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# Freedom of Speech and Expression & Indian Cinema: A Journey from 1950 to 2021

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## ABSTRACT

*Freedom of Speech and expression is natural right of every person in the world. Right to speech mentioned as a fundamental right in the constitution of India with certain restrictions. If we interprets the words by constitutional aspect means the right to express one's own conviction and opinion freely by words of mouth writing, printing, pictures or any other modes. And we know this rights also enshrined in Constitution of India under Art 19(1) (a) and Art 19 of UDHR. Now a days Right to speech and expression also include through cinema because it is a tool of social awareness or social problem direct way in public. It is a weapon of expression of thoughts and ideas. It provides a platform to express of itself. Under this research paper we are trying to focus on a right to speech and expression through electronic and digital tool like Cinema and what are constitutional aspects and certain restrictions and judicial interpretation regarding to speech and expression and a journey start since 1950 to 2021.*

**Keywords:** *Speech and Expression, Restrictions, Freedom, Digital tool.*

## I. INTRODUCTION

According to official reports, India's film industry is the world's biggest, producing over a thousand films every year and screening them in over 13,000 theatres around the nation. Every three months, a crowd the size of country's whole population descends just on cinemas.<sup>3</sup> Films are said to be the mirror of the society. The movie may be utilized to assist individuals in overcoming obscurantism and guiding them along the correct path. It has the potential to aid in the eradication of ignorance in our society. Not only that, but the cinema can also aid to initiate and implement various much-needed societal changes. "Film has a very tremendous ubiquity inside human society," As Tom Sherak (former president of Academy of Motion Picture Arts & Sciences, most renowned for its Academy Awards) remarked, commonly known as "Oscars"). Film is a mirror of both contemporary and historical society. I believe that film and its innovations must occasionally catch up to society, but can also lead it."<sup>4</sup> The film

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<sup>3</sup> Central Board of Film Certification Home Page, <http://www.cbcindia.tn.nic.in/> (last visited on March 18,2020).

<sup>4</sup> <https://thoughteconomics.com/the-role-of-film-in-society/> (last visited on March 18, 2020).

has a significant impact on people's minds. It is quite educational. It has the potential to achieve outstanding outcomes in the field of educational development. Prime Minister Nehru was quoted by author Baldoon Dhingra in a 1963 study for the United Nations Educational, Scientific, and Cultural Organization on Indian Cinema and Culture as saying, "...the power of cinema in India is larger than newspaper & literature together."<sup>5</sup>

Pandit Jawaharlal Nehru saw the potential of film from the outset and intended to utilise it to improve society. He expressed his dissatisfaction with the level of work done in a personal email sent to the organizers of the inaugural Indian motion picture congress in Bombay in 1939: "I am far from content with the quality of work that has been done." Motion movies have become an important aspect of contemporary life, and they may be utilized more effectively for educational reasons... thus far, more emphasis has been placed on a sort of film that is ostensibly intended to be amusing but has a low level of quality. I hope that the industry would think about fulfilling the criteria today and strive to make high-quality films with educational and social values. Such films should be supported not just by the audience but also by the government.<sup>6</sup>

Recognizing the value of film, In "K.A. Abbas v. Union of India", the Indian Supreme Court stated:<sup>7</sup>

"films have to be treated separately from other forms of art and expression because a motion picture is able to stir up emotions more deeply than any other product of art".<sup>8</sup> Additionally, it should be "in the best interests of society."<sup>9</sup> "If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is being abused".<sup>10</sup>

Again the Supreme Court recognized the importance of Films in Rangrajan Case and state "Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of it. But he has a right to 'think out' and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression however, hateful to its policies."<sup>11</sup>

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<sup>5</sup> <http://unesdoc.unesco.org/images/0018/001852/185220eb.pdf> (last visited on March 18, 2020).

<sup>6</sup> [http://shodganga.inflibnet.ac.in/bistream/10603/31855/10/10\\_chapter%203.pdf](http://shodganga.inflibnet.ac.in/bistream/10603/31855/10/10_chapter%203.pdf). (last visited on March 18, 2020).

<sup>7</sup> A.I.R. 1971 S.C. 481.

<sup>8</sup> Id. at 489.

<sup>9</sup> Id. at 495.

<sup>10</sup> Id. (emphasis added).

