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# CENSORSHIP'S INFLUENCE ON CREATIVE EXPRESSION IN INDIAN CINEMA: A CRITICAL ANALYSIS

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## ABSTRACT

Cinema is an extra ordinary form of art. It can not only entertain the audience but also can influence their taste and behaviour. In the dynamic realm of Indian cinema where violence, nudity are considered to be the common norm and not an exception, the role played by the censor board are becoming inevitable. There is a broad gap between the norms put forward by the legislation and the freedom of expression by an artist. This unidentified territory not only restricts the liberty of the artist but also violates his basic fundamental rights. This research paper depicts the analysis of film censorship in Indian scenario. The object of this research is to analyse the effects of censoring under the purview of judicial interpretations and legislations. It also clearly outlines the role of Censorship Amendment Bill 2023 and power of Central Board of Film Certification (CBFC) and the power of the authority to make classification and decisions regarding film scenes and sometimes even the entire cinema. This paper also highlights the potential risks that can arise if the power to cut and edit the film is given in the hands of few people and also delves into the complexities and controversies surrounding censorship. Furthermore, it explores the judicial views on upholding the public decency and morality at the same time, giving enough protection to fundamental rights. It purports for a balance approach between the artistic freedom while holding into account the principle of morality prevailing in the society.

**Keywords:** Film Censorship, India, Artistic Freedom, Societal Values, CBFC, Cinema

## INTRODUCTION

Cinema is a form of art that has endless meanings it is something that is not within the boundaries or hallmarks of any text book. Artists are persons who are performing within the scope of artificially created situations in a natural way. Throughout the period the films are not only being shown in theatres alone but also in online platform like Netflix, Amazon etc. However, the idea of bringing such kind of platform is to increase the access to the common people for watching films. Unfortunately, when such kind of a platform was introduced, it has also brought certain challenges along with it like the aspect of censoring, regulations made by the countries banning certain films, etc.

The idea of cinema is to express an art before the people in the way that the author prefers. If this basic right itself is prohibited then there is no doubt in stating that after 76 years of independence, people are not availed with full freedom. The rights of the artmaker are being restricted in many ways in this 21<sup>st</sup> century by way of legislations like Cinematographic Act 1952<sup>1</sup>, CBFC etc. These legislations are primarily focussing on protecting the interest of the people on one hand as well as to maintain uphold the public morality and decency on the other hand.<sup>2</sup> The thing to be noted here is that it ultimately violates the rights if the artist who have brought the same into life. The rights of the artist need to be protected especially during these centuries where their right have been infringed to a large extent.

The purview of legislation is so broad as it is not only restricting the rights of the maker but also it is preventing the art from being presented in its fullest form. The art and artist are two sides of a coin, you cannot violate one without affecting the other. The applicability of the legislation is in a prospective manner as it only focuses on the films that are yet to come into the public. The idea of cinematographic act was to restrict the idea of artists in making films that are violating or causing injury to the interest of the public in one way or the other.

## THE EVOLUTION OF FILM CENSORSHIP IN INDIA

The evolution of film censorship in India is rooted in the colonial era itself. Even though there was no statutory law in the Film Industry before 1918, the criminal laws<sup>3</sup> allowed forfeiture of

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<sup>1</sup> The Cinematograph Act, No. 2 of 1918, Acts of Parliament, 1918 (India).

<sup>2</sup> Arushi Dokania, *A Critical Overview of Film Censorship in India vis-a-vis Freedom of Speech*, 24 SUPREMO AMICUS [284] (2021).

<sup>3</sup> The Code of Criminal Procedure, § 95, No. 2 of 1974, Acts of Parliament, 1974 (India).

specific contents or publications. In 1917, a bill addressing the state's capacity to censor film was introduced to India's Legislative Council. This bill, which would later evolve into the Cinematograph Act 1918<sup>4</sup>, was heavily influenced by the British Cinematograph Act 1909. This Act, which led to the establishment of the British Board of Film Censors in 1912, served as a direct model for the Indian legislation. The central objectives of the 1918 Act were "(1) to provide for the safety of audiences, and (2) to prevent the exhibition of objectionable films"<sup>5</sup>. This Act, which inaugurated formal censorship in India, represents the colonial government's concern over both the medium of film, including its content, and the context of its exhibition in the cinema.

