

The control of the central government over the censor board, to be or not to be

¹Dr. Salil Shringarpure, ²Dr. Jyoti Dharm

Abstract: *Right to freedom of speech and expression is a fundamental right as per Article 19(1) (a) of the Indian Constitution. Exhibition of the motion pictures also falls under the ambit of the fundamental rights. Though, the pre censor ship relating to the motion pictures is not challenged, a critical study has made to point out how the government is getting an unfair influence through the current system of film censorship and how in a way the government is controlling the citizens right of freedom of speech and expression.*

Keywords: *Right to freedom of speech and expression, fundamental rights, film censorship, censor board, central government.*

I. Introduction

The framers of the Indian constitution in part III of the constitution have granted the citizens of India the fundamental rights. This chapter is called as *Magna Carta* of the constitution. The fundamental rights are termed as the *sacrosant* of not only democracy, but any civilised state, hence cannot be compromised, except in case of the emergency.

Right to freedom of speech and expression is also a fundamental right as per Article 19(1)(a) of the Indian Constitution. The freedom of press, media and the motion picture was included in the ambit of this article, and hence their freedom was included in the ambit of the fundamental rights.

Speaking in respect of the motion picture in particular has the position of the same is very clear, that displaying the movie is a fundamental right of the filmmaker. However the film which the filmmaker wishes to display holds the appropriate certificate obtained from the censor board constituted under the Cinematograph Act 1952. Though the pre censorship is held as a valid restriction by the Supreme Court in *K.A Abbas v. Union of India* the way the pre censorship is being exercised, causes a blatant violation of the fundamental rights not only of the filmmaker, but also of the people associated with the film and also the viewers, is highly disappointing. The researcher through this paper makes an endeavour balance the interest of the filmmakers as well as to keep the pre censorship, so that anything which is in the bad taste cannot be permitted under the guise of freedom of expression. To understand the issue in greater details, let us first analyse how the concept of film censorship come into existence.

¹Assistant Professor in Law, New Law College, Bharati Vidyapeeth, Pune.

²Assistant Professor in Law, New Law College, Bharati Vidyapeeth, Pune.

History of the film censorship

The history of the film censorship is very interesting. In fact the early film stock consisted of a compound named nitrocellulose, which was very flammable. In 1897 there was a fire due to this flammable component in Paris, killing 126 people. There were similar incidences of fire being breaking due to the flammable substances used in the film stock. These repeated incidences were responsible for formulation of the world's first legislation relating to cinematograph in the year 1909 in Britain, in order to improve safety standards, by regulating the issue of licences issued to the cinema. The regulatory authorities were supposed to be the local bodies. These local bodies not only started to regulate the safety standards, but also started to regulate the content of the film. This resulted in confusion, as every local body had their own rules. This confusion finally ended in the year 1912 when the British Board of Film Censors was formed.

The film censorship came to India by the Cinematograph Act 1918, which was enacted due to the bill of 1917, recommending the creation of new law to ensure safety and protection of the public from indecent or objectionable representations. Cinematograph Act 1918 gave the district magistrates (in case of Rangoon, the commissioner of police) the powers to appoint inspectors to examine and certify the films. The interesting point is that though the inspectors were supposed to certify the films, the Act did not give any guidelines as to how they shall be certifying the films. Thus the District magistrates had very wide discretionary powers regarding the censoring of films. Some guidelines regarding the criteria of censor came in the year 1920, when censor boards were set up in Bombay, Madras, Calcutta and Rangoon.

In the year 1921 the regional Madras censor board banned a movie named 'Bhakth Vidhur', because the main character of the film had a resemblance of Gandhiji. On the other hand, , in year 1929, Seeta Devi, went on to kiss Charu Roy, in the movie 'A Throw of Dice', which was passed by the censor board. Another actress Zubeida in skimpy dresses had created a sensation, failed to attract the scissors of censor

The sensible suggestions of the Indian Cinematograph Committee (ICC) which included setting up a central board of censor and to set up a proper system of appeals, a system which could classify the films in categories of 'U' and 'A', were also not implemented.