<sup>11</sup> *S. Rangrajan v. P. Jagjivan Ram* (1989) 2 S.C.C., 593.

## **II. “CBFC (CENTRAL BOARD OF FILM CERTIFICATION)”: LEGISLATIVE FRAMEWORK & WORKING**

Article 19 of the Indian Constitution guarantees the right to free speech and expression. Under Article 19, Clause 2, the State may limit this freedom in order to protect India's sovereignty, integrity, security, friendly relations with other countries, public order, dignity, or morality; or in connection with contempt of court, defamatory, or incitement to commit an offence. Additionally, Article 359 of Constitution allows for restriction of Article 19 rights in an emergency. The Constitution makes no mention of any particular mode of communication. The press, motion pictures, commercials, or other forms of media have all been included in the jurisprudence that has emerged via case law in this area. In India, under Entry 60 of Union List of Schedule VII of Constitution, the Parliament has the authority to control movie censorship. Under Entry 33 of State List, states may also establish cinema law, subject to the restrictions of central legislation. Cinematograph Act of 1952 as well as the Cinematograph (Certified) Rules of 1983 are most important pieces of law in this subject. amid a time of difficulty.

The CBFC (“Central Board of Film Certification”) (sometimes shortened as CB (Censor Board) is a statutory censorship as well as classification organisation in India, overseen by Ministry of Information or Broadcasting. Its mission is to "regulate the public display of films in accordance with the cinematograph Act 1952." Films, including those shown on television, may only be publicly displayed in India once they have been approved by the Board he CBFC India is recognized as one of the most powerful film censor bodies in the world due to its stringent operational processes. There are four types of film genres: "U" (for unrestricted public display) or "A" (for limited display) were the only two sorts of certificates that were initially available (restricted to adult audiences). Both "U/A" (unrestricted public exhibition to parental supervision for children under the age of twelve) or "S" (restricted public display with parental supervision for children under age of twelve) were added in June of 1983. (restricted to specialised audiences such as doctors or scientists)<sup>12</sup>. Censors all throughout the globe are primarily concerned about depictions of violence and sex. It prevents mental degeneration and prohibits the viewing of obscene films. The CBFC enables distribution of some films having sexual material (designated A-rated) that are only to be watched by those aged 18 and over and are only to be screened in limited areas.

'Principal for direction in certifying pictures' was a provision of the Cinematograph Act of

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<sup>12</sup> Central Board of Film Certification From Wikipedia, the Free encyclopedia, (last accessed on March 20, 2020).

1952. As stated in Section 5B of Act, "A film shall not be certified for public exhibition if it is contrary, with the authority issuing certificate, with respect to interests of India's sovereignty but also integrity, friendly relations, state's security with foreign states, public order, decency or morality," or consists of defamation or contempt of court, or is likely to incite the commission of any offence."

### III. EVENTS OR CONTROVERSIES

Period of British India's censorship, during which the picture BHAKTA VIDUR (1921) was banned due to its protagonist's remarkable resemblance to Mahatma Gandhi. Two films – "Aandhi" (The Storm) as well as "Kissa Kursi Kaa" (A Tale of Throne) – are banned in the 1970s just on grounds that they reflected then-Prime Minister Indira Gandhi's life. Latter was refused a censorship certificate, while the former was removed from theatres. After conferring with numerous critics, Gandhi re-released 'Aandhi' a few weeks later. On the other side, 'Kissa Kursi Kaa' became the most divisive film as in history of Indian cinema. This film was suspected of being a stinging assault on Gandhi's Central Government. This film reel was destroyed so at time by a governing party official, so it needed to be reshot. In reality, the national cinema industry suffered significantly during Mrs. Gandhi's Congress government's Emergency in the 1970s. The industry was heavily pressed to assist the government's propaganda efforts. Filmmakers as well as artists who refused to participate were blacklisted, & their films were denied display certificates by CB.

Hindu fundamentalists have long opposed to Deepa Mehta's subjects, and her films have enraged them. 'Fire' (1996) and '1947: Earth' (1998), which together with 'Water' (2005) constituted a trilogy, put her against similar forces. Due to film's depiction of a lesbian connection between two married women, (Army of Lord Shiva) the Shiv Sena conducted protests, causing the film's showing in a number of Bombay and New Delhi venues to be cancelled. Numerous cinemas have been vandalised by members of the group. The picture had to be pulled from theatres until another censorship review was conducted, but it was ultimately re-released unedited. Earth was set in Lahore just before and after India's partition in 1947, illustrating how a once-unifying circle of mixed-religion friends becomes split and tragedy ensues.