The Cinematograph Act 1918 introduced a rigorous process for film certification in India. Under this Act, exhibitors had to obtain a license from local civil authorities to screen a film<sup>6</sup>, and all films exhibited in India had to be censored. Films that met the Act's standards were certified as "suitable for public exhibition". These requirements applied to both foreign and Indian films, and aimed to censor films that might undermine the moral superiority of white men and women, and foster sympathy for the nationalist movement. In 1920, Censor Boards were established in the port cities of Bombay, Calcutta, Madras, and Rangoon<sup>7</sup>. Bombay and Calcutta Censor Boards used the British Board of Film Censors' guidelines to develop their own "General Principles of Film Censorship". A certificate granted by any of these boards was applicable across India. However a film could have its certificate revoked by any provincial government. This action was typically undertaken by a District Magistrate or Commissioner of Police.<sup>8</sup>

In 1928, the Report of the Indian Cinematograph Committee recommended restriction by a Central authority for censoring. After India's independence in 1947, the new government needed to retain film censorship. However, a few amendments were made to the Cinematograph Act 1918 in 1949. Two categories of film certification were created: an 'A' certificate for restricting viewership to adults and a 'U' certificate for an unrestricted exhibition. The amendment also provided for the setting up of a central censorship board instead of a

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<sup>4</sup> The Cinematograph Act, No. 2 of 1918, Acts of Parliament, 1918 (India).

<sup>5</sup> Report of the Indian Cinematograph Committee, 1928, ¶ 224, at 105 (1928).

<sup>6</sup> The Cinematograph Act, § 6, No. 2 of 1918, Acts of Parliament, 1918 (India).

<sup>7</sup> Debashree Mukherjee, *A Specter Haunts Bombay: Censored Itineraries of a Lost Communist Film*, 31 **Film Hist.** 30, 33 (2019).

<sup>8</sup> Rajeev Dhavan, *PUBLISH AND BE DAMNED: Censorship and Intolerance in India* 219 (Tulika Books, New Delhi, 2008)

regional one. In 1951, the Ministry of Information and Broadcasting formed the Central Board of Film Censors. Subsequently, in 1952, a new Cinematograph Act<sup>9</sup> was enacted which empowered the constitution of a censorship board by the central government. On June 1, 1983, the Central Board of Film Censors was renamed as the Central Board of Film Certification.

### **APPROACHES MADE BY THE LEGISLATURE.**

Film censorship can be traced back with its origin during the colonial period. During the period they were considered to be a form of private entertainments but as the time has changed the impact that has caused by films has also developed thereby the initial proposal for the Cinematographic Bill was taken place in 1917<sup>10</sup>, where the primary focus was to secure the public morality by prohibiting nudity, violence etc. Howsoever the colonial authorities considered the bill in 1918<sup>11</sup> which came into force on 1920<sup>12</sup>.

The objectives behind the Act weren't protected and thereby it necessitated the establishment of a body for the purpose of ensuring that the guidelines under the act are being followed. An enforcing body was established to ensure that guidelines are being followed at the time when the film is published. After the independence in 1947 also the requirement of censorship has felt throughout and the amendment in 1949 has introduced the central board to replace the regional board. In 1951, the Ministry of Information and Broadcasting introduced the Central Board of Film Censor on June 1, 1983.

In India public film exhibition requires certification from central board of Film certification (CBFC) and the CBFC consist of non- official members and a chairman who is appointed by the central government. The board operates from its headquarters in Mumbai and also has various offices in different cities. There are also advisory bodies that advise them in carrying out their operations The statement of the former CBFC's chairperson (Pahlaj Nihalani) is very much relevant in this regard. He said "There are several reasons for refusal to provide certificate to films... Content has gotten bolder but there was also a lot of corruption until 2013 and many B and C-grade films would get passed despite great violence and explicit scenes. We have also

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<sup>9</sup> The Cinematograph Act, No. 2 of 1918, Acts of Parliament, 1918 (India).

<sup>10</sup> Shubhangi Gupta & Shubham Kumar Jha, *Critical Analysis of Film Censorship in India*, 6 INT'L J.L. MGMT. & HUMAN. 2088 (2023).

<sup>11</sup> Cinematograph Act, No. 2, Acts of Parliament, 1918 (India).

