

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

'Lights, Camera, Cut!': The Impact of Censorship Upon Creativity in Films and Movies

ATRI CHATTOPADHYAY¹

ABSTRACT

Creativity is an essential form of representation of various thoughts, ideas and opinions and in modern democratic setups, it becomes increasingly important to express oneself freely. However, one's rights must never infringe upon those of others, due to which there is also a need for restrictions and regulations upon the freedom of creative representations. So, it becomes crucial to understand what role a censorship system can play with respect to creativity and whether, in the larger context, censorship is a way to ensure a regulated social order or an arbitrary curtailment of one's autonomy and personal freedoms.

This paper shall seek to study the impact and effects of censorship upon creativity and creative representation and, through the medium of films and movies, would try to ascertain the role that censorship plays for creative freedoms and liberties as provided usually in democratic setups. This paper shall also look into the judicial understanding of the interplay of censorship and creativity and would be a socio-legal analysis of this topic.

The methodical approach undertaken in this paper shall consist of the study of scholarly works and publications. Secondary sources such as research papers and theses shall be relied upon to describe the specific example chosen. Online databases and news articles shall also be utilised to lend credibility to the arguments and conclusively establish the objectives of this paper.

Keywords: *censorship, creativity, freedom of expression, social morality, socio-legal analysis.*

I. INTRODUCTION

Creativity has manifested itself in various forms over the years. Humans had represented their artistic abilities and creative thinking even during the ancient times when early humans used to paint on cave walls and draw on stones and tablets. As the human race has advanced along with developments in science and technology, the modes of creative representation have also undergone advancements and progress, culminating in the creation of modern-day media,

¹ Author is a student at West Bengal National University of Juridical Sciences, Kolkata, India.

primarily audio-visual media such as films which are currently one of the most prevalent forms of creative representation. However, censorship is also not a new phenomenon. The earliest instance of film censorship was from 1895 when Thomas Edison's *Dolorita in the Passion Dance* was banned from an Atlantic City Kinetoscope parlour.² Creativity and censorship have always been viewed as adversaries, and a widespread understanding has developed through the years that creativity cannot thrive and flourish fully with a system of censorship or restrictions in place. However, even in modern democratic societies, very few rights are absolute, and as in the Indian context, even the Fundamental Right of freedom of speech and expression is subjected to reasonable restrictions under Article 19(2) of the Indian Constitution. There is no doubt over the fact that creative representation should always be safeguarded and promoted in the greater interest of the society, for even the UN 'Report of the Special Rapporteur in the field of Cultural Rights' recognised the concerns with censorship or unjustified restrictions of the right to freedom of artistic expression and creativity to be devastating.³ Thus, it can be understood that both creativity and censorship play their respective roles in society, and while both have their individual purpose, they interact, overlap and even clash in certain instances. Therefore, it is pertinent to understand whether censorship should be abolished or removed in its entirety to facilitate an environment of absolute freedom of creativity or whether it should remain in place to ensure order and public policy, for as according to Csikszentmihalyi's "systems view of creativity" (325-39), censorship works as gatekeepers between the status quo (social and cinematic) and artistic innovation."

II. ANALYSIS

Art and creativity have often challenged the status quo at various points, and films have usually served as a channel to highlight the flaws and defects in the prevalent systems and have encouraged the adoption of changes in outlook and practices. A notable example is the movie '*Bend It Like Beckham*' which was released in 2003 and apart from dealing with the major issues of female presence in a male-dominated sport like soccer and the social alienation in a foreign country, the film also addressed important issues such as cultural identity, racism and the divide between old and new traditions and values⁴ while touching upon the breaking of traditional norms by a girl from a conservative Indian family. However, while this film was well-received

² Kirsten L. Boatwright, *Constraining Lars Von Trier: Issues of Censorship, Creativity, And Provocation*, MIDDLE TENNESSEE STATE UNIVERSITY, doctoral thesis (December 2011).

³ Chandana Arval, *A Conceptual and Legal Analysis on How Film Censorship Hampers the Freedom of Artistic Expression*, 3 INDIAN JOURNAL OF LAW & PUBLIC POLICY 22 (2016-2017)

⁴ Austa Somvichian – Clausen, *Top 10 Films that break gender and racial stereotypes*, THE HILL, December 9, 2019. Available at <https://thehill.com/changing-america/respect/diversity-inclusion/473687-top-10-films-that-break-gender-and-racial> (Last visited on March 25, 2022).

