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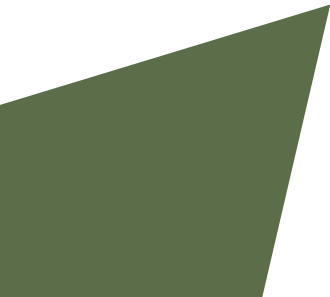
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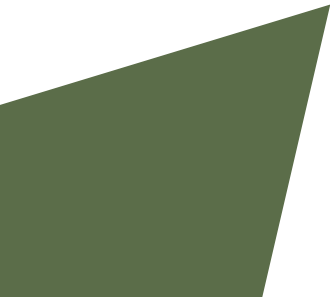
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The Veil of Censorship:

A critique on oppressed freedom in guise of film censorship in India

Gagandeep Singh

INTRODUCTION

What makes us human is our ability to express; the core of all human evolution is our aptitude to think and convey. Mode of expression is not just confined to speech; but it also emanates through songs, films, artworks, literature etc. From among the prominent means of expression, the films are the most persuasive ones. Through the beautiful assortment of all the different expressive styles they mark a striking impression on the sentiments of its spectators. They are not only a source of entertainment but also an instrument to promote social, political and economic agendas. Comprehending the robust impact of Cinema on masses, authorities generally strive to invade it through the baton of censorship. The obscure motive manifests within their intention to defeat the purpose of particular film so that it may not serve contrary to their vested interests. But in a democratic nation like ours: Is this kind of arbitrary censorship justified? Does it not amounts to violation of liberty of expression?

Value of freedom and liberties cannot be understated in a country like ours. Liberty in India has been achieved after fighting oppressive rule for 200 years and after independence establishing these liberties was a priority. On 26th January 1950 Constitution of India came into force and one of its first resolutions was to secure all its citizens liberty of thought and expression¹. Article 19(1)(a) of the Constitution guaranteed to all the citizens Freedom of Speech and Expression. However the exercise of this freedom was subject to restrictions, these certain restrictions justified existence or enactment of any such legislation which may curtail the freedom in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.²

These restrictions justifies the mechanism of censorship; the term “censorship” means a curb or a restriction on a person’s right to express his ideas in any form, on the ground that such expression would be harmful.³ Article 19(2) was added to the constitution after the First Amendment, 1950; State could now make laws to censor our expression to make them fit for public reception, but gradually instead of our freedoms becoming absolute these restrictions became absolute and liberty became a mirage. Many times expressions of various different film makers, writers, actors etc. have been oppressed or banned on the notion of indecency and immorality, it is quite common in India

¹ The Preamble, Constitution of India, 1950

² Article 19(2), Constitution of India, 1950

³ CK Razdan (ed), Bare Breasts and Bare Bottoms: Anatomy of Film Censorship in India (Jaico Publishing House 1975).

for films with strong social messages, historical significance or those opposed to government's interests getting banned. Many of them are denied certification by the Central Board of Film Certification. Films even after getting certifications get banned not only by the central government but even by the state governments and its district authorities also. Every time a movie gets banned, its makers engage in long and rigorous litigations in High Courts and countless times in Supreme Court too. Increasing hindrances raise questions -- Do we still have 'Freedom of Speech and Expression?' Or such proclamations by the state and the center upholding the banners of morality and decency have taken the freedom away from us.

Amongst its many pillars 'Freedom of Expression' is the most important pillar on which a democracy stands. The democracy is a Government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value.⁴

It is duly acknowledged that censorship is necessary tool for the state. But there remains a very fine line between arbitrariness and reasonable restriction, here duty lies on the State to ensure that this fine line is not crossed, because State which curtails the freedoms and rights of its citizens becomes totalitarian in nature and loses faith of its citizens. Censorship in a free society can be tolerated within the narrowest possible confines and strictly within the limits which are contemplated in a constitutional order.⁵

While assessing the entire situation one ponders - are the circumstances same in all the countries? No, ideal countries with lengthy and developed law have realized the value of these freedoms in nation building; in any case it is quite grave when rights or freedoms of their citizens are curtailed. Therefore, while exercising these restraints extreme caution is exercised so that while protecting the collective good they do not lose the track of individual good.

⁴ S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574

⁵ AIR 2005 Bom. 145.

