbitrary exercise of powers, the Court found the Act's guidelines, coupled with Article 19(2), to be adequately clear. However, the Court recommended distinguishing between artistic and non-artistic expression when assessing obscenity. Nonetheless, this alone was deemed insufficient to invalidate the Act's provisions.

In summary, "K.A. Abbas v. Union of India" marked a significant case where the Court addressed prior censorship, asserting that both prior and general censorship must adhere to reasonable restrictions within the Constitution. The case emphasized the Court's role in safeguarding public interests while acknowledging the limitations on freedom of expression.

Other cases regarding film censorship In India:

1. **S. Rangarajan v. P. Jagjivan Ram (1989)¹⁶**: This case is significant as it struck down certain provisions of the Cinematograph Act that allowed the government to ban a film on the ground of potential defamation or contempt of court. The Supreme Court emphasized the importance of freedom of expression and that reasonable restrictions must be in line with Article 19(2) of the Constitution.
2. **Phantom Films Pvt. Ltd. v. The Central Board of Certification (2015)¹⁷**: This case revolved around the movie "Udta Punjab," which faced numerous cuts ordered by the Central Board of Film Certification (CBFC). The Bombay High Court, in its judgment, held that the CBFC's role was to certify, not censor films. It ordered a few minor changes but largely upheld the filmmakers' right to expression.
3. **Creative Eye Limited v. The Information & Broadcasting Ministry (2017)¹⁸**: In this case, the Supreme Court highlighted that once the CBFC grants a certificate to a film, state governments cannot impose further restrictions on the exhibition of the film.
4. **Nakkeeran Gopal v. Union of India (2018)¹⁹**: This case involved the Tamil film "Sarkar." The Madras High Court directed the deletion of certain scenes that criticized government welfare schemes. The Supreme Court, however, stayed this order and allowed the film to be screened without cuts.

¹⁵ The Cinematograph Act, 1952

¹⁶ (1989) 2 SCC 574

¹⁷ [2016] (4) ABR 593, (BOHMC)

¹⁸ AIR 2017 SC 258 (SC)

¹⁹ (2018) 12 SCC 237

V. THE CINEMATOGRAPH (AMENDMENT) BILL, 2023

In order to enhance the effectiveness of film exhibition sanctioning process, adapting it to contemporary needs, and addressing piracy concerns, the Cinematograph (Amendment) Bill, 2023 has been passed by the parliament after getting an approval from Lok Sabha; The passing of The Cinematograph (Amendment) Bill, 2023²⁰ marks a significant milestone in the Indian film industry's evolution and its efforts to adapt to contemporary challenges. The amendment signals a departure from the previous norms established by the Cinematograph Act of 1952, which had been in place for nearly four decades. This new legislation reflects the government's recognition of the need to align film exhibition practices with the demands of the modern era, and concurrently addresses the pressing concerns of piracy.

One of the key objectives of the Cinematograph (Amendment) Bill, 2023 is to streamline and enhance the process of granting sanctions for film exhibition. By modernizing this process, the government aims to facilitate smoother and more efficient screenings of films in theatres. This move not only benefits the filmmakers and producers by reducing bureaucratic hurdles but also ensures that audiences can access a wider array of films without unnecessary delays.

Piracy has long been a critical challenge for the Indian film industry. The advent of digital technology and online platforms has made it easier for copyrighted content to be illegally distributed and accessed. The Bill's focus on piracy indicates the government's commitment to protecting intellectual property and supporting the economic interests of filmmakers and producers. The legislation likely introduces stringent measures to curb piracy, possibly involving legal consequences for those who engage in or facilitate unauthorized distribution of films. A noteworthy aspect of the Cinematograph (Amendment) Bill, 2023 is its emphasis on minimizing government intervention in the film industry. By doing so, the government acknowledges the creative autonomy of filmmakers and producers, allowing them more freedom in their artistic endeavours.²¹ This change is poised to foster an environment in which innovative storytelling and filmmaking techniques can flourish without undue regulatory constraints.

