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Lecture-28



Current Regulatory Framework And The Future Of Digital Content

The media and entertainment industry has consistently grown and continues to grow at a global level, particularly with the advent of new mediums for distribution, supported by dynamic technological advancements. The Indian market has not only followed this global trend over the years but has also demonstrated enormous potential. In the recent past, the Indian media and entertainment industry has witnessed a paradigm shift, both, in the volume and demand for varied content as well as in the mediums opted by viewers to access content.

With the rise in digitisation in India and greater access and affordability of the internet, digital media and entertainment platforms, also known as over-the-top ("OTT") platforms, have become popular with viewers of all age groups and categories. OTTs are perhaps on the verge of replacing the conventional television box and the availability of a wide range of content on a single platform, catering to the needs and tastes of a varied audience base, adds to the OTT entertainment platforms being more attractive for viewers.

Further, since digital content is not subject to censor certification applicable to films and television programs, the creators of such content enjoy ample creative freedom. At the same time, viewers have the freedom of choice in terms of the content they want to watch at any given time. The scope of this freedom and availability of a wide range of content for viewers could also be a significant factor for increasing viewership of online content and OTT platforms. However, as a consequence of minimal regulation and uncensored content being available on OTT platforms, the debate on the need for censorship of content beyond films and television has surfaced.

In this article we aim to outline the current regulatory framework for the certification of films, compliances for television programs and also the trends in regulation for OTT media platforms.

2. CERTIFICATION OF FILMS

The applicable law concerning pre-censorship of films in India has historically been tested on the basis of freedom of speech and expression for the reason that it is the heart of any artistic expression. In the earliest instance, when censorship of films was challenged on the grounds that

it violated freedom of speech and expression, the Supreme Court held that the social interest of people overrides individual freedom and thus justified the censorship of films on the basis that it is a powerful medium of expression. However, in the same judgment the Supreme Court also recognised the importance of setting a standard for censors to ensure that a substantial allowance is made in favour of artistic freedom, thus leaving a vast possibility and opportunity for creativity.

As it currently stands, the censorship of films in India is undertaken by the Central Board of Film Certification (the "**CBFC**") set up under the Cinematographic Act, 1952 (the "**Act**"). The Act along with the Cinematographic (Certification) Rules, 1983 and the Central Government's guidelines dated December 6, 1991, issued pursuant to Section 5B of the Act (the "**Censorship Laws**"), set out the manner in which films are to be certified for exhibition in India.

At present, under the Act, the CBFC is required to certify films under any of the following categories:

- a. "U" (unrestricted exhibition);
- b. "UA" (unrestricted exhibition except for children below 12 years of age);
- c. "A" (restricted to adults only); and
- d. "S" (restricted to specified class of persons).

The principles guiding the CBFC in the certification of films include assessing the film from the perspective of public order, morality, decency and defamation. Additionally, the CBFC is also required to consider laws relating to the depiction of cigarettes and tobacco, the use of drugs and substances, the prevention of cruelty to animals, the use of national emblems and names and other matters of national honour.

The objective of the CBFC is to ensure certification without curbing artistic expression and creative freedom. While the nomenclature is indicative of censorship, the core of the CBFC's function is in fact the certification of films and not the censorship of content. Filmmakers have often criticised the CBFC for acting beyond its powers of certification and taking upon itself the task of moral policing.

An apt illustration of this would be the deletions ordered by the CBFC to the film *Udta Punjab*, which included directions for the deletion of the names of Indian states, references to several cuss words, and inexplicably, the deletion of a name of a dog: 'jacky chain'. The film was granted an 'A' certificate and this decision of the CBFC was challenged by the producers of the film before the Bombay High Court,³ wherein the producers sought that the 'A' certification be granted without any conditions or cuts in the film. The Bombay High Court examined each of the deletions proposed by the CBFC, and sensibly held that the film was not objectionable merely due to depiction of the use or sale of drugs in a particular state and the political references therein and opined that the story must be viewed in its entirety.

Separately, in April 2018, the CBFC issued a notification regarding the certification of subtitles. The CBFC in its notice stated that several films were certified without subtitles and therefore applicants should submit an undertaking that the final version includes subtitles and that no subtitles will be added after a film has been certified. This notification has been challenged by the Indian Motion Picture Producers Association and is currently pending before the Bombay High Court.

3. SHYAM BENEGAL COMMITTEE'S REPORT

Recognising the need to re-examine the rationality of the prevailing film certification norms, the Ministry of Information and Broadcasting (the "**MIB**") has in the recent past set up expert committees to examine not only the issues of certification of films but also the provisions of the Act.

