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## LIGHTS, CAMERA, SCREEN; ANALYZING CENSORSHIP AND ITS ISSUES WITH OTT

- *Raag Singh*

### (I) INTRODUCTION:

Movies are not just moving pictures on the screen, but an entire marvelous wonder of its own, from the story, the characters, the actors that play them and the emotions that color the screen, movie have held a special place in our hearts. Movies have always been a window through which the Indian mass looked into a galore of stories. From Dadasaheb Phalke's Raja Harishchandra, to the current blockbuster of 2026, Dhurandhar, Indian cinema has grown a lot and the society of India has grown with it as has the population which has been consuming it as movies have explored into various ideas which were genre defining for the citizens. Movies such as Mother India (1957) by Mehboob Khan which became India's first feature film nomination to the Oscar's, represented and showed India's villages, poverty, rural life and women's struggles, Sadgati (1981) by Satyajit Ray displayed the brutal reality of untouchability, caste exploitation, and poverty India, and then straight into the 21<sup>st</sup> century, where movies such as Pink (2016) which delved into the hushed matters of sexual consent and the movie Aligarh(2015) which explored homosexuality, are some examples which showcased how Indian Cinema has influenced the population of the country.

Every movie has the capability to introduce a new concept or dimension which has been unexplored or revealed from plain sight, which can bring a fresh wind of perspective but sometimes, this wind can end up kicking a storm which brings unrest and chaos to the society. To stop this, the concept of censorship and certification have been adopted and this

has been a major tool for the government to decide how films influence the Indian populous and have been a source of controversy and discussions on freedom of speech and control of the government and how society reacts to ideas. Censorship and Certifications have always been a domain of movies but with the advent of Over - The - Top (OTT) platforms have thrown a wrench into the whole framework and reignited the need to see how the new mode reacts with the old methods of the government in the modern era

## **(II) HISTORY OF CENSORSHIP**

The history of censorship in India movies along with the history of movies and wherein the first movie in India was brought by the Lumiere Brothers showing their movie in Mumbai and later on inspiring Harishchandra Sakharam Bhatavdekar popularly known as Save Dada. He was highly influenced by the Lumiere Brothers production that he ordered a camera from England and shot his first film at the Hanging Gardens in Mumbai. *The Wrestlers* was a simple recording of a wrestling match and is considered as the first motion picture in the history of Indian Film Industry<sup>1</sup>. Later on, Dadasaheb Phalke came up with Raja Harishchandra, kick-starting the movie industry of the nation. Later on many parallel movie cultures emerged in Madras, Calcutta, Mumbai, Pune, Rangoon and Lahore, where these movies were made and this prompted the British Government to regulate this sector and led to the Indian Cinematograph Act, 1918, which mandated that movies could not be screened without the permission of the Board of Censor which categorized as the film being, 'suitable' or 'unsuitable' for public release. The criteria of classification being given as a list of 43 objectionable subjects that a film should not contain, such as freedom struggle, oppression, sexual provocativeness and the like.<sup>2</sup> This act also led to the censor boards in regions such as Madras, Calcutta etc. which gave powers to review the contents being screened and deem them fit for viewing or not. Later on, Indian Cinematography (Amendment) Act of 1949 was introduced which led to the creation of the Central Board of Film Censors at Mumbai and the adoption of granting 'U' and 'A' Certificates for movies were adopted

After independence of India, the government repealed the previous act and introduced the Cinematograph Act, 1952<sup>3</sup> which became the bible of film certification and censorship. Later

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<sup>1</sup> Nitisha Jamwal & Dr. Sakshi Semwal, *The History of Indian Cinema*, 43 Sambodhi 103(2020)

<sup>2</sup> Kartikeya Anshu, *Constitutional Guarantees for Indian Cinema: A Study of Film Censorship in Its Lead up to the Cinematograph (Amendment) Bill, 2021*, 12 NLIU Law Review 1 (2022)

<sup>3</sup> *The Cinematograph Act, 1952*

on multiple amendments were made into the act such as the amendment of 1981<sup>4</sup> which changed the name of the CBFC from Film Censors to Film Certification, a change which was mainly a white elephant since the board kept its censoring powers intact. The major earthquake came post the inclusion of Article 19(2) and brought constitutional purview into the act.

