



# FACULTY OF JURIDICAL SCIENCES

**COURSE:** LL.M. 1st Semester

**GROUP:** Constitutional Law

**SUBJECT:** Media Law

**SUBJECT CODE:** LL.M. 110

**NAME OF FACULTY:** Ms. Anjali Dixit

# Lecture-30



### **Cinematograph Act, 1952**

#### Censorship of Films

The Cinematograph Act, 1952 (the Act), ensures that films fulfil the objectives prescribed by law. In the Act is a provision for the establishment of a Central Board of Film Certification (the Board). This is the regulatory body in India that issues a certificate to the makers of films for public exhibition. Once the Board has examined a film, the Board can:

- Sanction the film for unrestricted exhibition;
- Sanction the film for public exhibition limited to adults;
- Direct such modifications and excisions in the film before sanctioning the film to any of the above;
- Refuse to sanction the film for exhibition completely.

One of the first cases where the issue of censorship of film was raised is *K A Abbas v Union of India*, where the Supreme Court of India considered the vital question related to pre-censorship of cinematography in relation to the freedom of speech and expression that is guaranteed under the Constitution of India. It was held by Hidayatullah, C.J, that censorship of films which includes pre-censorship was constitutionally lawful. Though, he added, that unjustified restriction on freedom of expression by the Board should not be exercised. In the case of *S. Rangrajan v Jagjivan Ram*, Supreme Court faced a similar question, and was of the view that 'if the exhibition of the film could not be validly restricted under Article 19(2), risk of procession and demonstration was not a valid ground to suppress the same.' The Supreme Court added that it was the State's duty to protect the freedom of expression. The Supreme Court of India in giving its judgement in the case of *Bobby Art International v Om Pal Singh Hoon* was of the opinion that, a film must be judged in its entirety. The court added that where the theme of the film is to condemn violence and degradation, scenes of expletives to advance the message, which was the main intention of the film, is permissible.

#### III Types of Certifications

There are mainly four kinds of certifications given by the Central Board of Film Certification:

#### 1.Universal (U)

This type of certifications is the Unrestricted Public Exhibition, and the same holds no limitations for the age groups that may watch the same. They could be family, educational or social oriented themes. This category has fantasy violence and minimal foul language. When a movie is being certified U by the Board, it must ensure that the movie is suitable for a family to watch it together including the children.

#### 2.Parental Guidance (UA)

This type of certification explains that the film is appropriate for all age groups. However, it is in the interest of the children below the age of 12 to be accompanied by their parents. The reason could that the theme of the movie may not be the most appropriate for the child without the guidance of their parents.

#### 3.Adults Only (A)

As the certification suggests, this type of film is restricted to adults only. Persons above the age of 18 are adults, for the meaning of this certification. The theme may contain disturbing, violent, drug abuse and other related scenes which are not considered suitable for viewing by children who may be influenced by the same negatively. Films that meet the requisites of the abovementioned criteria but are not suitable for exhibition to children or those below the age of 18 shall be certified A.

#### 4.Restricted to Special Class of Persons (S)

This is the last type of the certifications under the board, and the same explains that the films which are rated S are meant for a special class of persons only. For example, doctors. If the Board is of the opinion the with regards to content, nature and the theme of the film is to be restricted to members of a class of persons or any profession, the above certification shall be given to such film.

## IV OBJECTIVES OF FILM CERTIFICATION

A.The main objectives of the Board for the above are as follows:

1. To ensure that the medium of the film responsible. Additionally, to safeguard the sensitivity of standards and value of the society.
2. To ensure that creative freedom and expression are not unjustifiably curbed.
3. To ensure to adapt to the social changes.
4. To ensure the theme of the film provides a healthy and clean entertainment.
5. To ensure that the film is of cinematically an adequate standard and aesthetic value.