In January 2016, the MIB constituted an expert committee chaired by the Indian film maker, Mr. Shyam Benegal (the "**Committee**"). The primary objective of the Committee was to recommend broad guidelines and procedure for certification of films by the CBFC and to ensure that the process of certification of films for public exhibition is carried out in a uniform, non-discriminatory and non-discretionary manner.

The Committee submitted its report in April 2016. However, the recommendations of the Committee have not been acted upon by the MIB yet. Some of the key recommendations made by the Committee are as follows:

- a. Alterations and changes to films should be made only by the rights owner or with his consent, since the rights owner has complete rights over the film.
- b. The scope of the CBFC should be limited to only decide who and what category of audience can watch a particular film, without acting as a moral compass. The CBFC categorisation should be a sort of statutory warning for audiences of what to expect in a particular film, and thereafter the viewing of the film should be considered a consensual act, and upto the viewers of that category.
- c. A change in the categorization of films, including: (i) a further sub-categorization of films under the "UA" category into "UA 12+" and "UA 15+" in light of the sociological changes and exposure of teenagers to certain type of content in a moderate manner; and (ii) the introduction of the additional "A-C" (A with caution) certification for films that may contain explicit material such as nudity, or violence, helping audiences make distinct choices.
- d. Overhauling of the existing guidelines based on which films are certified to ensure that the CBFC is not responsible for ensuring the aesthetic composition of a film or clean and healthy entertainment. The Committee recommended that there should be separate guidelines for different aspects of certification, such as, general guidelines for every film, issue related guidelines that outline issues and concerns in a society which apply in varying degrees to all categories of certification and category specific guidelines that lay down the approach for certification of different categories of films.
- e. Recertification of films for the purpose of exhibition on television, since currently only "U" certified films can be exhibited on television, thus resulting in loss of revenue for films certified otherwise. Hence, for exhibition on television, the rights owner of a film may modify the film in order to qualify for the "U" category.
- f. Categorization of films should be limited to public exhibition and should not have a bearing on entertainment tax levied by state governments.

The Committee also proposed amendments to various provisions of the Act complementing its recommendations.

Prior to the Committee, the MIB had also constituted a "Committee of experts to examine issues of certification under the Cinematograph Act, 1952" which was chaired by the Honorable Justice Mukul Mudgal, former Chief Justice of the Punjab and Haryana High Court (the "**Mudgal Committee**").

One of issues to be addressed by the Mudgal Committee was the power of state governments to suspend a film from exhibition in the relevant state. The Mudgal Committee recommended that an order of suspension should only be passed after or during a public exhibition and not before as the 'suspension of exhibition' implies that exhibition has taken place or is ongoing.

This recommendation was further to the Supreme Court's judgment in case of the film Aarakshan, which was suspended from screening by state governments in Punjab, Andhra Pradesh and Uttar Pradesh. The Supreme Court, while quashing the decision of these state governments, held that once the CBFC has cleared the film for public viewing, screening cannot be prohibited in the manner sought by the relevant parties, and that it is the responsibility of each state to maintain law and order. Several other findings and recommendations of the Mudgal Committee were incorporated in a model Cinematograph Bill, a suggested replacement for the Cinematograph Act, 1952. However, the MIB has not acted upon it yet.

The Supreme Court also recently dealt with the issue of the prohibition on exhibition of the film Padmaavat⁵ ordered by the state governments of Gujarat and Rajasthan. The Supreme Court reiterated its position in the case concerning the film Aarakshan, staying the orders of the state governments of Gujarat and Rajasthan and restrained other states from issuing any orders prohibiting the exhibition of the film.

The Supreme Court further observed that: "if intellectual prowess and natural or cultivated power of creation is interfered without the permissible facet of law, the concept of creativity paves the path of extinction; and when creativity dies, values of civilisation corrode." It also held that it is duty of a state to sustain the law and order situation during exhibition of a film, which included providing police protection to those persons involved in the film and also the audience watching the film, whenever necessary.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	In India is undertaken by the Central Board of Film Certification (the "CBFC") set up under the Cinematographic Act, 1952 (the "Act").	True	False
2.	The Act along with the Cinematographic (Certification) Rules, 1983 and the Central Government's guidelines dated December 6, 1991, issued pursuant to Section 5B of the Act (the "Censorship Laws"), set out the manner in which films are to be certified for exhibition in India.	True	False
3.	The principles guiding the CBFC in the certification of films include assessing the film from the perspective of public order, morality, decency and defamation	True	False
4.	Films are considered as a great medium of communication with the people.	True	False
5.	we have the Cinematograph Act, 1952 to see the films fulfill the norms prescribed by the law	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)