<sup>12</sup> The Cinematograph Act of 1918 took effect on August 1, 1920, introducing the concept of film censorship to India.

tried to be more stringent in passing films based entirely on merit. But the degree of control will ultimately affect the right to freedom of speech and expression that is provided under Article 19(1)(a).<sup>13</sup> Therefore, censorship is all about harmonising the two i.e. freedom of speech and expression on the one hand and the restriction provided on the other hand.

Cinematographic Amendment Bill 2023 has introduced certain new aspects like digital piracy, certificate categories, separate certificate for television, balance between artistic freedom and responsible content creation etc. However, these new elements are not mainly focussing on providing any benefits to the artist instead it is only restricting his ideas regarding content creation and also is challenging his instincts recurrently. The Bill adds certain additional certificate categories based on age. Under the Act, film may be certified for exhibition: (i) without restriction ('U'), (ii) without restriction, but subject to guidance of parents or guardians for children below 12 years of age ('UA'), (iii) only to adults ('A'), or (iv) only to members of any profession or class of persons ('S'). The Bill substitutes the UA category with the following three categories to also indicate age-appropriateness: (i) UA 7+, (ii) UA 13+, or (iii) UA 16+. The age endorsement within the U/ A category by the Board will inform guidance of parents or guardians, and will not be enforceable by any other persons other than parents or guardians.

In the case of television, the board has introduced a new type of classification rather than "U" or "A" that is "S". Films with an 'A' or 'S' certificate will require a separate certificate for exhibition on television, or any other media prescribed by the central government. Standard nature for the films is necessary for the purpose of telecasting it on the channel it ensures that public are not exploited in any manner however it is also pertinent to note that the movies are a form through which the artist explains their language of thoughts to the public and there is no proper right that is vested with any person or body for classifying them into any categories on the basis of the fact that the movies have this or that element. But in the case of *Abbas v. Union of India*<sup>14</sup> it was held that the classification of movies into U or A categories was reasonable classification that was being constituted under article 14 of the constitution that also enable it to achieve the objective which it seeks to procure. The form of classification was

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<sup>13</sup> INDIA CONST. art. 19, § 1, cl. a.

<sup>14</sup> *K.A. Abbas v. Union of India*, 1970 (2) SCC 780.

initially stated through this case by taking into consideration the aspect of protective discrimination that is treating all equally at all times leads to inequality.

Before the arrival of the amendment act the censor, board has already made a classification into 2 categories that is “U “or “A”, but after the amendment came into force in 2023 it has broadened the number of categories for the purpose of restricting the amount of vulgarness that can be shown in the movie. The newly substituted Section 4(3) of the Cinematograph Amendment Bill, 2023, empowers the board to sanction a film whose public exhibition is restricted to adults or specific members of any profession with a separate certificate for exhibition on television or such other media as may be prescribed. The bill introduced two more sections, Sections 6AA and 6AB. These two sections prohibit a person from not only using an audio-visual recording device to make, transmit, or exhibit an “infringing copy” of a film or any part of it from a place that has been licenced to exhibit the film but also from attempting or abetting such acts. The new amendment bill has also stressed upon considering the importance of infringing copy and for the same purpose it has considered the same meaning that is given under the Copyright Act, 1952<sup>15</sup>.

There are also various other legislations that are dealing with the aspect of censorship in an indirect manner without affecting its operation. The Press Council of India Act 1978<sup>16</sup> for instance is mentioning about the constitution of a body that is having the power or authority to regulate the quality of content that is issued to the public. it regulates the media persons and journalists to self-regulate the kind of content that is issued to the public. Similarly, the Cable Television Network Act<sup>17</sup> that was introduced in the year of 1990’s which ultimately came into force in the year 1995, the provisions of the act also mandate about the types of content that can be broadcasted among the public. It has strict provisions ensuring that the films of U or U/A certificate can only be published or broadcasted through the channel. The act also confers ample power to the government to ban the cable channel as well as to prohibit its operation if it violates the above said mandates.<sup>18</sup> Exclusive powers are also vested upon the government

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<sup>15</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

<sup>16</sup> Press Council of India Act, § 3, No. 37, Acts of Parliament, 1978 (India).

<sup>17</sup> Cable Television Networks (Regulation) Act, No. 7, Acts of Parliament, 1995 (India).

