

Freedom of Speech and Expression with Respect to Indian Cinema: An Analysis

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“As the freedom of expression concerning public affairs is indispensable to the operation of the democratic system, it is a necessary implication from the provisions of the Constitution establishing it”².

Justice K.K. Mathew

Introduction

In India, constitution gives rights to an individual for presenting their opinions under Article 19 (1) (a)³. Freedom of expression is essential to the expansion and fulfillment of individual personality. It is a live wire of the democracy. Freedom of expression is more essential in democratic setup of State where people are the Sovereign rulers. According to Sir William Ivor Jennings, *“Without freedom of speech, the appeal to reason which is the basis of democracy cannot be made.”⁴*

The freedom of speech under Article 19(1) (a) comprises with right to express one’s views and views at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc. It thus comprises the freedom of communication and the right to propagate or printed their opinion. But this right is subject to reasonable restrictions being imposed under Article 19(2). Free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary⁵. It is not only guaranteed in the constitution or other states legislations but also by different international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights and etc. These declarations specifically discuss about protection of freedom of speech and expression in the

International level.

Film industry is the most influencing industry among the young’s of our nation. Movies are the artistic expression of ideas, stories and often opinions, sometimes inspired by reality occasionally set to music, designed to enthrall, enchant, or simply to entertain⁶. Indian film industry is the largest in the world producing over a thousand films in a year screened over 13,000 cinema halls in the country. Every three months an audience as large as the country’s entire population flocks to the cinema halls⁷. Hence, banning of the films brings to the serious question that, do we have the freedom of speech and expression? Films are banned or targeted primarily because of the issues those are related to sex, violence, religious sentiments etc., in the name of maintaining public order; in respect of beliefs and traditions; or for criticizing the nation. this research paper emphasis is given to analyze the applicability of Article 19 (1) (a) under the Indian constitution in respect of ban or censorship on movies in India.

Historical Expansion of Free Speech

Freedom of speech and expression expand at the 18th century, this was the first basic rights declarations. United Nations adopted a derivative from Article 19 of the Universal Declaration of Human Rights in 1948. Sweden became the first country in the world to enact a provision for access to official information for the citizens.⁸ The Rome Convention for the Protection of Human Rights and Fundamental Freedoms, 1950,⁹ and came into force on, 1953; and particularly Article 10, which talks about the freedom of expression states that:

(i) Everyone has the right to freedom of expression. This right shall include freedom

to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises,

(ii) The exercise of these freedoms since it carries with its duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.¹⁰

In India's context, struggle for independence from the British rule, right to free speech was given enormous importance by the national leadership. Rigorous campaigns were organized to ensure the freedom of press against several repressive laws¹¹. Political parties otherwise critical of each other and often at opposite ends of political and ideological spectrum vigorously defended each other's civil rights. The Moderates defended the Extremist leader Bal Gangadhar Rao Tilak's right to speak and write what he liked. Further, the Karachi Convention of the Congress in 1931, accepted a resolution on Fundamental Rights which, inter alia, guaranteed right of free expression of opinion through speech and Press.¹² After the independence, drafting committee of constitution realized the importance of freedom of speech, therefore in Part III of the Constitution rights have been given such as, right to life, liberty, dignity and right of freedom of free and expression in decent conditions of life and development. Such an illustrious history confirmed that freedom of expression became a fundamental right in the Constitution.

Legal Framework of Censorship in India

Under Indian Law, Section 8 of the Cinematograph (Certification) Rules 1983 have been framed the procedural details of Board, the Examining Committee, Revising Committee, the Tribunal and related matters. It may be stated in this regard, under Rule 11, it enforces a duty on the Board to assess public reactions to films. This may be by holding symposia or seminars of film critics, film writers, community leaders and persons engaged in the film industry and also by undertaking local or national surveys to study the impact of films on the public mind¹³.

Apart from the statutory provisions, Indian Court has also delivered various judgments to build up the jurisprudence in this respect. Some of those important judgments related to Censorship on films, telefilms and television serials. In the case of Life Insurance Corporation of India v. Prof. Manubhai D. Shah, Doordarshan¹⁴ refused to telecast a documentary film on the Bhopal Gas Disaster titled Beyond Genocide, in spite of the fact that the film won Golden Lotus award, being the best non-feature film of 1987 and was granted 'U' certificate by the Censor Board. The reasons cited by Doordarshan were inter alia, the political parties had been raising various issues concerning the tragedy, and the claims for compensation by victims were sub judice. Upholding the freedom of speech the Court held: Merely because it is critical of the State Government, is no reason to deny selection and publication of the film. So also pendency of claims for compensation does not render the matter sub judice so as to shut out the entire film from the community. The Court made it clear that subject to Article 19(2), a citizen has a right to publish, circulate and disseminate his views to mould public opinion on vital issues of national importance¹⁵. Hence, any attempt to thwart or deny the same would offend Art. 19(1)(a). Under such circumstances, the burden would, therefore, heavily lie on the authorities that seek to impose

them to show that the restrictions are reasonable and permissible in law.

Again an award winning documentary film, In Memory of Friends about the violence and terrorism in Punjab was rejected by Doordarshan even after been granted 'U' certificate by the Censor Board reasoning if such documentary is shown to people, it would create communal hatred and may even lead to a further violence. The court quashed the order emphasizing: The State cannot prevent open discussion and open expression, however, hateful to its policies. Everyone has a fundamental right to form his own opinion on any issue or general concern. He can form and inform by any legitimate means¹⁶.

