

**CONSTITUTIONAL GUARANTEES FOR INDIAN  
CINEMA: A STUDY OF FILM CENSORSHIP IN ITS  
LEAD UP TO THE CINEMATOGGRAPH (AMENDMENT)  
BILL, 2021**

*Kartikeya Anshu\**

**ABSTRACT**

*Historically, censorship in India has always been a subject of intense discourse, given its constant clash with freedom of speech and expression. The legal dialogue around film censorship has increased dramatically in recent years, evidently having peaked with the Cinematograph (Amendment) Bill, 2021. This paper attempts to understand the philosophy of the practice of film censorship, alongside the constitutional guarantees of freedom of speech and the accompanying reasonable restrictions.*

*Beginning with an account of history of litigation governing film censorship from the colonial period to the modern day; the paper establishes the historical circumstances of the Cinematograph Acts and changes in philosophies of the laws before and after independence (or the lack thereof). Following this, the paper analyses judicial positions on film censorship, with a particular focus on*

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\*Kartikeya Anshu is a fourth year student at ILS, Pune. The author may be reached at [kartikeyaanshu@gmail.com](mailto:kartikeyaanshu@gmail.com).

*historical patterns of judgements rendered in landmark cases on the issue. The next section focuses on politicisation of film censorship, particularly the judicial and extrajudicial restriction on rights of filmmakers of free speech and expression. The section also elaborates on the effects of the proposed 2020 Amendment. Finally, the paper concludes with a case of reform applicable for the current system of film censorship that promises a better balance of the movie-makers' freedom of speech and expression, and the rider for reasonable restrictions.*

*Drawing greatly from existing literature on censorship laws and jurisprudence around the world; this paper is an attempt to raise important questions on the virtue of film censorship and the nature of creative expression.*

## **I. INTRODUCTION**

Ever since the premiere of Dadasaheb Phalke's *Raja Harishchandra* in the April of 1913, to the major theatre release last-Friday, the Indian Cinema has constantly created a history of intense discourse centred around censorship and freedom of speech and expression. Unlike the wild artistic independence associated with a painter or a poet; a filmmaker's craft has always been bridled by not just the machinations of the artist's own expression, but also by the demands of the audiences and disturbingly, the impositions of the establishment. In the exercise of the latter, the machinations of political censorship are just as much

a cause of concern, as they are a source of study for greater academic potency.

Today, India produces more pictures than any other country in the world,<sup>1</sup> and it is this great scope of work that has established the foundation for heavy socio-political commentary. At an important juncture in its history, the practice of film censorship has come under a great deal of scrutiny in recent years, with the Cinematograph (Amendment) Bill, 2021<sup>2</sup> appearing to be the zenith of a massive nation-wide dialogue. This paper aims to ask a question very fundamental to the philosophy behind the practice: how does film censorship reconcile with the constitutional guarantees of freedom of speech and expression, and exist alongside other norms of democratic principles that dictate the functioning of Indian society.

## **II. A BRIEF HISTORY OF THE CENSORSHIP ACT(S)**

In practice, film censorship in India is a socio-political phenomenon that has continually grown since its colonial days, while still carrying the influences of its colonial past. It has been in existence since the setting up of censor boards in Bombay, Chennai, Madras, and Rangoon in 1920, which in turn was conceived in the Cinematograph Act, 1918 (Hereinafter as “the 1918 Act”).<sup>3</sup> It was enacted following the sudden and lucrative rise of the Indian film industry in its formative years. The primary objectives behind the inception of the Act were ensuring safety of the audiences and enforcing censorship policies. While the former

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<sup>1</sup>UNESCO Institute for Statistics, ‘Analysis of the UIS International Survey on Feature Film Statistics’ (2009) 4.

<sup>2</sup>Ministry of Information and Broadcasting, GoI, ‘Public comments sought on the Cinematograph (Amendment) Bill 2021’ (18 June 2021).

<sup>3</sup>Someswar Bhowmik, *Cinema and Censorship: The Politics of Control in India* (Orient Black Swan 2009).

was taken care of by allowing exhibition of movies only in select locations, the latter was left to the censor boards.<sup>4</sup>

Under the provisions of the 1918 Act, films could not be exhibited without the Board of Censors decreeing it fit for release and granting it the certificate. In place of granting 'A' or 'U' ratings, the Board could simply classify films as 'suitable' or 'unsuitable' for release.<sup>5</sup> Additionally, the government also had the discretionary power to revoke film certificates.