<sup>18</sup> THE ENTIRE OTT ECOSYSTEM IN A NUTSHELL, ZYPTV, <http://blog.zypmedia.com/ott-vs-vod>, (last visited Sep. 20, 2024).

to deal with the kind of issues regarding the telecasting of the programmes through the channel irrespective of the fact that whether the film being produced in India or abroad.

During the past Decades it has been observed that there has been a significant growth in the social media platforms. Considering the growing rate of social media network across the globe there has been a necessity to introduce laws to regulate the operation of social media platforms. A significant proposal to introduce the social media platforms and the new IT Rules was taken into consideration in 2021 but currently the aspects regarding the social media platforms are basically dealt by the Information Technology Act of 2000.<sup>19</sup> It has made necessary provisions under 67 A, 67 B, 67 C and 69 A to regulate the operation of social media platforms. laws always try to maintain harmony within the states by introducing the provisions that can prevent the telecasting of objectionable content that can lead to communal discord. The presence of the act can help us to curb all sorts of illegal activities that happens in the social media platform thereby ensuring social stability and protection of rights of individuals in the state.

The entertainment industry has tremendously grown over the period of time by leaps and bounds. it has not only increased the number of movies produced across the world but also the number of movies reaching across the world has also been increased. The social media platforms have however contributed to the growth of entertainment industry and there has been a high necessity to include provisions to regulate the content that is universally accepted.

## **JUDICIAL APPROACH TO CENSORSHIP IN INDIA**

Judicial intervention in India's censorship framework marked a significant turning point when the courts began examining the balance between the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution with the reasonable restrictions imposed by the state on exhibition of artistic expression. Indian courts have formulated several principles for judging an artistic, literary or theatrical work. Those principles are as follows:

### **Pre-censorship powers of the Censor Board**

The power of the censor board to certify or censor the film was questioned for the first time in *K.A. Abbas v. Union of India*<sup>20</sup>. In this case, the Apex Court rejected the distinction between

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<sup>19</sup> Information Technology Act, § 66A, No. 21, Acts of Parliament, 2000 (India).

<sup>20</sup> *Id.* at 5.

prior censorship and censorship in general, considering both subject to the reasonable restrictions outlined in Article 19(2) of the Indian Constitution. The court justified the pre-censorship of movies as essential under the pretext of societal interests, despite the hues and cries of filmmakers that it breaches their fundamental rights. The court further went on by referring to the Khosla Committee Report that the rule of pre-censorship is prevalent throughout the world; in some countries, it is stricter, and some are liberal, yet it is universal. In the *Ministry of Information Broadcasting, Govt. of India v. Cricket Association of Bengal*, the Supreme Court justified pre-censorship in the visual media.

### **Freedom of Speech and Expression**

The Supreme Court emphasised the importance of freedom of expression under various circumstances. In the case of *S. Rangarajan v. P. Jagjivan Ram*<sup>21</sup> where, HC refused to provide a certificate to the movie named 'Ore Oru Gramathile' under unrestricted demonstration to the people as the movie criticises a controversial topic related to caste-based reservation policy in jobs, which may provoke the audience and may lead to the problems associated to 'law and order' due to which an appeal was made to the apex court. The apex court categorically held that the government could not shirk its responsibility to protect the freedom of speech of the filmmakers by citing law and order problems. The Court held further that if a movie cannot be restricted under any of the grounds in Article 19(2), it must be certified and released.<sup>22</sup> In the case *Phantom Films Pvt. Ltd. v. The Central Board of Certification*<sup>23</sup> the movie "Udta Punjab" faced numerous cuts ordered by the Central Board of Film Certification (CBFC). The Bombay High Court held that the CBFC's role was to certify, not censor, films. It ordered a few minor changes but largely upheld the filmmakers' right to expression.

In the case of *Ajay Gautam v. Union of India*<sup>24</sup>, a case that concerned the movie 'PK' and its portrayal of godmen as being demeaning to Hindus, thereby being violative of Articles 19(2) and 25 of the Constitution of India, the court held that free speech could not be suppressed on the ground either that its audience will form harmful beliefs or may commit harmful acts as a

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<sup>21</sup> *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574 at p. 583.

<sup>22</sup> Gautam Bhatia, *Free Speech and Public Order: Film Censorship and Rangarajan Case*, Indian Constitutional Law and Philosophy, <https://indconlawphil.wordpress.com/2013/08/09/free-speechand-public-order-ii-film-censorship-and-the-rangaraian-case/>.