In *K.A. Abbas v. Union of India*¹⁷, the constitutionality of censorship under the 1952 Act along with the Rules under it was challenged. But the Supreme Court upheld the constitutionality within the ambit of Article 19(2) and added that 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'. However, at the same time it cautioned that it should be 'in the interests of society'.

Freedom of Expression and Indian Films

Demand for a ban on movies, books or arts are not uncommon in India. Freedom of cinematic expression vis-a-vis the statutory requirement of pre-censorship and the perceived notion of hurt sentiments of few disgruntled groups as a basis for seeking ban on movies by states have to be relooked and analyzed through the lens of the legal framework in place and the constitutional guarantee of freedom of speech and expression under Article 19(1) (a)¹⁸. Recently, Sanjay Leela Bhansali film *Padmaavat* (*Padmavati*) involves in controversy after the Rajput community raised objections about the depiction of queen *Padmavati* in the film and alleged misrepresentation of history.

Meanwhile, after hearing this matter, Supreme Court held that those in public offices shouldn't comment on the Central Board of Film Certification's (CBFC) workings.

The target of public are other than censorship carried out by the CBFC before certifying for public screening. Therefore, the call for banning *Padmaavat* does not stand alone. Movies like *Bandit Queen* (1994), *Da Vinci Code* (2006), *Jodhaa Akbar* (2008), *Udta Punjab* (2016) are few notable examples of many other films that got caught up in controversies in the past.

A documentary based on Delhi Chief Minister Arvind Kejriwal were challenged, albeit unsuccessfully- before the Supreme Court. The Apex court dismissing the plea for a ban on the *An Insignificant Man* has held that "*Freedom of Speech and Expression is sacrosanct and the said right should not be ordinarily interfered with.*"¹⁹ On the Marathi movie, the Bombay High Court dismissed the plea, taking a cue from the Apex Court's order. Therefore, the right to make and release films is similar to an expression of artistic creativity.

Conclusion

Freedom of speech and expression is one of the basic and historical right guarantees by the civil society as well as the constitution of India, after analyzing of all those incidents, judgments, and laws, the activities and rationale. The words 'in the interest of public order', as used in Article 19 contain not only utterances as are straight intended to lead to disorder but also those that have the tendency to lead to disorder.

The power of censorship substitute to the States has to be narrowed down drastically. They must satisfy the Central authority as to why the ban in their territory is indispensable and that there is no alternative left. In, India where actors/actress is considered as an idol among the youth, Cinema is a significant instrument of expression of ideas and speech remain unrestricted for any

kind of censorship. Therefore, Opinion or Perception of few people in the Society should not be amount to complete ban or censorship on movies, a balance should be maintained between the right of expression and the duty to maintain peace in the society.

19 *SC Upholds Freedom Of Expression, Refuses To Stay Documentary On Aravind Kejriwal*, available at <http://www.livelaw.in/sc-upholds-freedom-expression-refuses-stay-delhi-cm-documentary-read-order/>, last seen on 05/01/2018

(Endnotes)

- 1 4th Year Student, School of Law, UPES, Dehradun
- 2 K.K. Mathew, *“Democracy, Equality and Freedom”*,98(1st ed.,2015)
- 3 Constitution of India, Part III, Article 19(1)(a)
- 4 Jennings, W.I., Cabinet Government, 13. [Cited in Dr.Madhabhusi Sridhar, *The Law of Expression, An Analytical Commentary on Law for Media* 18 (Asia Law House, Hyderabad, 18, 2007)].
- 5 Radha Mohan Lal v. Rajasthan High Court,(2003) 3 SCC 427.
- 6 *Report of the committee of experts to examine issues of certification under the cinematograph Act 1952*, available at http://mib.gov.in/sites/default/files/Report_of_Expert_committee.pdf, last seen on 17/01/2018.
- 7 *Central Board of Film Certification*,available at <http://www.cbfcindia.tn.nic.in/>, last seen on 14/01/2018.
- 8 Subhash C. Gupta, *“Right to Information Act, 2005: A New Approach to Public Accountability”*,292(1st ed., 2007).
- 9 P.K. Das, *“Handbook on the Right to Information Act”*, 15(5th, 2015).
- 10 Article 10, *European Convention on Human Rights*, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf, last seen on 12/01/2018
- 11 A.G. Noorani, *Films and Free Speech*, 43(18) ECON. & POL. WEEKLY 11, 11 – 12, (2008)
- 12 Bipan Chandra , *India after independence: 1947 – 2000* 22 (Penguin Books 2000) (1999).
- 13 *Censorship reflects a society’s lack of confidence in itself*, Legal Service India, available at <http://www.legalserviceindia.com/articles/fban.htm>, last seen on 12/1/2018.
- 14 *Life Insurance Corp. of India. Vs. Prof.Manubhai D. Shah*, AIR 1993 SC 171
- 15 *Ibid* 13
- 16 *Anand Patwardhan v. The Union of India and others*, AIR 1997 Bom. 25.
- 17 *K.A. Abbas v. Union of India*, AIR 1971 SC 481
- 18 *Padmavati syndrome: Freedom of speech and expression vs perceived hurt sentiments*, *The Political*, available at <https://www.theapolitical.in/opinion/padmavati-syndrome-freedom-speech-expression-vs-perceived-hurt-sentiments>, last seen on 13/01/2018