
THE STATE-ASSUMED GROUND FOR THE REGULATION OF FREEDOM OF SPEECH AND EXPRESSION

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ABSTRACT

The freedom of speech and expression is the bedrock of democratic societies across the globe. The Karnataka Government's ban on the film *Thug Life* reflects the rampant misuse of "public order" as an excuse for censorship. The Supreme Court noted the inalienable and non-derogable nature of constitutionally guaranteed freedoms. This case is just one of the of the long trajectory of past cases, when governments have often invoked law and order concerns to silence creative voices. This article examines the constitutionality of such actions, the judicial precedents on film censorship, and the State's obligation to protect, not curb, fundamental rights.

Introduction

The Supreme Court's recent decision on the Karnataka Government's ban on the film "*Thug Life*" accentuates a very peculiar sense of understanding that has been running through the fabric of governments ever since the enforcement of fundamental rights. The movie was released on 5 June 2025 worldwide but in Karnataka, following remarks made by one of its producers, Kamal Haasan, during a press event where he claimed that "Kannada was born out of Tamil."¹ The Karnataka Film Chamber of Commerce (KFCC) confirmed the ban on the film at the request of Karnataka's Minister for Kannada and Culture, as the comment sparked controversy within the Kannada-speaking population. However, the Supreme Court called this an "extrajudicial ban" and pronounced that such a ban violated the rule of law, which mandates the release of any film certified by the Central Board of Film Certification (CBFC), and affirmed that threats of arson and violence cannot curtail the rights of filmmakers and theatre owners to release and exhibit their movies.²

¹ Krishnadas Rajagopal, *Rule of law must prevail, Supreme Court tells Karnataka on Thug Life screening*, THE HINDU (Jul. 9, 2025), <https://www.thehindu.com/entertainment/movies/thug-life-film-must-be-released-in-karnataka-guns-cant-be-put-to-peoples-head-supreme-court/article69703921.ece>.

² SUPREME COURT OBSERVER. *Extra-judicial ban on 'Thug Life' in Karnataka is contrary to rule of law, says SC*, <https://www.scobserver.in/journal/extra-judicial-ban-on-thug-life-in-karnataka-is-contrary-to-rule-of-law-says-sc> (last visited Jul. 9, 2025).

The Additional Ground of Restriction

Article 19(1)(a) of the Constitution of India guarantees the freedom of speech and expression to every citizen of the land, and the "reasonable" grounds on which they can be regulated are those of "the sovereignty and integrity 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 offense."³ However, the present case and the ones of a similar kind that have preceded this exemplify that governments have implicitly assumed an additional eighth ground of restriction – Heckler's veto. A Heckler's veto occurs when the government accepts restrictions on speech because of the anticipated or actual reactions of opponents of the speech.⁴ In 2019, a Bengali film, "*Bhobishyoter Bhoot*," was abruptly taken off the screens by the exhibitors without communication from the producers, and tickets were refunded. In a letter from the Joint Commissioner of Police (Intelligence) Special Branch, Kolkata, it was stated that "the contents of the film may hurt public sentiments."⁵ The film "*Aarakshan*" was suspended from screening by the U.P. government because it was based on a sensitive issue like reservation, and its screening was likely to cause a breach of peace that might lead to a law and order problem.⁶ Governments have mistaken the maintenance of public order for unanimity and dissent for breach of peace. The Supreme Court noted that the standard for judging a film should be that of an ordinary man of common sense, not that of the ordinary or hypersensitive man.⁷ The effect of the words must be judged from the lens of the reasonable, strong-minded, firm, and courageous man, not those of vacillating minds nor of those who scent danger in every hostile point of view. Governments have used this as a defence to justify suppressing people's rightful exercise of free speech and expression. In a democracy, everybody cannot be expected to sing the same song⁸, and to deliberate and dissent openly and freely is one of its basic postulates.

Credibility of Censorship Boards

The Cinematograph Act of 1952⁹ confers the responsibility and power on the censorship Board to grant certifications. Such actions by the governments to ban or censor films put a question

³ INDIA CONST. art. 19, cl. 1 (a).