Fundamentalists condemned the film 'Earth' and asked that it be banned by the government.<sup>13</sup>

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<sup>13</sup> "See generally Deepa Mehta speaks out against Hindu extremist campaign to stop her film, WORLD SOCIALIST WEB SITE, Feb. 15, 2000, <http://www.wsws.org/articles/2000/feb2000/meht-f15.shtml> (An interview of Mehta by Richard Phillips). (Last accessed on March 20.2020)".

'Water,' set in 1938 and focuses upon this suffering of impoverished widows at a Varanasi temple, sparked outrage among Hindu extremists. Mehta wanted to shoot 'Water' in February 2000, Protesters led by Hindu fundamentalists associated to the BJP (the governing party at the time) damaged the primary film set as well as threatened Mehta to death before filming could begin. Secretly recreated in Sri Lanka as 'River Moon' in 2003 ' with a new cast. After its debut at the Toronto Worldwide Picture Festival in 2005, the film received much international acclaim, yet it has been languishing in India. It was finally unveiled in India on March 9, 2007 – seven years after manufacturing started.<sup>14</sup> Gulabi Aaina, a film about Indian transsexuals, was prohibited by the C.B.F.C. in 2003. The film was deemed obscene and insulting by the C.B.F.C. Although the film is still prohibited in India, it has aired at several festivals across the globe and received prizes for its compassionate and moving representation of a downtrodden society. To tell the storey of two people whose lives are destroyed by rioting, director Faaiz Anwar made the film "Chand Bujh Gaya" (The Moon Has Been Eclipsed).The C.B.F.C. refused to certify the picture because it contains graphic violence and some characters have a striking similarity to real-life figures, and it was still a hot topic at the time, encouraging community conflict. The Board's ruling was later overturned by the Bombay High Court. As a result, after a three-year fight, it was published in 2005. After Aamir Khan's comments in favour of Gujarat citizens who were displaced by the Sardar Sarovar dam project, a huge uproar erupted immediately. 'Rang De Basanti' (Paint it Saffron) was immediately forbidden by BJP Yuva Morcha (Youth Wing).Nonetheless, it was already tainted by the story's depiction of unscrupulous officials participating in agreements to purchase low-quality fighter jets, which resulted in several accidents. After seeing the video on the Board's invitation, the Defense Minister, Pranab Mukharjee, as well as the three chiefs of defence forces gave it their blessing.<sup>15</sup> In yet another case of politically driven meddling, the release of Kamal Hassan's 'Vishwaroopam' was halted when Muslim organisations in Tamil Nadu objected to parts in the film. Even though the CBFC approved the picture for certification, the state government used Section 144 of Cr. PC. to restrict theatre owners throughout the state from playing it. After the makers challenged these orders in the Madras High Court, a single judge granted interim relief, suspending the government's orders prohibiting the screening of the film. However, a Division Bench later reversed that order. In the end, bereft of any relief, Hassan was forced to make

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<sup>14</sup> *Water (2005 film)*, Wikipedia.org, available at [http://en.wikipedia.org/wiki/Water\\_\(2005\\_film\)](http://en.wikipedia.org/wiki/Water_(2005_film)) See generally *Hindu widow film enrages fundamentalists*, N.Y. TIMES, May 3, 2006, available at <http://www.nytimes.com/2006/05/03/world/asia/03ihtweb>. (Last accessed on March 20.2020).

<sup>15</sup> Ruchi Gupta , *Rang De Basanti comes out all clear from Super censors*, YAHOO! INDIA NEWS, Jan.27,2006, [http://in.news.yahoo.com/060111/139/61\\_yjl.html](http://in.news.yahoo.com/060111/139/61_yjl.html). (Last accessed on March 20.2020).

seven edits in order to reach a compromise.