<sup>23</sup> *Phantom Films Pvt. Ltd. v. The Central Board of Certification*, [2016] (4) ABR 593, (BOHMC).

<sup>24</sup> Delhi High Court, W.P.(C) No. 112/2015.



result of such beliefs unless the commission of deleterious acts is a real close and imminent consequence of the speech in question.

In the Padmaavati<sup>25</sup> controversy case, where the CBFC had granted a "U/A" certification to the movie; however, the government of Rajasthan banned the film in the state on the apprehension that it may hurt the religious sentiments of the people and create a law-and-order situation in the state. The Court rejected the government's contention and held that the state government has to manage the law-and-order situation whenever a film is exhibited. The Court further held that it is also the responsibility of the government to protect the persons involved in the film/exhibition of the film and the audience watching it, if necessary.

### **The test of reasonability**

In *State of Madras v. V.G Row*, the court observed that to adjudicate an act as being reasonable, the facts and circumstances would have to be taken into consideration and "no abstract standard or pattern of 'reasonableness' can be applied uniformly."<sup>26</sup> However, in the same case, the court observed that to test the reasonability of an executive act, the court has to necessarily look into the various facets of a particular case, such as "the right that has been claimed to be infringed, purpose, extent and necessity of such a restriction imposed by the executive, conditions prevailing during the imposition of the restriction as well as the disproportion in its imposition."

### **Test of obscenity**

In *Samaresh Bose v Amal Mitra*,<sup>27</sup> the apex court held that while judging the issue of obscenity, "the judge should place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of a reader. In the famous *Bandit Queen Case*<sup>28</sup> where the Gujar community raised objections against the exhibition of the film, alleging that some depictions in the film were despicable, immoral and blemish on the womanhood of India and the rape scene in the film were "suggestive of the moral depravity of the Gujar community". The Apex Court, by drawing a demarcating line between obscenity and nudity, rejected the petitioner's

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<sup>25</sup> *Via Com 18 v. Union of India*, 2018 1 SCC 761 (India).

<sup>26</sup> *State of Madras v. V.G Row*, 1952 AIR 196.

<sup>27</sup> *Samaresh Bose v Amal Mitra*, (1985) 4 SCC 289; AIR 1986 SC 967

<sup>28</sup> *Bobby Art International v. Om Pal Singh Hoon*, (1996) 4 SCC 780

contention that the scene of frontal or apparent nudity was indecent within Article 19(2) and Section 5-B of the Cinematograph Act of 1952.

### **Films must be 'judged as a whole.'**

In *Anand Partwardhan Case*<sup>29</sup>, the Supreme Court held: "In our view, the correct approach to be taken here is to look at the documentary film as a whole and not in bits, as any message that is purported to be conveyed by way of a film cannot be conveyed just by watching certain bits of film. In the present situation, the documentary film seeks to portray certain evils prevalent in society and not cater to any person's prurient interests. Therefore, we have no hesitation in saying that if judged in its entirety, this documentary film has a theme and message to convey, and the view taken by the appellants that the film is not suitable for telecast is erroneous."

In the case of *Mahesh Bhatt v Union of India*<sup>30</sup>, the High Court of Delhi struck down rules under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, which was aimed at completely restricting the depiction of smoking in the movies. The court upheld the right of the filmmakers and the artists to use their presentation medium to project life in all its tinctures, including its eccentricity. Following the test in *KA. Abbas*,<sup>31</sup> the court held that the depiction of social evils as severe as rape, prostitution and the like cannot be censored. Instead, what has to be seen is the film's theme and whether the 'scene' in question is an indispensable part of the theme.

### **Restrictions by the State Governments**

In *Creative Eye Limited v. The Information & Broadcasting Ministry*<sup>32</sup> the Supreme Court highlighted that once the CBFC grants a certificate to a film, state governments cannot impose further restrictions on the exhibition of the film.

From the above-discussed cases, it has been seen that whenever there is a debate between morality and freedom, Courts in India have time and again protected the thoughts and

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<sup>29</sup> *Anand Partwardhan v Union of India*, (2006) 8 SCC 433.

<sup>30</sup> *Mahesh Bhatt v Union of India*, (2009) 156 DLT 725.