DEVELOPMENT OF CENSORSHIP INSTITUTIONS IN INDIA

Official accounts claim that Indian film industry is the largest in the world producing over a thousand films in a year exhibited over 13,000 cinema halls in the country⁶. Its establishment can be traced to 1913 when first Bollywood feature film 'Raja Harishchandra' a silent film by Dada Saheb Phalke, was released. In 1931 Bollywood's first sound film "Alam Ara" was released which was a huge commercial success. Hence a new mode to express was created; the Supreme Court held that films have to be treated separately from other forms of art and expression because a motion picture is "able to stir up emotions more deeply than any other product of art"⁷

Catching up to the rising trend to control this new business and its freedom to express, in the pre-independence era Cinematography Act of 1918 by the British-India Government was enacted. Two aspects were covered under the purview of this legislation, Firstly to license the places of exhibition and secondly censoring the films. The exhibition of films was only limited to the places licensed under the act.⁸ Security and protection of the audience was the major concern for licensors.⁹ Initially, the officials of the government so designated carried out the censorship as there was no board for such but gradually in 1920 Censor Boards were instituted in Bombay, Madras, Calcutta and Rangoon to examine and certify films.¹⁰ The board was guaranteed autonomous powers to frame guidelines for censorship of films.¹¹

Repealing the colonial act a new legislation drawing its validity from Article 19(2) of The Constitution of India, The Cinematography Act of 1952 was enacted. This basic operation of the act was to constitute a central board which was empowered to certify films.¹² The board was initially known as the Board of Censors but after the amendment of 1959 it came to be known as Board of Certification.¹³ The quorum of the board consists of not less than 12 and not more than 25 members to be appointed by the central government.¹⁴ Act also provides for advisory panels, the board may constitute as many advisory panels at regional levels as necessary for efficient working of the board.¹⁵ Upon receiving an application for certification, the relevant regional officer appoints an

⁶ Central Board of Film Certification, <http://www.cbfcindia.tn.nic.in/> (last visited May 13, 2020)

⁷ A.I.R. 1971 S.C. 481

⁸ Section 3, Cinematography Act, 1918

⁹ Section 5(1)(B), Cinematography Act, 1918

¹⁰ Monika Mehta, *Censorship & Sexuality in Bombay Cinema* (University of Texas Press 2012)

¹¹ Section 8(2) of Cinematography Act

¹² Section 3 of Cinematography Act, 1952

¹³ *Ibid.*,

¹⁴ *Ibid.*,

¹⁵ Section 5(1), Cinematography Act, 1918

Examining Committee. In case of short films, it consists of a member of the advisory panel and an examining officer, one of whom must be a woman. Otherwise, the committee consists of four members of the advisory panel and an examining officer. Two members of the committee must be women.¹⁶

Prior to amendment of 1981, central government's executives acted as review authority to the decisions of the board. However, through amendment of 1981 an appellate tribunal was constituted.¹⁷ Any grievances against the board were purview of the Appellate Tribunal only. The board is empowered to grant 4 types of film certifications: 'U' i.e. unrestricted public exhibition, 'UA' i.e. unrestricted public exhibition with supervision of adults for children, 'A' i.e. public exhibition for adults only and 'S' i.e. public exhibition restricted to members of any profession or any class of persons.¹⁸

Initially board was empowered either to grant the film a certificate or deny it¹⁹. Gradually through an amendment board was given authority to recommend edits in the film as the amended act stated *"direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses."*²⁰ This amendment made CBFC an authority for censorship rather than that of certification. Though the necessity for censorship could not be understated but censorship without any objective boundaries have several times resulted in the neglect of freedom of expression by the arbitrary decisions of the board. The board was required to objectively assess a film and award it one of the four certificate as which class of audience would be suitable for the public exhibition of the film. But it is felt now that the board instead of regulating certification is interfering with viewer discretion and is regulating what should one watch or not. It was amply stated by the learned advocate Rajeev Dhawan that "There should be no question of changing "content". Certification means informing the public what kind of audience the film is suitable for — Adult (A), Universal (U), or with supervision (U/A)."²¹

¹⁶ Analysis of working of Censor Board in India, at <https://iasscore.in/national-issues/analysis-of-working-of-censor-board-in-india> last accessed on 17 May 2020

¹⁷ Subs. by Act 49 of 1981, Ins by section 8

¹⁸ Section 5(A) of Cinematography Act, 1952

¹⁹ Section 4 of; Cinematography Act, 1952 prior to Amendment of 1983

²⁰ Section 4(1)(iii) of Cinematography (Amendment) Act, 1983

²¹ Rajeev Dhawan, "Padmavati: How censorship is dragging India back to the middle ages" Daily O, 22/01/2018, <https://www.dailyo.in/arts/padmaavat-sanjay-leela-bhansali-deepika-padukone-ranveer-singh-bollywood-censorship/story/1/21886.html>

The act declares a principle on which the censorship is to be conducted, “*A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.*”²² Almost all the terms of the principle are direct and straightforward but the ambiguous part on which most of the films are rejected certification is ‘*decency or morality*’ unfortunately what is indecent or what is immoral is not defined under the act. Rather the act made those select few of the board the judges of decency and morality. The apex court has opined in its judgment on the issue of artistic freedom and morality in the celebrated case of “*S. Khushboo V. Kanniammal & Anr*”²³ that “Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as ‘decency and morality’ among others, we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes.”