From all the above facts, the motive of the censor board during the British era becomes very clear that it would not allow any film or a scene in a film, or even the photograph of any national leader in a film, which would in any way promote Indian nationalism, rather than making any serious attempts to provide healthy entertainment to the public by suppressing vulgarity, or even to make any attempts to unify or to set up a central censor board, which would have brought some uniformity in censoring the films. In short it can be safely said that, during the British era, the censor board was being used as a tool to suppress the national spirit, rather than enhance the standards of the films.

If one ponders as to why the censor board was so narrow minded, the answer was simple, as firstly, during the British rule there was no democracy in India, the British people did not consider Indians as one of them; hence they did not bother about the fundamental right of any Indian film maker or the viewers. They were more concerned about the stability of their rule, which would come in danger, if the nationalistic feelings in the minds of the people were promoted through the medium of films.

Censor board in post independence period.

After the independence the scenario relating to the censorship changed. The Cinematograph film Act 1952 was passed. There was only one Board of censor. The vision and mission of the censor board were clearly stated, and looked very attractive. The stage was set where the fundamental rights of the film makers and the viewers would not only be protected, but also good tastes of the viewers and the creativity of the film makers would be promoted. The government's interference would be minimal and the board will encourage the creativity of the filmmakers and generously offer the filmmakers the platform to put his views, through the medium of films.

However as the time passed, the hopes regarding the ideal functioning of the censor board, and the minimum interference of the government were crashed and the reality proved to be the stark opposite of what was envisaged. The censor board became a tool in the hands of the government, the filmmaker's creativity was compromised, and the viewers were forced to watch what the censor board passed, and what the government wants the people to watch.

Let us now analyse the effects of the censor board becoming a tool in the hands of the government in detail.

The motion pictures derive its independence from Article 19(1)(a) of the constitution, which speaks about the fundamental right of freedom of speech and expression. Nothing in the constitution states or indicates directly or indirectly that the ideas expressed by way of motion pictures are not included in the ambit of the fundamental rights. On the contrary, if the assembly debates are referred, Dr. Babasaheb Ambedkar has strongly argued that "*The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editors of press or the manager are all citizens and therefore when they choose to write in news paper they are merely exercising their right of freedom of speech and expression and in my judgment therefore no special mention is necessary of the freedom of press at all.*" If the same logic is applied, then the motion picture also should come in the same ambit.

Appreciating the significance of the fundamental rights the Supreme Court in *Daryao v. State of Uttar Pradesh* has stated as follows

1. The fundamental rights of an individual have originated from public policy, and are not merely the rights of an individual.
2. One of the most essential feature of the democratic way adopted by the Indian constitution is that the liberty and the fundamental rights of the individual must be protected, and should not be taken away unless any authorisation if law.

Expressing the opinion through the motion pictures is also a fundamental right, and also should be protected. When the researcher say so, he does not at any time wishes to contradict the stance taken by the Supreme Court in *K.A Abbas v. Union of India*, where the Supreme Court held that the pre censorship regarding the motion pictures is a valid restriction on the fundamental rights. The researcher merely wishes that there should not be excessive control of the government regarding the exhibition of the motion pictures.

Constitution of the censor board and term of its members.

To understand and appreciate what the researcher exactly wants to convey, let us first understand the constitution and the term of the censor board, then the researcher also intends to discuss the interference of the central as well as the state government while exhibiting the film.

The censor board is appointed by the central government. The censor board shall consist of minimum twelve and maximum twenty five members. The term of the members so appointed is for two years; however this term can be extended or terminated by the central government through Information and Broadcasting Ministry.

Influence of the central government on the censor board and its impact.

