

Cinema, Censorship and Technology

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Abstract – Entertainment as the form of expression has always been an important part of our culture. Various art forms like music, dance, storytelling, drama etc. have been used since time immemorial to keep the people entertained, to give them relief, a break from the routine chores of life. Kings used to various patronize artists and art form. During the later stages of 1880s technology made it possible to capture real moving images, the cinematograph and cinema was born.

From a very humble beginning in the year 1896 cinema has come a long way. Today the advent of technology has made it possible to offer variety of contents over the internet .The medium is witnessing newer and newer things on everyday basis with developments in technology. The internet and over the top (OTT) content have greatly changed the creation, distribution and consumption of content.

The cinemas have been under the regulatory supervision of the CBFC a body under the Ministry of Information and broadcasting, and the content on the television is under the Cable TV network Regulations, the content on OTT platforms has remained outside the purview of regulation. But in past two years a numbers of cases and petitions were filed in the various courts to bring the services offered by the intermediaries under some form censorship regime. The allegation was mainly to prevent the violent, pornographic, obscene blasphemous contents from being easily available on net. The government has brought in the self-censorship code for the OTT platform. How the code works, How far it addresses the concerns of the stakeholders will decide the future of the OTT platforms in India.

The longstanding Cinematograph Bill is still pending in the parliament. How the self-censorship code for the intermediaries and the pending Cinematograph Bill for cinemas address the various issues plaguing the entertainment/ media industry and conflictingly interests of the various stakeholders needs to be seen. Regulation with minimum possible interference is the way out for future.

Key Words – Cinema-Censorship- Cinematograph-The Cinematograph Act 1918- Constitution of India-Fundamental Rights-Article 19 Freedom of speech and expression-The Cinematograph Act 1952- CBFC Central Board of Film Certification- creativity -artistic freedom-technological advancements-high speed internet- over the top content (OTT)- The pending Cinematograph Bill- Self censorship code.

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INTRODUCTION

Cinema is one of the most significant and powerful medium of communication. Since its birth cinema has evolved both as a social institution and as the most powerful form of art.

India along with Tanzania is the highest¹⁰ in terms of production of cinema. The Indian film industry produces around 2000-2050 feature films and even larger number of short films in a year.

According to the Central Board of Film Certification (CBFC)¹¹ a statutory body under the Ministry of Information and Broadcasting, Government of India “every two months, an audience as large as India’s entire population flocks its cinema houses and a much larger number watches it on Television and mobile phones”. And that is precisely the reason why the information’s, stories, ideas and narration disseminated by films see repeated interference by various stakeholders – governments, society, communities, religious groups, professional bodies among many others, for ‘appropriating’ and ‘regulating’ the content of films. One such form of regulation is censorship.

¹⁰ UNESCO Institute for statistics (UIS) is the only statistical agency to provide a global perspective on the world’s most lucrative cultural industry and one of the most popular cultural practice of movie watching.

¹¹ A statutory body under the Ministry of Information and Broadcasting, Government of India, constituted under the Cinematograph Act 1952.

Studies have shown that even though the interest in other means of communication like print is on decline, the audiences for cinema and contents on the various OTT (over the top) platforms etc. have grown in number. And this has reached to a feverish pitch in past one year due to the corona pandemic.

CENSORSHIP

Oxford Law Dictionary defines censorship as “Any regime or context in which the content of what is publically expressed, exhibited, published, broadcast, or otherwise distributed is regulated or in which the circulation of information is controlled.

The terms ‘censorship’ goes back to the office of the censor established in Rome in the year. The Latin term ‘sincere’ means to assess to give ones opinion. Roman censor were magisterial officers who regulated the moral conduct of the citizens. The censor’s regulation of public morality is the origin of modern meaning of words censor and censorship

