

CLEARED BY THE CENTRE, BANNED BY THE STATE: FILM CENSORSHIP & SOCIETY'S DEBATE



Wednesday Wisdom

24-05-2023



Indian film industry is one of the largest in the world and a recent report by Confederation of Indian Industry (CII) revealed that the industry's revenue for 2022 stood at Rs. 15,000 Crores, up from Rs. 9,300 Crores in 2021 [1]. Films have not only generated immense revenue and employment opportunities but are one of the most impactful mode of entertainment and also present a great platform for creating social awareness within the masses on a cause. Since ages, film makers have been using films as a medium to directly or indirectly showcase the issues prevalent in the society.

It is often seen that if a film attempts to address certain sensitive issues and present views that are not aligned with the political agenda of the parties, the film makers face certain challenges like bans, suspensions and rejections. Sometimes, even critically acclaimed and internationally accredited and acclaimed films are banned and rejected in States and not displayed for the viewers to watch. The ban may be driven either by the central government or by the State Government. Needless to state, an unnecessary restriction or ban always results in monetary losses to the producers and loss of quality entertainment for the general masses.

The article reflects the general work of the author and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

To quote George Orwell on this, “If liberty means anything at all, it means the right to tell people what they do not want to hear.”

Some of the interesting examples of films that were initially banned by the government:

AANDHI

Film “Aandhi” starring Suchitra Sen and Sanjeev Kumar was banned by the then ruling party, as the film was loosely based on Mrs. Indira Gandhi’s life. The film was banned by the government.

After Mrs. Indira Gandhi’s defeat, the then ruling party cleared it for release and it was also premiered on television.

PADMAVAT

This film was in heaps of controversies even during its shooting as well as before its release.

Its set was vandalized by various groups and even before its release, it was sought to be banned by various groups. Then after addition of disclaimers as suggested by CBFC, it was finally released in January 2023.

PHOOLAN DEVI

This film, based on the real life of a dacoit-Phoolan Devi. It was temporarily banned by the Delhi High court, when the real Phoolan Devi, the subject of the film, challenged its authenticity. It was also challenged by the member of the Gajjar family and was sought to be banned. However, it was later released.

LIPSTICK UNDER MY BURKHA

Initially certification to this film was denied by the CBFC, but after the appeal to the Film Certificate Appellate Tribunal, more than 16 cuts to the film were suggested. After the said cuts, the CBFC granted an A certificate to the film.

DA VINCI CODE

This international film was sought to be banned by almost 7 States citing the reason of hurting religious sentiments. Eventually, it was released in the States, after adding a disclaimer that the contents of the film are fictional.

The pressing issue around us is that even after the films are certified by the Censor Board, they are not exhibited due to the bans issued by the State Government. This article elaborates on the rights of the film-makers and the tussle between maintaining law and order and the freedom of speech and expression.

FREEDOM OF SPEECH AND EXPRESSION:

Constitution of India under Article 19(1) (a) grants a right of freedom of speech and expression to all citizens. However, this freedom cannot be absolute as it may have repercussions to hurt religious and social sentiments of other people. This freedom of speech comes with reasonable restriction as stated under Article 19 (2).

Article 19 (2) states that “Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interest 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.”

Thus, the filmmakers are at liberty to choose topics and portray the storyline of the film as per their visions, however such liberty may be subject to reasonable restrictions.

The Supreme Court in the case of International Sri Vaishnava Dharma Samrakshanaa Society vs. The Censor Board and others[2] stated that,

The movie is a powerful means of communication which attracts larger attention and mass audience. It cannot allow itself to propagate hatred among the people of all walks of life including the religion oriented people. Certain amount of restraint by them is the need of the hour. Though the producers of the films have got freedom of expression, they should see to it that such freedom does not affect the sentiments of the people of any religion of that matter. The unity of the people shall be the most paramount consideration of everybody, more particularly, the persons who produce the films.”

For the purposes of regulation of censorship, The Cinematograph Act, 1952 (Act) was enacted whose purpose was “to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs”.

The CBFC examines the film, and after a thorough examination, it has powers to do either of the following under section 4 (1) of The Cinematograph Act, 1952:

[2]W.P.Nos.11983 and 12929 of 2008





The Oxford Dictionary describes CENSORSHIP as the "prohibition or concealment of any piece of news, books, films, and so on that is considered politically inadmissible, revolting, or a danger to security." CBFC poses reasonable restrictions to enable the films to be in a condition that will not contravene the reasonable restrictions.

STATE INTERVENTION:

There has been a long-standing loggerhead between the State Government and the filmmakers in case the film deals with the sensitive subject and the State feels that it may disrupt the harmony of the State. There have been instances where the States have objected and banned certain films because the content does not correctly reflect political or religious facts.

In some instances, a State Government or an authority imposes a ban on the exhibition or showcasing of films even when the film is passed by the CBFC under any of the above categories and has been issued a censor certificate.

