



## AN ANALYSIS OF THE CENTRAL BOARD OF FILM CERTIFICATION IN LIGHT OF SOCIETY, MEDIA AND THE JUDICIARY

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### ABSTRACT

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*This article aims to analyze the role played by the Central Board of Film Certification with other factors of society that help in molding the future of Cinema based on its present procedure and the attached loopholes. The CBFC is included under the ambit of the Ministry of Information and Broadcasting through the Cinematograph Act of 1952. A distinction between the dual role of certification and censorship managed solely by the CBFC along with its extent and degree of compliance of authority is made. The freedom of creative expression of creators of films is an absolute right that cannot be neglected or overruled by the authorities except in case of reasonable restrictions. Article 19 of the Indian Constitution provides for both the freedom of speech and expression as well as its reasonable restrictions. It identifies the three I's crucial for understanding the flow and trends of the filming sector which are the impact of Cinema on society, the Influence of Media, and the Interference of Judiciary in the matters concerning the Board.*

*The issue of non-adherence to norms, laws, and rules attached to the exhibitors as well as spectators is highlighted in this work which arises due to the minimal possibility of enforcing strictness among such a vast system and population. The procedures and standards of the Central Board of Film Certification, Film Certification Appellate Tribunal, which is a statutory body for direct appeals, Revising Committees, and ultimately the Central Government have been critically understood with the help of case laws and major events. The role of media in the working of the Board and the balance it strikes has been pointed out further in the work.*

**Keywords:** *Freedom, creative expression, cinematograph, censorship, certification.*

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**Introduction**

The Central Board of Film Certification is a statutory body that finds its origin in the Cinematograph Act of 1952, which is included under the Ministry of Information and Broadcasting. The CBFC was created by this Act to certify films based on various parameters mentioned in the Act. Each film is required to be authorized with a certification granted by the Board for public exhibition. The Board may either certify a film when it fulfills the required criterion, sanction the film if it fails to tick the grounds needed for certification, or order to make changes in the film, cut a few scenes, replace dialogues, etc. for it to be desirable for showcasing. It is the only regulating body that owns the power to certify and censor films. It plays an important role in filtering suitable content.

Due to the rapid increase in the field and scope of broadcasting, as a result of advancements in technology, there arose a need for a leveling mechanism in order to control the portrayal of films and the depiction of scenes as per their suitability. Thus, CBFC holds the sole power of executing this function. It is also commonly called Censor Board as it performs the dual function of certifying and censoring films. The latter is done either in whole by sanctioning the film, putting a ban on it, or in part by censoring limited scenes. Provided that the applicants are given reasonable opportunity to address their views which might help with a clear understanding of the intention and theme of the film and may lead to a difference in the opinion of the authorities on the premise of which the decision is laid. In carrying out both of these functions, it has to ensure the maintenance of standards, compliance with public opinion, rights and freedom of filmmakers, and other guidelines, norms, and orders issued to the Board.

As per the provisions of the Cinematograph Act of 1952, the constitution of the Board is such that it consists of a chairman in addition to 12-25 members who are appointed by the Central Government. Section 5 of the same Act provides for an advisory panel to assist the Board, the members of which are also appointed by the Central Government.

**Certification and Censorship**

The dual function of certification and censorship is covered under the authority of the Central Board of Film Certification, which is the sole regulating agency for administering public exhibitions of movies and maintaining the equilibrium by implementing unbiased and fair decision-making policies. The decisions made by CBFC in certifying or censoring a film are times judged and influenced unpredictably by political bodies whose interference causes pressure upon the Board. There are two distinct opinions regarding the authority of the CBFC to censor the contents of a film. On one hand, it is considered that the Board shall be given

autonomous powers to function independently and on the other hand it is believed that the concentration of powers in one single agency may lead to misuse of such power and degrade the accountability as well as adherence towards the authority. It would be unfair to hold any one of these opinions strongly or concretely since every coin has two sides. In usual instances, the CBFC has stood on its protocol and made decisions regarding the certifications of films. However, in several cases, the CBFC has ordered makers to cut or modify certain scenes by labeling them unnecessary and inappropriate. The utmost priority while certifying or censoring a movie is given to societal standards keeping in mind the sensitivity, values, faith, and beliefs of the public.

