

CHAPTER 3

CENSORSHIP LEGISLATIONS

3.1 INTRODUCTION:

Broadly speaking, the term ‘censorship’ means a curb or a restriction on a person’s right to express his ideas in any form, on the ground that such expression would be harmful.¹⁷⁹ In India censorship remains fundamentally an instrument of intervention by the state, defined and administered by the parameters of law. The part of state is to govern through enactment and implementation of public policy. In a democratic setup, the formulation of public policy is closely related to the satisfaction of the needs of the citizens. Two significant, and underlying, factors in this regard are the perceptions about the needs and the outcome of actions based on these perceptions. From this point of view, law is one of the most important instruments of public policy.¹⁸⁰

The primary function of law is to secure desirable behaviour and avoid undesirable behaviour within a given framework of social, political and economic conditions. To its proponents, law upholds societal norms identifying what is deviant behaviour, on the other hand those who regard it as an instrument of repression, always oppose it, thereby leading to debate. However the most severe form of the said contradiction is rooted within the preventive censorship statutes. The seriousness of the matter is that it concerns a very sensitive aspect of human existence that is expression.

¹⁷⁹ CK Razdan (ed), *Bare Breasts and Bare Bottoms: Anatomy of Film Censorship in India* (Jaico Publishing House 1975).

¹⁸⁰ Someswar Bhowmik, *Cinema and Censorship –The politics of Control in India* (Orient Black Swan 2009).

Self-expression is an integral part of human existence. The concept of freedom of expression gradually gained ideological impetus and was soon inducted into the agenda of social activists. As a result there were demands to recognize the said concept as a basic human right. Any kind of restraint on freedom to expression has always been a subject of heated debate.

Within society there has always been a section who has opposed to absolute liberalism. These groups are inclined towards the preservation of Status Quo. Seized with a psychological compulsion to prevent others from acting in a manner detrimental to their cause, they always encourage some sort of social control. The advocates of such control have always put forward the counter concept of censorship, propagating against unconventional concepts and radical ideas. Since long, societies have been living with this irony.

The term ‘censorship’ goes back to the office of the censor established in Rome in 443BC.¹⁸¹ The censors were originally magistrates in ancient Rome, part of whose duties was to supervise public morals.¹⁸² Since beginning ‘censorship’ has been associated with some kind of social engineering and formation. But in the medieval age its meaning endured a noteworthy change, acquiring an oppressive connotation. The said change has sustained even in the modern times, often leading to conflict.

Censorship still prevails in a covert and a sophisticated form throughout the world. Even in the twentieth century, as in all previous history, there has been no exception from censorship in the world. It may however be considered assign of political and social progress that, everywhere in the world, at least lip-service is paid to the ideal of liberty, and no country brazenly admits that it is committed to an overall policy of religious, intellectual, artistic, or political censorship.

¹⁸¹ Someswar Bhowmik, *Cinema and Censorship –The politics of Control in India* (Orient Black Swan 2009).

¹⁸² CK Razdan (ed), *Bare Breasts and Bare Bottoms: Anatomy of Film Censorship in India* (Jaico Publishing House 1975).

This is apparent in the many covenants and declarations that have been passed in support of freedom and human rights which include the UN Charter (1945), the UN Declaration of Human Rights (1948), the UN Covenants on Civil and Political rights(1966) and on Economic, Social And Cultural Rights(1966) etc.¹⁸³

But the rule has been, and continues to be, repression, suppression, and oppression. There have been restrictions for medium of intense and collective expression like the press and the theatre. Later when Cinema revolutionized the concept and framework of human expression and communication, means were evolved to put even this medium under consistent surveillance. Censorship was found to be an ideal choice in many countries, including India.

3.2 EARLY CENSORSHIP LEGISLATION:

England was the first country to pass a specific law for films with its Cinematograph Act 1909. The immediate concern of the British government was the enforcement of adequate fire precautions in cinema halls. The provisions of the act did not outreach safety and structural matters. But gradually, it began to be used for purposes other than the one originally envisaged, until, almost inevitably, the subject matter of a film became a cause for intervention under this act. The British Board of Film Censors (BBFC) was established in 1912 by the film industry as an answer to this anomalous use of the act. Ultimately BBFC established itself as the sole censoring authority in Great Britain.¹⁸⁴

In Norway, the government set up a censorship body in 1913 for examination of films intended for public exhibition.¹⁸⁵

¹⁸³ Someswar Bhowmik, *Cinema and Censorship -The politics of Control in India* (Orient Black Swan 2009).

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

In Denmark, a decree was issued on 1 January 1914, providing for a Board of Censors to examine and certify films and pass them unconditionally with or without excisions, or subject to the conditions that children below sixteen were to be refused permission to enter the show.¹⁸⁶ At about the same time, Sweden too established a Board of Film Censors.¹⁸⁷ In 1916, a censorship Commission was set up in France for examination films and regulation of their exhibition nationwide. The aim was to prevent the outbreak of disorder that might result from the exhibition of criminal acts and modes of crime in films.¹⁸⁸

In the USA , the *Mutual Film Corporation v. Industrial Commission litigation*¹⁸⁹ (1915) resulted in a federal court verdict that movies were entertainment and as such not vehicles of protected speech. The case thus legalized state and local censorship in the so called ‘land of free speech’.¹⁹⁰

Over the period of time, film censorship became the manifestation of a complex of psychological phenomena applied in a social context seeking preservation of morality and maintenance of ethical standards, religious propriety, political stability and social hygiene.¹⁹¹

3.3 LEGISLATION IN INDIA DURING PRE INDEPENDENCE PERIOD:

On 7 July 1896, India was introduced to novelty of motion pictures with the first film show organized on by Maurice Sestier on the soils of India at the Watson’s Hotel in then Bombay.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ 236 US 230(1915).

