

RESTRUCTURING THE CENSOR BOARD, AND NOT ABOLISHING IS THE RIGHT WAY.

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Abstract: There is a demand from the film fraternity that the censor board should be abolished.

According to them, the censor board is hindering their creativity. It is not disputed that the current setup of the censor board makes them a puppet in the hands of the government and also lack of knowledge makes the board inconsistent, however the abolishment of the censor board will give rise to greater evils with may be detrimental to Indian society. The best way out will be to restructure the censor board and free it from the hands of the central government.

Introduction

The censor board in India has been a controversial subject. The voices is being raised from the film industry itself regarding the abolishment of censor board. Renowned Malayalam film director and Dada sahib Phaalke awardee Adoor Gopalkrishnan has stated tha it is the time to completely away with the censor boardⁱⁱⁱ, while veteran actress Shabana Azmi states that we should have censor just like the American way^{iv}. Recently even Amir Khan also thinks that the censor board is little aggressive^v

In this article the researchers havetried to find out whether it is necessary to abolish the censor board or can the censor board continue to function by mending its ways.

Evolution of the censor board and its functioning during pre- independence era

Actually the concept of censorship did born because of fire. The early film stock consisted of a compound named nitrocellulose, which was very flammable. In 1897 there was a fire due to this flammable component in Paris, killing 126 people^{vi}. This incidence was not the sole one, as similar incidences of fire being breaking due to the flammable substances used in the film stock took place. These repeated incidences were responsible for formulation of the world's first legislation relating to cinematograph in the year 1909 in Britain, in order to improve safety standards, by regulating the issue of licences issued to the cinema^{vii}. One type of

control led to another and the authority which was for ensuring the safety standards where the film was to be screened, started to indulge in the content of the films.

In the year 1918 first legislation regarding film censorship was made applicable.^{viii}. Cinematograph Act 1918 gave the district magistrates (in case of Rangoon, the commissioner of police) the powers to appoint inspectors to examine and certify the films. The interesting point is that though the inspectors were supposed to certify the films, the Act did not give any guidelines as to how they shall be certifying the films. Thus the District magistrates had very wide discretionary powers regarding the censoring of films. Some guidelines regarding the criteria of censor came in the year 1920, when censor boards were set up in Bombay, Madras, Calcutta and Rangoon.

In the year 1921 the regional Madras censor board banned a movie named ‘Bhakth Vidhur’, because the main character of the film had a resemblance of Gandhiji^{ix}. On the other hand, , in year 1929, Seeta Devi, went on to kiss Charu Roy, in the movie ‘A Throw of Dice’, which was passed by the censor board^x. Another actress Zubeida in skimpy dresses had created a sensation, failed to attract the scissors of censor^{xi}.

From all the above facts, the motive of the censor board during the British erabecomes very clear that it would not allow any film or a scene in a film, or even the photograph of any national leader in a film, which would in any way promote Indian nationalism, rather than making any serious attempts to provide healthy entertainment to the public by suppressing vulgarity. In short it can be safely said that, during the British era, the censor board was being used as a tool to suppress the national spirit, rather than enhance the standards of the films.

If one ponders as to why the censor board was so narrow minded, the answer was simple, as firstly, during the British rule there was no democracy in India, the British people did not considered Indians as one of them; hence they did not bother about the fundamental right of any Indian film maker or the viewers. They were more concerned about the stability of their rule, which would come in danger, if the nationalistic feelings in the minds of the people were promoted through the medium of films.

The evolution of censor board inpost-independenceera.

After independence the right to press and subsequently the right to display motion pictures was incorporated into article 19(1)(a) of the constitution. This was because in the assembly debateDr. Babasaheb Ambedkar has strongly argued that “*The press is merely another way*

of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editors of press or the manager are all citizens and therefore when they choose to write in newspaper they are merely exercising their right of freedom of speech and expression and in my judgment therefore no special mention is necessary of the freedom of press at all^{xxii}

After the independence there were certain changes in the constitution of the censor board. All the regional boards were absorbed into one Bombay Board of Film Censor. The Cinematograph film Act 1952 was passed, which was supposed to be a statutory body, by way of which the name was changed to Central Board of Film Certification. The vision and mission of the censor board were clearly stated, and looked very attractive. The stage was set where the fundamental rights of the film makers and the viewers would not only be protected, but also good tastes of the viewers and the creativity of the film makers would be promoted. The government's interference would be minimal and the board will encourage the creativity of the filmmakers and generously offer the filmmakers the platform to put his views, through the medium of films.

However, as the time passed, the hopes regarding the ideal functioning of the censor board, and the minimum interference of the government were crashed and the reality proved to be the stark opposite of what was envisaged. The censor board became a tool in the hands of the government, the filmmaker's creativity was compromised, and the viewers were forced to watch what the censor board passed, and what the government wants the people to watch.

Constitution and the appointment process of the censor board.

Let us now analyse the effects of the censor board becoming a tool in the hands of the government in detail. To effectively analyse this, we need to have a look at the constitution of the censor board, the appointment process and the term of the censor board.

The censor board consists of a Chairman and non-official members, all of whom are appointed by the Central Government. It is headquartered in Mumbai, Maharashtra. Additionally, it has nine Regional offices, namely, Chennai, Bangalore, Hyderabad, New Delhi, Guwahati, Cuttack, Kolkata and Thiruvananthapuram. Regional Offices, as mentioned above, are assisted by the Advisory Panels. The Advisory Panels, like the Board, is selected by the Central government. The members chosen for the panel are from different walks of life. It has a two-tier jury system, the Examining Committee and the Revising

Committee^{xiii}. The Chairman and the members are appointed by the Information and Broadcasting Ministry, and though the term of these members is of two years, their term can be extended or curtailed as per the pleasure of the Information and Broadcasting Ministry.