CENSORSHIP: BEFORE INDEPENDENCE

In the pre independence era the censorship regime was established to serve the imperialist interest of the British. In fact England was the first country to pass a specific law for cinemas with Cinematograph Act of 1909, primarily to address fire related safety regulations in the cinema halls. Soon its mandate was outreach and out stretched to regulate the contents of the cinemas, what can be shown, what is objectionable and hence can’t be shown. In fact the censorship machinery in the early days was greatly influenced by the working of the British Board of Film Censors (BBFC) established in 1912 in the Britain . So through censorship they wanted to prevent the socialist and communist ideas shown in the Soviet cinemas from reaching to the people in their most lucrative colony i.e. the India. The modern and lofty ideals of liberty, equality, independence and freedom portrayed in the cinemas of the USA posed a threat to their regime in India. The mandate was very clear that cinema should sever the larger interest of the imperialist power. The political dispatch dated 1st June 1922 from the Governor General in Council to the Secretary of State for India pointed out that ‘the object of the censorship is not merely to prevent the exhibition of obscene films but also of films that are politically objectionable’.

Hence the cinema was subject to censorship under the Act of Cinematograph Act of 1918. Regional censor boards were established and were kept under the supervision of police chiefs. The censors used to decide what cinema is suitable for public exhibition and India.

CENSORSHIP: AFTER INDEPENDENCE

India attained freedom in 1947. Considering the concerns which censorship of cinema addressed of

the British in pre independence era, there was no need for the rulers of independent India to carry forward this colonial legacy called the film censorship. But the political leadership chose to continue with the system. The perception about the moral and ethical role played by the cinema in society remained more or less unchanged. Even after independence the political leaders either considered cinema as too frivolous to be taken seriously or saw it as a bad western influence which needs to be done away with.

In the year 1950, the Constitution of India came into effect. It was the solemn document which was to govern the polity and the people of a newly independent nation. The most important change brought by the constitution was the fundamental rights guaranteed to all its citizens under part three of the Act. The Constitution of India under Article 19(1)(a) provides for freedom of speech and expression. The rights are not absolute and can be regulated and restricted on the specific grounds mentioned under the article 19 (2) of the Constitution. This right to freedom of speech and expression under Article 19 brought the idea of censorship that an act of curtailing the right of free speech and expression into direct conflict. The conflict was resolved to a great extent by providing for reasonable restrictions under Article 19 (2) by the first Amendment to the Constitution. The right guaranteed under the Article 19 (1) A could be restricted under the grounds mentioned in Article 19(2).

PRE CENSORSHIP

Since the nature of cinema was such that it offered very little scope for censorship post communication pre censorship of the medium was considered essential. The issue of the constitutionality of pre censorship of cinema has been vigorously debated in various cases. However the apex court has upheld the same time and again.

According to the Supreme Court of India¹²:

“Film censorship becomes necessary because a film motivates thought and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instill or cultivate violent or bad behavior. It cannot be equated with other modes of communication. Censorship by prior restraint is, therefore, not only desirable but also necessary. ”

¹² K A Abbas vs Union of India, AIR 1971 481.

In the case of India, this restraint is determined and exercised by the Central Board of Film Certification (CBFC), commonly known as the Censor Board.

Today, Indian cinema is widely circulated and enjoys wide viewership in countries like USA, Canada, Russia, the Middle East, Africa and Latin America and the Indian Diaspora living across the globe. According to a recent report "The film industry in India grosses a total revenue of Rs 13,800 crore (\$2.1 billion) and it has grown at a CAGR (compound annual growth rate) of over 10% in the last couple of years. It is expected to grow at 11.5% year-on-year, reaching the total gross realization of Rs 23,800 crore (\$3.7 billion) by 2020".

Despite many hurdles, the Indian film industry produces 1,500-2,000 films every year in more than 20 languages. Keeping in view the quantum of revenue generated and the number of people engaged in it and deriving their livelihood out of it, it's very vital to set up a system where all issues concerning the cinema industry are addressed in a holistic manner.

Cinema since its inception has come a long way in terms of better technology, facility, infrastructure, use of modern technology, much more organised structures at both production and distribution level. With advent of PVR and multiplexes the whole experience of cinema watching has taken a new shape. Newer stories, idealizes, concepts and alternative discourses are being shown and accepted by the audiences. When on the one hand the cinema has progressed and evolved, the censorship regime has failed to make the same progress and reform. And this mismatch in their evolution many a times results in conflicts in form of ban, several cuts, boycotts, disruption during release and exhibition and at times shelving of the movies all together, forever.