While the 1918 Act itself did not define what was to be deemed a 'suitable film', it gave the censor board a list of forty-three objectionable subjects that a film should not contain. Among others, these included politically motivated subjects such as the freedom struggle and imperialist oppression, and matters of sexual provocativeness, such as the sexualisation of the female form.<sup>6</sup>

In 1927, owing to the increasing number of protestations that were mainly led by colonialists about a perceived degree of laxity towards moral censorship of material derogation of the English - the Indian Cinematograph Committee (Hereinafter as "the ICC") was set up.<sup>7</sup> Commenting on the need to change the censorship practices in the country, the ICC recommended the inception of a centralised body, that would effectively eliminate any possibility of the different Boards practising varying censorship standards.<sup>8</sup> The ICC largely centred its focus on moral censorship, and generally upheld the methods of censorship that were in practice, while labelling the dissenters of the board as "ill-informed".<sup>9</sup>

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<sup>4</sup>Government of India, *Report of the Indian Cinematograph Committee* 1927.

<sup>5</sup>*Ibid.*

<sup>6</sup>Someswar Bhowmik, 'From Coercion to Power Relations: Film Censorship in Post-Colonial India' (2003) 38 EPW 3148.

<sup>7</sup>Arnab Banerjee, 'Political Censorship and Indian Cinematographic Laws: A Functionalist Liberal Analysis' (2010) 2 Drexel L Rev 557.

<sup>8</sup>*Ibid.*

<sup>9</sup>Report of the Indian Cinematograph Committee 1927 (n 4).

Following the end of colonial rule in India, the Cinematograph (Amendment) Act of 1949 was proposed,<sup>10</sup> making two prominent changes to the Act of 1918. First, the Central Board of Film Censors (Central Censor Board; “the Board”) was instituted in Bombay as a centralised institution governing censorship that would replace the regional censor boards.<sup>11</sup> Second, the British system of issuing ‘U’ and ‘A’ certification for movies was adopted.<sup>12</sup>

The Act of 1918 was repealed following the Indian independence, only to be later replaced by an Act not dissimilar in scope.<sup>13</sup> The Indian Cinematograph Act (Hereinafter as “the Act”) came into effect in 1952,<sup>14</sup> the historic cornerstone - and the milestone - of Indian film censorship; a statute that, till date, governs film censorship.<sup>15</sup> The Cinematograph (Amendment) Act of 1981 subsequently renamed the Central Board of Film Censors as Central Board of Film Certification (Hereinafter as “CBFC”)<sup>16</sup>; a change merely tokenistic in nature.<sup>17</sup>

Section 4 of the Act necessitates that all cinematographic works be submitted, prior to their release, for certification to the Board, while Section 7 defines the criminal penalties for non-compliance with Section 4.<sup>18</sup> The CBFC members are all appointed by the Union Members under Section 3 of the Act, and are retired bureaucrats.<sup>19</sup> Hence, the Indian government effectively has retained the colonial practice of maintaining a bureaucratic stranglehold on the censorship

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<sup>10</sup>Someswar Bhowmik (n 3).

<sup>11</sup>Ministry of Information and Broadcasting, *Report of the Enquiry Committee on Film Censorship*, 1969. (Khosla Committee Report)

<sup>12</sup>*Ibid.*

<sup>13</sup>Arnab Banerjee, (n 7).

<sup>14</sup>The Cinematograph Act, 1952 (37 of 1952).

<sup>15</sup>*Ibid.*

<sup>16</sup>The Cinematograph (Amendment) Act 1981.

<sup>17</sup>Someswar Bhowmik, ‘Politics of Film Censorship: Limits of Tolerance’ (2002) 37 EPW 3574.

<sup>18</sup>The Cinematograph Act 1952 (37 of 1952).

<sup>19</sup>Arnab Banerjee, ‘Political Censorship and Indian Cinematographic Laws: A Functionalist Liberal Analysis’ (2010) 2 Drexel L Rev 557.

regime.<sup>20</sup> Effectively, the two provisions collectively laid down that a film could not be released without obtaining a censor certificate, and one could not have a certificate issued without having the CBFC decree it as fit for release.

The criteria for denying a film certification, as defined under Section 5 of the Act, are similar to the restrictions laid down under Article 19(2) of the Indian Constitution.<sup>21</sup> A further provision under 5B of the Act allowed the Government to issue guidelines to the CBFC. The Certification Guidelines, thus issued under the said provision to the Certification Board by the Ministry of Information and Broadcasting in the year 1978, instructed the ‘CBFC’ to disallow the exhibition of certain ‘scenes’: it discouraged, among other things, sexual violence, child abuse, and the glorification of drugs, while also restricting the exhibition of scenes “likely to incite the commission of any offence” or “scenes endangering public order and state security.”<sup>22</sup>

Additionally, Section 5B of the Act laid down that any film or content material that exists in contravention to the “interests of [the sovereignty and integrity of India] 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” could be denied certification.<sup>23</sup>

The appeals against the decisions of the examining committee of the CBFC were heard by a ‘revising committee’, and in turn, the revising committee’s decisions could be appealed at the Film Certification Appellate Tribunal (Hereinafter as “FCAT”) in New Delhi.<sup>24</sup> Finally, filmmakers, failing all other options (following the FCAT’s decision),

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<sup>20</sup>Someswar Bhowmik (n 6).

