

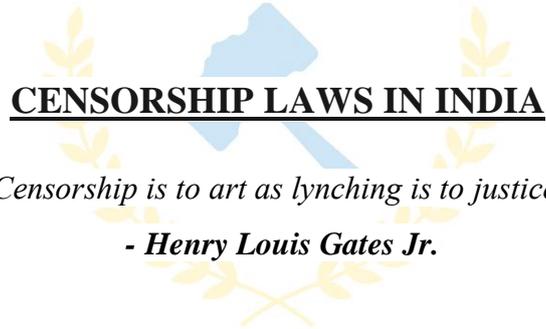
**DE JURE NEXUS LAW JOURNAL**

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**CENSORSHIP LAWS IN INDIA**

*“Censorship is to art as lynching is to justice.”*

*- Henry Louis Gates Jr.*

**Introduction**

Censorship is when an idea or opinion expressed in any artistic form (film, literature, play, music, painting, etc.) is curbed and restricted by the authorities on the grounds of public decency and morality. The right to freedom of speech and expression under Article 19 of the Indian Constitution is not absolute, so censorship takes cover in the reasonable restriction clause of Article 19 (2). It is used as a tool by the government to suppress any opposing ideas, thoughts or opinions.

Films have always been an integral part of the lives of the masses and contribute to the socio-cultural progress of society through popular culture. The impact of the Indian film industry is not just restricted to the Indian audience and has achieved global recognition. Similarly, the press being the fourth pillar of democracy has the onus and responsibility of keeping the public informed and aware. While both these mediums enjoy freedom of speech and expression, the government manages to keep this freedom in check through monitoring and censoring their content through bodies like the Central Board of Film Certification (CBFC) and the Press Council of India.

**The Cinematograph Act, 1952**

The Central Boards of Film Certification (CBFC) examines, certifies and censors films in accordance with the Cinematograph Act, 1952. Section 2 (c) defines cinematograph as follows: “cinematograph includes any apparatus for the representation of moving pictures or series of pictures”. In *K.A Abbas v. Union of India*<sup>1</sup>, the Supreme Court held that censorship of films is constitutionally valid on the grounds of Article 19 (2) and said that cinematograph is different from other forms of art as it has the ‘ability to stir up emotions more deeply than any other product of art.’

Under this Act a Board of Film Certification consisting of a Chairman and other members (not less than 12 and not more than 28) is appointed by the Central Government. They watch films before they are released for public exhibition and censor and certify it at their discretion after giving the film maker a chance to express his view on the matter in question. The Board follows an established procedure, on the completion of which it grants permission for the release of the film. It views the film to gauge the audience the film aims to target and accordingly issues it a certificate. The Board also has the right to either entirely cut scenes it deems inappropriate or ask the film makers to modify them accordingly. It also has the right to outright refuse the release of any film.

The Act recognises four categories of film certification. These categories are as follows:

1. ‘U’ Certificate - Unrestricted public exhibition
2. ‘UA’ Certificate - Unrestricted public exhibition with the exception of children below the age of 12 years
3. ‘A’ Certificate - Restricted public exhibition to adults (individuals above the age of 18 years)
4. ‘S’ Certificate - Restricted public exhibition to a specific class of people

The Board is also empowered to refuse certification on the grounds of national interest, public order, international relations, decency, morality or contempt of court. Also, the Central Government has the authority to direct the Board with regard to certification.

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<sup>1</sup> 1970 SCC (2) 780

## **Shyam Benegal Committee Report**

Over the years, there was felt a need to re-analyse the current legislation regarding censorship of films. In pursuance of this, the Shyam Benegal Committee was set up under the guidance of renowned film maker Shyam Benegal in 2016. The committee made various recommendations to the Central Board of Film Certification (CBFC) to make the procedure of censorship more liberal.

The report suggested that the Board should only decide the category of certification to be granted to a film and not become the moral police by pressurizing film makers to edit scenes based on their moral and ethical standards. Personally, this seems to be fair and reasonable as moral values are subjective and an individual should have the absolute right to make life decisions based on his own sensibility and morality.

The second suggestion is to expand the categories in certification instead of cutting scenes. The 'UA' category can be bifurcated into 'UA 12+' and 'UA 15+' to expose teenagers to a certain type of content in a moderate manner at the discretion of their parents or guardian. An 'A-C' i.e., Adult with caution category can be added for films with further explicit content. Currently only 'U' category films can be allowed for exhibition on television under the Cable Televisions Networks (Regulation) Act, 1995. This leads to a loss in revenue for films certified in other categories. Hence, film makers should be allowed to make changes for certification in the 'U' category. Further, their certification should not impact the entertainment tax levied on them by state governments.