Following are the changes brought by the Bill:

1. **Age-Based Certification Categories:** Currently, under Sections 4 and 5-A of the Cinematograph Act, films are certified for exhibition without restriction ('U'), with

²⁰ The Cinematograph (Amendment) Bill, (2023)

²¹ N. Ram, A new phase of censorship creep in India, *Frontline*, Feb 3, 2023, available at: <https://frontline.thehindu.com/columns/guest-column-media-n-ram-a-new-phase-of-censorship-creep-in-india-it-rules-2021-ban-bbc-documentary/article66463846.ece> (last visited on July 9, 2023)

guidance for children below 12 years ('UA'), only for adults ('A'), or for specific professions or groups ('S'). The Bill replaces Section 4 and introduces an age-based certification system within the "UA" category, dividing it into three sub-categories: "UA 7+", "UA 13+", and "UA 16+".²² This categorization is based on the age appropriateness of the content. Additionally, the Bill empowers the Board to grant separate certificates for television or other prescribed media exhibitions.

2. **Validity Period of Certification:** The Bill modifies Section 5-A (3),²³ which currently grants a certification validity throughout India for ten years. The Bill extends this validity to perpetuity, meaning that the Central Board of Film Certification's granted certification remains valid indefinitely.
3. **Omission of Central Government's Revisional Powers:** The Bill removes Section 6 (1) of the Act, which pertains to the Central Government's authority to revise decisions. This change aligns with the Supreme Court judgment in the case of Union of India Vs. K.M. Shankarappa.²⁴
4. **Introduction of New Sections 6AA and 6AB:** The Bill introduces two new sections, 6AA and 6AB:
 - **Section 6AA (Prohibition of Unauthorized Recording)**²⁵: This section prohibits the unauthorized recording of films using audio-visual recording devices in any place. Even attempting or aiding such unauthorized recording is considered punishable.
 - **Section 6AB (Prohibition of Unauthorized Exhibition of Films):** This section prohibits the unauthorized exhibition of films without proper certification. Like in the previous section, attempting or aiding such unauthorized exhibition is also punishable.
5. **Punishments for Offenses:** The Bill specifies punishments for the aforementioned offenses:
 - Imprisonment ranging from 3 months to 3 years.
 - A fine between Rs. 3 Lakh and 5% of the audited gross production cost of the

²² Central Board of Film Certification, available at: <https://www.cbfcindia.gov.in/cbfcAdmin/> (last visited on July 15, 2023)

²³ The Cinematograph (Amendment) Bill, (2023), Sec. 5-A (3)

²⁴ (2001) 5 SCC 73.

²⁵ The Cinematograph (Amendment) Bill, (2023). Sec. 6AA

film.²⁶

In summary, the Bill introduces a revised certification framework with age-based categories, extends the validity of certifications indefinitely, removes the Central Government's revisional powers, introduces new sections to prohibit unauthorized recording and exhibition of films, and prescribes penalties for violating these prohibitions.

VI. CRITICISMS TO THE AMENDMENT TO THE ACT

The amendment to the Cinematograph Act has not been immune to criticism, and several concerns have been raised regarding its implications:

1. **Subjectivity and Age-Based Categories:** The introduction of three further age subdivisions within the existing UA category raises issues of subjectivity. Deciding what content is suitable for viewers based on different age classifications can be subjective and debatable. The lack of an objective procedure for determining these distinctions could complicate the certification process. Filmmakers might find crucial scenes, necessary to convey a movie's essence, subjected to varying interpretations, leading to clashes and criticisms within the industry.
2. **Complex Decision-making for Parents:** The extended age categorization creates complexity for parents in deciding whether a particular film is appropriate for their children. This intricacy could lead to uncertainty and confusion among parents, making it challenging for them to make informed choices regarding their children's movie viewing.
3. **Implementation Challenges:** Effective enforcement of laws in a country like India is often a challenge. Stringent mechanisms need to be adhered to, but these are frequently ignored by both wrongdoers and law enforcement officials. As a result, laws can become ineffective in practice, rendering them futile on paper. The same concern applies to the current amendment, and piracy may persist due to non-compliance or lack of awareness among individuals, undermining the amendment's goals.
4. **Internet Anonymity and Piracy:** The rise of piracy, especially on the internet, presents a significant problem. Anonymity on the internet makes it difficult to track the actions of wrongdoers, particularly when movie clips are shared through various social media