The controversial topic of caste-based reservation in educational institutions was the focus of Prakash Jha's film 'Arakshan,' which was originally criticized by Dalit organisations as anti-Dalit. However, upper caste groups in Rajasthan sought to halt the film's distribution because of their view that it shows them unfairly, with posters being destroyed and threats made by a pressure group named Karni Sena. In Gujrat & Uttar Pradesh, the film was prohibited, it was only after Supreme Court's intervention that the picture could be released. Previously, Sadhu Yadav, the brother-in-law of RJD leader Laloo Prasad Yadav, was angered by Jha's 'Gangajal,' because the villain in his film has the same name. The virtual ban on Gangajal was removed only after the film was seen by Sadhu Yadav, a real-life lawmaker from Bihar who has been accused of various crimes he video was inspired on the infamous 'Bhagalpur blinding' case from two decades ago, in which authorities poured acid into the eyes of offenders. Soon afterwards, the acid was given the local name Gangajal.<sup>16</sup>

In 2014 Rajkumar Hirani's 'PK' starring Amir Khan which makes a satire upon the so called Hindu Swamis and tapaswis faced massive protest in Delhi, Hyderabad and Bhopal. The posters of the movie were vandalized and windows of cinema hall were smashed by the VHP and Bajrang Dal activists at various places in the country demanding an immediate ban on the film saying it was against the religious sentiments of Hindus.<sup>17</sup> The title & substance of Sanjay Leela Bhansali's love tale 'Goliyon Ki Rasleela: Ram Leela' sparked demonstrations in Indore, Rajkot, Jalandhar, as well as the capital. Despite the film's title been still had to face protest by Rajput community in Gujrat where the postars of the film were burnt. Workers from the Bajrang Dal in Indore blocked movie theatre owners from showing the film In Jalandhar, a FIR was filed under section 295-A of the Indian Penal Code against Bhansali, Deepika Padukone, and Ranveer Singh, however it was eventually overturned by the Punjab and Haryana High Court.<sup>18</sup> Recently Bhansali faced the agitation of protestors for his upcoming film 'Padmavati' which is a historical movie depicting the story of Queen Padmawati of Chittorgarh. It was reported that the protestors belonging to Karni sena manhandled Bhansali and even tore off his clothes in Jaipur. In Gujrat he also had to face the protest of Patidar NavNirman sena. In Mumbai the set of his movie was burnt by the Karni sena.<sup>19</sup>

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<sup>16</sup> Date taken from : <http://indiatoday.intoday.in/story/prakash-jha-aarakshan-faces-trouble/1/146752.html>. (last visited on March 29,2020).

<sup>17</sup> Data taken from: <http://m.timesofindia.com/entertainment/hindi/bollywood/news/VHP-protests-against-PK-in-Hyderabad/articleshow/45699179.cms>. (last visited on March 29,2020).

<sup>18</sup> Data taken from: <http://indianexpress.com/article/entertainment/bollywood/ramleela-faces-protest-in-several-states/> (last visited on March 30,2020).

<sup>19</sup> <http://www.google.co.in/amp/www.firstpost.com/entertainment/padmavati-shoot-in-jaipur-sanjay-leela>

#### IV. JUDICIAL APPROACH

Through several judgements over the years, the Supreme Court and the High Courts have made major contributions to safeguarding the rights of Indian residents. The freedom to free expression and speech in films is no exception. The court has frequently established a line between what constitutes free speech and expression and what constitutes abuse, as well as the legitimacy of censorship as a mechanism for ensuring that right is exercised appropriately. Artists' rights are strengthened, and needless censorship is eliminated. *K.A. Abbas v. Union of India* was the first case that India's Supreme Court questioned the legality of censorship under the 1952 Act as well as its accompanying Rules. Pre-censorship for cinematographic pictures was examined by the Supreme Court in light of Article 19(1)(a), the Constitution's protection of freedom of speech or expression. For "A Tale of Four Cities," a petitioner was appealing C.B.F.C.'s refusal to grant a U certificate. Under Supreme Court proceedings, the film was given a U rating by Central Government. Because the petitioner's grievance had been fully handled, he asked an amendment allowing him to highlight the broader problem of pre-censorship, so that others who invest money in filmmaking might obtain counsel on this critical constitutional matter. The supreme court granted the petitioner's request for a modification to be considered. The court was asked to evaluate the following two points:

(a) hence, pre-censorship cannot be considered as an appropriate restriction on the freedom of speech or expression.

(b) That even if the restriction were legal, it would have to be based on extremely precise criteria that would prevent arbitrary action.