FCAT: A PANACEA FOR ALL ILLS?

The Film Certification Appellate Tribunal (FCAT), a statutory body was constituted vide Section 5D of the Cinematograph Act, 1952 (37 of 1952) by the Ministry of Information & Broadcasting, Government of India. The Tribunal is headed by Chairperson assisted by four members a Secretary is appointed by the Government of India to look after the day-to-day affairs of the Tribunal.

The Tribunal hears the appeals filed under Section 5C of the Act under which any applicant for a Certificate in respect of a film who is aggrieved by an order of the Central Board of Film Certification (CBFC), can file an Appeal directly. Previously the appeals directly lied to the Central government who passed orders by consulting the concerned ministries. The quasi-judicial nature of the FCAT has been able to deal with the disputes to a certain extent, but the nature of the cinema, the huge

amount of investment riding on it and the fixed time for their release at theatres has forced producers and Directors to often seek relief from Courts.

ISSUES CONCERNING CENSORSHIP

The issues plaguing the entire censorship regime are much more complex than what they appear to be. For a common man it acts as a moral police by preventing certain kind of content to be shown in the cinema. There is a vast section of the society which wants the censorship to continue to uphold the morality, cultural values and ethos. A majority of the population feels that cinemas are in many ways responsible for the general moral and ethical degeneration of the society over the ages. The cinema is also responsible for the rise in the heinous crimes against women, for the rising crimes by the juveniles and a general degradation of the value system of the Indian society.

There is very little appreciation and understanding of the mammoth task the CBFC had been assigned with. The board has been burdened with too much responsibility with very little power to carry forward the responsibility. According to the mandate given to the CBFC "it must ensure that the film medium remains responsible and sensitive to the values and standards of society and also provides clean and healthy entertainment by maintaining aesthetic value and good cinematic standards, at the same time certification has to be responsive to social change, so that artistic expression and creative freedom are not duly curbed." The Cinematograph Act, Rules and the Guidelines are the triple filters, along with the "super sensors" i.e. the bureaucracy, the concerned Ministry and the Ministers, which are at work in censoring or certifying cinema before it's exhibition. And to uphold the mandate given above sailing through under the maze of these filters, sensors and super sensor is indeed a difficult task.

For the common man Censor Board still remains nothing more than a moral police whose only visible face is the chairperson of the CBFC. Police who decides what kind of cinema is suitable for exhibition, what people can see and what cant. It is the chairman who bears the brunt of the filmmaker, the common public as well as the government. In fact in recent past the way the Chairpersons have been appointed and unceremoniously removed or made to resign either by choice or by compulsion goes on to show that the Chairperson is nothing but a puppet in the hands of the bureaucracy and the government of the day.

For people in the creative arena CBFC is an archaic highly paternalistic and chauvinistic organization which has failed to grow along with the growth and development in the society. And they feel that cinema is nothing but a reflection of what is happening in in the society. The way movies are certified and censored has no

connection with what the society really wants to see or doesn't want to see.

The me# too movement of naming and shaming the sexual offenders and predators has opened a can of worms. Many women came out in open and talked about the ordeals, the unpleasant experiences they have undergone. The stories revealed the ugly underbelly of the otherwise shining film world. CBFC assumes a role only when cinema is ready and goes for certification. What goes behind in the making of cinema remains uncensored and unregulated.

The recent suicide by Sushant Singh Rajput and many other actors during past one year shows how unreal, fake, lonely and harsh the film industry is. The links with the underworld, the rampant use of black money, drug abuse, blatant violations of the law of the land tax evasion, Hawala transactions have done a great damage to the industry.

And one often wonders how can cinema, a highly creative and beautiful collaborative art form can evolve and flourish in such environment. The ongoing nepotism debate on how the industry is being run and managed to promote and protect the interest of certain big actors directors and production houses shows that there is no place for good artist. Talented actors from prestigious Film Institutes and organization often fail to get a break into the mainstream cinema.