²⁶ Aiman J. Chishti, More Film Certification Categories, Punishment For Unauthorized Recording Of Movies : Parliament Passes Cinematograph (Amendment) Bill, *Live Law*, 31 July 2023, available at: <https://www.livelaw.in/news-updates/parliament-passes-cinematograph-amendment-bill-2023-234032?infinitescroll=1> (last visited on July 22, 2023)

platforms.²⁷ The diverse forms of piracy, including sharing clips through platforms like Telegram, Instagram, Twitter, and others, complicate enforcement efforts.

5. **Unintended Consequences:** While the 2023 Amendment Bill introduces provisions to strengthen the future of Indian cinema, certain issues remain unresolved. The complexity of implementing and interpreting the new provisions, coupled with the challenges of piracy and subjectivity, could result in unintended consequences that impact the industry, filmmakers, and viewers.

In essence, while the amendment aims to enhance various aspects of the Cinematograph Act, it has sparked debates and concerns about its practical implications and potential challenges in the ever-evolving landscape of Indian cinema.

VII. CONCLUSION

In practical terms, cinema serves as a reflection of our surroundings. Fuelled by technological advancements and globalization, modern filmmakers are exploring unconventional themes that were previously considered off-limits. With the widespread use of the Internet, various degrees of violence and explicit content are easily accessible through smartphones, challenging the effectiveness of censorship. In the dynamic realm of Indian cinema, where artistic expression and societal sensibilities intersect, the recent amendment to the Cinematograph Act has ignited both anticipation and scepticism. While aimed at modernizing the certification process and addressing contemporary challenges, the amendment has elicited mixed reactions due to its wide-ranging effects. Furthw

The introduction of age-based subdivisions within the "UA" category, while intended to cater to diverse age groups, raises concerns about subjectivity and the potential for clashes within the industry. Determining what content is suitable for specific age classifications could prove to be a contentious task, given the absence of an objective framework for assessment. Filmmakers' creative intent may clash with varying interpretations, potentially dampening their artistic expression.²⁸ The challenge lies not only in formulating stringent mechanisms but also in ensuring their rigorous application. The history of ineffective enforcement in India's legal landscape casts a shadow on the extent to which these new provisions will be upheld.

Piracy, an enduring nemesis of the film industry, stands as another formidable challenge. The

²⁷ Pamela Philipose, Backstory: Censorship Comes in All Shades and Sizes in India, *The Wire*, 28 Jan 2023, available at: <https://thewire.in/media/backstory-censorship-comes-in-all-shades-and-sizes-in-india> (Last visited on Aug 6, 2023)

²⁸ Rajeev Dhavan, *PUBLISH AND BE DAMNED: Censorship and Intolerance in India* 219 (Tulika Books, New Delhi, 2008)

advent of the internet and social media has escalated its prevalence, posing a threat to creators' intellectual property rights. The difficulty of tracking anonymous culprits and the diverse forms of piracy further amplify the enforcement challenge.

As the Indian film industry evolves and navigates these complexities, it is essential to strike a balance between creative freedom and societal considerations. While the amendment seeks to fortify the cinematic landscape, it must also address the uncertainties it has introduced. The interaction between artistic expression, technology, and legal frameworks remains a delicate dance, and the true impact of this amendment will unravel over time.

In a country where cinema holds the power to inform, inspire, and influence, the amendment to the Cinematograph Act is a reminder of the need for continuous dialogue between creators, regulators, and the audience. By critically evaluating the amendment's provisions and addressing the concerns it raises, Indian cinema can forge a path that preserves creative freedom while safeguarding societal values. As the curtains rise on this new cinematic era, its successes and challenges will write the script for the future of Indian cinema.