for its unconventional subjects, it is not always the case with each film. India is a conservative country and is still reserved to a certain extent regarding various unorthodox matters such as same-sex relationships. Despite some progress in tier – 1 cities and cosmopolitan and urban areas, the mindset of the majority of the Indian population is still conservative, which results in the conservative perceptions becoming the dominant ideology. In his notable essay '*Ideology and Ideological State Apparatuses: Notes towards an Investigation*', Louis Althusser stresses the crucial role played by a wide variety of state agencies in the maintenance of ideology.⁵ Since the dominant ideology is often critical of unorthodox practices, the state regulatory agencies undertake a mechanism of curtailing the spread of such practices, and the primary instrument of this mechanism is the imposition of censorship upon creative content, especially films, which deal with the topic of these practices or seek to justify or advocate for their acceptance. Althusser's description of the function of ideological state institutions..... go beyond the traditional interpretation of censorship as simply imposed by an authority on an individual. A state institution in India, the Central Board of Film Certification (CBFC), has often curtailed creative representation of unorthodox subjects through the employment of censorship, such as the ban on the 1996 movie '*Fire*' which dealt with the issue of homosexual relationships and although critically acclaimed globally for its pathbreaking portrayals and a strong message, was met with fierce resistance in India. Censorship is also employed widely, especially in the Indian context, to restrict creative representations of controversial subjects for their nature to trigger discussion and debate or having the potential to threaten the political stability of the incumbent governments or incite constructive criticism amongst the masses.

Censorship forms part of a network of social control that aims to restrict change, often employing censorship in the name of the protection of the common good and of political or social stability, the failure of such ostensibly positive concepts to withstand irony, criticism or debate points instead to the weakness of those who employ such terms to prop up a dubious or weak political power.⁶ The 1997 film '*Kissa Kursi Ka*' was staunchly banned by regulatory authorities and had to face stringent censorship under the incumbent Indian National Congress government at the centre during that time, for the film was a creative depiction in the form of a political satire and sought to raise critical questions and debates over the state of affairs in the politics of that time.

Film and literature share quite a few aspects, so a study of censorship imposed upon works of

⁵ CATHERINE O'LEARY, DIEGO SANTOS SÁNCHEZ & MICHAEL THOMPSON, GLOBAL INSIGHTS ON THEATRE CENSORSHIP (2016).

⁶ CATHERINE O'LEARY, DIEGO SANTOS SÁNCHEZ & MICHAEL THOMPSON, GLOBAL INSIGHTS ON THEATRE CENSORSHIP (2016).

writings historically can also be emulated in the context of cinema in modern times. The most common type of censorship employed in the case of writings was a system of self-censorship, whereby writers and publishers used to regulate the produced content by themselves and tended to voluntarily omit certain portions to ensure that the writings were compliant with the standards of morality prevalent of those times and to conform the writings with the ideologies in place. This was undertaken to avoid a mass scale ban or rampant censorship at the hands of the authorities and to facilitate the circulation of the censored writings at least. As the ultimate purpose of publishing houses is to reach the public and avoid financial losses, a form of negotiation is, thus, usually formed between publishers and the censorship mechanism.⁷ On one hand, these negotiations can put contentious texts in circulation after suppressing the disallowed material. On the other hand, they could transform into a collaboration with the censorship system, which, in the long run, creates more effective self-censorship systems placing the screening and censoring responsibility of publications on the publishers themselves.

According to a study titled '*Made in Hollywood, censored by Beijing*', major Hollywood productions such as the 2013 film *Iron Man 3* were self-censored to tailor them according to the stringent censorship requirements in China, which is one of the biggest and most profitable markets for Hollywood films. Creativity is compromised to such levels that films like the 1997 Brad Pitt starrer *Seven Years in Tibet*, which deals with the sensitive issue of Tibet and the Dalai Lama, have been replaced by movies like DreamWorks Animation's 2019 film *Abominable*, which reinforces Beijing's territorial claims to the South China Sea.⁸

So, creativity is still being curtailed in order to survive commercially, as a result of which, creative choices succumb before the scissors of censorship.

In *The New Censors: Movies and the Culture Wars* (1997), Charles Lyons delineated two distinct categories of cinematic censorship: censorship of prior restraint and "de facto" censorship.⁷ Censorship of prior restraint is the usual form of censorship, enforced by governmental authorities and regulatory bodies, which restricts the content of movies before their release. Under this form of censorship, movies are censored by legal means and the censoring is undertaken prior to the actual release of the film. This type of censorship is still possible to be bypassed as filmmakers often incorporate the changes demanded by the

⁷ Inci Sariz, *Censorship(s) in Translation: Constraints and Creativity*, 2 JOURNAL OF INTELLECTUAL FREEDOM AND PRIVACY No. 3-4 (2017).