Earlier instances of such bans being imposed on films include ban being imposed on the film "The Da Vinci code" by the State Government of Tamil Nadu and the ban on the film "Aarakshan" by the State Governments of Andhra Pradesh, Punjab and Haryana, despite these films being passed by the CBFC and censor certificate being issued to the films.

A recent example of this is the new feature film "The Kerala Story" which has sought to be banned by Tamil Nadu and West Bengal. The plot of the story revolves around forced conversions of ladies to support ISIS's terrorist activities. The film is inspired by real life events that have occurred. The film was not permitted release in theatres in Tamil Nadu and West Bengal, and a case was filed in the High Courts. The film was released in some States on 05th May 2023. Ultimately the matter reached the Supreme Court and through writ petition. In the order passed on 18th May 2023, it was suggested by Senior Advocate Harish Salve, who is advocate for the plaintiff that in order to set the controversy pertaining to the film at rest following two statements can be added in the existing "Disclaimer" with effect from 20th May 2023[3]:

- There is no authentic data to back up the suggestion that the figure of conversion is 32,000 or any other established figure; and
- The film represents a fictionalised account of events forming the subject matter of the film.

The final disposal of petitions is now scheduled on 18th July 2023.

BANNED!

The seventh schedule of Constitution of India provides for the division of powers between the Central and State Governments. List 1 is the Union List, which enumerates the subjects on which the Central Government can legislate and List 2 is the State List, which enumerates the subjects on which the State Government can legislate.

And another entry 33 exists in List 2 which provides, "Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I".

Thus, we have central as well as State legislation on cinemas and sometimes there is a conflict between these State legislations and the central legislation which needs to be determined carefully in each case.

The constitutional validity of the legislation of the UP was sought to be challenged in the Supreme court in the case of M/S Prakash Jha Productions & Anr vs Union Of India & Ors, but it was not pursued by the petitioners.

Entry 60 of List 1 provides "60. Sanctioning of cinematograph films for exhibition".

Case Law:

M/S Prakash Jha Productions & Anr vs Union Of India & Ors on 19 August, 2011[4]

This is a landmark case law in terms of dealing with constitutional validity of the provisions of the State Acts and the guidelines which are stated by the CBFC. This case involved an objection to the film "Aarakshan" which was produced by Prakash Jha Productions. This film revolved around the sensitive subject of reservations imposed for educational institutions. The State of Uttar Pradesh had raised an objection over the exhibition of the film. The film was presented before the CBFC and the CBFC had also invited legal experts to analyze the film and an examining committee was also established which consisted of social experts. Upon the recommendation of the examining committee, the certificate was granted to the film, and also changes were carried out in the film. After the grant of the certificate, the film was exhibited in other States except the State of Uttar Pradesh.

The State of Uttar Pradesh sought to suspend the film under section 6 of U.P. Cinemas (Regulation) Act. Prakash Jha Productions, as petitioners challenged the suspension on various grounds like:

- decision of the Uttar Pradesh Government suspending the screening of the film 'Aarakshan' in the entire State of Uttar Pradesh amounted to pre censorship and exercise of power which did not vest in it;
- decision of the State Government is in violation of the provisions of Article 19(1) of the Constitution of India and, therefore, the same is required to be struck down and quashed.

The State of Uttar Pradesh essentially stated that a very high-level Committee has seen the film and thereafter has given an opinion, according to which if and when the concerned film is shown there is likelihood of breach of peace and also breach of law and order situation and, therefore, the aforesaid decision of suspending the screening of the film "Aarakshan" in Uttar Pradesh, which has been taken in order to preserve and upkeep the law and order situation in the State should be upheld.

These contentions were upheld by the Supreme Court and the said film was allowed to be released and the Supreme Court stated that:

