

## **CENSORSHIP OF FILMS-CONSTITUTIONALITY**

The term 'censorship' is derived from the Latin term 'censere' which means to give one's opinion, or to assess. Its span encompasses books, magazines, newspapers, radio, TV, movies, dramas, paintings, plays, speeches, dance, music, art, literature, photographs, mails, emails, websites etc.

### **FILMS AS A POWERFUL MEANS OF COMMUNICATION**

Films are considered as a great medium of communication with the people. With the development and progress of the society and also with the progress in the field of science and technology the films have undergone a sea change and by adopting all the available technologies have been able to reach the masses and also significantly contributed to the social and cultural development of the country. In this way the films are equated with the Press as Press is also considered as a great medium of communication. Both the films and the Press enjoy the same status and right so far as constitutional freedom relating to expression of ideas and spreading of ideas and messages are concerned. As is known Article 19(1) (a) of the Constitution guarantees freedom of speech and expression which is extended to the Press also. Therefore, both these mediums are regulated under this provision of the Constitution. Simultaneously as these freedoms are not absolute and subject to constitutional restrictions, both these mediums are also to adhere to this.

Considering the overall impact of film Hidayatullah, C.J. in a landmark judgment observed that:

"It had been almost universally recognized that motion pictures must be treated differently from other forms of art and expression, because a motion picture's instant appeal both to the sight and to hearing, and because a motion picture had become more true to life than even the theatre or any other form of artistic representation. Its effect, particularly on children and immature adolescents was great."

### **CONSTITUTIONALITY OF CENSORSHIP**

**K.A. Abbas v. Union of India** is perhaps the first case where the question relating to the censorship of films arises. In this case, the Supreme Court considered important question relating to pre-censorship of cinematograph films in relation to the fundamental right of freedom of speech and expression conferred by Article 19(1) (a) of the Constitution. The petitioner in this case challenged the decision of the Board of Film Censors in refusing a 'U' certificate for him

film "A Tale of Four Cities". While the case was pending in the Supreme Court, the Central Government to grant the 'U' certificate provided certain cuts were made in the film.

As the petitioner's grievance was completely redressed, the petitioner applied for an amendment enabling him to raise the question of pre-censorship in general, in order that persons who invested money in making films may have guidance on this important constitutional question. The amendment sought by the petition was allowed for consideration by the apex court. The following two issues were before the court for consideration:

- a. That pre-censorship itself cannot be tolerated under the freedom of speech and expression; and
- b. That even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action.

Taking into consideration all these, Hidayatullah, C.J. made it clear that censorship of films including pre-censorship was constitutionally valid in India as it was a reasonable restriction within the ambit of Article 19(2).

The Supreme Court held the view that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression."

Further the Court held that:

"Censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition in cinema films. We need not generalise about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interest of society. If the regulations venture into something which goes beyond this legitimate opening the restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution."

Constitutionality of censorship was also held in **S. Rangarajan v. P. Jagjivan Ram**. The case came to the Supreme Court in an appeal relating to the revocation of 'U' certificate to a Tamil film. In this case, the Madras High Court revoked the 'U' certificate issued to a film entitled "Ore Oru Gramathile" ("In Just One Village"), and also banned the exhibition of the film

as there was some public protest against the film. The film was critical of the reservation policy of the Government of Tamil Nadu. During the pendency of the case, the film received the National Award by the Directorate of Film Festival of the Government of India.

After the decision of the Madras High Court, the matter went to the Supreme Court on an appeal and the court reiterated the importance of the freedom of speech and expression and the role of films as a legitimate media for its exercise. Reversing the judgment of the Madras High Court, the Supreme Court opined that:

"Though movie enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movies and the other modes of communication. Movie motivates thought and action and assures a high degree of attention and retention. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It has a unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as does the newspapers and magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary."

### **NEED FOR CENSORSHIP OF FILMS, NOT THE PRESS**

After discussing in detail about the censorship of films, one question automatically comes to our mind, i.e. why censorship of films, not the press? This question was dominating the Indian scenario for quite a long period. To find a clear cut answer we have to take in to consideration several other factors and aspects along with some of the important decisions of the Supreme Court. The freedom of speech and expression guaranteed under our Constitution most probably draws its inspiration from the First Amendment of the American Constitution. The First Amendment which deals with freedom of the press is as follows:

"Congress shall make no law respecting an established religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the Press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

If we analyse the American First Amendment it is clear that in the first place it advocates for the freedom of the press, and secondly no restrictions are imposed on the freedom of the press. But on the other hand Article 19 (1) (a) of the Indian Constitution guarantees to all the citizens the right to 'freedom of speech and expression' and this right also includes the freedom of the press or the freedom of the communication and the right to propagate or publish opinion. But unlike American Constitution, this freedom is not absolute, and is subject to restrictions imposed by Article 19 (2) of the Constitution.