⁸ Tatiana Siegel, *Hollywood Is "Increasingly Normalising" Self-Censorship For China, Report Finds*, THE HOLLYWOOD REPORTER, August 5, 2020. Available at <https://www.hollywoodreporter.com/movies/movie-news/hollywood-is-increasingly-normalizing-censorship-china-report-finds-1305935/r> (Last visited on August 25, 2022).

regulatory bodies and omit the portions in question to evade a complete ban on the film. This was the case with the 2016 film *Udta Punjab*, which came under heavy scrutiny for allegedly portraying the state of Punjab in a bad light but was finally released after the incorporation of the suggested cuts and disclaimers. However, in this case, the Bombay High Court came in support of creativity and rejected the long list of suggested edits by the Central Board of Film Certification, stating that the film was not out to "malign" the state of Punjab and that it "wants to save people"⁹ However, the other form of censorship, i.e. de facto censorship, is more restrictive as it is not undertaken by any lawful means. Instead, it is imposed by a section of the masses who forcefully prevent the showcasing of specific movies. It is also known as extra-legal censorship and comprises of a variety of censorial actions undertaken at a large scale or community level by groups of people. It hampers creativity to a large extent too, as in this case, the movies are banned post their release, so there is no scope of any alterations or changes, as a result of which certain contents, which are inherently creative, are unable to reach the intended audience. A notable example in this regard is the 2017 film *Padmaavat*, which, although was a filmmaker's magnum opus and an opulent display of creativity and cinematic marvel, was violently opposed by the Rajput organisation Shri Rajput Karni Sena, especially in Rajasthan, and was forcefully stopped from being screened across Rajasthan and Gujarat. This was a glaring case of de facto censorship preventing the propagation of a creative piece of art that did not actually contain any offensive or inappropriate content.

Censorship is undertaken for various reasons, the primary ones being the interests of national security, religious peacekeeping, and controlling obscenity and hate speech. However, the ambiguous nature of these factors leaves scope for a broad interpretation that may threaten the propagation of creative content. In the Indian context, courts are also increasingly recognising the need for the safeguarding of the freedom of artistic expression and are formulating pioneering standards which have the potential to preserve creativity from undue censorship. In case of obscenity, for example, courts are increasingly adopting the Community Standards Test, as opposed to the Hicklin Test, according to which a publication has to be judged for obscenity based on isolated passages of a work considered out of context and judged for their apparent influence on most susceptible people, such as children or weak-minded adults. This test seriously threatened creative freedom as it provided a free reign for rampant censorship of content that was deemed 'obscene'. Instead, the Community Standards Test acknowledges the

⁹ Ruhi Bhasin, *Udta Punjab not made to malign state: Bombay HC*, THE INDIAN EXPRESS, June 10, 2016. Available at <https://indianexpress.com/article/entertainment/bollywood/udta-punjab-not-made-to-malign-state-bombay-high-court-2844372/> (Last visited on March 25, 2022).

changing and dynamic nature of morality over time and in this test, as held in the *Bobby Art International and Ors. V Om Pal Singh Hoon* case, which was incidentally also concerned with objectionable scenes in a 1994 movie, *Bandit Queen*, the complete message and context of the objectionable scene need to be examined to find out whether the alleged material is obscene or not. This test plays a vital role in safeguarding creative liberties and ensures a balance between creativity and regulation, for something which may seem obscene if considered individually might be a mere creative representation in the full context. In this case, it was also held that the authorities must take note of social changes and ensure that “artistic expression and creative freedom are not unduly curbed.” Another important judicial decision that upheld the protection of creativity in the face of censorship was *Anand Patwardhan v Central Board of Film Certification*¹⁰, which dealt with a documentary film of the petitioner titled *War and Peace (Jung aur Aman)*. The Bombay High Court in this case, apart from holding that the recommended cuts in the film were only to harass the petitioner, even went to hold that arbitrary censorship affects the Freedom of Speech and Expression under Article 19(1)(a) of the Indian Constitution¹¹ and artistic freedom is highly integral to the entire creative process.

III. CONCLUSION

So, censorship in any form restricts creative freedom and liberties of representation, but if employed in an arbitrary and unchecked manner, it can seriously hamper and affect the creative endeavours of people who are free to express and represent their thoughts in a modern democratic setup. Creativity and creative representation, primarily through movies and films, is a medium of communicating with the masses and is a solid channel to put out one's thoughts and opinions, for a modern democracy also bestows the right to dissent, or the right to disagree with the majority or those in power. Challenging the status quo and raising questions over the existing order has always been at the foundation of social progress and development, and therefore, creative representations with a potential for invoking debate and discussion should not be censored to ensure compliance with the majoritarian perspectives, for it will lead to a social stagnation in the long run. While governments, through their functionaries and authorities, have always undertaken censorship for a variety of reasons, sometimes leading to severe breaches of one's freedom of expression, the judiciary is increasingly supporting the protection of one's creative interests in the face of regulation and restraints, and through some landmark decisions, the courts are sending out a message that any form of censorship which