<sup>31</sup> (1970) 2 SCC 780.

<sup>32</sup> *Creative Eye Limited v. The Information & Broadcasting Ministry*, AIR 2017 SC 258 (SC).

expressions of a filmmaker by considering motion pictures as an official and relevant tool for dealing with questions of genuine concern.

## CENSORSHIP OF FILMS RELEASED ONLINE

Since the internet has opened numerous avenues whereby people can watch films at a time and place of their choice, online platforms have redefined the meaning of entertainment for people. As a result of the low cost of providing services in OTT platforms, people are more dependent upon such platforms for watching movies. However, the lack of specific regulation for online content is a pressing issue. The Cinematographic Act 1952 does not extend to exhibitions of films on the Internet.<sup>33</sup> Thus, films exhibited online are left outside the purview of the Act and are not required to be examined and censored by the CBFC. This leads to a differential treatment between films released on different platforms, highlighting the urgent need for a comprehensive and inclusive regulation.<sup>34</sup> A PIL was also filed in the Punjab and Haryana High Court against these filmmakers but to no avail, since CBFC only has jurisdiction over films released in theatres and not those released on the internet.<sup>35</sup> This incident opened a Pandora's box of discussions revolving around the need to regulate 'films released online' and the relevance of CBFC in the present digital age.

Amid rising concerns for the regulation of online platforms the Government had released the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 within the jurisdiction of The Information Technology Act, 2000. It declares that the intermediaries should not telecast any such content that is unlawful, which effects minors, includes pornographic content, etc. Any intermediary is prohibited from knowingly hosting such content.<sup>36</sup> It also provided for a self-regulatory followed by post-regulatory approach on the films released online. The Rules further require the intermediary to establish an office for grievance redressal as a post-regulatory approach. The post-regulatory form of approach follows the principle of legality which states that all things are presumed to have been done

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<sup>33</sup> Padmanabh Shankar v. Union of India, 2019 SCC OnLine Kar 3087.

<sup>34</sup> Nidhi Sinha, *Regulating 'Films Released Online': A Critical Analysis of Film Certification and Censorship in the Digital Age*, 8 GNLU L. REV. 46 (2021).

<sup>35</sup> Raksha Jyoti Foundation v. Union of India, CWP No. 1322 of 2016, decided on 2-3-2016 (P&H).

<sup>36</sup> Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, Rule 3(2) (b), (c), (e), (2021).

correctly and solemnly (omnia praesumuntur rite et solemniteresse acta).<sup>37</sup> But neither films released on television nor on online platforms are subjected to any form of prior-restraint.

The issue that arises in such circumstances is of the differential treatment being meted to films released online from those released in theatres, thus violating the norms of equality.<sup>38</sup> As a consequence of this differential treatment, unlike films released in theatres, films released online are denied the legal shelter, from any action brought against them regarding the content of such films, that comes with CBFC certification.<sup>39</sup>

However, there are some arguments against OTT censorship as well. Firstly, these platforms work on subscription basis and hence people can pay and select what kind of content they want to watch. There are a lot of filmmakers who do not have sufficient funds to release their movies at the theatres and hence OTT serves as a cheap platform to showcase one's talent and this has given us a lot of good movies and shows as well. A lot of people have got the opportunity to start their acting career which otherwise would not have been possible for them due to lack of money, social contact, etc.<sup>40</sup>

## CHALLENGES TO THE NEW TRENDS

The new amendment bill is not only providing a different perspective in the feature of alteration but also it imposes various challenges in a manner that affects the interest of the public. The challenges are affecting the public in various dimensions like from making of the film to the fact that whether ticket need to purchased or not.

**Categorisation:** categorisation of films even though is supported by the judicial precedents and constitutional provisions; it is leading to navigate the classification of films even if the extent vulgarness is not so to the bar. The ultimate purpose of making classification in films is to make sure the type or categories of people who can have access to the same.<sup>41</sup> If the classification

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<sup>37</sup> Black Julia, *Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a "Post-Regulatory" World* 54 CURR. LEG. PROBL. 103-146 (2001).

<sup>38</sup> Nidhi Sinha, *Regulating 'Films Released Online': A Critical Analysis of Film Certification and Censorship in the Digital Age*, 8 GNLU L. REV. 46 (2021).