<sup>21</sup>The Cinematograph Act 1952 (37 of 1952), s 5B.

<sup>22</sup>Notification, Ministry of Information and Broadcasting, Government of India, Jan 7, 1978, cited in Vinayak Purohit, *Arts of Transitional India* 976 (1988).

<sup>23</sup>The Cinematograph Act 1952 (37 of 1952).

<sup>24</sup>*Ibid.*

as per the provisions of the Act, were entitled to appeal against the decision by means of a writ petition.

### III. JUDICIAL OUTLOOK ON FILM CENSORSHIP

A glance at the history of film censorship inadvertently involves a look at the history of the right to freedom of speech and expression. Guaranteed as a fundamental right under Part IV of the Constitution of India,<sup>25</sup> the right to freedom of speech and expression is also accompanied by the accompanying clause of reasonable restrictions that are “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”<sup>26</sup> The Supreme Court has historically, for the sake of safeguarding public interest, “upheld the validity of law sanctioning pre-censorship of motion pictures to protect the interests of public order and morality safeguarded by Article 19(2)”.<sup>27</sup>

Furthermore, when the newly formed government of independent India scrapped the Indian Press (Emergency Powers) Act, 1931, it removed the imperialist imposition of pre-censorship to newspaper media.<sup>28</sup> However, no such effort was made to free Indian cinema of such imposed restrictions.<sup>29</sup> If debates of the Constituent Assembly were to be relied on, “the fact that films were placed under a greater level of scrutiny was perhaps related to Gandhian concerns about the moral effects of cinema”.<sup>30</sup>

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<sup>25</sup>The Constitution of India 1950, art 19(1)(a).

<sup>26</sup>The Constitution of India 1950, art 19(2).

<sup>27</sup>Durga Das Basu, *Introduction to the Constitution of India* (Lexis Nexis Butterworths Wadhwa Nagpur, 1960).

<sup>28</sup>The Indian Press (Emergency Powers) Act 1931 (23 of 1931).

<sup>29</sup>Banerjee (n 7).

<sup>30</sup>*Ibid.*

This lack of redressal for cinematographic liberty and mounting criticism against the Censorship Board prompted the setting up of the Enquiry Committee on Film Censorship (Khosla Committee) - headed by Justice G. D. Khosla, and members including film professionals and bureaucrats.<sup>31</sup> In the 1960s, during the period of strengthening of the Indo-Soviet relations, the Indian Government “used the Central Censor Board to expunge films that spoke ill of its ally”.<sup>32</sup> Several deletions were demanded, in addition to other Cold War films, in British filmmaker David Lean’s *Doctor Zhivago*, prompting backlash against the censors.<sup>33</sup> The Khosla Committee sympathised with Lean, accusing the Central Censor Board of “succumbing to political pressure”.<sup>34</sup> On being informed by filmmakers that the state of censorship then had made them “shy of taking up social and political themes and dealing with them boldly and frankly,”<sup>35</sup> the Khosla Committee asserted in its report that certain items in the Censorship Guidelines were “clearly beyond the ambit of reasonable restrictions as defined in Article 19(2) [of the Indian Constitution]”. The Committee also declared that some of the decisions made by the Censor Board on the basis of these restrictions would be “difficult to defend” in Court.<sup>36</sup> This conclusion was evidently supported by the Committee’s study of seminal cases on Article 19 (1)(a) and Article 19(2) of the Constitution.<sup>37</sup>

Following this conclusion of the Khosla Committee, one of the Committee members, Khwaja Ahmed Abbas - the well-celebrated screenwriter of movies like *Awara* and *Shree 420* - moved to the Supreme Court, in what would become “the first legal battle of note between a filmmaker and the censorship authorities”.<sup>38</sup> His

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<sup>31</sup>Khosla Committee Report 1969 (n 11).

<sup>32</sup>Banerjee (n 7).

<sup>33</sup>*Ibid.*

<sup>34</sup>Khosla Committee Report 1969 (n 11).

<sup>35</sup>*Ibid.*

<sup>36</sup>Khosla Committee Report 1969 (n 11).

<sup>37</sup>Banerjee (n 7).