It also needs to be accepted that morality and decency are changing phenomena there cannot be any set bar on these, they are ever changing and ever evolving. We live in a dynamic society and it is equally important for the State to evolve up to the changing standard, through this evolution only an ideal State could be established. The apex court commenting on the changing nature of social morals, has held “that in the field of art and cinema, the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions, the same are taken for granted without in any way tending to debase or debauch the mind, morality changes with the society and so should we.”²⁴

Furthermore, the act empowers the Central Government to at any time intervene in the proceedings of the board and give afresh orders for the certification of film. Even the already awarded certification could be altered by the orders of the central government, certification can be even revoked. According to Section 6(1) of the act: “*Notwithstanding anything contained in this Part, the Central Government [may, of its own motion, at any stage,] call for the record of any proceeding in relation to any film which is*

²² Section 5B of Cinematography Act, 1952

²³ Criminal Appeal No. 913 of 2010, Supreme Court of India

²⁴ Ranjit D. Udeshi Vs. State of Maharashtra, AIR 1965 SC 881,

pending before, or has been decided by, the Board, [or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal) and after such inquiry, into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose of the matter in conformity with such order”

This above section is a complete mockery of judicial and quasi-judicial setup of the country as even after the judicial scrutiny by the tribunal the executive is empowered to control or act as a reviewing authority over board. The apex court has targeted this section in the landmark judgment of “Union of India V. K. M. Shankarappa”²⁵ the Id. justice held: “We are unable to accept the submission of the learned government counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the Executive and the Government is concerned. To permit the Executive to review and/or revise that decision would amount to interference with the exercise of judicial functions by a quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the Executive. Under our Constitution the position is reverse. The Executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The Legislature may, in certain cases, overrule or nullify the judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught on a judicial order. The Executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts and decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the tribunal.”

By this order Supreme Court has nullified the power of government to review any order passed by the board rather it has suggested that if there is any grievance by the government it should be addressed and appealed to the tribunal there cannot be any such arbitrary use of powers by banning such film.

²⁵ Appeal (civil) 3106 of 1991, Supreme Court of India

UNCONSTITUTIONAL SUPER-CENSORS

For long center and state governments have justified that in lieu of maintaining public order certain films, books, artworks etc. needs to be banned, but is it justified to curtail freedom of one on regard of acceptability of another? In actuality the bitter reality is that not even the conservative population has faith in the film certification authorities because the films which were duly certified were not borne to be exhibited as the masses resorted to violence. A classic example can be derived from film 'Padmaavat', after many cuts, scrutiny and turmoil the film finally received certification; even after this the film was not accepted by the masses. Death threats were issued to the actors and directors of the film by outfits who termed them as guardians of morality and Indian heritage. Cases of violence by these organizations at movie theaters were reported throughout the country. Lead advocate for the film expressed that they faced three kinds of censorial opposition: (i) censorship by the Board (ii) censorship by motivated mobs and (iii) populist censorship by governments playing to the crowd."²⁶

The Apex court adjudging on the issue that is it just to ban a film because of public order in the '*Shankarappa*²⁷' case held that "We fail to understand the apprehension expressed by the learned counsel that there may be a law and order situation. Once an Expert Body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the concerned State Government to see that the law and order is maintained. In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view, from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the Executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law."

The statute has only empowered CBFC to certify films; it is deemed that every film certified by the board stands fit on the principles of censorship mentioned in the act. Therefore exhibition of every certified film to interested audience should be legally protected by the constitution. Although under Section 13 District Authorities have also been given power to suspend the public exhibition of any film in lieu of maintaining public order situations, but the apex court has many times held that "It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the

²⁶ Ibid., 21

²⁷ Ibid., 25

State. The State cannot plead its inability to handle the hostile audience problem.”²⁸ The power to suspend the exhibition under section 13 has to be exercised when there is grave and imminent danger, not when it is apprehended that there would be danger.