¹⁹⁰ Someswar Bhowmik, *Cinema and Censorship –The politics of Control in India* (Orient Black Swan 2009).

¹⁹¹ *Ibid.*

Maurice Sestier was a representative of M/s. Lumiere Brothers of France who were instrumental in organizing the first ever commercial show of live visuals projected on screen in 1895¹⁹² and thereby starting film history. Success of the show led to the screening of more foreign films in India. The first full length feature film made in India was Raja Harishchandra. This path breaking movie was produced by Dadasaheb Phalke and was released on 3rd May 1913. As most of the early Indian movies were based on mythological themes, the producers of films had not yet realized the full potential of the newly invented medium as a form of creative art, possessing aesthetic, entertaining and propaganda value. Censorship in these circumstances was not scarcely necessary nor did anyone think of evolving rules and regulations for censorship.¹⁹³

Soon the popularity of cinema spread rapidly all over the country. Cinema left behind the traditional forms of communication far behind by virtue of its power of verisimilitude, or the appearance of being true. The British rulers watched keenly the growing popularity of cinema across the length and breadth of the country. They were concerned about the evocative power it wielded, and its ability to transcend the boundaries of sense experiences. In Britain, these concerns were taken care of by the Cinematograph Act 1909. But in the colony they had different set of apprehensions in relation to cinema.

One major element in the British colonial policy since the last quarter of the nineteenth century was the formulation of various measures of media control. The parameters of British sensitivity with regard to the media and the limits of their tolerance were defined within the first two decades of the twentieth century. These remained the keystones for administration until the departure of the British from India.

¹⁹² The first exhibition of cinematograph took place in Paris on 28th December 1895 at Paris.

¹⁹³ *The Report of the Enquiry Committee on Film Censorship* (Government of India 1969).

So as to protect its dominance, the British introduced a system of media control. Its main pillars were the Dramatic Performances Act 1876, Newspaper (Incitement to Offences) Act 1908 and Indian Press Act 1910. Gaining popularity in India, very soon, Cinema too joined the list.

In India, the first major legislative attempt to control cinema took place in 1918 when the Cinematograph Act¹⁹⁴ was enacted. Initially there was an effort to amend the Dramatic Performances Act 1876 and include provisions for the control of cinematographic exhibition. But the then secretary of the home department thought that the film medium called for a special method of surveillance.¹⁹⁵

In his speech introducing the Indian Cinematograph Bill 1917 in the imperial Legislative Assembly, Sir William Vincent, the home member in the Governor General's Executive Council, had affirmed:

“Most other civilized countries have found it necessary to revise and supplement the existing law for the control of spectacular entertainments with special reference to the control of exhibition. Two points are to be considered: a) Safety of the audience and b) Prevention of objectionable films being exhibited. It is obviously necessary to guard against the exhibition of indecent and improper films, or those which wound religious or racial feeling”¹⁹⁶

The Indian Cinematograph Act 1918¹⁹⁷, which finally evolved out of the said Bill, paved the way for an omniscient system of film censorship. The exhibition of films was brought under close supervision of government officials vested with statutory powers.

¹⁹⁴ Act 2 of 1918.

¹⁹⁵ Someswar Bhowmik, *Cinema and Censorship -The politics of Control in India* (Orient Black Swan 2009).

¹⁹⁶ Home (political)/November 1917/779-91 (Part B) file at the National Archives of India, New Delhi.

¹⁹⁷ The Act came into effect from 1 August 1920.

In order to ensure the safety of the audience and the prevention of exhibition of objectionable films on Indian soil the statute provided for two things-(i) licensing of cinema theatres, and (ii) censoring of films. The law prohibited the exhibition of films elsewhere than in a place licensed under the act by the licensing authorities and in violation of the licence conditions.¹⁹⁸The main consideration for licencing was, of course, the safety of the persons attending exhibition of films.¹⁹⁹

Two things were made mandatory: securing a license from the local civil authorities by any prospective exhibitor; and compulsory pre-censorship of each and every film, whether produced indigenously or imported from abroad. This was done to ascertain its suitability for public exhibition.

As regards certification of films for public exhibition, the statute authorized the local or provincial Governments to constitute an Authority for that purpose.²⁰⁰It did not lay down any principles to be followed by such authority while it decided the suitability or otherwise of films. Thus we see that the law conferred very wide discretion on the authority to grant or refuse certificate.

As far as licencing provisions were concerned, the act was generally modeled on the British Statute, vis., the Cinematograph Act of 1909. As local self-government system was not introduced into India at that time, therefore, the Act of 1918 could not envisage licencing by local governments. Because of this, the District Magistrate or the Commissioner of Police was designated as the licencing authority under this act.²⁰¹

However, the Indian model of censorship under the act of 1918 was different from the British model. While the Indian censorial authorities were institutionally part of the officialdom, the British practice was that the job was carried out by local bodies and the board of censors.

¹⁹⁸ The Cinematograph Act 1918, s 3.

¹⁹⁹ The Cinematograph Act 1918, s 5(1)(b).

²⁰⁰ The Cinematograph Act 1918, s 6.

²⁰¹The Cinematograph Act 1918, s 4.

The absence of local bodies and an organised association of the film industry persuaded the British authorities to introduce a more practicable method of censorship in India through official bodies.