<sup>38</sup>*Ibid.*

documentary, titled '*Chaar Shehar Ek Kahaani*' ('A Tale of Four Cities'), failed to obtain a 'U' rating and was instead certified as 'A'. The decision was upheld in the filmmaker's appeals to the Central Board of Film Certification as well as the Central Government. Consequently, he moved to the Supreme Court, claiming that his "fundamental right of free speech and expression was denied by the Central Government's refusal to grant the film a 'U' certificate".<sup>39</sup> Following the petition, the Government assented to granting the film a 'U' certification.<sup>40</sup> Abbas later proceeded to challenge the constitutional validity of pre-censorship itself.<sup>41</sup>

In deciding this case, the Court held that it "does not accept the distinction between pre-censorship and censorship in general," and both practices "are to be governed by the standard of reasonable restrictions" as guaranteed by the Indian Constitution.<sup>42</sup> Pre-censorship in Indian cinema was thus permitted as it was categorised as a reasonable restriction as provided under the Constitution.

Importance of this trial can be gauged by two important outcomes of this case that became apparent as a result of the judicial interpretation of the Khosla Committee Report: the formation of the FCAT, as a tribunal to hear appeals made against the Central Censor Board's decisions,<sup>43</sup> and the Central Censor Board that was renamed as CBFC,<sup>44</sup> to signify a change in policy that mandated marked removal or banning to observed certification.

In the years following this amendment, the relation between filmmakers and the CBFC has turned even more litigious.<sup>45</sup> Aggrieved parties moving to the court for the release of their movies has become

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<sup>39</sup>*Abbas v Union of India* AIR 1971 SC 481.

<sup>40</sup>*Ibid.*

<sup>41</sup>*Ibid.*

<sup>42</sup>*Abbas v Union of India* AIR 1971 SC 481.

<sup>43</sup>The Cinematograph (Amendment) Act 1981.

<sup>44</sup>*Ibid.*

<sup>45</sup>Banerjee (n 7).

an increasingly common occurrence, with the ensuing judgements and overturning of the CBFC's rulings highlighting an increasing illiberalism of the CBFC decisions.<sup>46</sup> The hold on the release of - and the demand of cuts to be made to - *Bandit Queen*,<sup>47</sup> for instance, was overturned by the FCAT, and the Supreme Court further upheld FCAT's decision. Interestingly, the Court further held that Certifying Guidelines, and the list of forbidden subject matters therein, "cannot overweigh the sweep" of the clause guaranteeing artistic freedom.<sup>48</sup>

In the case of Anand Patwardhan's *Jang Aur Aman*,<sup>49</sup> a film criticising the then-BJP government's nuclear missile testing, the cuts demanded by the CBFC, the revising committee, and even the FCAT (although significantly reduced in number), were all overturned by the Bombay High Court. Moreover, very notably, in the case of Mani Ratnam's *Bombay*,<sup>50</sup> the Bombay High Court overturned the decision of the CBFC and the FCAT, and held that the film would have to be granted certification, while criticising the CBFC and the FCAT for having "misconceived the scope and function of their powers".<sup>51</sup> Significantly, in response to concerns of the portrayal of a villain that remarkably resembled a highly contentious Chief Minister of Gujarat, the Court stated, "Those who hold important positions must have shoulders which are broad enough to accept with grace a critique of themselves..."<sup>52</sup>

Very notably, in recent times, the Abhishek Chaubey directorial effort *Uda Punjab*<sup>53</sup> which recounts the drug crisis in Punjab, entered into turbulent waters with the CBFC, resulting in a mass re-examination and dialogue on the ethics of film censorship in their current state in India.

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<sup>46</sup>Ibid.

<sup>47</sup>*Bobby Art International v Hoon* (1996) 2 SCR 136.

<sup>48</sup>Ibid.

<sup>49</sup>*Anand Patwardhan v CBFC* (2003) 5 Bom. CR 58.

<sup>50</sup>*F.A. Picture Int'l v CBFC* AIR 2005 Bom. 145.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

<sup>53</sup>*Phantom Films Pvt. Ltd. & Ors. v CBFC & Ors.* (2016) (4) ABR 593 (BOMHC).

In this case, while the CBFC demanded a staggering 94 cuts and 13 pointers, the Bombay High Court cleared the film after ordering one cut, along with a disclaimer to the film.

However, it must also be noted that the very reason behind *Bandit Queen* being denied certification and the subsequent appeal reaching the Supreme Court, was that the FCAT's decision of granting certification to the film had been previously overturned by the Delhi High Court, which found the scenes raised in contention to be "absolutely disgusting."<sup>54</sup> Elsewhere, a High Court judge invoked contempt of court against a Bollywood feature film for implying, in one scene, that a judgement could be influenced by bribing the judge.<sup>55</sup>

Hence, on the whole, the judiciary of the post-colonial period can be said to be "better characterised not as a messiah, but as a generally reliable, sometimes fickle upholder of free speech".<sup>56</sup>

#### IV. POLITICISATION OF CENSORSHIP AND THE 2020 AMENDMENT BILL

A study of judicial positions in matters of film censorship raises important questions associated with political censorship in Indian cinema, and the autonomy of our censorship institutions. As stated, every member of the Board, from the Chairperson to the advisory board members, are all government employees. Moreover, primary evidence of the politicisation of the CBFC can be found in the political leanings of its chairpersons.<sup>57</sup>

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<sup>54</sup>*Amitabh Bachhan Corp. v Hoon* (1996) 37 DRJ 352.