<sup>39</sup> Kumar Alok Prasanna, *When it Comes to Netflix, the Government of India has no Chill*, MEDIANAMA (Oct. 3, 2019), <https://www.medianama.com/2019/10/223-when-it-comes-to-netflix-the-government-of-india-has-no-chill/>.

<sup>40</sup> Astha Ranjan & Arkojit Debnath, *An Analytic Study on OTT Censorship with Reference to India*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

<sup>41</sup> Shivesh Raj, *Film Censorship in India: A Critical Study of Regulatory Paradigm*, 6 INDIAN J.L. & PUB. POL'y 13 (2019).

like U or A are already being determined by the concerned authority after verification then whether there is a necessity for cutting the films again is the relevant point to be considered here.

***Navigating complex decisions:*** In the current era it becomes a hectic task for parents to decide the type of films that their children should see. In the earlier period, there was not much question of the film to be chosen for seeing because of the lack of extent of vulgarness, but howsoever the time has changed to an extent where the children can only be taken to certain verified types of films having the authorisation from the censor board. The films to which children are exposed should not exploit them in any manner that is the ultimate focus of the censor board as well as the Cinematographic Amendment Bill.

***Challenges in implementation:*** effective enforcement of laws is a challenge in a place like India even though there are stringent mechanisms as well as necessary machineries constituted to overview and preserve the violation of the principles that is portrayed through the cinematographic bill but many of them are not been followed or enough consideration are not been given for adhering the same. The attitude of the people must change before considering about the crafting of films. The same concern applies to the current amendment, and piracy may persist due to non-compliance or lack of awareness among individuals, undermining the amendment's goals.

***Internet autonomy and piracy:*** The rise of piracy, especially on the internet, presents a significant problem. Anonymity on the internet makes it difficult to track the actions of wrongdoers, particularly when movie clips are shared through various social media platforms.<sup>42</sup> Internet anonymity offers crucial protection for personal privacy and freedom of expression, allowing users to navigate online spaces without revealing their identities. However, this same anonymity can facilitate piracy, where individuals unlawfully access or distribute copyrighted material without facing immediate repercussions. While anonymity can shield whistleblowers and activists, it also complicates efforts to enforce copyright laws and hold offenders accountable. The tension between safeguarding privacy and curbing piracy presents a complex challenge, requiring a balanced approach to ensure that online freedoms are respected while protecting the rights of creators and upholding legal standards. The diverse forms of piracy,

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<sup>42</sup> Astha Ranjan & Arkojit Debnath, *An Analytic Study on OTT Censorship with Reference to India*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

including sharing clips through platforms like Telegram, Instagram, Twitter, and others, complicate enforcement efforts.

**Unintended challenges:** While the 2023 Amendment Bill introduces provisions to strengthen the future of Indian cinema, certain issues remain unresolved. The complexity of implementing and interpreting the new provisions, coupled with the challenges of piracy and subjectivity, could result in unintended consequences that impact the industry, filmmakers, and viewers. There are even certain challenges that are not considered even in the new amendment bill necessary adoption of policies must be taken into consideration for the same. Necessary adoption of mechanism as well as steps are necessary to overcome these challenges that are uncertain in nature.

The Cinematographic Act faces numerous challenges in the contemporary landscape of film production and distribution. One significant issue is the persistent problem of copyright infringement, exacerbated by digital technology that makes it easier to copy and distribute films without authorization. Despite legal protections, the rapid spread of pirated content through online platforms often outpaces enforcement efforts, complicating attempts to protect intellectual property. Additionally, the fast-paced evolution of technology introduces new distribution methods, such as streaming services and digital platforms, which frequently outmoded existing legal frameworks. This technological shift creates difficulties in regulating content and ensuring compliance with traditional laws. Globalization further complicates matters, as films are distributed and consumed across international borders, leading to conflicts between different countries' copyright laws and regulatory standards. This international aspect also affects fair compensation, as revenue distribution can become contentious, with stakeholders in different regions disputing how profits are shared. Moreover, balancing censorship with artistic freedom remains a delicate task, as varying regional standards for acceptable content can lead to conflicts between regulatory bodies and creators. Lastly, while Digital Rights Management (DRM) solutions are designed to combat piracy, their effectiveness is continually challenged by sophisticated methods to bypass these protections. Addressing these multifaceted challenges requires ongoing updates to legal frameworks and international cooperation to protect the rights of creators and ensure a fair and equitable film industry.

