
REGULATORY CAPTURE AND POLITICAL INFLUENCE IN FILM CERTIFICATION: A CONSTITUTIONAL AND MEDIA LAW ANALYSIS OF CINEMATIC CENSORSHIP IN INDIA

Nyater Ete, LLM, Symbiosis Law College, Pune

ABSTRACT

The status of cinema in constitutional law is unique. The issue of social impact and vulnerability to prior restraint makes cinema a special subject of constitutional free speech jurisprudence¹. In India, the Cinematograph Act, 1952, regulates and certifies the films by the Central Board of Film Certification (CBFC). Although this framework is constitutionally acceptable as a mechanism of regulation, its actual functioning demonstrates that political influence and regulatory capture is present. This essay will discuss how the executive control and discretionary standards together with informal pressures have changed the film certification into a form of ideological control instead of a neutral classification. The study takes a doctrinal and analytical methodology whereby it examines provisions in constitutions, judicial precedents and regulatory practices to determine how political capture affects freedom of expression under Article 19(1)(a). It is argued in the paper that prior restraint is normalized by regulatory capture, that it produces a chilling effect on filmmakers and that it contributes to democratic discourse and that structural and constitutional reform is required.

¹ K.A. Abbas v. Union of India, (1971) 2 SCC 446.

INTRODUCTION

One of the most effective expressions of the democratic society is cinema, which influences the opinion, cultural stories and the political speech. The Indian constitutional jurisprudence, noting its extensive reach, has traditionally allowed more regulation of films than speech of other kinds². Such control is maintained by a system of prior certification which is conducted by the Central Board of Film Certification (CBFC). Although this regulation is legally authorized by Article 19(2), it should work within the very strict boundaries and with principled restraint.

Over the last few years, film classification in India has grown more controversial over claims of political influence, judicious censorship, and unofficial intimidation of dissenting stories. A certification hold-up, unreasonable excision, and increased enquiries on politically sensitive movies all point to the fact that regulatory bias is no longer administered in a neutral manner.³

Rather it is indicative of a more fundamental issue of regulatory capture whereby institutions that are aimed at regulating in the interests of the people are converted into being aligned with political power.

The given paper considers the issue of film certification in terms of regulatory capture and constitutional free speech. It claims that the politics of control of certification bodies has reduced previous restraint as an exception to an everyday process of regulation. The paper will use the statutory systems, judicial cases and regulatory practices to illustrate how this capture is going against constitutional guarantees and democracy and how structural reform is a great urgent need.

METHODOLOGY

The methodology of this research is doctrinal and analytical, and it suits well the constitutional and media law science. The research is a qualitative one that is not designed to utilize empirical data collection. Instead, it pays attention to normative analysis, interpretation of the law, and critical analysis of the existing regulatory frameworks.

² K.A. Abbas v. Union of India, (1971) 2 SCC 446.

³ Abhinav Chandrachud, *Freedom of Speech and Censorship in Indian Cinema*, 30 OJLS 617 (2010).

Sources of Research

The study is based on both primary and secondary sources:

➤ Primary Sources

- Articles 19(1)(a) and 19(2) of the constitution, especially.
- Cinematograph (Certification) Rules and the Cinematograph Act, 1952.
- Cases of film censorship and free speech, as determined by the Supreme Court of India.⁴
- Choose foreign judicial ruling and regulatory structures.

➤ Secondary Sources

- Articles about freedom of expression, censorship and regulatory capture by scholars.
- Reports of law commissions of India and expert committees.
- Scholarly writing on constitutional law, administrative and media law.

Analytical Framework

The research uses a theoretical framework of regulatory capture in studying the operations of the CBFC. The comparative analysis is applied to evaluate alternative regulatory models in other constitutional democracies especially the United States and the United Kingdom. The aim is to assess the compliance of Indian film certification with the constitutional and democratic principles and the identification of the structural changes which would help to fill the current gaps.

RESEARCH QUESTIONS

- How regulatory capture works on film certification in India?

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

- How far does Article 19(1)(a) get compromised by political power?
- Do the current judicial protections work?

LITERATURE REVIEW

Bimal N. Patel and Aparna Chandra - Freedom of Speech and Expression under the Indian Constitution.