Taking all of this into account, Supreme Court held that film censorship, includes pre-censorship, were legally permitted in India since it constituted a reasonable restraint within in meaning of Article 19(2). However, censorship should not be used in such a way that it restricts freedom of speech in an unfair way. Taking the position that "pre-censorship was merely one kind of censorship, and cinematograph film censorship was 'universal,'" "It had been virtually unanimously accepted that motion pictures' immediate appeal both to the sight and to the hearing, and that a motion picture had become more true to life than even the theatre or any other kind of creative expression," Hidayatullah, C.J. said. It had a significant impact, especially on youngsters and immature teenagers."

*Jagjivan Ram v. S. Rangarajan* <sup>20</sup> 'Ore Oru Gramathile', a Tamil film, was awarded a "U-

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bhansali-attacked-by-protestors-3223846.html/amp.(last visited on March 30,2020).

<sup>20</sup> (1989)2 S.C.C. 574,592.



certificate" by the Madras High Court, but that certificate was revoked when the Supreme Court considered an appeal (*In One Village*). Meanwhile, a national prize had been given to the film. This video criticised the government's policy on hiring reservations, arguing that it was racially biased or unfair to Brahmins.. Throughout the film, it was claimed that economic deprivation should be the criteria, not caste.

Tamil Nadu's high court predicted that the reaction to the film would be violent because of the decades of pain faced by a huge no. of people in the state. Dr. B.R. Ambedkar and a no. of Tamil figures were also singled out for criticism. The Supreme Court overruled the decision of the High Court & recognised the right to freedom of expression or expression. It stated: "The democracy is a Government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value."<sup>21</sup>

The Court further added:

"Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of it. But he has a right to 'think out' and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The state cannot prevent open discussion and open expression, however, hateful to its policies."<sup>22</sup>

In "*Bobby Art International v. Om Pal Singh Hoon*"<sup>23</sup>, widely known as *Bandit Queen* case, petitioner Om Pal Singh Hoom asked the court to invalidate the film "*Bandit Queen's*" certification of exhibition or to restrict its Indian display. According to the appeal, the film's depiction of Phoolan Devi's life was "abhorrent and repugnant, and an affront to Indian femininity." The manner in which rape scenes were presented and similar activities were depicted were also questioned, with some arguing that depicting the Gujjar community in such situations amounted to moral depravity on their part. The Delhi High Court reversed the Tribunal's decision to award the film a 'A' certificate, citing obscene rape scenes. When the issue was appealed to the Supreme Court, which granted the appeal, the Supreme Court overturned the High Court's ruling and affirmed the Tribunal's conclusion that the 'A' certificate

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<sup>21</sup> *ibid* at 592.

<sup>22</sup> *ibid* at 593.

<sup>23</sup> (1996) 4 S.C.C. 1.

was genuine. The court reached the conclusion that: "The film must be judged in its entirety from the point of overall impact. Where theme of the film is to condemn degradation, violence and rape on women, scenes of nudity and rape and use of expletives to advance the message intended by the film by arousing a sense of revulsion against the perpetrators and pity for the victim is permissible." "We do not censor to safeguard the vulnerable or to appease the susceptibilities of the unduly sensitive," the court said in dismissing the case under the Cinematograph Act of 1952. The scene depicting Phoolan Devi's forced naked procession is critical to the film's portrayal of a compelling human tale. It explains why Phoolan Devi turned out the way she did, her fury and revenge against the society that had treated her so badly."<sup>24</sup>

*"Srishti school of art, design & technology v. The chairperson, central board of film certification & anr"*.<sup>25</sup> This 2011 judgment by the Delhi High Court began with this quote from French philosopher Voltaire *"I disapprove of what you say, but I will defend to death your right to say it"*.

Shabnam Virmani, a well-known Indian documentary filmmaker, is the subject of this case. Srishti School of Art, Design, & Technology created the videos, which are based on the heritage and teachings of Kabir, a famous 15th-century poet and philosopher. The documentary films weave current adventures and experiences in search of Kabir together.

Three of the four unedited films were approved by the CBFC, while the fourth required to be edited. Four exclusions from the Canadian Board of Film Certification (CBFC) were sustained by the Film Certification Appeal Tribunal (FCAT).