Even after sundry of judgments on this issue, several state governments at numerous occasions have acted as “Super Censors” who have encroached upon their legal authority by banning several films duly certified by the board for public exhibition. Every time a film gets banned in a state the aggrieved has to file for voluminous litigation, here the question is not justice but why the freedom was even curtailed? In a democratic country everyone has a right to communicate his views on different affairs. Millions of views are circulated throughout the nation every day by different means. Many of them are not approved by majority of the Indians. But does that mean that those should be scrapped? Or do the authors have to knock the doors of the courts on every occasion if their opinions fail to satisfy a billion population? Movie is a legitimate and one of the most important medium through which general problems can be addressed.²⁹

INDIBILY CREATIVE PVT. LTD. V. GOVT. OF WEST BENGAL³⁰ (2019)

Facts:-

Recently in 2019, A Bengali horror film “Bhobishyoter Bhoot” was produced. The film was a satire on Bengali politics it was duly certified by the Central Board of Film Certification and was awarded the “UA” certificate on 19 November 2018. Four days prior to the release the petitioner stated that he has received a letter by the ‘State Intelligence Unit of the Kolkata Police’. The officials of the said authority asked the producers to arrange a prior screening of the film for senior officials of the unit. The letter stated that inputs were received “that the contents of the film may hurt public sentiments which may lead to political law and order issues”. The petitioner responded that the ‘inputs’ have already been addressed by the CBFC. Petitioner also stated in the reply that according to Supreme Court judgment it is not up to any other body to interfere after a certification has been awarded by the CBFC moreover the office of Joint Commissioner does not have the jurisdiction to seek ‘advance’ private screening prior to the release for a “few senior officials” on a “priority basis” as sought.

²⁸ S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C 598

²⁹ Subhradipta Sarkar, RIGHT TO FREE SPEECH IN A CENSORED DEMOCRACY (2008)

³⁰ Writ Petition (Civil) No 306 of 2019

Couple of days after release of the film all the theater houses took down the movie, when inquired they claimed to have received orders from 'higher authorities'. Several exhibitors claimed that "Station House Officers from the local police station had informed them to cease exhibition of the film with immediate effect, failing which they would have to face the risk of damage to their cinema halls."

Judgement:-

The court while reprimanding the state government held: "The West Bengal police have overreached their statutory powers and have become instruments in a concerted attempt to silence speech, suborn views critical of prevailing cultures and threaten law abiding citizens into submission," the court also further reaffirmed these principles:-

1. CBFC the final authority for certification: "Repeatedly, in decisions of this court, it has been held that once a film has been duly certified by CBFC, it is not open to any authority either of the State Government or otherwise to issue formal or informal directions preventing the producer from having the film screened. Such actions of the State directly impinge upon the fundamental right to the freedom of speech and expression guaranteed under Article 19(1) of the Constitution of India."
2. State duty bound to safeguard constitutional rights: "The State of West Bengal is duty bound, once the film has been certified by the Central Board of Film Certification ("CBFC") to take necessary measures to protect the fundamental right to free speech and expression of the producer and the director and, for that matter, of the viewers to see the film unrestrained by extra constitutional restraints."

The court after setting the above mentioned principles upheld the petitioners claim, state government was restrained to interfere with screening of the film further the bench added "the same hands which tried to stop the film would now ensure that it is screened in theatres across the state." Compensation of 20 lakhs was awarded to the petitioner, and the court held "The power of the State is what the people give it. Freedom is not subject to power, but power is answerable to freedom."

SREE RAGHAVENDRA FILMS V. GOVERNMENT OF ANDHRA PRADESH (1995)³¹

The phenomena of super censorships are not novel rather instances of abuse of constitutional power can be seen in every decade. In the year 1995 film 'Bombay' was released, film was originally released in Tamil but was later dubbed to Hindi and Telugu. The Tamil version of the film was a big success in other parts of the country; the film has won several International and National Awards. After the release of the film in Andhra Pradesh, state government on 14 March 1995 ordered for suspension of screening of film in the cities of Hyderabad, Secunderabad and Ranga Reddy for 2 months. The impugned order cited "exhibition of the movie is likely to cause breach of peace and create religious animosity and hatred between different communities." The suspension was passed by exercise the powers of state government under Section 8(1) of A.P. Cinemas (Regulation) Act, 1955 and Section 22(2)(e) of the Hyderabad City Police Act, 1348 Fasli. The exhibition of movie was suspended despite being awarded a valid 'U' certificate by CBFC. It was stated that the respondents who passed such order never actually saw the film, rather suspended the exhibition due to its controversial genre.

Government of Andhra Pradesh suffered quite the backlash from the court when its Advocate General pleaded that it would be unable for the state apparatus to maintain peace and harmony. In response to this pleading the A.P. High court held: "We are amused yet troubled by the stand taken by the State Government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression."