For instance, recent movies like *Adipurush* and *The Kerala Story* have received heavy reactions and responses from the public for reasons of faith and belief in mythology and religion. Similarly, movies like *Padmavat*, even after being granted certifications, had to make changes in the segments of the film due to public outrage. In 2015, a documentary based on the Nirbhaya rape case, named *India's Daughter*, was released by BBC which gained publicity and streamed in other countries like the UK but was banned in India due to fear of international embarrassment and threat to tourism.<sup>1</sup>

A very common issue arising in the smooth functioning of the two roles of certification and censorship arises in this level of predicting and monitoring public sentiments which have the chance of getting triggered by any part of the film and eliminating the possibility of such protest. The importer of films is required to make sure that no provision of any law in relation to the exhibition or distribution of films is in contravention of the impugned film and shall follow the due process of law regarding the certification. The censor board has to filter what is suitable and what is not. The suitability is estimated as per the common and best interests of the public. A film cannot be deemed to be fit for obtaining certification if it arises undesired inspiration or motivation for committing unlawful acts or is against public peace and morality or if it defames or hurts the sentiments of a community or an individual towards his or her religion, country, gender or class. The Board can also ask the representatives of the film to edit, modify, or remove a particular segment of the subject in order to be certified. If such orders are not obeyed, the film can be denied to be showcased publicly. The Board is required to balance the rights and requirements of both, the public as well as the filmmakers. The pivotal role of preventing the exposure of unsuitable content to the general public as well as not

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<sup>1</sup> Dev Lewis, *India, China and Censorship*, Gateway House: Indian Council on Global Relations, (Jul. 06, 2023, 11:42 PM), <https://www.gatewayhouse.in>.

restricting the right to freedom of speech and creative expression of the applicants or filmmakers is the most crucial and critical task to be performed by the CBFC.

### **Freedom of Creative Expression**

Article 19 of the Indian Constitution guarantees the freedom of speech and expression to the citizens of India. It also includes reasonable restrictions on the right to avoid the misuse of such absolute right by the citizens. However, in doing so, the bodies in action tend to become arbitrary in nature and exceed their understanding of reasonableness as per their own whims and fancies. Similarly, on a narrower scale, the CBFC has also questioned the freedom of creative expression of filmmakers by misinterpreting the degrees of reasonability multiple times. Being the only body to carry out the function of determining and deciding what is to be certified and what is to be censored, the CBFC lacks multiple perspectives from different angles that are required to clarify the subject keeping in mind all possibilities. The film industry has undergone heavy consequences due to the actions ordered by the Board. It is the duty of the Board to ensure that it does not curtail or suppress the freedom of the filmmakers in any of its actions.

In the case of *Anand Patwardhan v. The Central Board of Film Certification and Ors*<sup>2</sup>, the petitioner had submitted a documentary named *War and Peace* to the CBFC for certification and was ordered 6 cuts to get issues for a 'U' certificate. After reaching the Revising Committee which recommended the refusal of the certificate, the petitioners reached the second Revising Committee which suggested 15 more cuts. Finally, the impugned order was decided by FCAT directing the issuance of a 'U' certificate on the prerequisite of two cuts and one addition in the film.

In the landmark case of *K. A. Abbas v. Union of India*<sup>3</sup>, it was held that censorship of art is to be made in the interest of social and moral justice. It was the first case for censorship in India whereby it was settled that the censorship order shall be based on a pre-developed premise mentioning what may not be included as a theme of the film in light of the fundamental right of freedom of speech and expression under Article 19.

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<sup>2</sup> *Anand Patwardhan v. The Central Board of Film Certification and Ors*, MANU/MH/0242/2003.

<sup>3</sup> *K. A. Abbas v. Union of India and Ors*, AIR 1971 SC 481.

## Impact of Cinema on Society

The entertainment industry has always played a significant role in driving the trends of society. Societal control as well as deviance is the result of the action of such industries through the medium of cinema. It is through films that people come the closest to reality apart from other media. The message and moral of a film are imbibed in the visual depiction of the movie which makes it both resourceful as well as concentrated in ability. It is the most expensive visual medium for depicting stories. In such a huge and highly populated country like India, the trend of movies and the number of theatres make the field of Cinema pivotal in influencing the audience.