Board-mandated and Appellate Tribunal-confirmed cuts:

- The term "Militant Ram" is used. For instance, "Perhaps turning to Kabir was a repudiation of Ram... the militant Ram who stoked Hindu-Muslim animosity in modern India."
- A debate about destruction of the Babri masjid, including video discs showing the destruction; and
- Insults directed at the Muslim community, spoken during a bus ride back from the Wagah border.

The producer was upset and filed a writ suit with the Delhi High Court to challenge the validity of the reductions.

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<sup>24</sup> *Ibid.* at p. 15

<sup>25</sup> 2011 SCC OnLine Del 1234.

The Delhi High Court rejected all three edits during a screening of the documentary film and asked that CBFC provide a "U" certificate to universal viewing. When the Court examined each cut individually, it found that the picture as a whole did not justify any cuts since removing it would violate petitioner's right to free speech & expression. The film is based on the life of the renowned poet Kabir, who pushed the boundaries of religion with his poems about his 'Ram,' who transcended all theological boundaries. The video's purpose is to provoke discussion on Kabir's Ram by bringing up social, religious, & community problems. Given the matter, the Court found that removing the film would be an unreasonable restriction on free expression. The Court reversed the CBFC's decision, determining that any alterations to the image would stifle and infringe on free speech and expression. The Court held, "*As long as the film provides space for dialogue and discussion of a contentious issue, the policing out of a point of view or a visual merely because it is disagreeable to some cannot be justified.*"<sup>26</sup>

*"M/S Prakash Jha Productions & anr. v. Union of Indian & ors"*.<sup>27</sup>

The case went to the Supreme Court after the Uttar Pradesh government forbade the screening of the film Aarakshan in the state. Despite the fact that the CBFC had given the film a U/A rating since it dealt with caste-based reservations. The Supreme Court declined to believe the state government's claim that nothing bad had transpired as a consequence of the film.

A Bench of Justices Mukundakam Sharma and Anil Dave held,

*"...when there is public discussion and there is some dissent on these issues, an informed and better decision could be taken which becomes a positive view and helps the society to grow."*<sup>28</sup>

*"Phantom films Pvt. Ltd. v. Central board for film certification"*<sup>29</sup>

This is the most recent case in which an Indian court has affirmed the freedom of the people to free expression and speech. In this example, the film Uda Punjab is based on and centres on drug usage among the young in the Indian state of Punjab, as well as the different conspiracies that surround it. C.B.F.C. asked the producers to make a total of 89 edits in the picture. The producers filed a written appeal with the Bombay High Court, claiming that the CBFC's decision breaches The right to freedom of speech or expression is guaranteed by Article 19(1)(a) of the Constitution. Except for one cut and an exclusion, the Court found the CBFC's decision to be invalid and unenforceable. alternation in the disclaimer. The Respondents were given the task of certifying the film for Adult audiences. The Respondents' request for a stay

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<sup>26</sup> Available at : <https://indiakanon.org/doc/171639/para27> . /(Last visited on March 31,2020).

<sup>27</sup> (2011) 8 SCC 372.

<sup>28</sup> Available at: <http://indiakanon.org/doc/65086/para18> .(last visited on March 31,2020).

<sup>29</sup> 2016 SCC OnLine Bom 3862.

of the Order was denied, notwithstanding the petitioners' counsel's insistence on expenditure for production, marketing, and display.

The Court held that :” *No one can dictate to the maker how to make his film and what should be the context..... It is entirely for them to choose the setting the underlying theme and story line.*”<sup>30</sup>

## V. ARGUMENTS AGAINST AND FOR CENSORSHIP

"In a dictatorship, censorship is utilised, in a democracy, manipulation," veteran Polish journalist Ryszard Kapuscinski (1999) stated. This is also true of the atmosphere that exists in India when it comes to film censorship. Censorship is a British legacy that aims to prevent anything anti-British from being shown in Indian cinema. The CBFC members adhere to the norms that prevailed in Indian society in 1952, while infusing them with their own moral compass. However, as the nation quickly modernises, the government must walk a fine line between catering to a more liberal, young India while also not offending society's more conservative elements. "The rules are old. We have to write them with a modern and honest outlook. The Indian value system has changed hence censor rules must change," admitted R. Singh, joint Secretary of the film department in New Delhi.<sup>31</sup> "Censorship is highly subjective and essentially mindless. The main motivation for censorship is intolerance. Conventional wisdom and official ideology can not be allowed to be questioned and criticized and must be suppressed. Portrayal of historical events that depict a government or certain persons or groups in an unfavorable light cannot be tolerated and should therefore be suppressed by recourse to censorship" This is a comment made by Soli Sorabjee in the Indian Express on January 30, 2007 in response to Gujarat's refusal to screen Parzania. Multiplex owners in Gujarat rejected the film out of fear of a Hindu response.<sup>31</sup>