The Indian culture was from time immemorial been noted by the Indian cinema. presumably the Indian film industry is considered to be the one among the largest industry in the world.

But the aspect of maintain such kind of status requires some kinds of compromises as well as adjustments. according to the words renounced film enthusiasts as well as a critique of Indian cinema François Truffaut, said” film is an art that should not have any barriers” likewise for the development of the society it is necessary that the barricades that are made through the provision of law should also be removed. art is an expression that shouldn't be restricted through any barriers and the moment we try to restrict our freedom something we try to restrict our creativity. The power of media to bring a change or influence in a person's life is crucial and that is undoubtful. Howsoever the censor board must have a broad idealism behind them to what is actually the creator is trying to speak out through the movie and media and make certain changes thereafter otherwise the purpose for which the film is made or its object itself will be defeated

The challenges faced by the artist in introducing a new film to the public is a hectic one. Because it has pass through various dimensions of challenges and also it has to satisfy certain requirements that is prescribed by the board. In a layman perspective. What the law seeks to achieve here is acceptable but in the perspective of the artist it is not. The film is not always focusing on providing entertainment but also certain films are focussing on introducing new ideologies and different perspective to the public. i.e. it is focussing on making some changes on how to observe and infer certain situations Like: **Lipstick Under My Burkha** This film produced by Ekta Kapoor and directed by Alankrita Shrivastava was denied a censor certificate. The board stated that it is lady-oriented film about their fantasies. It has sexual scenes, abusive words and audio pornography and it is a bit sensitive about a certain section of society hence it is refusing the film. **Haram Khor** This film starred Shweta Tripathi and Nawazuddin Siddiqui in the lead. After winning big at MAMI, the makers were confident about getting a wide release. But when they applied for a Censor certificate, they were shocked. They were told the film is not suitable for viewing in India. Then they applied to Revising Committee which gave them an A certificate and chopped 2 major scenes. Being not satisfied they went to court and managed to get U/A certificate. **Udta Punjab** The film spoke about the harsh reality that the state of Punjab was facing through the characters of Shahid Kapoor, Alia Bhatt, Diljit Dosanjh and Kareena Kapoor Khan. The censor board wanted many cuts in the film including deletion of names of places. The makers went to court against the order and Bombay High Court had to tell the board that it has no authority to censor films.

As the society that we are living in is a dynamic one the kind of films that is also produced is

evolving as films are actually a representation of what happens in the society. So, the ultimate question comes whether the authority to censor films should be given to a third person other than the ones who have actually contributed to the films. Certification of the film is itself enough indication about the movie as well as its standards and also it speaks the type of audience that they are focussing on. The purpose of the board is to certify, by means of screening and rating, the suitability of feature films, short films, trailers, documentaries, and theatre-based advertising for public viewing however the actions done by the board should always stay within this limit it should not encroach upon the fundamental rights and freedoms of the individual in any kind of manner.

## **CONCLUSION**

In conclusion, censorship in Indian cinema acts as both a limiting and a stimulating force. It constrains the direct expression of ideas but simultaneously inspires creative adaptations and innovations. While it undeniably affects the scope of creative freedom, it also compels filmmakers to navigate and negotiate their artistic visions within a framework of societal expectations. Understanding this dynamic is crucial for appreciating the nuanced interplay between regulation and creativity in Indian cinema. However, censorship also catalyses creative innovation. Filmmakers often work within these constraints to explore alternative storytelling methods, employ symbolic representation, and craft nuanced narratives that can subtly critique societal norms without overt confrontation. This forced ingenuity can lead to the development of unique cinematic techniques and themes that might not emerge in a less restrictive environment.

India's censorship regime has come under criticism for its potential to violate human rights, including the right to freedom of speech and expression. The wide discretion given to the government to censor content has led to frequent censorship of content criticised by the government or against government policies, which can have a chilling effect on free speech and lead to self-censorship. Additionally, there are inconsistencies and ambiguities in the censorship laws and regulations, making it difficult for individuals and organisations to know what is and is not allowed. However, it is important to note that censorship laws and regulations are put in place to protect the public from harmful or offensive content. Therefore, it is crucial to strike a balance between protecting freedom of speech and expression while also ensuring that the public is not exposed to harmful or offensive content.