<sup>55</sup>*Rao v Department of Home* AIR 1995 SC 359.

<sup>56</sup>Banerjee (n 7).

<sup>57</sup>A Acharya and K Sundar, 'Silencing Talkies – India's Politicised Film Censorship' (*The Bastion*, 12 September 2018) <<https://thebastion.co.in/ideas/silencing-talkies-indias-politicised-film-censorship/>> accessed 28 March 2023.

Former Chairperson of the CBFC, Pankaj Nihalani, is an active and vocal supporter of both, the BJP and the Rashtriya Swayamsevak Sangh (RSS).<sup>58</sup> There would appear to be nothing inherently wrong with that as in a democratic parliamentary setup, power is concentrated on party lines. However, decisions taken by the Board under the command of Nihalani raises questions on the independent functionality of the board, and the effect it has on artistic freedom.

Under Nihalani, the CBFC has publicly opposed the exhibition of acclaimed filmmaker Rajkumar Hirani's *PK* (2014),<sup>59</sup> arguing that the subject matter of the film, one of religious institutions and religious identity, is hurtful to religious sentiments. His board also came under fire for its stringent stand and de-certification of films like *Unfreedom* (2014), and *Lipstick Under My Burkha* (2016), which was denied certification for being too lady-oriented.

However, history points out to Nihalani as only being one of the many Chairpersons who have previously employed the powers granted to their office for political reasons.<sup>60</sup> In fact, the highly draconian censorship practices deployed on the press, which extended to certification of the press, during the 1975 Emergency declared by Prime Minister Indira Gandhi is often associated with the Congress Party's eventual electoral defeat in 1977.<sup>61</sup>

The Emergency did, in fact, witness the most glaring abuse of censorship powers, with Gulzar's *Aandhi* (1975) and Amrit Nahata's *Kissa Kursi Ka* (1977), which were seen as damaging to Indira Gandhi's public persona, being banned for several years.<sup>62</sup> Shyam

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<sup>58</sup>Ibid.

<sup>59</sup>Ibid.

<sup>60</sup>A Acharya and K Sundar (n 57).

<sup>61</sup>N Bose, 'The Central Board of Film Certification Correspondence Files (1992–2002): A Discursive Rhetoric of Moral Panic, "Public" Protest, and Political Pressure' (2010) *Cinema Journal* 49, 67-87.

<sup>62</sup>Banerjee (n 7).

Benegal's *Nishant* (1975), seen as a critical commentary of the Congress Government, was forced into a bureaucratic tangle.<sup>63</sup>

Post-Emergency, the attack on artistic freedom of filmmakers by political forces has continued undeterred. The sets of the film *City Of Joy* (1992) were destroyed by the forces of West Bengal's Communist Party, then in power - owing, primarily, to the fact that it made a critical commentary on poverty in Calcutta, a bastion of the Communist Party at the time.<sup>64</sup> Activists of the BJP have similarly vandalised and attacked the sets of Deepa Mehta's *Water* (2005), a movie centred on the discrimination faced by Hindu widows.<sup>65</sup> And again, opposition was targeted, primarily by workers of the Shiv Sena, to Deepa Mehta's *Fire* (1996), a commentary on lesbian relationships in India, inspired by Ismat Chughtai's short story *Lihaaf*.<sup>66</sup>

In 2017, Nihalani was replaced as the Chairperson of the CBFC by poet-lyricist Prasoon Joshi, whose own support for the BJP in the past has not been discreet.<sup>67</sup> The historic trends have appeared to continue unfettered under Joshi. Following the blueprints laid in the cases of *City Of Joy* and *Water*, violent political groups, aggressive campaigning, and physical assaults have forced the makers of films like *Padmaavat* (2018) into delaying releases and making changes; the changes, in this case, included the changing of title, and extending the length of the lead character's blouse.<sup>68</sup>

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<sup>63</sup>Inderjit Badhwar and Raghu Rai, *Indira Gandhi: A Living Legacy* (Timeless Books 2017).

<sup>64</sup>Banerjee (n 7).

<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

<sup>67</sup>A Acharya and K Sundar (n 57).

<sup>68</sup>Ibid.

In recent years, the discussion on film censorship has been largely focused “on the advancement of the Hindu nationalist movement and the concomitant decline of secularism, in practice, if not as a norm”.<sup>69</sup>

The attack on a filmmaker’s freedom of speech, oftentimes literal, points out to a significant point of concern in our system of censorship, and its nature of bending to the political will. Consequently, the politicisation becomes all the more worrying when it gains a form of legitimacy by legislation.