The foundational constitutional interpretation of Article 19(1) (a) and the restrictions that it can allow in accordance with Article 19(2) is shown by Patel and Chandra. In their work, the authors stress that the boundaries on speech should be interpreted strictly and supported by the principles of proportionality and reasonableness. Although the authors support the historical reason behind cinema regulation, they warn that the executive should not have too much discretion. This piece of literature stands out as one that provides the foundation of doctrines on which the modern practices of censorship in the movie industry can be assessed.

Gautam Bhatia - Free Speech under the Indian Constitution: Offend, Shock, or Disturb.

Bhatia's work gives a normative defence of the free speech on the basis that constitutional democracy demands safeguarding the speech that can provoke or be disruptive to the mainstream sensibilities. He criticizes indeterminate norms like the national interest and the societal morality, pointing out how they are abused. The book does not deal with censorship in the film industry solely, but the analysis of its subject matter is squarely applicable to the comprehension of the regulatory discretion facilitating political influence and chilling effects in cultural regulation.

Cultural Regulation and the State in India - Sujata Patel.

Patel explores the structures of the state and cultural production, where in most cases regulation of art and media is indicative of the current political ideologies as opposed to an agnostic rule. Her journalism places the issue of film censorship in a more general sociological context of state domination of cultural discourse. This school of thought can help us view regulatory capture as an ideological phenomenon, and not a legal/administrative failure.

Aspects of Media Law in India - Madhavi Goradia Divan

Divan gives a comprehensive description of the media regulation in India and it gives the legal framework in the films, broadcast and the print media. She points to the special treatment given to the movies and criticizes the perpetuation of the use of pre-censorship. Although mostly descriptive, the work finds the structural flaws of the CBFC which expose it to political and executive influence.

RESEARCH GAP

Existing scholarship extensively analyses constitutional free speech and film censorship but insufficiently addresses **regulatory capture and political influence as structural problems** in film certification. This paper seeks to bridge that gap by combining constitutional doctrine with regulatory theory and democratic analysis.

THEORETICAL FRAMEWORK

Regulatory capture was first defined in the context of political economy in an attempt to describe how regulatory agencies tend to benefit the interests of those regulated instead of in the best interest of the populace. The theory which was developed by George Stigler focused on the importance of economic incentives and lobbying as sources of regulatory results.⁵

Modern academic work has however broadened the definition to encompass political and ideological capture especially when the regulators are directly under the executive authority.

In the sphere of media and cultural regulation, the capture is not often shown in the form of the orders or official bans. Rather, it works by employing the unobtrusive mechanisms like informal pressure, anticipatory compliance, discretionary enforcement and self censorship.⁶ This makes film certification bodies particularly susceptible since their assessment standards, i.e. morality, decency and order among people, are quite subjective and culturally relative.

Discretion in regulation can be prone to political affiliation when there are no clear standards applied in the exercise or the practice lacks accountability to the institution. The ruling out of

⁵ George J. Stigler, *The Theory of Economic Regulation*, 2 Bell J. Econ. & Mgmt. Sci. 3 (1971).

⁶ Tarunabh Khaitan, *Political Censorship and the Indian Constitution*, 14 IJCL 152 (2016).⁷ The Cinematograph Act, 1952, §§ 3–5B.

regulatory capture in film certification therefore expresses structural phenomenon and not isolated acts of misconduct. It is the process of the normalisation of political authority in the regulatory procedures leading to censorship that is legally but constitutionally suspect.

Indian Legal Framework of Film Certification.

The Cinematograph Act, 1952

The film certification in India is statutorily provided by the Cinematograph Act, 1952.⁷ The Act provides the formation of the CBFC and bestows the authority on the certification of films to be shown to the public. Although the Act does not explicitly request censorship, it empowers the Board to decline certification or demand changes in the case of a film which is considered to be unsuitable to be shown to the population.

The wording of the Act is very broad giving substantial discretion to the CBFC. The words, morality, decency, and the public order are not determined precisely; therefore, their interpretation is strongly dependent on the subjective opinion of the Board. This vagueness can be of constitutional concern because it allows the application of regulatory standards in an arbitrary and even inconsistent manner.

Executive Control, Institutional Design.

The CBFC works under the Ministry of Information and Broadcasting and the members and the Chairperson are appointed by the central government.⁷ This institutional setup places the Board in such a structural dependence with the executive and compromises its independence. Regulatory autonomy is commonly considered to have a requirement in constitutional democracies in securing freedom of expression, especially in areas of higher political sensitivity like in media and culture.