⁴ Patrick Schmidt, *Heckler's Veto*, FREE SPEECH CENTRE (Jul. 9 2025) <https://firstamendment.mtsu.edu/article/hecklers-veto>.

⁵ Indibly Creative (P) Ltd. v. State of W.B., (2020) 12 SCC 436 (India).

⁶ Prakash Jha Productions v. Union of India, (2011) 8 SCC 372 (India).

⁷ *Ibid*.

⁸ Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; (1989) 2 SCR 204 (India).

⁹ The Cinematograph Act, No. 37 of 1952, Acts of Parliament, 1952 (India).

mark on the credibility of the censorship boards and convey that there is a parallel course of approval conducted by both the Boards and the State. Nevertheless, in the *Union of India v. K.M. Shankarappa*,¹⁰ where the constitutional validity of certain provisions of the Cinematograph Act were challenged, the court stated that if an expert body has considered the impact of a film on the public and given it a clearance, then the possibility of a law and order situation is no valid excuse for its censorship. In many of these cases, the films were given a 'U' certification from the Central Board of Film Certification. "*Padmaavat*," "*Thug Life*," and "*Bhobishyoter Bhoot*" were all granted the certificate from the Censor Board. Once the Censor Board has issued a certificate, there is a prima facie presumption that they have considered all the factors, including public order. When Doordarshan had refused to telecast a national award-winning documentary film, "*Father, Son and Holy War*" on the ground that they would create law and order problems, the court iterated that the fact that the CBFC had already awarded a 'U/A' certificate is a testimony that the board which is a body of experts was in no way of the opinion that the film promotes communal violence.¹¹

The Positive Mandate on the State

On a literal interpretation of Article 19 (1) of the constitution, it is understood that it constitutes a set of negative constraints on the part of the State. However, on a purposive reading of the law, it can be well inferred that for the actual realization of the fundamental rights, there is a positive mandate on the State. The positive mandate is of creating an environment where the people face no impediments while exercising their basic rights, an environment where these rights can flourish. On the release of both "*Padmaavat*"¹² and "*Bhobishyoter Bhoot*,"¹³ the apex court said that the State must maintain law and order situation whenever the film is exhibited, which would also include providing police protection to the persons who are involved in the film or in the exhibition of the film and the audience watching the film, whenever sought for or needed. The State cannot plead its inability to handle the hostile audience problem. The State must ensure that the right to free speech and expression is not held ransom by an intolerant group. In the landmark film censorship case of *Rangarajan*, the court asked, "What good is the protection of freedom of expression if the State does not take care to protect it?"¹⁴ If a film

¹⁰ *Union of India v. K.M. Shankarappa*, (2001) 1 SCC 582 (India).

¹¹ *Director General, Directorate General of Doordarshan v. Anand Patwardhan*, (2006) 8 SCC 433 (India).

¹² *Viacom 18 Media (P) Ltd. v. Union of India*, (2018) 1 SCC 761 (India).

¹³ *Indibly Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436 (India).

¹⁴ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574 (India).

cannot be restricted on any of the grounds under Article 19 (1) (a), then the same cannot be censored on account of threats of demonstration and processions as that way, the right is conceded to blackmail and intimidation. Therefore, the mere prospects of protest or unrest cannot be flagged as a basis for imposing blanket bans.

Conclusion

In a truly democratic society, the right to disagree, to provoke thought, and to challenge mainstream narratives is not a threat to order — it is a sign of its maturity. To balance the rights of an individual with the larger interests of the society is indeed a very delicate task, and it is at these crossroads that the State must conform to the doctrine of the least restrictive means. While regulating these rights, the State must ensure that any restriction imposed is proportionate to the situation and is the least restrictive alternative¹⁵ — one that minimizes the harm to both individual rights and community interests while addressing the conflict between them.

¹⁵ Ankush Rai, *Guest Post: Proportionality in Application – An Analysis of the “Least Restrictive Measure”* CONSTITUTIONAL LAW AND PHILOSOPHY (Jul. 29, 2025, 2:39 AM), <https://indconlawphil.wordpress.com/2020/05/08/guest-post-proportionality-in-application-an-analysis-of-the-least-restrictive-measure/>.