In 2019, the Cinematograph (Amendment) Bill was introduced in the Rajya Sabha, which proposed amendments to the Cinematograph Act of 1952. It was then further revised and re-introduced in 2021 (Hereinafter as “the draft Amendment”); both times with the same objective - ‘to tackle the menace of film piracy’.<sup>70</sup> Among amendments to penalties for film piracy, duration of validity of certificate (proposed change from 10 years to perpetuity), and additional classifications to the existing U/A Certification (including U/A 7+, U/A 13+, and U/A 16+), the draft Amendment also proposes that the Central Government be given the power to re-examine a film for certification, and to recertify an already certified film.<sup>71</sup>

On June 18, 2021, the Centre sought public comments on the draft Amendment, according to which, “...since the provisions of Section 5B(1) are derived from Article 19(2) of the Constitution and are non-negotiable, it is also proposed in the Draft Bill to add a proviso to subsection (1) of Section 6 to the effect that on receipt of any references by the Central Government in respect of a film certified for public exhibition, on account of violation of Section 5B(1) of the Act, the

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<sup>69</sup>Malvika Maheshwari, ‘Art, law and the violence of offence taking’ (2019) 10 South Asian History and Culture 212.

<sup>70</sup>Ministry of Information and Broadcasting, GoI, *Public comments sought on the Cinematograph (Amendment) Bill 2021* (18 June, 2021).

<sup>71</sup>*Ibid.*

Central Government may, if it considers it necessary so to do, direct the Chairman of the Board to re-examine the film.”<sup>72</sup>

In its note, the Ministry of Information and Broadcasting said that “sometimes complaints are received against a film that allude to violation of Section 5B(1) of the Cinematograph Act, 1952 after a film is certified,” and that “the government is not able to act on those complaints because the courts have said it has no power once a film is certified by the CBFC”.<sup>73</sup> Hence, the freshly-laid provisions of the Bill sought to empower the government to direct that a certified film be re-examined upon receipt of any complaint regarding the contents of the film, thus further casting a shadow over a filmmaker’s rights.

What is of greater concern, is that the draft Amendment came shortly after the abolition of the FCAT under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021,<sup>74</sup> which existed as one of the last resorts for aggrieved filmmakers to appeal the judgements of the CBFC.

Further, in the earlier case of *KM Shankarappa*, the Supreme Court held that a decision passed by a quasi-judicial body of the FCAT was to be binding on the Government.<sup>75</sup> Additionally, the court opined that the Government cannot use its revisional powers to interfere and reverse a decision proclaimed by FCAT.<sup>76</sup>

Following the abolition of the FCAT, there exists no such quasi-judicial body to keep the censorship powers of the government in check by awarding the binding say in the matter, which gives the government a greater degree of authority over the filmmakers’ rights.

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<sup>72</sup>Ibid.

<sup>73</sup>Ibid.

<sup>74</sup>Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021.

<sup>75</sup>*KM Shankarappa v Union of India* ILR 1990 KAR 4082.

<sup>76</sup>Ibid.

At the heels of mass politicisation of cinema and film viewership, several noted filmmakers such as Vishal Bhardwaj and Anurag Kashyap, and other members of the film fraternity, have expressed their concerns over the provisions of the draft Amendment, with the collective concern being the political push-back the legislation would levy on the filmmaker's freedom of speech and expression.<sup>77</sup> The provision granting the Centre the power to re-examine a film has been a particular point of concern. With increasing polarisation in matters of cinema critical of the government or nationalistic sentiments, and a growing hostility towards political filmmaking, the draft Amendment can only be seen as a cause of concern for the future of censorship policies.

After a great deal of hostility that liberal cinema of the modern day has been subjected to, especially in recent years, and a rising wave of Hindu nationalism in the BJP era; the discourse around Indian cinema and censorship laws appears to have culminated in the draft Amendment.

## **V. THE CASE FOR REFORM AND CONCLUSION**

“Well obviously a lot of things have changed. The world has changed too, if you look at Hollywood films... The only reason I take the example of Hollywood is because the United States and India are the only two countries in the world producing films in such large numbers—and essentially for a mass audience. There was an unwritten code in American film-making, particularly in the ‘30s and ‘40s. If you compare American films of the ‘30s with the Indian films of the ‘50s or ‘60s, you will find that they are very similar in their attitude to sex. Now of course, the social attitudes of urban people to sex have changed

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<sup>77</sup>Shilpi Gulati, ‘Super Censorship of Cinema?’ (2021) 56 EPW <<https://www.epw.in/journal/2021/31/comment/super-censorship-cinema.html>> accessed 31 July 2021.

all over the world. All that does get reflected to some extent is the manner in which the censor board operates. For instance you can have young couples very much in love with each other kissing on the Indian screen today. This wasn't allowed earlier, but the odd part is that these films automatically get an adult rating."