Constitutional Validity of the censor board

The Supreme Court had upheld the validity of the censor board in *K.A Abbas v. Union of India*^{xiv}, where the Supreme Court held that the pre censorship regarding the motion pictures is a valid restriction on the fundamental rights. The researcher merely wishes that there should not be excessive control of the government regarding the exhibition of the motion pictures.

Influence of the government censor board

Whenever the government at the centre changes, then the head of the censor board changes. When in the Bharatiya Janata Party came in power, Anupam Kher was appointed as censor board chief in 2003. When Congress Government came in power in 2004, Anupam Kher was removed and Sharmila Tagore was appointed.

The central government's control on the censor board is far more than mere changing the chiefs of the censor board. The two glaring examples are, one regarding the film *Andhi*, which was not allowed to be screened, despite being passed by the censor board, because it had resemblance of the then Prime Minister Indira Gandhi. The second one about a political spoof movie *Kissa Kursi Ka* in the year 1977, also could not be screened, despite of having clearance of the censor board, because it was supposed to be critical on the policies of Indira Gandhi and Sanjay Gandhi.

With these wide powers enjoyed by the government, the right to criticise the government, which is very essential in any healthy democracy is greatly prejudiced. More importantly the by making of a film the film maker not only exercise his freedom of speech and expression, but the filmmaker and all those who are involved in making of the film are exercising their right of livelihood, another essential fundamental right of a citizen. Also a film is not completed in a day or two, so considerable time is spent during the making of that particular film. If the film is rejected either by the censor board or the central government, then the fundamental rights granted under Article 19(1) (a) and Article 21 of the filmmaker and the others who are involved in filmmaking are greatly prejudiced.

Flaws existing in the current system of censorship

Despite the opinions against the existence of the censor board, researcher strongly feels that there shall be a pre censorship relating to the motion pictures, as the same have a capacity to impact the human minds in a far better way than any other form of media.

However according to the researcher the current system of censorship have some grave flaws.

The current system of censorship tends to overlook the fundamental rights of all the people who are associated with the film.

Another major flaw is the central government enjoys virtually a dictatorial position as the members of the censor board cannot dare to pass any film which may be critical of the central government, because the appointment and removal of the board members is in the hands the central government. This position which is presently enjoyed by the central government virtually takes away the right of criticism and freedom of expression to a great extend, thus diplomatically sidelining the Supreme Court's contention in *Shreya Singhal v. Union of India*^{xv} case where the apex court had stated that liberty of thought and expression is a paramount significance under our constitutional scheme.

Conclusion and suggestions

The researcher hence gives the following suggestions so that the pre censorship relating to the motion picture will be meaningful and not arbitrary.

- (a) The censor board shall be made a statutory body with fixed term, independent system of appointment and removal of the members, without any interference from the central government. There is no harm in including not more than two members from or on the behalf of the central government.
- (b) The censor board should only be a certifying authority. This can be done by amending the Section 5B of the Cinematograph Act 1952, which authorises the censor board to refuse the film from being exhibited. By way of such amendment, the authority of the censor board should be limited only till cutting few parts in the film, which may tend to corrupt the minds of the people.
- (c) However before applying the scissors on any part of the film, the censor board shall take into consideration that it is not denying the creative platform to the filmmaker, or compromising with the essence of the story itself. However it is also equally true, that

the filmmakers under the guise of creativity should not depict or promote anything which is in bad taste, against the public policy or against the morality or decency.

- (d) There shall be adequate number of legal experts at prominent positions in the censor board, as the censor board is, in a way is doing interpretation of the Cinematograph Act 1952, when it is censoring the film. This is why; the help of legal experts will be of great value.
- (e) The board should honestly strive for being as consistent and transparent as possible.
- (f) The central government as well as the various state governments shall not refuse any film, which is duly certified by the censor board on mere apprehensions of breach of peace or just because they are critical about their policies.

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ⁱⁱⁱ'It is time we did away with censorship in Indian cinema: Adoor Gopalakrishnan'

available at: <https://englisharchives.mathrubhumi.com/movies-music/interview/movie-1.3537983>

ivShabana Azmi Underlines Need For United States Style Film Certification

^vCensor board has become aggressive: Aamir Khan available

at: https://economictimes.indiatimes.com/magazines/panache/censor-board-has-become-aggressive-aamir-khan/articleshow/49901232.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

^{vi} By Uday Bhatiya, '100 years of film censorship in India' available at

<https://www.livemint.com/Leisure/j8SzkGgRoXofpxn57F8nZP/100-years-of-film-censorship-in-India.html>

^{vii}ibid

^{viii}ibid

^{ix}Article 'History of Film Censorship – A Timeline' available at <http://saveourcinema.in/history.html>

^xibid

^{xi}ibid

^{xii}Constituent Assembly Debates, Vol. VII p 780 (2nd December 1948)

^{xiii}<https://www.mondaq.com/india/broadcasting-film-tv-radio/827892/the-cinematograph-act-of-india>

^{xiv}1971 SCR (2) 446

^{xv}(2013) 12 S.C.C. 73