Two years later, in 1920 censor boards were instituted in Bombay (Now Mumbai), Calcutta (Now Kolkata), Madras (Now Chennai) and Rangoon (Now Yangon²⁰²) to examine and certify films.²⁰³ Subsequently, in 1927, another censor board was established in Lahore.²⁰⁴ These Boards were authorised to carry on censorial activities with the help of inspectors.

These authorities initially worked without specific guidelines for evaluating films. Section 8(2) of the Cinematograph Act 1918 conferred power on the boards to frame rules for censorship of films. Exercising this power, the Boards drew up some guidelines for the Inspectors. The guidelines issued by the Bombay Board were very elaborate and notable furnishing a pattern for subsequent developments of censorship in India.²⁰⁵

The guidelines warned against rigidity and called for logical decisions judging films on their own merits. The honest opinion of the inspectors on the moral impact of a film was endorsed. Extenuation of crime, glorification of criminals and vicious characters, contempt against the institution of marriage, exhibition of nudity, character assassination, disrespect to foreign nations, fermenting social unrest and spreading disaffection or resistance to government were the important objectionable practices prohibited under the guidelines. The Inspectors were to assess the film on the basis of the impression likely to be made on an average cinema audience in India. While considering the effect of a cinema, the bad reputation, if any of the book on which it is based should also be taken into consideration by Inspectors.

²⁰² Former capital of Myanmar.

²⁰³ Monika Mehta, *Censorship & Sexuality in Bombay Cinema* (University of Texas Press 2012).

²⁰⁴ *Ibid.*

²⁰⁵ *The Report of the Enquiry Committee on Film Censorship* (Government of India 1969), 6-8 and 30, 31.

The Inspectors were further authorised to order for a change in the title or subtitle of the film or to cut out portions from films. Further, the guidelines listed forty two specific matters that were objectionable for public exhibitions.²⁰⁶

The other boards in India also drew up rules for censorship but they were less elaborate.²⁰⁷ The Britishers and the Indians criticized the working of these boards. It was alleged by the former that films as certified by the Boards presented a distorted version of normal life of westerners lowering the respect for western civilization in the minds of Indians. The Indian view was that such films polluted Indian culture and norms of morality, and copied the worst in western films like excessive love making, indecently dressed woman, scenes of cruelty and torture, criminal acts and the use of violence.

3.3.1 Criticism of the working of the 1918 Act

In time the Indian film industry began to develop. Coming out of their shell of religious themes they began to imitate the American movies shown in India mostly of a lower quality. This led to lots of criticism of the functioning of the censors in India. Even in England, articles critical of the functioning of the boards were written.²⁰⁸

The Secretary of State for India in one of his minutes (1924) regarded the film censorship system in India as inadequate and emphasized that the censor should himself see the film and should not entrust the job to ‘low paid Inspectors’.

²⁰⁶ These were largely based on the well-known TP O'Connor (Second President of the British Board of Film Censors appointed in 1916).

²⁰⁷ The Bengal Board of Film Censors formulated four principles viz., moral, racial, religious and political. These principles mentioned eight subjects as objectionable viz., rape, drawing of young girls astray, prostitution, feminine nudity, scenes showing women in drunken state, exaggerated scenes of debauchery at cabarets, desecration of places of worship, torture or cruelty scenes by whites against blacks or vice versa.

²⁰⁸ Westminster Gazette, November 17, 1921.

Eventually, the colonial authorities formed the Indian Cinematograph Inquiry Committee in 1927.²⁰⁹ Headed by a prominent Indian lawyer, T. Rangachariar, the terms of reference of the committee included examination of the organization and the principles and methods of censorship, survey of the organization for the exhibition of cinematograph films and the film producing industry, and consideration of the steps to be taken to encourage the exhibition of film produced within the British Empire generally and the production and exhibition of Indian film in particular.²¹⁰

The committee rejected the old criticisms on censorship, and cleared the Censor Boards of the charges of laxity and dereliction of duty. The committee further found that the cinema was not responsible for increase in delinquency or in shaping the modus operandi of criminals. Based on the evidence of police witnesses, the committee opined that cinema had not in any way, increased the criminal propensity of an individual. The opinion of the committee was that most of the criticism against cinema was based on vulgar posters and advertisements and in many cases the critics entirely relied on these posters and advertisements without seeing the films. Setting up of a Central Board of Film Censors with a whole-time chairman and non-official members, appointment of whole time Chief Censor and deputy Censors and provision for an appeal from the decision taken by the board were some salient features of its liberal approach to censorship.²¹¹ The committee was against any classification. Still, it recommended for the adoption of the then existing British practice of issuing two types of certificates, one for universal public exhibition and the other for public exhibition restricted to adults.²¹²

²⁰⁹ Monika Mehta, *Censorship & Sexuality in Bombay Cinema* (University of Texas Press 2012).

²¹⁰ *The Report of the Enquiry Committee on Film Censorship* (Government of India 1969) 12-14.

²¹¹ *Ibid.*

²¹² *Ibid.*

The committee's recommendations remained unimplemented for a long time probably because they gave a green signal to the working of the then existing Boards or because political and constitutional issues stood in the way.

3.4 POST INDEPENDENCE DEVELOPMENT:

Theoretically, there was indeed no need for the rulers of independent India to carry forward the colonial legacy, called film censorship. But they surprised everybody by choosing to retain the system of film censorship in the post-colonial era.

Towards the end of 1948, the Governments of Bombay and Madras published a "Production Code", comprising a set of suggestions for the guidance of producers of films. The Code was drawn up "with a view to ensure that the cinema plays its proper role in the building of a healthy national life". The industry did not reject the Code. But the Code did not lead to any substantial change.²¹³

Since the days of the interim government, the film trade had begun to express itself strongly in favour of a centralized system of film censorship in order to weed out the regional differences in judgments.