Further there are constant issues about the appointment of members, as except the regional officers all other members are political appointees and more often than not people with very little understanding about the cinema as an art. There are no qualifications prescribed for the members in the examining committee, revising committees and the advisory panel. There is great variation in the orders passed by the various regional advisory boards. The presence of excessive amount of obscenity sex, violence, vulgarity in the cinemas of regional languages shows that the criteria for judging a cinema are different for different kinds of cinemas and the target audience.

The biggest problem is the lack of transparency. In the name of confidentiality the Boards decisions as to what advise was given, what cuts were asked to be made, what changes were to be made etc. are all confidential and communicated only to the maker of the cinema. This has prevented from formulation of a clear precedent for the future filmmakers.

As Sri AG Noorani has made a scathing remark about the censorship regime in his article, *Censorship and the state*..

"The entire system of film censorship in India is brazenly unconstitutional and a fraud on the Supreme Court. It is in utter disregard of the report of one of the most distinguished committees ever which

toiled on film censorship 40 years ago. The structure erected by the outdated and much amended Cinematograph Act, 1952, is scandalous. It is designed to foster organised patronage. Politically, it establishes overwhelming state dominance to ensure the film industry's dependence on Ministers and civil servants."

Perusal of the literature reveals that the ways cinema is certified is greatly influenced by the personality traits of the person holding the post of chairperson and also the government of the day. The appointment of chairperson has been a very controversial and debated issue in the past two three years. Recently a new chairperson has been appointed. He needs to see how certain issue plaguing the board gets addressed. But at the same time we also must keep in mind that unlike past, today cinema/film making is a much diversified profession. People from various different walks of life are coming together to make cinema of a very different kind. The sensibilities of the young film makers who have been brought up on the great exposure of world cinema is very different from the old traditional school of movie makers. For these young film makers the stand taken up of CBFC on certain issues are beyond comprehension. They both seem to only disagree with each other. There is a need to develop a platform or some kind of means of communications between these parties.

Though the prime objective of censoring cinema is to prevent contents of certain type mostly related to sex violence abuse nudity from reaching to the young and adolescents, a specific mention¹³ of the same has been done away with in the Act. India is one of the nations with highest number of young population i.e. from age group of one to fifteen (1-15 years). Thus there is a huge potential for developing contents for the children's. But as one the one hand contents already being produced are considered not suitable for them and hence denied to them, on the other hand no serious efforts are being made to create contents for the children's. In recent past the Chairperson of Childrens Film society resigned saying that he is unable to generate funds for children's cinema. We need to seriously think whether we want our younger generation to only watch movies made by foreign makers and hence lose out on stories, culture, ethos and history of their own culturally rich nation. Also considering that India has one of the largest populations of children, we are also going to financially lose out on the huge potential of money which can be generated from this.

The Shyam Benegal Committee report and Justice Mudgal Committee report which were constituted to recommend broad guidelines/ procedure for certification of films by the Central Board of Film

¹³ A specific clause concerning children's was added only in the Guideline of 1961 and the same has been done away by the 1978 Rules.

Certification (CBFC), have dealt in great details as to how to make the organization an independent one and have also dealt on changes needed to be brought in in the existing Act Cinematograph Act of 1952. The Justice G.D Khosla submitted report in 1969 made some remarkable suggestions but the same was never incorporated by the government. Some of the recommendations are still very relevant and must be incorporated in the pending Cinematograph Bill.

A study on how many movies were made but never released due to censorship issues and also how many suffered losses due to stalling of release, ban, delay in release and how much revenue loss was suffered on account of all these will greatly help in understanding and assessing the financial implications of the censorship regime.

Many movies have faced the tyranny of various religious and fundamentalist organizations in recent past. The movies duly passed by the Board have faced ban, disruption in screening either due to their content or some other issues. The controversy around the big budget Sanjay Leela Bhansalis "Padmavati" crossed all limitations by holding the entire nation sabotaged by certain fringe elements forcing the makers to finally approach the highest Court of the land. Here the censorship started at the stage of shooting of the movie itself. Mr Bhansali was attacked by the certain fundamentalist goons who wanted to stall the making of the film.