Before setting up the Shyam Benegal Committee, the Ministry of Information and Broadcasting constituted the Mudgal Committee under the Honourable Justice Mukul Mudgal, former Chief Justice of the Punjab and Haryana High Court. This committee suggested that the "order of suspension should only be passed after or during a public exhibition and not before as the 'suspension of exhibition' implies that exhibition has taken place or is on-going". This issue has been addressed with regard to many films such as Aarakshan, Udta Punjab and more recently Padmaavat where state government sought a ban on these films owing to state politics as it represented a particular state in a negative light. The Supreme Court held in these cases that once a film has received sanctioning for public exhibition, their screening cannot be prohibited by regional parties and the state is responsible for the maintenance of law and order.

## **Press Council of India Act, 1978**

Like the CBFC, the Press Council of India (PCI) consists of chairman and 28 other members. It is the regulatory body for the Press and its decisions are binding and final and cannot be taken up in any court. It aims to ensure that journalistic ethics are being held and improve the standard of the media in our country. Although the Council does not indulge in censorship directly, issues regarding the same have been brought up before it.

Media and Press have always self-censored as they are often funded by the advertisements of big corporate houses and political parties at the national as well as state level. In a report made by the Press Council of India under the guidance of Paranjoy Guha Thakurta and K. Srinivas Reddy in 2010 highlighted how corruption has seeped into the media. The report “Paid News: How corruption in the Indian media undermines Indian democracy,” directly names newspapers and channels that were following the practice of “paid news”. These names included reputed and established media houses and newspaper agencies. Those who do not self-censor fall prey to the Cable Televisions Networks (Regulation) Act, 1995. On television a Programme Code under this Act is used to censor channels. For example, in 2016 the Government of India had banned the news channel NDTV for a day.

Hence, to avoid self-censorship and other such problems a lot of reliable and trustworthy media outlets have emerged on the digital platform in the last decade.

## **Censorship of Online Content and OTT Platforms**

Not only digital media portals but also over the top (OTT) platforms such as Netflix, Amazon Prime, etc. have seen tremendous success in the past few years. The main reason behind this being these platforms have remained outside the ambit of the Cinematograph Act, 1952 as well as the Cable Televisions Networks (Regulation) Act, 1995. Online content has flourished with no sort of censorship curbing artistic freedom and creativity. Without the fear of censorship there has been an upsurge in the quality of content with films and web-series being made with social and political commentary. Subjects which are considered taboo in the society and hence are either not discussed or discussed inadequately on televisions and theatres, are finally finding their space on digital platforms.

To avoid stringent legislation by the government monitoring and censoring them, they adopted a self-regulatory framework. In February 2020, Disney+ Hotstar did not stream an episode of Last Week Tonight with John Oliver, in which Prime Minister Narendra Modi was criticised.

### **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**

According to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 digital media houses will have to follow the Norms of Journalistic Conduct of the Press Council of India *and the Programme Code under the Cable Television Networks Regulation Act, 1995.*

A grievance redressal mechanism will also be put in place and will involve the following 3 stages:

1. Self- regulation by the publisher
2. Self-regulation by the self-regulating body (registered under the Ministry of Information and Broadcasting) of the publisher
3. Oversight mechanism

Grievances have to be resolved within a period of 15 days by a Grievance Redressal Officer. Many news website such as the Wire, News Minute and Live Law have approached the courts regarding these new rules and spoken how these new rules are a cause of concern. "Most of the digital news media organisations are small, working with 20-30 people. They are not comparable to big legacy media organisations. These rules impose onerous conditions on them," said Manu Sebastian, managing editor of Live Law. He further argued that "These rules can push digital news portals to self-censor. They will have to think twice before publishing any content, whether it would be offensive to someone or whether there's scope for a complaint from any person and so on."

The new IT Rules, 2021 also bring under its purview the various OTT platforms. The content on these platforms will be categorized in 5 age groups which are:

1. U (Universal)

2. UA 7+
3. UA 13+
4. UA 16+
5. A (Adult)

These new rules are definitely a step backward for all the artists who were finding a voice on online platforms. Web-series like Mirzapur, Sacred Games, etc. that despite protests had a safe space to exist online will have to face censorship and future projects will be deterred.

### **Conclusion**

Censorship has been practised since the time of Socrates to crack down on opposing views both political and social. However, in a true and ideal democracy, freedom of speech and expression should be absolute with no restrictions. As far as the Cinematograph Act, 1952 is concerned the Mudgal Committee report and the Shyam Benegal Committee report are the step forward and should be implemented as they aim to adapt censorship laws to the changing social environment. Artistic mediums of communication need to be protected as they are not only the mirror of our society but they also help the society and its mind-set to evolve and grow. OTT platforms that have encouraged artistic freedom so far and given a new hope to so many, will definitely face tough times ahead owing to the new rules. Media houses should work on a new model of funding and earning revenue, in order to avoid falling prey to self-censorship due to depending so heavily on advertisements given by political parties and corporate houses. Small digital media houses that have managed to do so with their subscription model should be encouraged and supported and not restricted as the current government aims to through the new IT Rules.

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