In the immediate post-independence scenario, the government allowed regulation of films for exhibition and of cinemas themselves to be carried out under the provisions of the Cinematograph Act 1918, wherein power of certifying films for exhibition remained with the state governments.

Situation changed with the passage of Government of India (Amendment) Act 1949 which was brought to amend the Government of India Act 1935 that was still in force in matters of general governance.

²¹³ PM Bakshi, "Censorship of Films: Some Glimpses from history", *Lawyers Collective* (6 June 2001), available online at <http://www.lawyerscollective.org/mag/2001/6-jun.pdf> (last accessed on 8 March 2017).

In terms of section 3(b)(1A)(b) of this amendment, the central government's executive authority was extended to the provisions in respect of, among other things, the sanctioning of cinematograph films for exhibition. The central government soon brought the sanctioning of cinematograph films for exhibition under the list of union subjects. This was a significant shift, as in the Government of India Act 1935, censorship of films was a current subject, which meant that it was under the joint control of the central and the provincial governments. Now the Central Legislature could pass laws in this matter, even superseding Provincial Laws, but the responsibility of executive action was solely on the Provincial Governments.

The central government utilized its newly found authority by passing the Cinematograph (Amendment) Act 1949²¹⁴. Although, it was still related to the pre-independence Cinematograph Act 1918. It introduced two categories of censor certificates: 'U' for unrestricted exhibition and 'A' for exhibition restricted to adults only (people above the age of eighteen years).

On 29 August, 1949, the Government of India appointed a Film Enquiry Committee under the chairmanship of S.K.Patil, who was a member of constituent Assembly.

The directives before the committee were:

“a) to examine the growth and organization of the film industry in India and to indicate the lines on which further development should be directed and

b) to examine what measure should be adopted to enable films in India to develop into an effective instrument for promotion of national culture , education and healthy entertainment.”

²¹⁴Act 39 of 1949.

The committee so appointed supported the centralization of censorship in the country.

As a result the Cinematograph (Second Amendment) Act, 1949²¹⁵.The very objective of this amendment was to centralize the machinery for censorship of films. For this, Section 6 to 9 of the Cinematograph Act 1918 were thoroughly rewritten. By setting up a Central Board of Film Censors (CBFC), a centralized film censorship regime was formally put in place under the sole control of the central government. With effect from 15 January, 1951, the autonomy of the regional boards was abolished. But the Regional Boards, retained with them powers of previewing films. Another change was conferment on the central Government of an appellate jurisdiction. The central government was given power to make rules providing for the conditions under which censorial powers were to be exercised by the authority and a reserve power to overrule the decisions of the Board. The State Governments or local authorities were conferred with the power to suspend the exhibition of a film if they were satisfied that the film was likely to cause a breach of peace.

The Cinematograph (censorship) Rules 1951 were consequently promulgated under section 9(1) and (2) of the Cinematograph Act 1918 (as amended up to 1949).These set out the composition of the centralized Board and its ways of functioning.

Another major development of that time was adoption of the Constitution on 26 January 1950, which declared India as a sovereign democratic republic granting several fundamental rights to Indian citizens. These were listed under Article 19(1).

²¹⁵Act 62 of 1949.

The Right to freedom of Speech and Expression was on top of this list as Article 19(1)(a):

All citizens shall have the right to freedom of speech and expression.

Exceptions to this freedom were granted under Article 19(2), which read:

Nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law in so far as it relates to, or prevents the state from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the State.

With the commencement of the Constitution of India some changes occurred in the powers of State and central Governments relating to cinema. The Centre became the competent authority in the matter of ‘sanctioning of cinematograph films for exhibition’.²¹⁶The power of the state to deal with cinemas was subject to the power of the Centre.²¹⁷In the changed setting there was difficulty in administering the then existing law relating to cinema. There were calls for greater Central Control and for separation of film censorship from cinema house licencing.

Moreover, there were series of judgments in 1950 and 1951, striking down statutes that did not restrict the exercise of regulatory executive powers to grounds authorized in Article 19(2). In prompt reaction to this development, the government enacted the Constitution (First Amendment) Act 1951. It fundamentally altered the spirit and scope of the original Article 19(2).

It was in this state of affairs, that the Cinematograph Act 1952 was passed. The new legislation unveiled the post-colonial agenda for pre censorship of films in independent India.

²¹⁶The Constitution of India, Seventh Schedule , List I , Entry 60.

²¹⁷*Ibid* ,List II, Entry 30.

3.5 AN INSIGHT INTO THE CINEMATOGRAPH ACT, 1952:

3.5.1 Brief Introduction

Britishers brought silent films from England to India for their private entertainment in their bungalows. But this form of entertainment could not remain limited to their bungalows for long. With the passage of time, cinemas sprang up in the country and took the fancy of Indian public. In the fitness of the situation, the cinematograph Act, 1918 was passed by the legislature in order to regulate the exhibition of films, their certification as suitable for public exhibition and licencing. Post-independence, although the 1918 Act was amended in 1949 but that was not sufficient to meet the changed circumstance after independence of the country. Hence the cinematograph Bill was introduced in the parliament. After getting passed by both the houses of Parliament, the bill received the assent of the President on 21st March, 1952. It came into effect from 28th July, 1952²¹⁸.