Censorship is more complicated than merely prohibiting, reducing, or placing limits by government agencies. According to new ideas, the state does not have absolute control and that censorship institutions are run by real people with their own perceptions, norms, and beliefs. Veteran film actor Dev Anand, hinting at the censorship's weakness, said the censor board's limited power and responsibility to the federal government led to their cautious approach. He believes the censorship board is a puppet of the federal government. Every time a government changes, the guidelines appear to change. He opposed censorship in any form, claiming that any cutting in a film is wrong and that only a rating, like in the Hollywood film

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<sup>30</sup> Available at: <http://indiakanon.org/doc/116968980/para43> .(last visited on March 31,2020).

<sup>31</sup> "A dilemma and debate around relaxing film censorship in India: available at : <http://www.ndtv.com/india-news/a-dilemma> - (Last visited on April 01,2020)".

business, is appropriate. However, if we examine our society and the differences between American and Indian culture, we must conclude that a ban on films such as *Kamsutra*, *Unfreedom*, and others is a requirement for our civilization. In a free society, censorship can be accepted only within the strictest of constraints and within the limitations set down in a constitutional system.<sup>32</sup>

## **VI. CONCLUSION AND SUGGESTIONS**

Following a thorough examination of all of those instances, rulings, and statutes, the actions and justification for having a Censor Board become very controversial. If such a body is required, it must be more independent rather than acting as a puppet in the hands of the government. Moreover, censoring films without Censor Board approval is not only arbitrary, but it also contributes to a dangerous trend of increased intolerance. Overall, the country's higher courts have done an admirable job, although the recurrence of identical situations is a source of contention. As a result, a long-term solution is required. It is critical to pass a new legislation.

Filtering capabilities should be kept to a minimum. The most critical condition for such a council should be that it may receive recommendations/suggestions from the government but must make its own judgments. They persuade the Central Authority that the prohibition is unavoidable in their jurisdiction and that there are no other options.

Although censorship cannot be completely eliminated in Indian society, it cannot be justified if it is contradictory, unreasonable, or violates citizens' freedom to free expression. Our censoring protocols must be well-defined, so that both filmmakers and censors understand where they are and there is little possibility for miscommunication. Because the words obscene and obscenity are not defined in the IPC, the community standards test is more appropriate for India. It is more adaptable to societal changes. The many changes in India's ever-evolving civilization are impossible to overlook. If society approves the depiction of sexual activity on TV, the court should not overturn it because of a few sensitive individuals.

In general, the criteria for imposing restrictions on free expression should be tightened. Restriction of individual freedom of expression should be recognised only when it is absolutely necessary to avert serious harm. As a result, if democracy is to advance, screenings of films and documentaries must never be prohibited on speculative grounds, as limiting motion pictures equates to prohibiting the right to freedom of expression and communication.

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<sup>32</sup> The Censorship debate on Indian Films. Available at: <http://ourfrontcover.com/homepageposts/censorship-Debate-indian-films/> (Last visited on April 01,2020).

**VII. REFERENCES**

1. V.N. Shukla, Constitution of India-11th edition 2007 Eastern Book Company Lucknow
2. M.P Jain –Indian Constitutional law 6th edition 2012, Lexis Nexis Nagpur
3. Dr. J.N. Pandey- Constitutional Law of India,44th edition 2007 central Law Agency, Allahabad.
4. Central Board of Film Certification Home Page., <http://www.cbfcindia.tn.nic.in/>
5. Indian Cinema and Culture - UNESCO Digital Library, <https://unesdoc.unesco.org/ark:/48223/pf0000185220>
6. Ruchi Gupta, Rang De Basanti comes out all clear from Super censors, YAHOO! INDIA NEWS, Jan.27,2006, <http://in.news.yahoo.com/060111/139/61>
7. (2011) 8 SCC 372.
8. 2016 SCC OnLine Bom 3862.

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