The lack of substantive protections against executive power entails the presence of conditions that favor the regulatory capture. The decisions on certification instead of being based on constitutional reasoning, the decision is prone to be based on the existing political narratives.

⁷ Madhavi Goradia Divan, *Facets of Media Law* (OUP 2017).

DIMENSIONS of constitutional aspect of film censorship.**Article 19(1)(a) and Expression on Cinema.**

Article 19(1) (a) provides the right to freedom of speech and expression. The Supreme Court has always recognised films as a guarded type of discourse, which has offered them a penetrate in social critique, cultural manifestation and democratic discourse. The expressive value of cinema is not only about entertainment, as it also allows questioning political power and can be used to voice the marginalised voices.⁸

Reasonable Limitations under Article 19(2).

Article 19(2) only allows the limits on speech to be based on the listed grounds, which include the public order, morality as well as security of the state. It has been stressed by judicial precedent that these limitations should be reasonable, proportional and closely focused. Little more than fear of controversy, political interference, or embarrassment by the general opinion justifies censorship.

In spite of this jurisprudence, the certification decisions that are made in the film industry tend to be based on the speculative harms and expected response by the population. This line of reasoning is beyond the constitutional boundaries and a break in the doctrine of freedom of speech.¹⁰

Prior Restraint and the Democratic Cost of it.

Generally, prior restraint is considered the most extreme expression of speech restriction since it prevents any expression before it is released into the public. Although Indian courts have accepted such films being certified earlier, it has been warned severally against being abused. The issue of regulatory capture increases the problem of the democratic costs of prior restraint by making it an ideological gatekeeping mechanism.

THE JUDICIAL PERSPECTIVE ON FILM CENSORSHIP

The courts have been very instrumental in defining constitutional constraints on film

⁸ Bennett Coleman & Co. v. Union of India, (1973) 2 SCC 788.

¹⁰ Shreya Singhal v. Union of India, (2015) 5 SCC 1.

censorship. In *S. Rangarajan v. P. Jagjivan Ram*, the Supreme Court ruled that the freedom of expression cannot be curbed on the basis that it is unpopular or obscene. The Court stressed that state should defend the expression and not give way to the threats of chaos.⁹

Equally, under *Prakash Jha Productions v. The Court* restated that after a film is certified it is the responsibility of the state to guarantee its display. These rulings highlight a strong adherence to the freedom of expression in the constitution.¹⁰ Nonetheless, judicatory protections are limited in nature. The courts usually come in when the regulatory damage is already done. Censorship delays in certification, lengthy judicial inquiry and even unofficial censorship frequently go unchallenged by courts leading to regulatory capture.

INFORMAL CENSORSHIP AND POLITICAL INFLUENCE

Political effect on the certification of films in most cases is not through outright ban. Rather, it works by informal means, like withheld approvals, too many requests to make, and opinionated warnings. Such practices amount to informal censorship, which is constitutionally problematic in that it gets away with prosecution and creates the chilling effect on expression.

Movies with particular topics on the issues of governance, nationalism, historical reinterpretation, or minority rights seem to receive an extra critical analysis. Such selectivity in applying the standards implies that there is ideological bias in the process of certification, as opposed to being based on the constitutional principles.¹¹

CRITICAL ANALYSIS

The system of film certification in India shows a sharp lack of connection between constitutional provisions of the freedom of speech and practice by the administrative body. Whereas the judicial doctrine always upholds robust safeguarding of the freedom of expression in the Article 19(1)(a), the experience of the film certification shows how such provisions are watered down by the executive branch, ambiguous norms, and discretionary obscurity. This loophole reveals the issue of regulatory capture of the film certification regime. One of such weaknesses is the illusion of regulatory neutrality. CBFC is technically organized as a quasijudicial institution but rather functions by its own, subjective, morality, decency, public

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

¹⁰ *Prakash Jha Productions v. Union of India*, 2011 SCC OnLine Bom 228.