3.5.2 Statement of Objects and Reasons

The ostensible purpose behind the enactment of The Cinematograph Act 1952 was the separation of the provisions relating to the sanctioning of films for exhibition (Union subject²¹⁹) from the provisions relating to the licensing and regulation of cinemas (State subject²²⁰) in order to redefine the whole system for content control in cinema.

²¹⁸ S.R.O.1066, dated the 10th June, 1952, published in Gazette of India, 1952, Pt. II, Sec. 3 945.

²¹⁹ Entry 60 of the Union List.

²²⁰ Entry 33 of the State List.

3.5.3 Parts and Application of The Cinematograph Act, 1952

The Cinematograph Act, 1952 was divided into parts I, II, III and IV. Parts I, II and IV extended to the whole of India except Jammu & Kashmir, and part III was applicable to Part C states only. Part I of the Act comprised of the preliminary sections dealing with definitions and application of the Act. Part II of the Act dealt with certification of films for public exhibition. It contained Sections 3 to 9.

Section 3 formalised the existence and responsibility of a centralised Board by saying

“The Central Government may, by notification in the official Gazette, constitute a Board of Film Censors, consisting of such number of persons as may be prescribed, for the purpose of sanctioning and certifying films as suitable for unrestricted public exhibition or for public exhibition restricted to adults and prescribed in the manner in which the board shall exercise the powers conferred on it by this act.”

Taking advantage of the constitutional provision of the seventh schedule, Section 4 of the said Act read:

“1) If the board ,after examination, considers that a film is suitable for unrestricted public exhibition or that , although not suitable for such exhibition it is suitable for public exhibition restricted to adults , it shall grant to the person applying for a certificate in respect of the film a ‘U’ certificate in the former case and an ‘A’ certificate in the latter case, and shall, cause the film to be so marked in the prescribed manner, and any such certificate shall, save as hereinafter provided, be valid throughout India.

2) If the Board is of the opinion that a film is neither suitable for unrestricted public exhibition nor for public exhibition restricted to adults, it shall inform the person applying for the certificate of its decision.”

So we see that initially, there was no express provision that enabled the Board to demand deletion or modification in a film before it was granted certificate.

Under Section 8, the central government reserved for itself the power to make rules. To give effect to this provision, the Cinematograph (Censorship) Rules 1951 were revalidated in order to govern the operations of CBFC.

Also a four page document - 'Directive to Examining Committees regarding the principles to be observed in determining whether a film is or is not suitable for public exhibition' was prepared and published. It contained a detailed list of objectionable matters in films as it is desirable that there shall, as far as possible, be a uniform standard for determining whether a film is suitable or not for unrestricted public exhibition or for public exhibition restricted to adults²²¹.

Under the provisions of the revalidated 1951 rules, each state was required to frame cinematograph regulation acts and rules putting in place a regime of licensing authorities armed with powers to impose conditions and restrictions on cinematograph exhibitions. A condition, prohibiting exhibition of films without censor certificate in the licensed premises, was incorporated in all such rules. These legislations took the provisions of Part III of the 1952 act as a model, which applied to states under control of the central government.

3.5.4 Changes in 1953

In order to strengthen the revisional powers of the government and to make the penalty clauses more deterrent, the Cinematograph (Amendment) Act 1953 was passed. The act specified that the central government could at any time suspend the exhibition of a film for such period as may be specified but not exceeding two months.

²²¹Someswar Bhowmik, *Cinema and Censorship -The politics of Control in India* (Orient Black Swan 2009) 78.

Another major change made in 1953 was alteration of the Cinematograph Censorship Rules, 1951. Initially a certificate for permitting exhibition was issued on the basis of prior examination. The then existing values and trends were applied in such examination. To expect that a certificate once granted with regard to the then conditions would never fall out of tune with prevalent standards was unreasonable. To make such examination reasonable, Cinematograph Censorship Rules, 1951 were altered in order to limit the validity of a censorship certificate to five years.

3.5.5 1954 Directive

Superseding CBFC's earlier directive issued in 1951, the CBFC again issued 'Directive to Examining Committees' in September 1954, regarding principles to be observed in determining whether a film is or is not suitable for public exhibition.

The new directive set out 3 general principles for censorship: “

1. No picture shall be certified for public exhibition which will lower the moral standards of those who see it. Hence the sympathy of the audience shall not be thrown on the side of crime, wrongdoing, evil or sin.
2. Standards of life, having regard to the standards of the country and the people to which the story relates, shall not be so portrayed as to deprave the morality of the audience.
3. The prevailing laws shall not be so ridiculed as to create sympathy for violation of such laws.”

CBFC elaborated these principles in a series of detailed directions dealing with various undesirable parameters.

These were related to crime, immorality, relations between opposite sexes, exhibition of the human body, attitude towards public servants, promotion of social disorder and unrest and the sensitivities of foreign nations.

3.5.6 Cinematograph Amendment Bill 1956

On 17 August 1956, the Lok Sabha passed a private member's resolution, moved by C.R. Narsimham, suggesting that the government should seek additional powers for improving the standard of films in the interest of national unity and progress. Consequently a Cinematograph Amendment Bill was introduced in December 1956 to provide for the construction of a National Film Board for the purpose of promoting the development of films as a medium of culture, education and healthy entertainment and for the regulation of exhibitions by means of the Cinematograph. But the bill was dropped in August 1957, on grounds of economic difficulties.

3.5.7 Cinematograph Amendment Act 1959

This act heralded a thorough overhauling of the principal Cinematograph Act 1952. Sections 3, 4, 5 and 6 were substituted for by newly framed sections 3, 4, 5, 5A, 5B, 5C and 6. These revised sections spelt out the functions of the CBFC and the central Government more elaborately than in the Principal Act. Most significant feature of this amendment was the incorporation of '**Principles for Guidance in Certifying Films**' as section 5B of the amended act.