Despite the restrictions, in our country the citizens and the press in real practice enjoy this freedom to a large extent because in a democratic set up, such freedoms are necessary and quite helpful for the proper functioning of the democratic process. It has been remarked by Justice Bhagawati in **Maneka Gandhi v. Union of India** in the following words:

"Democracy is based essentially on free debate and open discussion, for that it is the only corrective of Government action in a democratic set up. If democracy means Government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making choice, free and general discussion of public matters is absolutely essential".

It is clear now that the freedom of press certainly enjoys importance in our democratic process as it seeks to advance public opinion and matters of public interest by publishing it which enables them to form a responsible judgment. Our Supreme Court through various judgments also upheld the dignity of the press and freedom it enjoys by nullifying the attempts to put a curb on it. Accordingly imposition of pre-censorship on a newspaper as held in **Brij Bhusan case**, or prohibiting the newspaper from publishing its own views as in **Virendra**, or imposing a ban on the entry of newspapers and its circulation as in **Sakal Papers case**, and in **Romesh Thapper case**, or trying to put restrictions in some way or other in **Express News paper case** and the **Bennett and Coleman case**, were held by the Supreme Court as encroachment in freedom of speech and expression and opposed to Article 19 (1) (a).

In all the above mentioned cases the Supreme Court has maintained that the freedom of the press cannot be taken away and it would not be legitimate to subject the press to the laws which take away or abridge the freedom of speech and expression. In the words of Justice Mudholkar who gave his opinion in **Sakal Papers (P) Ltd. v. Union of India** as:

"The Courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of Legislatures and Governments and must be preserved."

So far as censorship of films is considered, censorship is required because of its mass appeal, the way the presentation and above all, the impact it leaves in the minds of the persons both young and adult. Expression of one's own idea, through the medium he likes is permissible under Article 19 (1) (a) of our Constitution. The medium is vast. But using the films as a medium of expression should be treated differently because this medium is not the same as reading a book or reading a newspaper or magazine. So in the larger interest of the community and the country restrictions as envisaged in Article 19(2) can be imposed. The framers of our Constitution deemed it essential to permit such reasonable restriction as they intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19 (2).

### **JUDICIAL RESPONSE ON CENSORSHIP OR BANNING OF FILMS**

Over the years, the Supreme Court and the High Courts through various judgments have contributed immensely in safeguarding the rights of the people of India. Freedom of free speech and expression through motion pictures, is no exception. To assess the impact of the judiciary the following important judgments related to films and documentaries, including few telecasted as television serials may be cited.

As already stated for the first time the constitutionality of censorship was challenged before the Supreme Court in the case of **K.A. Abbas v. Union of India**. The Supreme Court upheld the constitutionality within the ambit of Article 19(2) of the Constitution and added 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".

Probably, the most important case regarding the problem is the case of **S. Rangarajan v. P. Jagjivan Ram**. The Supreme Court held as below:

"Movie is the legitimate and the 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.”

In doing so, the Court did acknowledge to have a compromise between the interest of freedom of expression and social interests. Censorship is permitted only on the grounds envisaged under Article 19(2) and the standard of judging a film to be applied by the Board or courts should be that of "an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man". It went on to observe that the anticipated danger should not be remote, conjectural or farfetched but should have proximate and direct nexus with the expression and equivalent of a "spark in a powder keg". The Court criticized the State and emphasized that freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. "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."

In **Ramesh v. Union of India** an appeal was preferred before the Supreme Court against the judgment of Bombay High Court (which allowed the screening of the serial) to restrain the screening of the serial as it was violative of Section 5B of the 1952 Act. It was alleged by the petitioner that the screening of the serial on Doordarshan would be against public order and it was likely to incite the people to indulge in the commission of the offences. The Supreme Court affirmed the High Court decision and dismissed the petition. Commenting on the reaction of the average men, the Court held that the average person would learn from the mistakes of the past and perhaps not commit those mistakes again. They concurred with the High Court that "... Illiterates are not devoid of common sense ... and ... awareness in proper light is a first step towards that realization". Incidentally, the serial was given 'U' certificate by the Board.