Furthermore, the states along with the center have been given authority to legislate on the issue of regulating cinemas under the constitution³², but it was further held that "that under Section 5 of Act 37 of 1952 the Central Government established an Advisory Board which is known as "Film Censor

³¹ 1995 (2) ALT 43

³² Entry "33" of the State List (or List II), Schedule VII, Constitution of India

Board"(now known as CBFC) consisting of persons from different walks of life with varied experience to judge the effect of the film on the public. The Board, having seen the picture and having been satisfied and judged that there will not be any adverse effect on the public, issued certificate for unrestricted exhibition of the film, popularly known as 'U' Certificate and state government cannot sit in judgment over the decision of the Censor Board which is specifically constituted with people having experience to Judge the impact of the film on the public” and “herefore, Section 8 of the A.P. Cinemas (Regulation) Act, 1955 and Section 22(2)(e) of "The Act, 1348 Fasli" are inoperative and null and void in view of the repugnancy”

However, in the last stages of the suit expert committee of the state government assessed the film and lifted the ban on exhibition. Though the movie was allowed but authority on which it was banned is under question, and through this court’s and apex court’s judgments it is copiously proved that State’s duty is not just to keep a check on absolute freedom but to ensure reasonable freedom. The government cannot restrict a right because of its inability to protect the same.

The above instances of “Unconstitutional Super Censorship” are of different decades, in every such occasion the Apex Court or the High Courts upheld the validity of Certificate by CBFC. These instances are not exhaustive there are 100’s of such examples, these depict the continuity of abuse of power. In spite of countless judgments, every now and then some state bans a film and encroaches upon its power. Abuse of this power by the state is a complete disdain of individual freedoms and judicial precedents; this is a grave injustice to those countless people whose rights have been compromised.

NEED FOR REFORMS

The importance of law reform in strengthening the legislative processes cannot be overemphasized. Law reform contributes to the shaping of democracies to suit changing political and legal environments and the benefits are enormous. Most importantly, laws need to be reformed to adapt to societal changes while adhering to constitutional norms and principles.³³ When the dynamism of society reaches its peak change becomes inevitable, for long our expression has been bracketed. It is high time to uproot these old laws and bring reforms; the tremors of this need were even felt in the government offices. In recent times to recommend changes in the current legislation two committees were formed.

³³ Matilda M. Katopola, The Role of Law Reforms in Strengthening Legislative Process.

MUDGAL COMMITTEE (2013)

The Mudgal committee was set up in the year 2013 after the government felt the need to update The Cinematograph Act, 1952 in the wake of the controversy over Tamil Nadu's ban on film Vishwaroopam.³⁴ Then the Minister of Information & Broadcasting Shri Manish Tiwari said "The trigger for the constitution of the committee was the decision of a particular State to invoke the law and order remit to ban the release of a certain movie, notwithstanding that the Supreme Court in the Aarakshan case had said that once a film was certified for viewing, the fig leaf of law and order could not be allowed to stand in the way."³⁵ Vishwaroopam was another classic case of state abusing its power in lieu of maintaining law and order, state government by order banned the exhibition of film in several districts. It was claimed that the movie has objectionable material and exhibition of it would hurt sentiments of a said community.³⁶ The film was duly certified by the CBFC and received 'U/A' certificate. The state government raised objection on the validity of the certificate as the then Advocate General for the State of Tamil Nadu Shri A. Navaneethkrishnan stated – "UA' certificate to Vishwaroopam was not issued by the Censor Board, but only by an Examining Committee not mandated by provisions of the Constitution."³⁷ Though, this was defended by the center government but nonetheless working of the committee was questioned. Therefore the Mudgal Committee to bring reforms in the act and smooth the functioning of the board was constituted.

The Mudgal Committee (on Cinematography Act, 1952) submitted its report on 28th September, 2013. It was chaired by Justice Mukul Mudgal, Retired Chief Justice, High Court of Puniab & Haryana, the committee also had seven other members', eminent singer and lyricist Javed Akhtar was also one of them.³⁸

Recommendations of the Committee:-

First Recommendation on Appointment of Members of the Advisory Panel: The committee on interacting and discussing the matter with many people working in this industry found that most people working in these several committees of CBFC did not had any cinematic expertise.³⁹ The

³⁴ Mudgal panel submits report on governing cinema (2013) at <https://www.thehindu.com/news/national/mudgal-panel-submits-report-on-governing-cinema/article5218032.ece> last visited on 16 May 2020

³⁵ Ibid

³⁶ Madras HC lifts ban on 'Vishwaroopam' (2013) at <https://www.thehindubusinessline.com/news/madras-hc-lifts-ban-on-vishwaroopam/article20570885.ece> last visited on 16 May 2020

³⁷ Ibid

³⁸ Reports of The Committee of Experts to Examine Issues of Certification under the Cinematography Act 1952 on 28th September 2013

³⁹ Para 13.1 pg. 5, Ibid

Committee was of the view that the role of such a panel is extremely important as it is this panel of persons which views the film, makes its recommendations and on which basis the Board issues certification- Hence while great care is to be taken to appoint the members of the Board, equal care must be taken to introduce criteria to ensure that the process of selection and appointment of such panel members is autonomous and insulated as far as is possible from such errors.⁴⁰