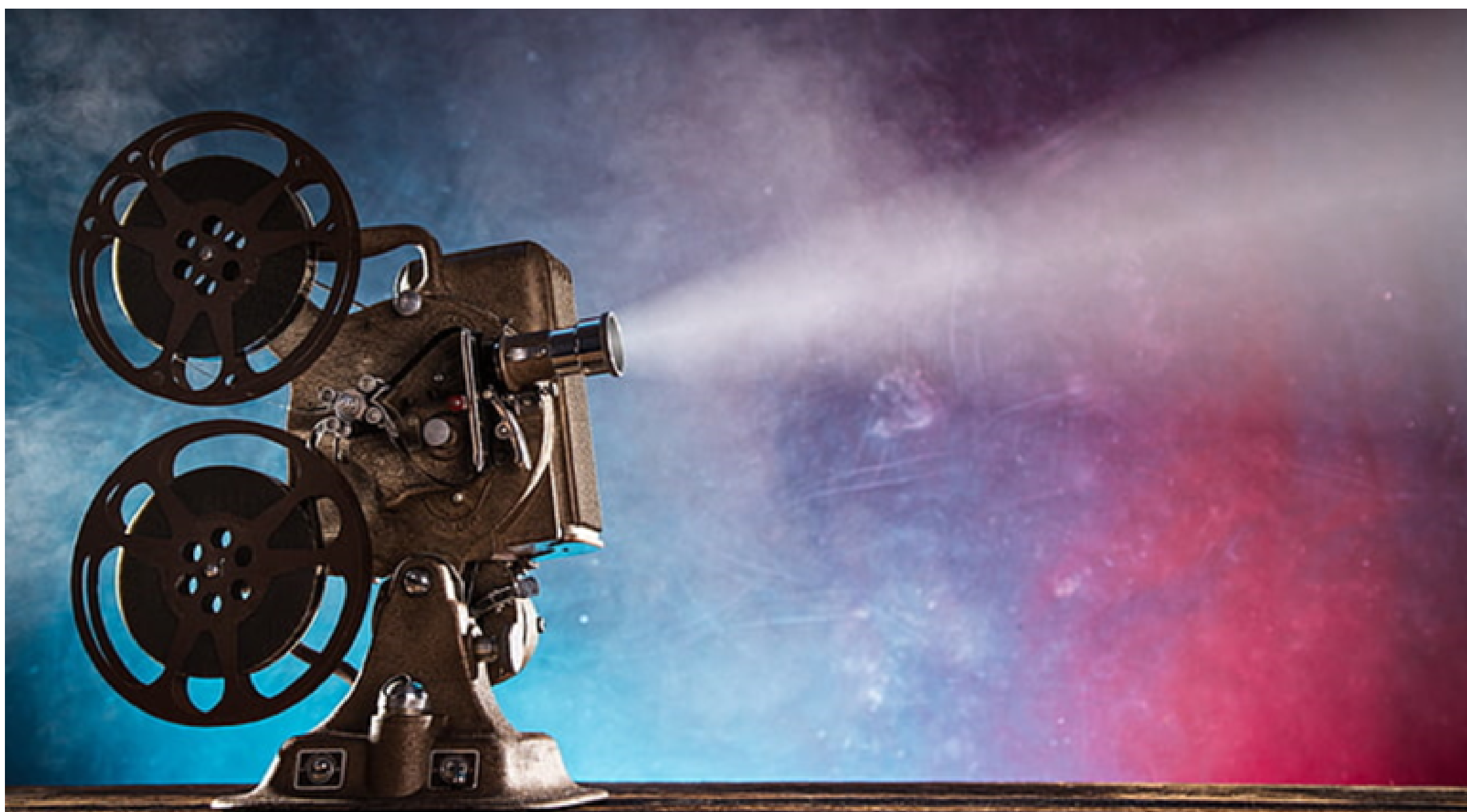
"So far the contention of the counsel appearing for the State of Uttar Pradesh that the issue of reservation is a delicate issue and is to be handled carefully is concerned, we are of the considered opinion that reservation is also one of the social issues and in a vibrant democracy like ours, public discussions and debate on social issues are required and are necessary for smooth functioning of a healthy democracy. Such discussions on social issues bring in awareness which is required for effective working of the democracy. In fact, 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.

..It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the present case. As held in Union of India Vs. K.M Sankarapaa[5] it is the responsibility of the State Government to maintain law and order."

[3] WP(s) Civil No. 552/2023

[4] (2011) 8 SCC 372

[5] (2001) 1 SCC 582



Conclusion:

Currently, there is rift between State Governments and CBFC. It is evident that even after the CBFC has granted the certification, there are challenges to the film makers. This causes a clash between the artistic freedom granted to an individual under the Indian Constitution and the State control on mediums of entertainment.

CBFC's certification process and guidelines are designed to ensure that the films which are being made and released have to adhere to certain guidelines and meet certain standards. Thus, the State Governments should be extremely cautious and prudent while exercising a ban. Any suspension on grounds like mere disagreement with content, political agenda, or objectionable content within the films may not be held sufficient and it should be remembered that any suspension is always subject to judicial review.

Courts have repeatedly emphasized the need to protect artistic freedom though such freedom is not unfettered. The Courts have ruled in favour of allowing the release of certain films so that it can be ensured that process is not arbitrary or prone to abuse.

A balanced approach will ensure that films do not get banned or delayed unreasonably, depriving the general public from quality entertainment.

Today, we are in the era of OTT platforms where the mechanism for certification of OTT Platform is at a very nascent stage, and government also admits a need for a stronger and stricter censorship for OTT Platforms. On the contrary, for films the CBFC is applying their mind with respect to the socio-economic-political conditions, as well as the content of the film is strictly judged, and thereafter film is granted with certificate. Thus, this process needs to be respected as a good practice.

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