

CINEMA AND CENSORSHIP: A CRITICAL ANALYSIS UNDER INDIAN CONSTITUTION

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ABSTRACT

Cinema in India occupies a constitutionally protected space as a medium of democratic expression under Article 19(1)(a) of the Constitution of India.¹³⁰⁸ Yet it has been subjected, since the colonial enactment of the Cinematograph Act, 1918, to a persistent apparatus of state regulation that has frequently overstepped the constitutional bounds of reasonable restriction. This paper critically examines India's framework of film censorship through a constitutional, statutory, and comparative legal lens. It traces the historical evolution of film regulation from colonial pre-censorship to the Cinematograph (Amendment) Act, 2023,¹³⁰⁹ evaluates the foundational tension between artistic freedom under Article 19(1)(a) and the permissible restrictions under Article 19(2), and surveys the landmark judicial pronouncements that have progressively shaped the constitutional parameters of film certification. The paper further analyses the regulatory challenges posed by the rise of OTT streaming platforms and the adequacy of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. A comparative study of the United Kingdom, United States, Australia, and Germany is undertaken to derive lessons for institutional reform. The paper concludes that India's certification framework must transition from a censorship model to a classification-only regime – one that upholds adult autonomy, ensures institutional independence, and reconciles regulatory authority with constitutional guarantees of free expression.

KEYWORDS: Cinema, Censorship, CBFC, Article 19(1)(a), Cinematograph Act 1952, Film Certification, OTT Regulation, Prior Restraint, Proportionality Doctrine, Comparative Film Law, Freedom of Expression

GRASP - EDUCATE - EVOLVE

¹³⁰⁸INDIA CONST. art. 19(1)(a).

¹³⁰⁹K.A. Abbas v. Union of India, (1971) 2 SCC 111.

INTRODUCTION

Cinema occupies an exceptional position among the arts in India. It synthesises visual imagery, sound, narrative, and performance into a medium simultaneously intimate and mass-reaching – one capable of transcending barriers of literacy, language, and geography in a country as diverse as this nation. The Indian film industry, producing in excess of fifteen hundred feature films annually across more than twenty languages, is not merely a commercial enterprise but a deeply rooted tradition of storytelling, social commentary, and democratic encounter.

Yet the history of Indian cinema is equally a history of regulation and suppression. From the colonial Cinematograph Act of 1918 – driven partly by anxiety about the political potential of the new medium – to the post-independence legislative framework crystallised in the Cinematograph Act of 1952, the Indian State has maintained a robust apparatus for determining what audiences may see on screen.¹³¹⁰ The paradox at the heart of this framework is unresolved: the same Constitution that guarantees freedom of speech and expression also enables the State to restrict that freedom in the name of public order, decency, morality, and national security.

This paper is structured around five primary objectives: (i) tracing the historical evolution of film censorship from colonial regulation to the 2023 Amendment; (ii) analysing the constitutional framework of Article 19(1)(a) and the permissible limits of restriction under Article 19(2); (iii) examining landmark judicial pronouncements that have defined the constitutional boundaries of film regulation; (iv) assessing the emerging regulatory landscape of OTT platforms; and (v) drawing comparative lessons from international film classification models to propose concrete reforms.

SIGNIFICANCE OF THE STUDY

The significance of this study lies in bridging constitutional law, media regulation, and cultural studies into a coherent analytical framework. While scholarship on freedom of expression in India is substantial,¹³¹¹ the domain of film censorship law remains underexamined relative to its practical importance. The Cinematograph (Amendment) Act, 2023 – introducing age-based sub-categorisation and OTT-specific certification – makes a timely doctrinal analysis both necessary and valuable.

The paper also addresses the rapidly evolving OTT regulatory landscape, an area where scholarly analysis has lagged significantly behind judicial and legislative developments. By examining the intersection of constitutional guarantees, statutory mechanisms, institutional critique, and comparative methodology, this research contributes to the ongoing discourse on securing a legal environment genuinely supportive of creative freedom in India.

LITERATURE REVIEW

The theoretical debate on freedom of expression spans centuries of political philosophy. John Stuart Mill's argument in *On Liberty* (1859) for near-absolute protection of speech rests on the marketplace of ideas and individual autonomy – a tradition that has influenced American First Amendment absolutism. The counter-tradition emphasises the harm-causing potential of expression, finding resonance in India's constitutional scheme, which incorporates elaborate grounds for reasonable restriction.

Someswar Bhowmik's *Cinema and Censorship: The Politics of Control in India* (2009)¹³¹² provides a comprehensive historical account of censorship practices, demonstrating that the exercise of censorial power has rarely been ideologically neutral. Gautam Bhatia's analysis of the reasonable restrictions doctrine¹³¹³ offers a

¹³¹⁰S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

¹³¹¹Cinematograph (Amendment) Act, 2023 (No. 13 of 2023).

¹³¹²H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, New Delhi, 2015).