¹¹ Editors' Guild of India, *Media Freedom and State Regulation in India* (2021).

order, and national interest, constructs. Although discretion does not in itself violate the Constitution, unchecked discretion permits soft censorship, using delays, undue cuts, and uncertainties of certification. These practices are contrary to the constitutional requirement that the restrictions on speech be accurate, proportional and foreseeable. The institutional reliance of the CBFC on the executive perpetrates regulatory capture further. It is situated under the ministry of Information and Broadcast, which impairs independence and enables political sway with no clear directives. Instead of making decisions neutrally, anticipatory compliance and ideological compliance provide censorship the capacity to operate invisibly through administrative routine. The culture of normalisation of prior restraint has had a chilling effect on moviemakers to preempt self-censorship. Though there have been some powerful statements of the courts about the principle of free speech in the case of *S. Rangarajan v. P. Jagjivan Ram*, the judicial review is still reactive and inadequate to combat structural abuse. Selective enforcement of the politically sensitive films also breaches the content neutrality and pluralism.

Finally, regulatory capture in movie certification is a constitutional, administrative, and democratic crisis that kills dissent, bizarre cultural discussion, and undermines democratic deliberation.

COMPARATIVE PERSPECTIVES

Comparative constitutional practice demonstrates that film regulation need not entail state censorship. In the United States, film ratings are administered through voluntary, industry-led mechanisms, reflecting a strong commitment to free speech.¹² The United Kingdom employs an independent classification board guided by transparent standards and public consultation. These models illustrate that audience protection can coexist with expressive freedom when regulatory institutions are insulated from political control and guided by clear principles.

CONCLUSION

A more constitutional conflict of state authority and freedom of expression is expressed in the process of regulation of the cinema in India. Although a reasonable regulation of films is acceptable, the politicisation of film certification has been on the rise; an ominous trend that speaks of regulatory capture. Censorship can no longer be in the interests of the people when

¹² Motion Picture Association, *Classification and Rating Rules* (U.S.).

the decisions made in the certification process are politically oppose to the constitutional principles and thus it becomes a tool of controlling ideology. Cinematic expression is indispensable in protecting democratic pluralism, cultural diversity and constitutional morale. The institutional autonomy, transparency and accountability that is ensured by structural reforms are essential to make sure that film certification is in line with the constitutional values.¹³¹⁶ In the absence of such reforms, the guarantee of the free speech as stipulated in the Article 19(1)(a) would be a mere figment of imagination.

¹³ Law Commission of India, 224th Report (2011).

¹⁶ Shyam Benegal Committee Report (2016).

REFERENCES

Constitutional & Statutory Materials

Constitution of India, Article 19(1)(a) and Article 19(2).

The Cinematograph Act, 1952.

Cinematograph (Certification) Rules, 1983.

Guidelines for Certification of Films for Public Exhibition, Ministry of Information and Broadcasting, Government of India.

BLIOGRAPHY

CONSTITUTIONAL AND STATUTORY MATERIALS

INDIA CONST. art. 19(1)(a), art. 19(2).

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

Cinematograph (Certification) Rules, 1983 (India).

Ministry of Information & Broadcasting, Guidelines for Certification of Films for Public Exhibition (as amended).

BOOKS

M.P. JAIN, INDIAN CONSTITUTIONAL LAW (8th ed. 2018).

H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA, Vol. I (4th ed. 2016).

LAWRENCE LESSIG, FREE CULTURE: HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY (2004).

OWEN FISS, THE IRONY OF FREE SPEECH (1996).

BIMAL N. PATEL ET AL., INDIAN CONSTITUTION AT WORK (Oxford Univ. Press 2021).

JOURNAL

George J. Stigler, The Theory of Economic Regulation, 2 *Bell J. Econ. & Mgmt. Sci.* 3 (1971).

Sunita Patel, Freedom of Expression and Cinematic Censorship in India, 5 *NUJS L. Rev.* 215 (2012).

Abhinav Chandrachud, Freedom of Speech and Censorship in Indian Cinema, 30 *Oxford J. Legal Stud.* 617 (2010).

Tarunabh Khaitan, Political Censorship and the Indian Constitution, 14 *Int'l J. Const. L.* 152 (2016).

Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution* (Oxford Univ. Press 2016).

LAW COMMISSION & COMMITTEE REPORTS

Law Commission of India, 224th Report on Need for Amending the Cinematograph Act, 1952 (2011).

Shyam Benegal Committee Report, *Reforming Film Certification in India* (Ministry of I&B, 2016).

REPORTS Human Rights Watch, *India: Free Speech Under Pressure* (2022).

Editors' Guild of India, *Media Freedom and State Regulation in India* (2021).

UNESCO, *Re|Shaping Cultural Policies: Advancing Creativity for Development* (2018).