### (III) JUDICIAL EVOLUTION AND IMPACT

The most significant amendment was of 1959<sup>5</sup> which introduced Section 5B into the Cinematograph Act which included statutory principles in the act upon which reasonable restrictions could be placed on movies as in accordance with Article 19(2) which deals with restrictions of freedom of speech and expression<sup>6</sup>. Section 5B censored films on the grounds such as interests of the sovereignty and integrity of India, contempt of court, friendly relations with foreign states, public order or incitement of offense. This led to film censoring being connected with constitutional values and something which was later misused, prime example of which was in 1960, when Indo-Soviet Relations were flourishing, the government used the censor board to ban movies which were against USSR, and this led to the ban on British filmmaker David Lean's movie *Doctor Zhivago* among other Cold War films in India<sup>7</sup>. The Enquiry Committee on Film Censorship (Khosla Committee) which was constituted to recommend reforms in the 1952 Act and accused the Central Censor Board of "succumbing to political pressure" and held in its report that certain items in the Censorship Guidelines were beyond the ambit of Article 19(2) of the Constitution.<sup>8</sup>

In 1970, this friction reached the Supreme Court where prominent director, Khwaja Ahmed Abbas, who received a 'A' on his movie, *Chaar Sheher Ek Kahani* ( A Tale of Four Cities), due to scenes of prostitution and economic exploitation, for which the Examining Committee gave them the grade, for which Abbas protested against the pre-censorship of the board. He challenged this decision in the Supreme Court which later on became the first legal case on censorship.<sup>9</sup> The court held that cinema is protected under Freedom of Expression but it is subjected to certain restrictions as given in Article 19(2) and that pre censorship is justified

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<sup>4</sup> *The Cinematograph (Amendment) Act, 1981*, No. 49, Acts of Parliament, 1981 (India)

<sup>5</sup> *Cinematograph (Amendment) Act, 1959*

<sup>6</sup> *The Constitution of India, 1950*

<sup>7</sup> SUPRA note 2

<sup>8</sup> Khosla Committee Report, 1969

<sup>9</sup> *K. A. Abbas v Union of India*, AIR 1971 SC 481

and valid when read with Section 19(2) and the Cinematograph Act of 1952, but also observed that restrictions should be under definite guidelines and subjected to judicial review. This case, later on contributed to the 1981 Amendment<sup>10</sup> and the change in the name and nature of the board from film censor to certification.

The next major case on the nature of censorship was in the case of *S. Rangarajan v p. Jagjivan Ram*<sup>11</sup>. This case was in the relation to the Tamil movie, *Ore Oru Gramathile*, a movie which focused on reservation policy was denied public exhibition and revocation of 'U' certification. The Supreme Court rejected the respondent's argument that the film would end up causing mass unrest and harmful backlash and held that Freedom of Expression cannot be suppressed merely because certain groups opposed it. This was the first major decision against 'Heckler's Veto', a concept which refers to a decision being revoked because people object to it. Another case was related to the *Bandit Queen*<sup>12</sup> where the Supreme Court held that a movie must be observed into whole and not through some violent or sexually explicit scenes and that the broader theme should be kept in mind while providing certifications.

This tussle between the Certification Board and the movie industry continued through cases such as in the movie *Uda Punjab* which depicted the case of drug abuse in Punjab and the CBFC ordered a staggering 94 cuts and 13 pointers but was cleared by the Bombay High Court after one cut along with a disclaimer,<sup>13</sup> and later on the *Padmavat Controversy*<sup>14</sup> wherein the Supreme Court dealt with State authorities trying to stop the public exhibition of a movie which had beforehand received the approval from the Certification Board, due to public disapproval. Very recently, the 2023 amendment of the Cinematograph Act of 1952 introduced additional age based categories such as 'UA7+', 'UA 13+', and 'UA 16+' and recognising needs of the modern era as well as the changes the present times have shown in regards to sensitivity and public morality and the government has recognised the jurisdiction of the CBFC in regards to censorship. Although, the new era has brought the trending and explosive growth of OTT platforms such as Netflix, Amazon Prime Video and many others growing rapidly with a study by PwC estimating that Indian OTT revenue grew 7.2% in

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<sup>10</sup> SUPRA note 4

<sup>11</sup> *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574

<sup>12</sup> *Bobby Art International v. Hoon* (1996) 2 S.C.C. 136

<sup>13</sup> SUPRA note 2

<sup>14</sup> *Viacom 18 Media Pvt. Ltd. v. Union of India*, (2018) 1 S.C.C. 761 (India)

2024, reaching US\$ 2.3 billion and is projected to reach US\$ 3.5 billion by 2029<sup>15</sup> and this growing market exposed a glaring loophole in the entire scenario of CBFC and how India and the Board sees and regulates censorships.