There are certain parameters of classification of categories for certification. In India, they are classified into 'U', 'UA', 'A', and 'S'. 'U' stands for Universal Exhibition which allows the public portrayal of the film universally without any restrictions or conditions with respect to age group, locality, or any other factor. 'UA' depicts a prior warning seeking parental authority discretionary for the screening of a film having kids under the age of 12 as its audience. 'A' stands for the compulsory limitation on the display of film to a certain age group, i.e. only for adults. 'S' is a category that denotes that the film is directed towards a particular set of people like lawyers, doctors, females, etc. all of which are graded as per the contents of the film and its suitability to the target audience.<sup>4</sup>

However, it is not difficult for a restricted person to get access to a film by illegal methods like piracy or non-supervision of parents or guardians in the case of a minor. The contents of a film carry the intense potential to influence the mindset and activities of the public at large. In various cases, individuals, especially teenagers get motivated to commit crimes, become violent, or get introduced and addicted to the use of alcohol, drugs, or tobacco. Recently, there was a case of murder committed by a woman in Gujarat who killed her 2-year-old son and claimed to have received the idea of hiding the body at a construction site by being inspired by the movie *Drishyam*. For reasons of influence of substances like drugs or tobacco, the Notification by Ministry of Information and Broadcasting dated 15<sup>th</sup> September 1997, the Central Government, by its power, amended the notification of Government of India in the Ministry of Information and Broadcasting in No. S.O. 836 (E) dated 6th December 1999 by

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<sup>4</sup> Ashwini Biradar & Arundhati Bhale, *Analysis of Censorship on OTT Platform and Its Analysis with International Laws And Brief Study of India's Cinema Laws*, 1 MULTI-DISCIPLINARY JOURNAL 1, 6-7 (2022).

inserting the entry “(vi-a) scenes tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown.”<sup>5</sup>

By the grace of technology, films are easily available on internet platforms. The easy accessibility of the same makes it difficult to impose restrictions on the audience. Cheaper alternatives that are not subject to checks to ensure that the contents of the film are not exposed to inappropriate content are mostly preferred by non-complying individuals. Theatrical screenings are now almost equal to the comfort and luxury of access to movies, series, documentaries, etc. without adherence to guidelines. Not just that, the films that are to be released only in theaters get released on other internet platforms shortly after the theatrical release and as a result, there is no practical difference between differently rated movies as per their suitability.

### **Influence of Media**

Media is an integral and indispensable part of society without which no section of the society can function independently. It not only provides services for communication, interaction, or development but also is a source of spreading information, and entertainment, gaining knowledge and updates, and reaching the masses. It is through media that people can express their views so easily. The purpose of media is fulfilled by its different forms namely print media like newspapers, audio-visual and digital mediums like radio and television, internet platforms like social media, etc. One such branch of media is portrayed through cinema. The chain of public views and opinions leading to public outrage, criticism, appreciation, or any other comments is broadcasted through these media in different forms. Media, also called the fourth pillar of democracy, is an essential contribution to the field of information and broadcasting. Through news channels, social media platforms like Twitter and Instagram, etc. people can express their opinions about a film, film industry, or related aspects. Reviews of an influential individual or institution affect the mindset of its followers. People begin having a preconceived notion about the film and react to it with a biased response.

In a deeper picture, cinema itself can be considered as a form of media, being the most influential form of mass communication. It broadcasts its contents influences the audience and creates a huge impact in their lives. Though such impact may be positive or negative, the task that CBFC aims at performing is shaping an intended perspective by looking at the overall

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<sup>5</sup> Amendment in the Notification regarding Guidelines for Certification of Films for Public Exhibition published vide S.O. 836(E) dated 06.12.1991.

long-run impacts. Various films were created to spread social messages or a real story or event that is to be known by people by the method of entertainment. Restricting the public exhibition of such films for petty reasons or scenes that eventually assist the essence or theme of the film defeats the purpose of the creation of the film and also demotivates makers to create such content.

People often tend to believe that what is shown in movies is right and this thought process starts affecting their psyche. They start adopting habits like smoking and drinking due to movies and get inspired to undertake other activities as well. Children and adolescents are the most prone to being influenced by the contents of a film. Their focus drifts from the main objective of the movie and they pay attention to small actions in scenes, the existence of which would probably be insignificant to the creators. Not just the film, people also follow the cast of the film. The influence of celebrities in the lives of their fans plays an equally important role. For instance, Rajnikant is a respected, reputed, followed, and even worshipped figure, particularly in the Southern regions. The mentality of followers insists them to imitate the behavior and practices of their idols. Television programs, advertisements, and other forms of visual media also create a fine imprint in the minds of the audience. It is believed that children spend an average of seven hours per day on entertainment media like television, phones, computers, and other electronic devices; the solution of the same is media literacy through which the influence of such exposure can be prevented by methods of accessing, analyzing and evaluating media by explaining it as a construction of reality of society, its commercial implications, hidden agendas, and content.<sup>6</sup>

Another approach, applied by the WHO Framework Convention on Tobacco Control to ensure the mental and bodily well-being of people, is the MPOWER measure which stands for Monitoring tobacco use, protecting people from tobacco smoke, Quitting tobacco, Warning about the dangers of tobacco, enforcing tobacco advertising, promotion and sponsorship bans and finally Raising taxes on tobacco respectively.<sup>7</sup>