B.In pursuance of the above, the Board must ensure that:

1. Activities that anti-social such as violence are not justified or glorified;
2. The way criminals are depicted, and other related words or visuals must not incite the commission of any kind of offence;
3. The scenes showing ridicule and abuse of mentally and physically handicapped, cruelty or abuse of animals, involving children as victims of violence and abuse must not be presented needlessly;
4. Avoidable or pointless scenes of cruelty, horror and violence that are intended to provide entertainment but may have the effect of dehumanizing or desensitizing people are not shown;
5. Scenes that glorify or justify drinking are not shown;
6. Scenes that tend to justify, glamourize or encourage drug addiction are not shown. Additionally, similar scenes for the consumption of tobacco or smoking must not be shown;
7. Human susceptibilities are not offended by obscenity, vulgarity or obscenity;
8. Words with dual meanings that cater to dishonourable instincts are not used;
9. Scenes denigrating or degrading women in any manner is not shown;

10. Scenes that involve sexual violence against women in the form of rape or any other form of molestation are avoided. If the theme of the movie requires so, the same must shall be reduced to a minimum and no details are to be shown. The same goes for scenes that involve sexual perversion;
11. Words or visuals contemptuous of religious, racial or other groups must not be presented;
12. Words or visuals that promote obscurantist, communal, anti-national and anti-scientific attitude are not shown;
13. The integrity and sovereignty of the country is not called in question;
14. The security of the country is not endangered or jeopardized;
15. Relations with foreign states are not overwrought;
16. Public order is maintained, and not hindered;
17. Words or visuals involving defamation of a body or an individual, or contempt of court are not shown;
18. National emblems and symbols are not presented except according to the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).

C.The Board shall additionally ensure that a film:

1. Is judged as a whole from the perspective of its overall impact; and
2. Is inspected in the light of the period illustrated in the film along with contemporary standards of India and the people who the movie is related to, to ensure that the film does not corrupt the morality and ethics of the audience.

Applying to all of the above categories, the Board shall ensure the titles of each film is carefully scrutinized to ensure they are not vulgar, violating, provocative or offensive to the guidelines mentioned above.

## V. CONSTITUTION of the Censor Board

The Board consists of a Chairman and non-official members, all of whom are appointed by the Central Government. It is headquartered in Mumbai, Maharashtra. Additionally, it has nine Regional offices, namely, Chennai, Bangalore, Hyderabad, New Delhi, Guwahati, Cuttack, Kolkata and Thiruvananthapuram.

Regional Offices, as mentioned above, are assisted by the Advisory Panels. The Advisory Panels, like the Board, is selected by the Central government. The members chosen for the panel are from different walks of life, and they are chosen for a period of 2 years.

It has a two-tier jury system, the Examining Committee and the Revising Committee.

## VI. Common Reasons for Censorship or Banning of a Film

In light of the history of why a film has been banned, or parts of it are censored, the main categories for why the same is done are as follows:

1. **Sexuality:** A rigid social structure has been followed in Indian society. Hence, a medium which portrays sexuality regardless of the audio, written or visual form, which has not been fathomed by the society and is concerned a social stigma is banned on the grounds that it might have the effect of undignified morals of Indians.
2. **Politics:** The isolation of political forces is not far when one talks about censorship. The description of an allegorical political scene, directly or indirectly, is banned by the authorized party to it. Overt political overtones are not appreciated by the government and hence is a common reason why certain films are either entirely banned, or such scenes are censored or removed.
3. **Communal Conflict:** Under a heterogeneous nation like India, if a film incites or spurs any type of communal conflict, the same is censored. The aim is to avoid the consequences such a film would have on the audience it intentionally or unintentionally targets. If the state believes that a movie would open a window for riots by a community for the way they have been portrayed in the film, the same is banned by the Board or censored.

4. **Incorrect Portrayal:** Sometimes, a situation arises where a well-known personality objects his own depiction in a medium which would be exhibited, and consequently goes for censoring the same. For more clarity, in a situation where the medium is of biographical nature, and the person on whom it is based does not approve the authenticity of the same, there have been times when the person has sued for the medium not to be released, or be edited and released upon approval of such person.
5. **Religion:** Religion does not appreciate any type of defiance or disobedience towards the values it proliferates. Hence, any medium which directly or indirectly distorts any aspect of the religion including its preaching, values, idols, to name a few, is highly criticized and therefore, censored.
6. **Extreme Violence:** Indubitably, the portrayal of extreme gore and violence may meddle and disturb the human mind. Viewing such scenes may have a negative psychological effect on the mind. If the Board of a similar opinion that such a scene through any medium may have an underlying negative impact on the viewer, contrary to the entertainment or knowledge such scene tries to bestow, the same may be banned, edited or censored by the Board in public interest.