Time and again the Board has failed to play a proactive role in dealing with such issues. If the Board has the mandate and power to certify and censor a film, it should also have the power to ensure that the Films duly passed by them are not subject any other kind of obstruction by non-state players and fringe elements. But the history shows CBFC has no concern whatsoever in such situations. It's always a personal fight for the Directors and Producers of the film. No attempt has been made to set up a system within the fold of the Board to deal with such issues effectively. The various reports submitted by the committees over the years have also failed to provide a plausible solution.

There are several other issues which have not been considered important by the CBFC, the Government and the society to term them as 'objectionable and hence has been blatantly shown in cinemas. For instance the portrayal of patients of epilepsy, a disease though not so fatal but extremely capable of serious consequences and in many cases takes away the right of the patient to lead a normal healthy life. In Cinema they have always been portrayed as something funny, abnormal, acting in a weird way, and sometimes shoes being put near their nose as a remedy for the diseases. Similarly the people of LGBT community had always been portrayed in a very disgusting and distasteful manner.

Similar has been the portrayal of people with some special characteristics. Like dwarfs or people who are fat or stammer. The way the side actors, mostly referred as comic actors have been treated is abhorrent. In the name of providing entertainment to people who spend their hard earned money on movie tickets, some rotten, highly objectionable, insensitive narration has been served and surprisingly never offended the sensibilities of anybody.

From June 1983 the central board of film censorship came to be known Central Board of Film Certification. This was done after facing a lot of criticism about the nomenclature and characterization of CBFC. A lot of Actors Directors addressed the issue that the task of any authority overlooking the cinema industry should only be to classify and certify cinema on the basis of their content with respect to their suitability for the audiences. However even after 35 years off changing the nomenclature the CBFC from Censor Board of Film Censorship to Central Board of Film Certification, the Board continues to censor, sanitize and even mutilate cinema along with certifying them.

There is a great difference between the term certification and censorship. Certification is a process whereby the contents of any product; cinema in this case, is classified with reference to certain parameters, in case of cinema, the age of the viewer, the theme, the sexual content, violence substance/drug abuse, nudity content. This is primarily done for giving prior information to the viewer/audience to know in advance what are they going to watch. It gives an option, a choice to the audience, to see and not to see. Whereas censorship by its very nature is prohibitive. It's a denial of choice and option. The authority having the powers of censorship decides what is permissible and what is not. It cuts, mutes, beeps, blurs, and delete the content which in its opinion is not suitable for audiences consumption for any reason. So even with a changed nomenclature and hence a change mandate the CBFC continues to censor films.

Currently, OTT in India enjoys a higher level of creative freedom than television or film, primarily because such content doesn't need to be certified before release. This freedom has helped creators push the envelope in some cases for better and in some areas for worse. Rapid technological developments have also enhanced the consumer experience – innovations in augmented reality and virtual reality will further enhance the creative edge enjoyed by OTT media.

The recent pandemic has shown that in near future cinema halls and public exhibition of cinemas with huge audiences can become a thing of past. Last few months have also forced many directors and

actors to showcase their movies on internet. And if the content on internet and the OTT platforms remains unregulated then having laws and having an organisation like censor board for merely certifying and censoring cinemas exhibited in cinema halls would be unfair and futile. Recently the Government has brought in guidelines for regulation of content on OTT medium. The government learning from its experience with CBFC has made it clear that government if not going to directly interfere in the affairs of the intermediaries. Government wants them to set up a mechanism for self-regulation with inbuilt grievances Redressal system and a system of disclosures and reporting instead of an external auditing.

CONCLUSION

At last there is an urgent need to address the issue of censoring and certifying cinema a form of art through a government agency. The law needs to change to allow the creativity to flourish without jeopardizing the interest of State as well society at large. Also there is a need to provide a level playing field to all the mediums. Lack of legislation in certain areas like the OTT platforms should not be taken a licence to offend the sentiments and sensibilities of vast majority of people in the country in the name of creativity. Supreme Court has recently taken a tough stand against the offensive pornographic and vulgar content served on the OTT platforms. The judgement in the matters under its consideration will pave the way for future of the entertainment industry in India.

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