### **Interference of Judiciary**

Judicial Censorship is not a new term in the history of CBFC or the film industry. The main step of interference of the judiciary in matters concerning the authority of the Censor Board arises when the contents of the film form an offense. It can also intrude if the concerned board

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<sup>6</sup> Jothi Mathivanan, Kannan Vigneshwaran, Ezhumalai Sinu, *Do movies influence smoking among adolescents?* 5 INTERNATIONAL JOURNAL OF HEALTH SCIENCES AND RESEARCH 458, 462-463 (2015).

<sup>7</sup> WORLD HEALTH ORGANISATION, <https://www.who.int/>, (last visited Jul. 7, 2023).

is arbitrary in its duties or when the rights of people are violated. A renowned instance of this was the case with the movie *Jolly LLB* to which a certificate was granted by the Censor Board but a PIL filed in Delhi High Court demanded the withdrawal of the same on the ground that certain dialogues from the trailer were in contempt of court in light of section 5-B of the Cinematograph Act, 1952 which states no visuals or words involving defamation of an individual or contempt of court are to be presented. The Delhi High Court stated that the petition could not be entertained since the ground for the complaint was based on the trailer of a film that was yet to be released.<sup>8</sup>

Courts may at times be required to interfere in matters of imposing bans on films on grounds of cultural beliefs, public sentiments, contents of vulgarity or obscenity, and other matters that confirm judicial purview. In the landmark case of *S. Rangarajan v. P. Jagjivan Ram*<sup>9</sup>, The Madras High Court revoked the 'U-Certificate' issued to a Tamil film on the ground that it was based on reservation policy in jobs as such policy was based on caste and was unfair to the Brahmin. Supreme Court had overruled this argument on appeal.

In another case, *Ramesh v. Union of India*<sup>10</sup>, the subject matter was the TV Serial *Tamas*, which depicted the tensions between Hindu and Muslim communities before partition. The screening was allowed by the High Court and an appeal against the same was presented before the Supreme Court which was dismissed on the reasoning that the serial was a medium of informing the public about the events and was to be taken as a lesson.

### Suggestions

- It is crucial to ensure that religious freedom and rights, freedom of creative expression, and reasonable restrictions on parts of the public, makers of a film, and the authority of the CBFC do not overlap the prescribed boundaries. There has to be a balance between what is moral and ethical with what is required and needed.
- Unnecessary and insignificant actions in a film may be of big notice to a child or an adolescent. Implementations of regulations and checks of compliance with adult-rated movies need to be strict.
- Access to restricted content is easily available and can be exposed to an undesired age group and due to a variety of platforms that showcase such content, it is easily spread.

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<sup>8</sup> Ritwik Tyagi, *A Case against Judicial Censorship*, SCC ONLINE BLOG (Jul. 7, 2023, 9:32 P.M), <https://www.scconline.com/>.

<sup>9</sup> *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

<sup>10</sup> *Ramesh v. Union of India*, (1988) 1 SCC 668.



Illegal means like piracy have to be eliminated with rigor by imposing heavy penalties for the commission of such acts. Media literacy and parental control are needed from the other end to guide the young population.

- The role played by the other forms of media in uplifting or appreciating Cinema has paved the way for advancements in the field of filming. A system of checks and balances needs to be put up by the Board to ensure peace within the society.
- For efficiency and effective working of the system, the Central Board of Film Certification shall be given independent authority and autonomous powers to deal with its cases.
- A stricter approach to rating films and ensuring their obedience from the public is required rather than censoring a film or any part of it in scenes that lead to a waste of money and efforts invested by the makers. The powerful influence of cinema needs to be preserved and utilized as a tool for the greatest common benefit of all.

### **Conclusion**

The current system and process of certifying films and other related aspects like censorship have proven to be beneficial. However, with new possibilities and scope for the addition or elimination of a theme or the use of technology in an advanced manner, there have to be provisions for regulating the existence of such scenarios. Though a society's action leads to the creation of a new law, the foreseeability of the future of the film industry and cinema requires the Board and the Government to be ready. The current loopholes which are prone to being taken advantage of have a higher edge in comparison to the current rules which have no practical strictness in their implementation. The Central Board of Film Certification is expected to be prudent while certifying a film, keeping in mind the efforts, money, and importance attached to a scene as well as the consequences it is likely to face by the public order to maintain confidence and faith in the public as well as makers of a film.