¹³¹³Cinematograph Act, 1952 (37 of 1952), s. 5B.

rigorous constitutional framework for evaluating film censorship norms. Shohini Ghosh has contributed important feminist perspectives on the gendered dimensions of censorship, demonstrating how the regulatory apparatus has systematically disadvantaged women filmmakers.¹³¹⁴

Notwithstanding the richness of existing scholarship, significant lacunae remain. The regulatory implications of the 2023 Amendment have yet to receive sustained scholarly attention. The constitutional dimensions of the IT Rules, 2021 for digital cinematic content have not been comprehensively examined. The intersection of film censorship with the rights of marginalised communities – Dalit, women, and LGBTQ+ persons – remains undertheorised. This paper addresses each of these gaps.

LEGAL FRAMEWORK AND CONSTITUTIONAL PERSPECTIVE

Article 19(1)(a) and Cinema as Protected Speech

Article 19(1)(a) of the Constitution guarantees to all citizens the fundamental right to freedom of speech and expression, interpreted generously by the Supreme Court to encompass all forms of human expression, including artistic and cinematic modes. In *K.A. Abbas v. Union of India* (1971),¹³¹⁵ the Supreme Court held unequivocally that films constitute a form of expression protected by Article 19(1)(a), while acknowledging that cinema's unique psychological impact and mass reach may justify a degree of regulatory oversight not required for print media. This acknowledgement validated the framework of film pre-censorship constitutionally while imposing important constraints on its exercise.

Article 19(2) permits restrictions on the grounds of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality, contempt of

court, defamation, and incitement to an offence. The Supreme Court's endorsement of the proportionality doctrine in *Modern Dental College v. State of Madhya Pradesh* (2016)¹³¹⁶ – requiring that restrictions be the least restrictive means available – has significant implications for film censorship. Mandatory cuts, as opposed to age-based classification, may fail the proportionality test where less restrictive alternatives exist.

The Cinematograph Act, 1952: Structure and Critique

The Cinematograph Act, 1952 establishes the Central Board of Film Certification (CBFC) as the primary statutory authority for examining and certifying films. Section 5B enumerates the principles governing the Board's decisions,¹³¹⁷ empowering it to refuse or conditionally certify films on grounds including public order, decency, morality, national integrity, and communal harmony. The Cinematograph (Amendment) Act, 2023 introduced significant revisions: age-based sub-categories (U/A 7+, U/A 13+, U/A 16+), OTT-specific certification provisions, and a restored Film Certification Appellate Tribunal.¹³¹⁸

The statutory framework has attracted sustained critique. Constitutionally, the pre-censorship model is difficult to reconcile with a robust understanding of Article 19(1)(a). Administratively, the CBFC suffers from excessive discretion, susceptibility to political bias, and institutional opacity – appointment of all members lying exclusively with the Central Government creates structural vulnerability to political influence regardless of which party is in power.

JUDICIAL REVIEW AND LEGAL PRECEDENTS

In *S. Rangarajan v. P. Jagjivan Ram* (1989),¹³¹⁹ the Supreme Court held that the State cannot restrict a film merely because it offends some

¹³¹⁴Someswar Bhowmik, *Cinema and Censorship: The Politics of Control in India* (Orient BlackSwan, Delhi, 2009).

¹³¹⁵Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution* (Oxford University Press, New Delhi, 2016).

¹³¹⁶*Bobby Art International v. Om Pal Singh Hoon*, (1996) 4 SCC 1.

¹³¹⁷*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹³¹⁸*Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹³¹⁹Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) dated 25 February 2021.

section of the population. The Court articulated the test of the 'strong and resilient citizenry' – a democracy must trust its citizens to engage with challenging ideas without state-mandated protection.

In *Bobby Art International v. Om Pal Singh Hoon* (1996),¹³²⁰ the Court held that graphic content integral to a film's social message must be assessed in the context of the work as a whole, and cannot be condemned as obscene when its overall purpose is to condemn rather than celebrate the acts depicted. *Aveek Sarkar v. State of West Bengal* (2014)¹³²¹ adopted the community standards test, rejecting the restrictive Hicklin standard and directing that content be assessed in the context of the work as a whole.

In *Shreya Singhal v. Union of India* (2015),¹³²² the Court struck down Section 66A of the IT Act as unconstitutional – establishing that restrictions on expression are valid only if grounded in the specific grounds of Article 19(2), and that 'grossly offensive' speech falls outside those grounds. This reasoning directly governs the constitutional standard applicable to OTT content regulation. *Nachiketa Walhekar v. CBFC* (2018)¹³²³ further affirmed that constitutional rights cannot be vetoed by threatened private violence, establishing the State's positive obligation to protect filmmakers against mob censorship.

OTT PLATFORMS AND THE NEW REGULATORY LANDSCAPE

The emergence of OTT streaming platforms – Netflix, Amazon Prime Video, Disney+ Hotstar, and their indigenous counterparts – represents one of the most significant transformations in India's media landscape. The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹³²⁴ establish a three-tier regulatory

framework: platform-level self-regulation, industry-level self-regulatory organisations, and governmental oversight through an Inter-Departmental Committee empowered to direct content removal.