¹⁰ *Anand Patwardhan v Central Board of Film Certification* 2003 (5) BomCR 58, 2004 (1) MhLj 856

¹¹ Manisha Naik, *Freedom of Speech and Expression Article 19 (1)(A)*, GOVIND RAMNATH KARE COLLEGE OF LAW, postgraduate thesis

does not satisfy the conditions of reasonability shall not be deemed enforceable and censorship which is motivated by mala fide intentions shall also not be allowed to hamper creative pursuits of an individual. While creativity and censorship, being at opposites, can never go hand in hand, an optimum balance between the two must be struck to ensure that bona fide creativity always thrives and no arbitrary censors clip the wings of any creative pursuit, for as said by the award-winning author Allan Jenkins,

“Censorship in any form is the enemy of creativity, since it cuts off the lifeblood of creativity: ideas”.¹²

¹² Censorship, *Quotes on Intellectual Freedom and Censorship*, INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS. Available at <https://repository.ifla.org/bitstream/123456789/1722/1/quotes-on-intellectual-freedom-and-censorship.pdf> (Last visited on March 25, 2022).

IV. REFERENCES

Primary Sources:

Cases –

- i. *Anand Patwardhan v Central Board of Film Certification* 2003 (5) BomCR 58, 2004 (1) MhLj 856
- ii. *Bobby Art International and Ors. V Om Pal Singh Hoon* (1996) 4 SCC 1

Books –

- Catherine O’Leary, Diego Santos Sánchez & Michael Thompson, GLOBAL INSIGHTS ON THEATRE CENSORSHIP (2016).

Secondary Sources:

Journal Articles –

1. Inci Sariz, *Censorship(s) in Translation: Constraints and Creativity*, 2 JOURNAL OF INTELLECTUAL FREEDOM AND PRIVACY No. 3-4 (2017).
2. Chandana Arval, *A Conceptual and Legal Analysis on How Film Censorship Hampers the Freedom of Artistic Expression*, 3 INDIAN JOURNAL OF LAW & PUBLIC POLICY 22 (2016-2017).
3. Fenice B. Boyd and Nancy M. Bailey, *Censorship in Three Metaphors*, 8 JOURNAL OF ADOLESCENT & ADULT LITERACY 52 (May, 2009).
4. Swapnil Tripathi, *Cinema and Censorship in India: A Political Restriction on Freedom of Speech*, 9 UNIVERSITY OF BALTIMORE JOURNAL OF MEDIA LAW & ETHICS 64 (2021).
5. David Franklin, *The Professor as Censor: Creative Limitation and Film Production Pedagogy*, 1 JOURNAL OF FILM AND VIDEO 53 (Spring, 2001).

Academic Theses –

- Kirsten L. Boatwright, *Constraining Lars Von Trier: Issues of Censorship, Creativity, And Provocation*, MIDDLE TENNESSEE STATE UNIVERSITY, doctoral thesis (December 2011). Available at <https://jewlscholar.mtsu.edu/server/api/core/bitstreams/c393efa3-0447-45d1-be6e-272d57f85e81/content> (Last visited on March 31, 2022).
- Manisha Naik, *Freedom of Speech and Expression Article 19 (1)(A)*, GOVIND

RAMNATH KARE COLLEGE OF LAW, postgraduate thesis. Available at <http://www.grkarelawlibrary.yolasite.com/resources/LLM-Const-1-Manisha.pdf> (Last visited on March 31, 2022).

E – Resources –

- i. Austa Somvichian – Clausen, *Top 10 Films that break gender and racial stereotypes*, THE HILL, December 9, 2019. Available at <https://thehill.com/changing-america/respect/diversity-inclusion/473687-top-10-films-that-break-gender-and-raciall> (Last visited on March 25, 2022).
- ii. Tatiana Siegel, *Hollywood Is “Increasingly Normalising” Self-Censorship For China, Report Finds*, THE HOLLYWOOD REPORTER, August 5, 2020. Available at <https://www.hollywoodreporter.com/movies/movie-news/hollywood-is-increasingly-normalizing-censorship-china-report-finds-1305935/r> (Last visited on August 25, 2022).
- iii. Ruhi Bhasin, *Udta Punjab not made to malign state: Bombay HC*, THE INDIAN EXPRESS, June 10, 2016. Available at <https://indianexpress.com/article/entertainment/bollywood/udta-punjab-not-made-to-malign-state-bombay-high-court-2844372/> (Last visited on March 25, 2022).
- iv. Censorship, *Quotes on Intellectual Freedom and Censorship*, INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS. Available at <https://repository.ifla.org/bitstream/123456789/1722/1/quotes-on-intellectual-freedom-and-censorship.pdf> (Last visited on March 25, 2022).