The Committee recommended a change in name of the 'advisory panel' to 'screening panel'. As regards the process of appointment, it is recommended that the Board sets up a Committee comprising of 9 of its members in such manner as to ensure language diverse representation with at least two lady members. Such Committee would then prepare a panel of members, which shall be twice the number of vacancies, who in the opinion of such Committee, by reason of their profession, qualifications or experience in the field of art, cinema, drama, law, literature, history, sociology, psychology, media, education, performing arts, or public administration are deemed fit to judge the effect of film on the public. These qualifying criteria have been designed in relation to subjects which have a direct or indirect bearing on cinema and its content. This is to ensure that members of the screening panel have some cinematic, aesthetic and /or artistic background. The usual subject criterion of “social sciences” has been deliberately omitted by the Committee. Such pool of members drawn up by the Committee will then be forwarded to the Central Government from which the Central Government shall finally appoint such members of the screening panel.⁴¹

Second Recommendation on Principles for Guidance in Certifying Films: This is one of the most important aspects where reforms are needed. On the basis of these guidelines only either freedom is allowed or curtailed, though a set guidelines can never be imposed but objectivity in these guidelines is must. Presently, the board screens films according the guidelines set by the government in notification dated 6th December 1999 under Section 5B (2) of the Cinematograph Act, 1952. The committee held that the guidelines must have provisions which protect artistic and creative expression.⁴²

The committee recommended “While examining a Film or causing a Film to be examined for certification, the Board will be guided by the following principles:

⁴⁰ Para 13.2 pg.5, Ibid

⁴¹ Para 13.3 at pg.5, Ibid

⁴² Para 14.3 at pg. 7, Ibid

a) The medium of the Film remains responsible and sensitive to the values and standards of society and as far as possible the Film is of aesthetic value and cinematically of a good standard;

b)

Artistic expression and creative freedom are not unduly curbed and certification is responsive to social change;

c) The film is examined in the light of the period depicted in the film, context, content theme and people to which the film relates and is judged from the point of view of its overall impact and the contemporary standards of the country.⁴³

Third Recommendation on Classification of Films: The committee observed that the present categorizes of the film certification were inadequate given the myriad of subjects, complex themes and content of the movies being produced today. Specially, the 'UA' classification was ambiguous as it gave no clarity in the mind of viewer as to what the film classification meant. The committee recommended that International standard should instead be followed and films should be classified based on the age. Separate classification for who have completed the age of 12 and separate for those who have completed the age of 15.⁴⁴ Further the committee recommended strong pictorial recommendation of different certificates.⁴⁵

Fourth Recommendation on Power of State Government to Suspend the Exhibition of a Film: Many times state governments have suspended the exhibition of CBFC certified films; this committee was also tasked by the central government to recommend changes in the legislation wherever necessary to apprehend this abuse of power. The committee while examining the role of state legislation in film censorship and certification found that according to entry 60 list 1 only center has the power to sanction films. Though entry 33 of state list also contains such provisions as to regulations of theaters, but that provisions is only limited to the theaters not the films they exhibit.⁴⁶

Further the committee recommended that ordinarily there should be provision in the legislation that screening of the films certified by the board cannot be suspended Assuming that there are certain circumstances which have arisen during the public exhibition of such certified film leading to a breach of public order or likelihood of such breach, then the central government either suo motu or

⁴³ Para 14.3 at pg. 8, Ibid

⁴⁴ Para 15.1 at pg.8, Ibid

⁴⁵ Para 15.2 at pg. 8, Ibid

⁴⁶ Para 21 at pg. 9, Ibid

at the behest of the relevant State Government may proceed to pass an order of suspension of exhibition of such film. Such film of suspension ought not to be passed unless an opportunity has first be given to the producer / holder of the certificate, informing him of the grounds of the proposed suspension and to show cause or explain why the film ought not to be so suspended.⁴⁷

The committee also recommended that where the order of suspension has to be passed to maintain public order, then it should not be before screening but after the exhibition of film has started. Through this only places where actually public order is in question would be tackled and exhibition could go unrestricted where there is no such issue.⁴⁸ Committee in this recommendation relied on the judgment of the apex court where it was held: “the very term ‘suspension of exhibition’ presupposes that public exhibition has already taken place, is on-going and the need has arisen to suspend’ such exhibition. Secondly, passing such an order in a given case after and during such public exhibition will also enable the authorities to arrive at an actual and proper assessment of breach of public order or its likelihood, since the film is in public domain, being publicly exhibited and actual public reaction can be garnered and assessed. An opinion formed on such material is likely to be more objective, based on reality and actual facts rather than a perceived and/or distant likelihood of breach of public order.”⁴⁹