Thus one can clearly see that the very existence and continuation of the members of the censor board depend upon the wishes of the central government. Hence the censor board will pass only that films which is favouring or not critical of the central government. Hence the right to criticise the government through the films is restricted significantly. Another aspect of the same point is this that whenever the government at the centre changes, then the head of the censor board changes. When in the Bharatiya Janata Party came in power, Anupam Kher was appointed as censor board chief in 2003. When Congress Government came in power in 2004, Anupam Kher was removed and Sharmila Tagore was appointed.

The central government's control on the censor board is far more than mere changing the chiefs of the censor board. The two glaring examples are, one regarding the film *Andhi*, which was not allowed to be screened, despite being passed by the censor board, because it had resemblance of the then Prime Minister Indira Gandhi. The second one about a political spoof movie *Kissa Kursi Ka* in the year 1977, also could not be screened, despite of having clearance of the censor board, because it was supposed to be critical on the policies of Indira Gandhi and Sanjay Gandhi.

With these wide powers enjoyed by the government, the right to criticise the government, which is very essential in any healthy democracy is greatly prejudiced. More importantly the by making of a film the film maker not only exercise his freedom of speech and expression, but the filmmaker and all those who are involved in making of the film are exercising their right of livelihood, another essential fundamental right of a citizen. Also a film is not completed in a day or two, so considerable time is spent during the making of that particular film. If the film is rejected either by the censor board or the central government, then the fundamental rights granted under Article 19(1)(a) and Article 21 of the filmmaker and the others who are involved in filmmaking are greatly prejudiced.

Arguments in favour of abolishing of the censor board

There is an extensive debate over whether the censor board shall be abolished, and renowned people from the film industry have actually argued in the favour of abolishing the censor board. For instance Dada Saheb Phalke award winner, Adoor Gopalkrishnan, a famous name in Malyalam Cinema, opposes the censor board on the ground that the government will use its authority in a wrong way.

Flaws existing in the current system of censorship

Despite the opinions against the existence of the censor board, researcher strongly feels that there shall be a pre censorship relating to the motion pictures, as the same have a capacity to impact the human minds in a far better way than any other form of media.

However according to the researcher the current system of censorship have some grave flaws.

The current system of censorship tends to overlook the fundamental rights of all the people who are associated with the film.

Another major flaw is the central government enjoys virtually a dictatorial position as the members of the censor board cannot dare to pass any film which may be critical of the central government, because the appointment and removal of the board members is in the hands the central government. This position which is presently enjoyed by the central government virtually takes away the right of criticism and freedom of expression to a great extend, thus diplomatically sidelining the Supreme Court's contention in *Shreya Singhal v. Union of Indi* case where the apex court had stated that liberty of thought and expression is a paramount significance under our constitutional scheme.

II. Conclusion and suggestions

The researcher hence gives the following suggestions so that the pre censorship relating to the motion picture will be meaningful and not arbitrary.

(a) The censor board shall be made a statutory body with fixed term, independent system of appointment and removal of the members, without any interference from the central government. There is no harm in including not more than two members from or on the behalf of the central government.

(b) The censor board should only be a certifying authority. This can be done by amending the Section 5B of the Cinematograph Act 1952, which authorises the censor board to refuse the film from being exhibited. By way of such amendment, the authority of the censor board should be limited only till cutting few parts in the film, which may tend to corrupt the minds of the people.

(c) However before applying the scissors on any part of the film, the censor board shall take into consideration that it is not denying the creative platform to the filmmaker, or compromising with the essence of the story itself. However it is also equally true, that the filmmakers under the guise of creativity should not depict or promote anything which is in bad taste, against the public policy or against the morality or decency.

(d) There shall be adequate number of legal experts at prominent positions in the censor board, as the censor board is, in a way is doing interpretation of the Cinematograph Act 1952, when it is censoring the film. This is why; the help of legal experts will be of great value.

(e) The board should honestly strive for being as consistent and transparent as possible.

(f) The central government as well as the various state governments shall not refuse any film, which is duly certified by the censor board on mere apprehensions of breach of peace or just because they are critical about their policies.

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