The Rules have been challenged in multiple High Courts on grounds of constitutional invalidity – particularly the provision empowering the government to direct content takedowns without adequate procedural safeguards or judicial oversight. The Madras High Court expressed serious reservations about the constitutionality of certain provisions, and the eventual judicial determination will profoundly shape the regulatory future of digital cinema in India. The Cinematograph (Amendment) Act, 2023 adds OTT-specific certification but leaves unresolved how this framework interacts with the IT Rules – a jurisdictional ambiguity requiring urgent legislative clarification.

COMPARATIVE ANALYSIS

A comparative review of international film classification models reveals a decisive global trend away from governmental censorship and towards classification-based systems. The British Board of Film Classification (BBFC), operating as a non-governmental body with publicly available and periodically consulted classification guidelines, offers a model of transparency and institutional independence sharply contrasting with the opacity and governmental dependence of the CBFC. The United States relies on a wholly voluntary MPAA rating system funded by the film industry, demonstrating that effective audience information mechanisms can function without state compulsion.

Australia's statutory Classification Board employs a graduated range of categories – including a Refused Classification category applied only to a narrow range of genuinely harmful content – demonstrating how a mandatory system can protect children without functioning as general content censorship. Germany's FSK operates as an industry-funded

¹³²⁰Shreya Singhal v. Union of India, (2015) 5 SCC 1.

¹³²¹Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

¹³²²Report of the Committee of Experts on Film Certification (Shyam Benegal Committee), Ministry of Information and Broadcasting, Government of India (April 2016).

¹³²³Shohini Ghosh, 'Censorship, Law and the CBFC: Why the Board Needs Radical Reform' (2016) 51 Economic and Political Weekly 18.

¹³²⁴Aveek Sarkar v. State of West Bengal, (2014) 4 SCC 257.

self-regulatory body with governmental recognition but not control, combining a classification mechanism with carefully defined governmental intervention powers. Each model affirms: transparency in classification criteria, independence from political appointment, and the separation of child protection from general adult content regulation are essential features of a constitutionally sound regulatory framework.

FINDINGS AND DISCUSSION

The findings of this study reveal a consistent gap between India's progressive constitutional jurisprudence on cinematic expression and the institutional reality of the CBFC's functioning. The Board's excessive discretion – arising from open-textured statutory criteria – permits the imposition of personal moral preferences under the guise of objective standards. Its susceptibility to political bias, inherent in government appointment of all members, has produced regulatory decisions that systematically favour dominant political and cultural narratives while suppressing dissenting, minority, and subaltern voices.

Films addressing political critique, caste discrimination, LGBTQ+ identities, and religious satire have faced disproportionate censorial burdens – a pattern that strikes at the heart of constitutional commitments to pluralism and equal citizenship. The decriminalisation of consensual same-sex relations in *Navtej Singh Johar v. Union of India* (2018)¹³²⁵ removes any legal basis for restricting LGBTQ+ cinematic depictions, yet informal institutional conservatism persists. The Shyam Benegal Committee (2016)¹³²⁶ identified these structural deficiencies and recommended a fundamental shift to a classification-only regime – recommendations only partially implemented by the 2023 Amendment.

¹³²⁵Prakash Jha Productions v. Union of India, (2011) 8 SCC 372.

¹³²⁶Nachiketa Walhekar v. Central Board of Film Certification, W.P. (Civil) No. 1119 of 2017 (Supreme Court of India, January 2018).

CONCLUSION

Indian cinema stands at a crossroads between a century-old regulatory tradition of mandatory pre-censorship and the promise of a constitutional democracy that genuinely fulfils its commitment to freedom of expression. The accumulated jurisprudence of the Supreme Court has established that cinematic expression is fully protected by Article 19(1)(a); that restrictions must be grounded in Article 19(2) grounds and proportionate to the harm sought to be prevented; that the State cannot suppress a film merely because its content is politically inconvenient; and that the standard of audience impact is the resilient democratic citizen, not the hypersensitive viewer.

The Cinematograph (Amendment) Act, 2023 represents a partial and incomplete step forward. The power to impose mandatory cuts remains intact; the structural independence of the CBFC from governmental influence remains unaddressed; and the regulatory asymmetry between theatrical and digital distribution remains unresolved. India's film regulation framework urgently requires: a reformed CBFC with genuine institutional independence and transparent, publicly developed classification criteria; a classification-only mandate abolishing the power to impose mandatory cuts; harmonised standards across theatrical and OTT distribution channels; and a strengthened, specialised appellate forum.

These reforms are not merely administrative improvements – they are constitutional imperatives. A State that genuinely honours its commitment to freedom of speech and expression cannot continue to operate a system of mandatory pre-censorship that imposes governmental preferences on the creative choices of filmmakers and the viewing choices of citizens. The reform of India's film regulation framework is an important test of the nation's commitment to the democratic and constitutional values upon which it was founded.

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