This section consisted of two clauses, as follows: “

1. A film shall not be carried for public exhibition, if in the opinion of the authority competent to grant the certificate, the film or any part of it is

against the interest of the security of the state, friendly relations with foreign states, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

2. Subject to the provisions contained in sub section(1) ,the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificate under this Act in sanctioning films for public exhibition.”

These clauses therefore provide for two things. First, it incorporated in the statute books the specific grounds on which public exhibition of any film, or a part of it, could be forbidden. Second, it expressly authorized sanctioning of films for public exhibition .The hegemony of the state over the film medium was complete.

3.5.8 1960 Guidelines

Consequently, in 1960 Government of India itself issued a set of guidelines regarding censoring of films. This was done by the Ministry of Information and Broadcasting by a notification dated 6 February 1960 under section 5B (2) of the amended Act 1952. These set out the principles, which would guide the CBFC in sanctioning films for public exhibition.

Through these guidelines the government abolished whatever leverage the CBFC was granted regarding film censorship in the 1950s.And ,with the installation of a triad of act, rules and guidelines, devised and monitored by the bureaucracy-politician nexus , the state’s hegemony over the entire pre-censorship machinery was complete.

3.5.9 Procedural Changes for Examination of Films in 1963

The newly introduced Section 4 of the Cinematograph (Amendment) Act 1959 necessitated certain changes in the procedure for examination of films by the CBFC. These changes were incorporated by introducing two amendments to the Cinematograph(Censorship) Rules in 1963.

In May 1963, the Cinematograph (Censorship) Amendment Rules 1963 provided for a final appeal to the central government by an applicant who was dissatisfied with the verdict of the CBFC. Then in September 1963, the Cinematograph (Censorship) Second Amendment Rules 1963 provided that the chairman of the CBFC might on his own behalf or on the request of an applicant, refer a film to a revising Committee subsequent to its examination in the examining committee.

3.5.10 Post Nehruvian Era

First evaluation of film censorship was done by the Estimate Committee (1966-67) of the Third Lok Sabha in 1966. However this committee could not finalise its report due to sudden dissolution of the Lok Sabha on 3 March 1967.

A new Estimates Committee, constituted under the fourth Lok Sabha examined the minutes of evidence prepared by its predecessor and came down to its own conclusions.

Its core suggestions were

1. Relocation the Head quarter of the CBFC in a central city
2. Cut down administrative cost

Made a general appeal to the government to evolve a new national policy encompassing both film production and film censorship in consultation with film industry

It called for a suitable modification of the censorship code in order to reflect the spirit of the times.

3.5.11 Khosla Committee 1968

The completely government dominated system of film censorship was subject to severe criticism from all quarters especially by the film industry. On May 7, 1965 the Rajya Sabha passed a resolution demanding for a thorough enquiry into the working of the censorship regulations in India. The Central government therefore decided to set up a High powered Enquiry Committee on Film Censorship in 1968 under the Chairmanship of Justice G.D Khosla to enquire into the working of the existing procedures for certification of cinematograph films for public exhibition in India and allied matters.²²²

The committee conducted extensive studies and produced an excellent and elaborate report. Its recommendations though controversial, were notable .They said that Regional Boards should be abolished.²²³ In their place the central board should exercise the whole censorial powers. The Board should consist of about twenty persons drawn from different regions and should view all films before certification is given. The decisions of the Board shall be made final and the Central Government should be diverted of its appellate as well as revisional powers.²²⁴ Significantly the committee recommended for scrapping the entire directions. Another remarkable recommendation of the Committee was to widen the categories of certificates. The commission opined that the censor while censoring films should evaluate the overall impression of the films on the viewers .This recommendation was in due course accepted by the government although many remained unimplemented, to a great extent.

²²²Resolution No.14/35/64 F.C dated 28th March 1968 by the Ministry of Information and Broadcasting.

²²³*The Report of the Enquiry Committee on Film Censorship* (Government of India 1969) 100.

²²⁴*The Report of the Enquiry Committee on Film Censorship* (Government of India 1969) 95.

3.5.12 K.A Abbas Case 1969

Soon after the submission of the Khosla report, the Supreme Court had the occasion to examine the validity of censorship regulations. The Court upheld the validity of these regulations. It laid emphasis on the need for flexibility in approach by the censors. The court insisted that the censors should take into account the artistic excellence in presenting the theme by film makers. This line of thinking led the court to disapprove the mechanism of Government or in other words the bureaucracy to hear appeals against censorial decisions and make a suggestion for institution of an independent appellate authority which the government conceded in the case.²²⁵

3.5.13 Cinematograph (Amendment) Act 1973

Cinematograph (Amendment) Act 1973 was passed by the parliament in order to extend the domain of the Cinematograph Act 1952 to the state of Jammu and Kashmir. Although it was another matter, quite unrelated to the ongoing issue but having some bearing on film censorship.

3.5.14 Cinematograph (Amendment) Act 1974

With great enthusiasm and zeal and in pursuance of the recommendations of the Khosla Committee, the Central Government piloted an amendment to the Cinematograph Act in 1974.

²²⁵ See also AG Noorani, "Censorship and the State", *Frontline* (10-23 September 2011), available online at <http://www.frontline.in/static/html/fl2819/stories/20110923281909100.htm> (last accessed 8 March 2017).