#### **(IV) OTT AND THE LOOPHOLE**

Whenever we watch a web series, we see a logo of the film or the typical Netflix sound as our show starts, but the same is not in the case of movies wherein the nostalgic white UA certificate pops up. This led to a question that how come a movie, when shown in a cinema and when shown on a tablet, it shows none. This discrepancy might seem small but this actually leads to a cascading effect with far reaching consequences where this loophole might get exploited. To showcase how dangerous this slight mistake, it would be pragmatic to consider real life cases.

*Tandaav*, the most controversial web series of 2020, had a scene where actor Mohammad Zeeshan Ayyub, dressed as the Hindu God Shiva, shouted slogans of ‘azaadi’, obviously inspired by the JNU Protests, which led to widespread outrage on grounds of hurting religious sentiments, demeaning hindu gods, provoking communal tensions. Multiple FIRs were filed against it and the makers issued a public apology, many scenes were cut, and the Haryana Home Minister issuing a statement, related to banning the series and for the series to go through the censor board<sup>16</sup>. Another good example was the case of the famous dark ad politically charged series Mirzapur where protest erupted due to sexually violent scenes and poor depiction of the district of Mirzapur. These cases showcase the worse of what happens when OTT is not regulated in the way that normal movie do. This is a judicial oversight by the parliament and defeats the purpose of censorship in accordance with Article 19(2), as the main motive to curb films was due to their grasp and popularity over the audience which can lead to very negative reactions down the pipeline, and not applying it to a more famous and influential method is just a bomb which is being incubated to explode. This raises a question about the reason for application of different standards of the same content only on the basis of mode of distribution, and becomes a major loophole for film productions to get their uncensored movies out there. A good example of this was the uncut content of the famous movie *Dhurandhar*, which was nothing but scenes which could not be put past the censor

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<sup>15</sup> PwC India, *Global Entertainment & Media Outlook 2026 -2030; India Perspective*, (2026)

<sup>16</sup> Sephali Svati,, *Classification of Content, Content Regulation and Ethics-OTT Platforms in India*, 3(4) International Journal of Legal Science & Innovation 509 (2021).

board, and hence the question on differential standards becomes applicable. Till now, the government has banned over 50 OTT platforms over the course of two years in 2026<sup>17</sup>, revealing the ugly truth of content regulation which happens post-publication.

## **(V) DIFFERENTIAL REGULATIONS**

The issue raised here not that there is no regulation and is not a contention made in this paper, but the central theme is related to differential regulation which is the case when it comes to OTT regulations. OTT comes under the Part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which deals with regulation of online curated content and the digital media ethics code' administered by Ministry of Information and Broadcasting. This section provides a grievance system was divided into three tiers, (1) self-regulation by the publisher, (2) self - regulation by a body and (3) oversight mechanism of the government<sup>18</sup>. This put in a makeshift system which relied too heavily on self-regulation, and too less on government and legal ones. The system came into action once certain content was published and it turned into an issue, then only the producer bring changes to the content. This provides no safeguards to the film producers and to the audience and leaves a lot of gray area wherein the producers remain in the dark about what would turn into a controversy or not and for the people, they remained ignorant whether the series they are watching is fit or safe for themselves or those around us.

## **(VI) CONCLUSIVE SOLUTION**

The only way to resolve this is to rely on primarily an act, either increasing the ambit of the Cinematography Act or creating a different set of rules for regulating the content on OTT, which would help in having judicial and legal clarity, other methods could be to enforce laws for self-regulation by providing a list of objectionable grounds on which either the platform, or the government could censor and regulate the mechanism and a swifter and proactive review organization for the streaming of OTT in India , by expanding or drawing from the CBFC in order to make censorship more equal, less unpredictable and minimum judicial controversy which would not lead to the backlash of the society and the emergence of 'Heckler's Veto' and at the same time protect and define the provisions of censorship and certification in the country.

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<sup>17</sup> Press Information Bureau, Ministry of Information & Broadcasting, *50 OTT Platforms Disabled in Last Two Years for Displaying Obscene Content and Violations of IT Act and Other Applicable Laws* (July 22, 2026).

<sup>18</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, pt. III (India).

Movies hold a major place in our heart and now it is being rapidly taken by OTTs but just as how films were regulated and scrutinized under the eyes of law, this mode of communication should not be left out since it has a massive potential to influence people and it needs regulations which befit its importance in order to curb elements harmful for our people.