- Shyam Benegal, on the evolving nature of cinema, and  
censorship.<sup>78</sup>

In an interview dating back to November 2009, renowned Iranian filmmaker Mohsen Makhmalbaf labelled Bollywood as a "sanitised world meant for enjoyment, not introspection".<sup>79</sup>

Historically, Bollywood cinema has grown on the backbone of India's rich storytelling heritage, drawing deeply from folklore and religious epics. A tradition of theatricality and narrative melodrama, accompanying the cultural significance of the 'song and dance' form, have marked the evolution of the cinematic medium in the mainstream; evolving from the classical Hollywood genre, Bollywood has made a place and identity for itself in international cinema with its 'musicals'. However, the search for creative expression and artistic drive must exist outside of the rhyme and reason of formula. An overwhelmingly vast majority of Bollywood films are "fantastical love stories without even the slightest trace of political sentiment"<sup>80</sup>; indisputably, "film

<sup>78</sup>S Benegal and G Sen, 'Issues and Censorship in Indian Cinema' (1997) IIC Quarterly 24(2/3) 284–297.

<sup>79</sup>Saibal Chatterjee, 'Iranian Director Turns Lens on India' (*BBC News*, 19 November 2004)

<[http://news.bbc.co.uk/2/hi/south\\_asia/3763074.stm#:~:text=BBC%20NEWS%20%7C%20South%20Asia%20%7C%20Iranian%20director%20turns%20lens%20on%20India&text=Mohsen%20Makhmalbaf%2C%20one%20of%20Iran's,begin%20filming%20early%20next%20year](http://news.bbc.co.uk/2/hi/south_asia/3763074.stm#:~:text=BBC%20NEWS%20%7C%20South%20Asia%20%7C%20Iranian%20director%20turns%20lens%20on%20India&text=Mohsen%20Makhmalbaf%2C%20one%20of%20Iran's,begin%20filming%20early%20next%20year)> accessed 28 March 2023,

<sup>80</sup>Aditi Sharma, 'Such a Long Journey' *Mumbai Mirror* (Mumbai, 11 December 2005) <[https://uploads-ssl.webflow.com/612775c738af1e639b90a3e8/61c906639ca456b1249952d2\\_Interview\\_Mumbai%20Mirror\\_2005.pdf](https://uploads-ssl.webflow.com/612775c738af1e639b90a3e8/61c906639ca456b1249952d2_Interview_Mumbai%20Mirror_2005.pdf)> accessed 28 March 2023.

censors must be blamed for politically emasculating Bollywood and forcing filmmakers to make musicals with clichéd romantic plots”.<sup>81</sup>

Arguably, the cinematic medium has always had the underlying potency to catalyse political reforms in India, and even more so in the case of films being made in the populist Bollywood cadre of movie-making.<sup>82</sup> At several points in the history of world cinema, there have existed film movements that have drawn extensively from the political realities, converging with the particular brand of cinema’s space and time realities:<sup>83</sup> the post-war truth of Europe encapsulated in the Italian neo-realism movement, the noir film movement augmented by the Cold War realities, the avant-garde ideologies of the French New Wave representing the growth of an artistic counter-culture, or the radical new-age American youth represented by the 70s Hollywood New Wave.<sup>84</sup>

Even in India, the ‘parallel cinema’ film movement attempted to break free from the machinations of mainstream, commercial Indian cinema, and dive into the elements of hard-hitting naturalism, with a highly observant outlook at the socio-political realities of the time.<sup>85</sup> Commentaries on caste hierarchies, class politics, socio-political identities, female oppression, and the rural-urban divide, among others, became commonplace. Socialist filmmakers like Saeed Akhtar Mirza and Govind Nihalani helmed political art of great potency, working with similarly progressive writers like Vijay Tendulkar and Satyadev Dubey.<sup>86</sup>

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<sup>81</sup>Ibid

<sup>82</sup>Banerjee (n 7).

<sup>83</sup>P Cook (ed.), *The Cinema Book* (British Film Institute 2007).

<sup>84</sup>Ibid.

<sup>85</sup>JW Hood, *The Essential Mystery: The Major Filmmakers of Indian Art Cinema* (Orient BlackSwan 2000).

<sup>86</sup>Cook (n 10).

It was a period that evidenced, undoubtedly, that cinema as a medium is one of the most potent sources of artistic expression of political thought, and the artist's endeavour at tackling political accountability.

What, then, is the role of censorship in the augmentation of Indian cinema aspirations? If an argument for censorship hinges on the grounds of reasonable restrictions, what does the freedom of speech and expression guarantee to the filmmaker's creative liberties?