Fifth Recommendation on Jurisdiction of FCAT: Under the present scheme of legislation only an applicant for certification may prefer an appeal to the Film Certification Appellate Tribunal [FCAT]. Due to this people who are aggrieved from that film have to file else in various High Courts due to which dissecting views arise. The Tribunal should be empowered to hear such appeals also. And also cases of unconstitutional suspensions or bans should also be dealt by the tribunal. For this the benches and the size of the tribunal should be increased.⁵⁰ Further a right of appeal to the Supreme Court against the decisions of the tribunal should be included.⁵¹

Apart from giving just the recommendation the committee also submitted a model bill to amend Cinematography Act, 1952. The bill was formulated after adopting these recommendations and the committee deemed that the bill is adequate to tackle all the issues with film certifications prevalent in the country. Though government was eager to constitute the committee but no such amendment on the recommendation of the committee have been performed till date.

⁴⁷ Para 22 at pg. 9 & 10, Ibid

⁴⁸ Para 24.4 at pg. 11, Ibid

⁴⁹ Prakash Jha Productions & Anr. V. union of India & Ors. (2011) 8 SCC 372

⁵⁰ Para 26.1 at pg. 12, Ibid., 38

⁵¹ Para 26.2 at pg 12, Ibid., 38

SHYAM BENEGAL COMMITTEE (2016)

CBFC was surrounded amidst many controversies in 2015 and 2016. As the board was recommending unjust and arbitrary cuts in the films, 'Pahlaj Nihlani' was the then chairperson of the board. The decisions of the board at the time were quite absurd, as the board recommended countless cuts in films like 'Uda Punjab', 'Jab Harry Met Sejal' and 'James Bond's 007 Specter' but certified sexual comedy films like 'Grand Masti' and 'Mastizade' without any cut. 'Uda Punjab' was recommended 94 cuts before it could get certificate, though the apex court stepped in and allowed the film to be released with only one cut. Films on liberalist topic such as 'Un-Freedom' and 'Lipstick under My Burkha' were banned for release by the board, fortunately internationally acclaimed 'Lipstick under My Burkha' was saved by the FCAT and was released.⁵²

Once again need to amend the procedure and guidelines of board was felt throughout the nation and the then Minister of Information & Broadcasting Shree Arun Jaitley formed a committee under Eminent Film Maker Shree Shyam Benegal.⁵³

Recommendations of the Committee:-

First Recommendation on Film Censorship: Committee in its very first guidelines highlighted the need to protect artistic freedom and targeted the board in its abuse of power by conducting unjust censorship. The Committee was of the view that it is not for the CBFC to act as a moral compass by deciding what constitutes glorification or promotion of an issue or otherwise. The scope of the CBFC should largely only be to decide who and what category of audiences can watch the depiction of a particular theme, story, scene etc. If the film in question violates the provisions of Section 5B(1) of the Cinematograph Act, 1952 or exceed the limitations defined in the highest category of certification recommended by this committee then the CBFC would be within its rights to reject certification to a film, but not authorized to dictate excisions, modifications and amendments. Rather the committee recommended that 'A-C' i.e. Adult with Caution certificate should be introduced.

⁵² Pahlaj Nihalani's CBFC controversies (2016), at <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/photo-features/pahlaj-nihalani-cbfc-controversies/post-pahlaj-nihalani-exit-cbfc-clears-film-umeed-with-graphic-scenes/photostory/60170897.cms> last visited on 17 May 2020.

⁵³ Government tasks Bengal to lead revamp of controversy-ridden Censor Board (2016) at <https://www.dailymail.co.uk/indiahome/indianews/article-3381498/Government-tasks-Benegal-cleaning-controversy-ridden-Censor-Board.html> last accessed on 17 May 2020

Statutory Warning as what could be expected in the film to be displayed before such films, through this viewing becomes a consensual act and up to the viewers of that category.⁵⁴ There should be no system of imposing excisions (as is practiced at present) and the CBFC must transition into solely becoming a film certification body, as indeed the name of the institution suggests.⁵⁵ Committee recommended that certification of the films should be done as per International Standards almost everything should be allowed to the adult viewers.⁵⁶ 'U/A' certificate was deemed as ambiguous and inadequate and addition of 'UA 12+' and 'U/A 15+' certificates were recommended.⁵⁷

Second Recommendation on Duties of the Board: The committee recommended that the board has become too involved in day to day affairs of certifying films, the board and its chairperson has to act as guiding parent body of the institution. The board is also duty bound to submit certain annual reports to Central Government on film certification, it should be more focused on supervising than on participating in certification exercise.⁵⁸ The committee also recommends that as the function of the board in not to be involved with process of certification its member should be reduced, there should be maximum of 9 members.⁵⁹