In **Sree Raghavendra Films v. Government of Andhra Pradesh**, the exhibition of the film 'Bombay' in its Telugu (the official language in the State of Andhra Pradesh) version was suspended in exercise of the powers u/Sec.8(1) of the A.P. Cinemas Regulation Act,1955, despite being certified by the Censor Board for unrestricted exhibition. The suspension was imposed citing the cause that it may hurt sentiments of certain communities. The Court discovered that the authorities who passed the impugned order did not even watch the movie. Hence, the Court quashed the order as being arbitrary and not based on proper material.

In another case, Doordarshan refused to telecast a documentary film on the Bhopal Gas Disaster titled 'Beyond Genocide', in spite of the fact that the film won Golden Lotus award, being the best non-feature film of 1987 and was granted 'U' certificate by the Censor Board. The matter came before the Supreme Court in the case of **Life Insurance Corporation of India v. Prof. Manubhai D. Shah**. The reasons cited by Doordarshan were inter alia, the political parties had been raising various questions concerning the tragedy, and the claims for compensation by victims were sub judice. Upholding the freedom of speech and rejecting the abovementioned arguments, the Court held: "... Merely because it is critical of the State Government ... is no reason to deny selection and publication of the film. So also pendency of claims for compensation does not render the topic sub-judice so as to shut out the entire film from the community."

Award winning documentary film, 'In Memory of Friends' by Anand Patwardhan about the violence and terrorism in Punjab, though granted 'U' certificate by the Censor Board, was rejected by Doordarshan reasoning that if such documentary is shown to people, it would create communal hatred and may lead to further violence. The Bombay High Court quashed the order emphasizing: "Everyone has a fundamental right to form his own opinion on any issue or general concern. He can form and inform by any legitimate means."

In another case, while overruling the FCAT's order to censor the movie, 'Chand Bujh Gaya', the Bombay High Court in **F.A. Picture International v. Central Board of Film Certification** opined: "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."

It strongly criticized the role of the concerned authorities:

"... The view of the censor does no credit to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme. The certifying authority and the Tribunal were palpably in error in rejecting the film on the ground that it had characters which bear a resemblance to real life personalities. The constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditioned on the premise that he must depict something which is not true to life. The choice is entirely his".

In **Da Vincicontroversy** as well, the Supreme Court rejected the writ petition by the All India Christians Welfare Association seeking a ban on the movie on the ground that it hurt the

religious sentiments of Christians. The court found no point of objection when the Censor Board and the Central Government has given a green signal. It also held that that no predominantly Christian country had banned the film and there has been no definite reason forwarded by the petitioners to ban the movie in India.

The aspect of right of the viewers with regard to freedom of information has not gone unnoticed by the Courts. Freedom of information is, of course, inseparable from freedom of speech. If a speaker cannot express a view, then hearer cannot receive information. In the case of **Secretary, Ministry of I & B v. Cricket Association of Bengal**, it was held by the Supreme Court that freedom of speech and expression includes "right to acquire information and to disseminate it to public at large". Hence, Article 19(1) (a) also includes the right of viewers. Further, in **Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India**, it was held by the Supreme Court that the people have a right to be informed of the developments that take place in a democratic process.

Finally, it is important to note that in the case of **Union of India v K.M.Shankarappa**, the Supreme Court disapproved of the Government retaining powers by enacting Section 6(1) of the 1952 Act and declared it *ultra vires* the Constitution. It held:... 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 [FCAT], 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... 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 Executive cannot sit in an appeal or review or revise a judicial order. It emphasized that the only way to nullify the Court order would be through appropriate legislation. Otherwise, "... 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."

### **CONCLUDING REMARKS**

Cinema being an important instrument of expression of ideas and free thoughts must remain unrestricted from any kind of censorship. Restriction of any kind must not infringe upon the basic human right of expressing one's view in the community of civilized societies. However at the same time one must keep in mind the practical realities of the society in which such ideas



are broadcasted. The peace and security of the society should not be disturbed in the process of expression of one's thoughts. Since cinema as a public expression can influence the society at large, caution must be taken while exhibiting the film to avoid any kind of chaos and threat to national security. A balance must be maintained between the right of expression and the duty to maintain peace in the society. The Certification Board must take a balanced approach while reviewing a film and must take into account that the harmony between freedom of expression and sense of security and peace in the society is maintained.

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