As popular and critically-acclaimed filmmaker Shyam Benegal, who also headed the Shyam Benegal Committee on Film Censorship in 2016 that sought to effectively limit the powers of the CBFC as a body of political censorship,<sup>87</sup> puts it, "My problem with censorship is that it does not work. The guidelines have not been effective in creating an intelligent system ... Frankly, I think [censorship should be thrown out], because in a democracy it has no place. What is more, film censorship is pre-censorship which is even worse."<sup>88</sup>

The constitutional guarantees for filmmakers are hinged on the provisions of Article 19(1)(a).<sup>89</sup> If the freedom of speech and expression has to have the constitutional sub-clause of reasonable restrictions attached to it as a rider meant for 'public order and morality', then surely, this delicate equilibrium of the two constitutional causes must be allowed to exist without the imposed fracturing of filmmakers' rights by means of political censorship of such arbitrary and prejudicial nature.

"Just as it could flaunt a melodramatic *Dilwale Dulhania Le Jayenge* (dir. Aditya Chopra, 1995, Hindi) or a romantic *Hum Aapke Hain Kaun?* (dir. Sooraj Barjatya, 1994, Hindi), so it could claim credit for dishing out *Sadak* (dir. Mahesh Bhatt, 1991, Hindi), shot against the backdrop of a brothel and having a eunuch as the main character or

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<sup>87</sup>Ministry of Information and Broadcasting, GoI, *Shyam Benegal Committee submits its report on Cinematograph Act/ Rules to Shri Jaitley* (26 April 2016).

<sup>88</sup>Benegal, S., & Sen, G. (n 78).

<sup>89</sup>Basu (n 27).

*Jism* (dir. Amit Saxena, 2003, Hindi), a sexy morality thriller. It moreover extended a hearty welcome to non-resident Indians or foreign citizens of Indian origin making films that represent either the outsiders' (objective?) view of India or the insiders' (subjective?) view of Indian culture abroad. Thus, complementing the efforts of the indigenous filmmakers, crossover films like *Monsoon* (dir. Jagmohan Mundhra, 1996, English), which pitted the sensuousness of the Indian female against western masculinity, *Kama Sutra: A Tale Of Love* (dir. Mira Nair, 1996, English), supposed to be a cinematic version of the fourth century treatise on sex ... or *Fire* (dir. Deepa Mehta, 1996, English), which explored lesbian relationship of Indian women, made their appearance from the west."

- Someswar Bhowmik, on the multi-faceted evolution of Indian Cinema in the 90s.<sup>90</sup>

Time and again, Indian cinema has found a way for the conventionalities of mainstream cinema and the avant-garde expression of experimental cinema to co-exist. The industry outlook to cinema production, the relationship of the films (and the filmmakers) with the audiences, and an increasing emphasis (since the 2000s) on the distinction between what is for a 'multiplex-audience' and what is a 'festival film', have all attempted to create a space of co-existence of two virtually distinct *mediums*.<sup>91</sup> However, the film censorship/certification machinery, under the bureaucratic tutelage, has continued in its nonchalant, conservative ways.<sup>92</sup> This has added the Indian cinematic traditions enough, without the incessant politicisation of the art form.

The Cinematograph Act has been, since its inception, riddled with a great deal of colonial and statist characteristics that have not just enabled but actively encouraged political censorship. Indian judiciary,

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<sup>90</sup>Someswar Bhowmik (n 3).

<sup>91</sup>Cook (n 10).

<sup>92</sup>Ibid.

having adopted fairly functionalist-liberal ideologies in the past, have stressed on the importance of “allowing free and frank criticism of the state; the counter-view,<sup>93</sup> as the Bombay High Court described famously in the Anand Patwardhan case”.<sup>94</sup> The incessant political censorship, however, points to a tradition of silencing of radical voices and curbing of protesting expression.

Aside from the renowned Bollywood flair for the melodrama and the escapist grandeur of the musical, filmmakers in India have used the potency of the craft for biting vitality and scathing critique of the nation. Political commentaries, social observations, taboo subjects, and documentation of ground reality, among others, have always been tools used by the filmmaker to paint a portrait of their time. The concerns of defectors notwithstanding, cinema has always carried the potential for expression of powerful truth. A great deal of social evils cripple the country, and if Indian filmmakers were only enabled to canvas these evils intrepidly, and to their best artistic capability, they could surely help in alleviating some of them.

“You want free speech? Let’s see you acknowledge a man whose words make your blood boil, who’s standing centre stage and advocating at the top of his lungs that which you would spend a lifetime opposing at the top of yours.”

- Aaron Sorkin, writing for *The American President* (1995).

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<sup>93</sup>*Anand Patwardhan v CBFC* (2003) 5 Bom. CR 58.

<sup>94</sup>Banerjee (n 7).