Accordingly the power of the Regional was taken away and the Central Board²²⁶ was enjoined to preview films for censorship with the help of panel of assessors. The amendment provided for a Revising Committee²²⁷ for the purpose of review by the Board. It proposed for the establishment of Appellate Tribunal to hear appeals against the decisions of CBFC.²²⁸ The Central Government would have all the comprehensive power to revise the decision of the board and the appellate tribunal.²²⁹

Act was to come into force from 1 July 1975. But it was set aside. The official reason put forward mentioned that the Cinematograph (Rules), which were also to be amended by another set of rules to implement the Amendment Act, had not yet been notified.

3.5.15 Censorship Guidelines 1978

Another significant event in the field of censorship took place in 1978. The Ministry of Information and Broadcasting issued fresh guidelines²³⁰ to the CBFC. In fact they did not deal with new areas but considerably simplified the old directions and made them compact. This was ostensibly done as a result of scathing attack on the 1960 guidelines by the Khosla Committee, which insisted that the guidelines should not go beyond the scope of restrictions enumerated in Article 19(2).

Emphasis was laid on the broad objectives of film censorship, which as per

²²⁶ The Central Board of Film Censors was to consist of a Chairperson, five other whole time, salaried members and six honorary members appointed by the Central Government. The Cinematograph (Amendment) Act 1974, Section 3.

²²⁷ It would comprise the chairperson, one whole-time member and one honorary member.

²²⁸ The Cinematograph (Amendment) Act 1974, s 10.

²²⁹ The Cinematograph (Amendment) Act 1974, s 11(b).

²³⁰ Via Notification No. S.O.9 (E0 dated 7 January 1978).

guidelines were to ensure that the medium of film remains responsible and sensitive to the value and standards of society, artistic expression and creative freedom are not duly curbed and censorship is responsive to social change.²³¹

Attention of the Board was drawn to some specific objectionable matters in cinema. These were: glorification or justification of violence, modus-operandi of criminals or other visuals or words likely to incite the commission of any offence, pointless or avoidable scenes of violence, cruelty and horror, vulgarity, obscenity and depravity, visuals or words contemptuous of racial, religious or other groups, depiction of scenes or visuals affecting sovereignty and integrity of India, security of the state, friendly relations with foreign states or public order and visuals and words involving defamation or contempt of court.²³²

Under these guidelines the CBFC was for the first time advised to take into consideration the overall impact of a film. Further it provided that the film must be examined in the light of contemporary standards of the country and the people to which the film relates.²³³

3.5.16 Working Group on National Film Policy 1979

A Conference of State Information Ministers, held on 14 November 1977, recommended the revival of the efforts towards the formulation of a National Film Policy.²³⁴ In the wake of emergency, the Janta Party government took it up as a means to upstage the previous regime.

²³¹ Paragraph 1 of the Censorship Guidelines 1978.

²³² Paragraph 2 of the Censorship Guidelines 1978.

²³³ Paragraph 3 of the Guidelines 1978, *CF Miller v. California*, (1973) 413 US 14, *Ranjit Udeshi v. State of Maharashtra*, (1965) AIR SC 881.

²³⁴ As suggested during the National Film Seminar in November 1976. This seminar was organized by the Ministry of Information and Broadcasting on from 1-3 July 1976 under the chairmanship of Styajit Ray.

Accordingly, a working group on National Film Policy was set up²³⁵ under the chairmanship of Dr.K.S Karanth. The group came out very strongly against the Revisional Powers of the Central Government. It recommended that except on grounds of integrity and sovereignty of India, security of state and friendly relations with foreign states, the revisional and appellate powers of the central government over the decisions of CBFC shall be taken away and given to a proper judicial tribunal.²³⁶

Another significant recommendation was the introduction of an additional category of censorship certificate with a view to warning the parents on the unsuitability of the film to be seen by children below twelve years of age, which they called UA.²³⁷

The organizational structure of the Board envisaged by the 1974 amendment was endorsed by the Working Group.²³⁸ Further it recommended for the introduction of three additional Regional Boards at Bangalore, Hyderabad and Trivandrum in order to strengthen the enforcement machinery under the Act.²³⁹ According to the Working Group, the Board should constantly try to maintain a balance in a continuously changing environment.²⁴⁰

3.5.17 Cinematograph (Amendment) Act 1981

There was a regime change in January 1980. The new government reverted to the Cinematograph (Amendment) Act 1974, which could not be implemented earlier.

²³⁵ Set up by Government of India Resolution no. 5/6/77-F(1) dated 8May 1979.

²³⁶ *Report of the Working Group on National Film Policy* (Government of India 1980) 77.

²³⁷ *Ibid.*

²³⁸ *Report of the Working Group on National Film Policy* (Government of India 1980) 78-79.

²³⁹ *Report of the Working Group on National Film Policy* (Government of India 1980) 79.

²⁴⁰ *Ibid.*

The government promised to initiate immediate exercise to formulate a new one, taking into consideration the recommendations of both the Khosla committee and working group.

The 1981 Act changed the name of the Central Board of Film Censorship to the **Central Board of Film Certification** to underline a more tolerant attitude of the government.

Membership of the board was increased from nine to not less than twelve and not more than twenty five.

Accepting the suggestion of the Karanth Group, the act expanded the two-fold classification of films, namely the 'U' and 'A' categories. Two more categories were introduced - 'UA' for unrestricted public exhibition subject to the film being endorsed with the caution to the parents/guardians to satisfy themselves as to whether they would like their children or wards below the age of twelve years to see a film and 'S' for public exhibition restricted to members of any profession or any class of persons with specific interest in the nature , content and theme of a film.