Third Recommendation on Structuring of Several Committees of CBFC: It was recommended that the structuring of the several examining committees and revisionary committees should be changed.⁶⁰ More focus should be on the resolution of regional disputes at regional level⁶¹ and appointment of members to be unbiased and based on a computerized system.⁶² The board held that certification of films is a subjective matter and to protect utmost objectivity in every film, number of films that can be watched by every examining committee should be limited.⁶³ The committee also proposed the structure of the several regional committees, in regards to the appointment of members the committee recommended that:

- (a) 25% of the strength of a Regional Advisory Panel in each regional office shall be recommended by the National Film Development Corporation Ltd;

⁵⁴ Para 5.2 at pg. 7, Report of Committee of Experts chaired by Shyam Benegal (2016)

⁵⁵ Para 5.1 at pg. 6, Ibid

⁵⁶ Para 5.7 at pg. 8, Ibid

⁵⁷ Para 5.9 (iii) (a) at pg. 10, Ibid

⁵⁸ Para 6.1.1 at pg. 12 Ibid

⁵⁹ Para 6.1.2 at pg. 13 Ibid

⁶⁰ Para 6.2.1 at pg. 13 Ibid

⁶¹ Para 6.2.2 at pg. 13 Ibid

⁶² Para 6.3.1 at pg. 14 Ibid

⁶³ Para 6.11 at pg. 17 Ibid

- (b) 25% shall be nominated by the Board, comprising members from all walks of life, from recommendations sent by the FFSI:
- (c) 25% of the members of each Regional Advisory Panel shall comprise representatives nominated by the National Council for Protection of Child Rights (NCPCR) and National Commission of women (NCW);
- (d) 25% of the members on each Regional Advisory Panel shall be from the local film industry. The Film Federation of India, who shall approach all film trade associations of all nine regions specified in the First Schedule and form a database for this purpose, shall nominate these.⁶⁴

The committee also proposed that participation of women cannot be overlooked and women shall have 50% representation on each Regional Advisory panel.⁶⁵

The committee amongst other recommendations also recommended restructuring of the act of 1952. Reforms were suggested on the guidelines issued by the center for film censorship. The committee also expressed the need to preserve original artworks of film makers. These above recommendations were the highlight of the report. Further, many minute and critical reforms as to functioning and operation of day to day activities of the board were also recommended.

Many reforms of this committee which was chaired by a film maker were identical to those of which was headed by a retired High Court Judge.⁶⁶ When recommendations of two committees formed from members from different walks of life reach the same conclusion, then necessity of such reform is imperative and cannot be understated. Meeting the same fate as its predecessor the recommendations of this committee had also not been incorporated to the legislation till date.

CONCLUSION

The need of the hour is to change these medieval relics and bring reform in these institutions. Recommendation and amendments suggested by several committees should be conceived. New guidelines needs to be laid down so that not only films but every aspect where freedom of speech or expression is curtailed must be adjudged with a fine lens where we do not lose track of individual freedoms in lieu of national interest, or term the less favorable expression as indecent or immoral. Importance of expression through movies needs to be understood. Movie is the legitimate and the

⁶⁴ Para 6.2.2 (ii) at Pg. 13, Ibid

⁶⁵ Para 6.2.2 (iii) at Pg. 13, Ibid

⁶⁶ Mudgal Committee (2013)

most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of it. But he has a right to 'think out' and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however, hateful to its policies.⁶⁷ "If the right of the playwright, artist, musician or actor were to be subjected to popular notions of what is or is not acceptable, the right itself and its guarantee under the Constitution would be rendered illusory,"⁶⁸

It is 21st Century and rather than feeding selective information to the audience/ viewers/ readers, we should instead let them choose and decide. The views of the writer of a play, the meter of a poet or the sketches of a cartoonist may not be palatable to those who are criticized. Those who disagree have a simple expedient: of not watching a film, not turning the pages of the book or not hearing what is not music to their ears.⁶⁹

A declaration attributed to Voltaire: "I despise what you say but will defend to the death your right to say it" encapsulates the essence of the protection of free speech. Protection of the freedom of speech is founded on the belief that speech is worth defending even when certain individuals may not agree with or even despise what is being spoken. This principle is at the heart of democracy, a basic human right, and its protection is a mark of a civilized and tolerant society."⁷⁰

⁶⁷ Ibid at., 4

⁶⁸ Justice D.Y. Chandarchund, Indibily Creative Pvt. Ltd. V. Govt. Of West Bengal, Writ Petition (Civil) No 306 of 2019

⁶⁹ Ibid

⁷⁰ Ibid