In India, the basis on which a film is censored or banned has been evidently traditional norms. That being said, what is censored today, may not be censored tomorrow. The socio-economic dynamics of a country is continually evolving. Hence, all regulations must try to adapt to the same. The Constitution of India guarantees freedom of speech and expression with justifiable limitations on certain expressions like contempt of court, morality and decency, the security of the State, public order, incitement to an offence, defamation, etc. and rightly so

### **Pre-censorship**

Some judges of the United States' Supreme Court maintained that pre-censorship itself violated the freedom of speech. The petitioner in this case attempted to persuade the Supreme Court of India to accept this view. The court rejected the argument pointing out that there is difference between the guarantees provided by the constitution of United States and that of the constitution of India. In United States the freedom is guaranteed in absolute terms while in India it is specifically restricted. Justice Douglas, the strongest exponent of the freedom had made the



following observation: “if we had a provision in our Constitution for „reasonable“ regulation of the press such as India has included in hers, there would be room for argument that censorship in the interests of morality would be permissible.”

Chief Justice Hidayatullah cited this in Abbas case and pointed out that in spite of the absolute nature of the terminology of the First Amendment, the majority of the Supreme Court of the United States tried to read the words “reasonable restrictions” into the First Amendment so as to make the right subject to reasonable regulations. After an analysis of case law, the court found that the majority view in the United States also supported a case for censorship of motion pictures. In view of the express provision for imposing reasonable restriction in the Indian Constitution, the Court dismissed the contention that pre-censorship itself violated the constitutional guarantee of free speech and expression.

Chief Justice Hidayatullah said: “Pre-censorship is but an aspect of censorship and bears the same relationship in quality to the material as censorship after the motion picture has had a run. The only difference is one of the stage at which the state interposes its regulations between the individual and his freedom. Beyond this there is no vital difference. That censorship is prevalent all the world over in some form or other and pre-censorship also plays a part where motion pictures are involved shows the desirability of censorship in this field. The method changes, the rules are different and censorship is stricter in some places than in others, but censorship is universal.”

### **Reasonableness of Film Censorship**

Constitutionality of film censorship being challenged in the Abbas case, Justice Hidayatullah justified the reasonableness of film censorship in the following words: “Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other from the instant appeal of the motion picture, its versatility, realism (often surrealism) and its coordination of the visual and aural senses. The art of cameramen, with trick photography, vista vision and three dimensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply

stirred as by seeing a motion picture. Therefore, the treatment of the latter on a different footing is also a valid classification.”

The higher potentiality of cinemas to influence people and the consequent possibility for misuse of the medium is suggested as a justification for film censorship.

Assuming on the grounds of morality, that cinema is subject to a treatment different to other forms of expression, can it be said that greater chances of abuse affords a sufficient justification for such a differential treatment. Is there any rational basis for the conclusion of the court that cinema stir up emotions more deeply than other form of expression like paintings, sculpture, dramatic performances and books? Will not a painting or a sculpture of a nude woman in a suggestive manner or a nude dance stir up emotions more deeply than a cinematograph? All these doubts question the reasons furnished by the court as justification for differential treatment towards cinema.

Pre-publication control over the media, wherever such control is practicable, is the most effective remedy, the evil if any, is eliminated before its publication. Such a preventive measure is more effective than a subsequent punishment. The state may adopt a practicable system in accordance with the nature of the activity in question. It is comparatively easier to implement the mechanics of expression.

### **Reasonableness of censorship regulations**

Are the censorship regulations reasonable under Article 19 (2) of the Constitutions? The Court examined this question after finding that the State is competent to impose restrictions by way of censorship. The guidelines provided by the Act for the censors are described in general terms. The Act authorises the Central Government to issue „directions“ to censors. In exercise of this power the Central Government issued „directions“ to the Board of Film Censors. The then existing „directions“ provided in detail the grounds on which films were to be censored.

## SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	The Cinematograph Act, 1952 (the Act), ensures that films fulfil the objectives prescribed by law.	True	False
2.	Central Board of Film Certification is the regulatory body in India that issues a certificate to the makers of films for public exhibition.	True	False
3.	One of the first cases where the issue of censorship of film was raised is K A Abbas v Union of India	True	False
4.	censorship of films which includes pre-censorship was constitutionally lawful.	True	False
5.	In the case of Bobby Art International v Om Pal Singh Hoon was of the opinion that, a film must be judged in its entirety	True	False

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