The 1981 Act also amplified the principles of certification of films under section 5 B (1) of the principal act. This was in the light of amendment effected to Article 19(2) of the Constitution by the Constitution (Sixteenth Amendment) Act 1963 which added to the clause one more restriction – 'in the interest of sovereignty and integrity of India' on the freedom of expression.

It provided for constitution of an appellate tribunal. Such tribunal was to consist of a chairman and not more than four other members appointed by the central government. The Chairperson was to be a person who was a retired judge of a High court or someone qualified to be a judge of a High Court.

As regards the qualification of the four other members, it was simply stipulated that they should be such persons who, in the opinion of the central government, were qualified to judge the effect of films on the members of the public.

The said act gave the central government more powers to deal strongly with cases of violation of the conditions of censor certificate like exhibition of uncensored films, exhibition of certified films with portions directed to be deleted by the CBFC, exhibition of films with portions not shown to the CBFC(interpolation), showing adult films to non-adults, failure to comply with any order of the central government or the CBFC in exercise of the powers conferred on it by the 1952 Act or rules there under. As a response to this, the central government was given power to suspend or revoke the certificate granted by the CBFC in cases of public exhibition in contravention of the provisions of Part II of the principal Act or rules made thereunder.

The said amendment act came into effect from 1 June 1983, more than one and a half year after notification. The delay was necessitated by the government's intention to formulate and bring simultaneously into effect the Cinematograph (Certification) Rules 1983 to replace the Cinematograph (Censorship) Rules 1958.

Significant features of these rules were:

“-The express provision for the adequate representation of women in the board (Rule 3 A)

And

-the creation of a new post of Chief Executive Officer at the headquarters in Bombay (Rule 9(1).”

On the whole it ushered in a new era in the history of film censorship in India.

3.5.18 Cinematograph (Amendment) Act 1984

The basic objective of this amendment was to provide for more stringent punishment for contravention of the provisions of censor certificate as laid down in Part II of the principal act and the rules framed accordingly.

In the eighties, both the state and commercial film industry encountered threats on account of the video boom in the country. Whereas the state wondered how to regulate these new media, the film industry sought ways to lure audiences to theatres. In addition viewers had access to pirated videos of new or prohibited films. Cable television also increased access to films. In any neighborhood, viewers could easily ask their local cable service to screen films of their choice. The fact that the new media circumvented state authority and in the process gave the public access to unregulated material provoked the anxieties of the state. Due to these developments, exercise of control over mediating technologies was at stake. It had become easier for some unscrupulous persons to violate the norms attached to censor certificate as there was an effort by certain owners of video parlours to claim immunity from the conditions of censorship for exhibition of films. The state sought to expand its control over these technologies by passing new laws that policed video piracy and required video certification.

3.5.19 The Indecent Representation Of Women (Prevention) Act 1986

As an indirect result of the passing of the Indecent Representation of Women (prevention) act 1986 the following item was added to the 1978 Guidelines:

Scenes involving sexual violence against women, like attempt to rape, gang-rape, murder or any other form of molestation, or scenes of a similar nature shall be avoided and if for any reason such scenes are found to be inevitable for the sequence of a theme they shall be properly scrutinized so as to ensure that they do

not create any adverse impression on the viewers and the duration of such scenes shall be reduced to the shortest span.

3.5.20 Certification Guidelines 1991

Till 1989, film censorship/certification had three main objectives, namely responsibility and sensitivity of the film medium to ‘the values and standards of society’, respect for ‘artistic expression and creative freedom’ and responsiveness to ‘social change’. In 1991, the Central Government issued new guidelines in order to guide the process of film certification. With these guidelines, two more objectives were incorporated, namely providing ‘clean and healthy entertainment’ and promoting ‘good standard’ films. The said guidelines have guided the process of certification for the past two and a half decades.

3.6 CONCLUSION:

The development and popularity of Cinema in India had put the Legislators a tough task to deal with. What we see here is that until 1918, the film maker and the film exhibitor in India enjoyed total freedom .For all practical purposes, film censorship began in India with the passing of the Cinematograph Act in 1918.

Soon Censor boards were set up, in accordance with the terms of the said Act. The said colonial legacy was retained in the post-independence period. Eventually, Cinematograph Act 1952 was passed.

The Law had to run behind the artistic work to ensure the morality and cultural values in India. The kinds of Films being released were out of reach of the prevailing law for the reason of creativity behind such work. One major challenge was that, we could not have applied the similar laws prevailing in other countries

or adopts such character for the reason of difference in the culture, language and ethics involved. The Cinema was not limited to entertainment but also enshrining the problems in the society but eventually the shift to global issues became important and hence to regulate the same was a herculean task. The amendments from time to time were incorporated to ensure a mechanism followed to applaud the artistic creativity as well as meeting up the moral, cultural and religious norms in India.

To sum up, what we see here is that, as on date, the CBFC discharges its function of certification in accordance with the following provisions:

- a) The Cinematograph Act 1952
- b) The Cinematograph (Certification) Rules, 1983
- c) The Guidelines issued in 1991 by the central government under Section 5B of the Cinematograph Act.

In addition, CBFC is required to take into consideration the provisions of the following Acts, Rules and Guidelines while certifying films:

- Cable Television Networks (Regulation) Act, 1995 read with the Cable Television Network Rules, 1994.
- Prevention of Cruelty to Animals Act.
- Cigarettes and other Tobacco Products (Prohibition of Advertisement and regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003& Rules 2004.
- Emblems and Names (Prevention of Improper Use) Act, 1950.
- Prevention of Insults to National Honour Act 1971.
- Drug and Magic Remedies Act.