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CURTAILING EXPRESSION TO ENABLING CHOICE: REFORMING FILM CENSORSHIP IN INDIA

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ABSTRACT

This paper examines the evolution of film censorship in India, tracing its roots from the colonial-era regulatory frameworks to the present-day mandate of the Central Board of Film Certification (CBFC). The study is situated within the constitutional perspective of Article 19(1)(a), analysing how judicial scrutiny, through landmark rulings, has attempted to safeguard creative expression against arbitrary restrictions. It details the CBFC's two-tiered structure and the history of its appellate mechanism, culminating in an analysis of the Cinematograph (Amendment) Act, 2023.

The key finding is that the Act's retention of the power to order mandatory cuts and excisions for subjective reasons creates an irreconcilable conflict with the principle of freedom, pushing the CBFC into the role of an unconstitutional censor. The paper recommends a fundamental regulatory paradigm shift toward a strict, sophisticated content classification framework that prioritize audience choice over mandatory edits. Additionally, it advocates comprehensive institutional reforms, including the establishment of an independent appellate mechanism and formalized appointment processes, to ensure accountability and expert-driven, constitutionally compliant certification.

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INTRODUCTION

Cinema often described as “the mirror of society” has long served as a medium of artistic expression, social commentary, and public dialogue. In India, however, this form of expression has frequently encountered the tension between creative freedom and state control. The regulation of films through censorship reflects a persistent conflict between moral guardianship and constitutional liberty. Moreover, the attitude of the authorities towards cinema appears to be idiosyncratic, with their decisions being directed not on set rules and guidelines but rather on their own whims and fancies.² The central problem lies in the lack of a consistent and transparent approach to film certification, which often leads to arbitrary restrictions on filmmakers and undermines the democratic value of free speech. This paper aims to examine the historical evolution of film censorship in India, analyse the functioning and statutory framework of the Central Board of Film Certification (CBFC), and propose policy-oriented reforms to ensure a more accountable, classification-based, and constitutionally compliant system of film regulation.

THE EVOLUTION OF FILM CENSORSHIP IN INDIA

Even though the term censorship may seem like a modern concept, its origin in India can be traced back to the colonial period. The British colonial state, fearing the rise of nationalist sentiments expressed through various media, used censorship as a tool to suppress and control political expression. The Vernacular Press Act of 1878 was part of this broader colonial strategy, giving authorities the power to censor Indian

² R S Chauhan, Clamping Down Creativity, The Hindu, March 30, 2017, <https://www.thehindu.com/opinion/op-ed/clamping-down-on-creativity/article17739798.ece>.

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newspapers that criticized their rule. While that was the case, the year 1905 witnessed the rise of freedom struggle leaders advocating more assertive and aggressive methods to gain independence. The British foresaw the potential of films to worsen the situation and therefore sought to keep them under control. Amidst this background, the first-ever Cinematograph Act, namely the Cinematograph Act of 1918, was implemented. The main motive of this Act was to regulate film exhibitions, with primary focus on ensuring safety, such as taking precautions to prevent fire, and preventing the display of objectionable content. The grounds for censorship included content that was anti-British, scenes likely to incite communal tensions, depictions of vulgarity or immorality, and any material that questioned authority or the justice system. As per Art 3 of this Act, any film intended for public exhibition had to obtain a license. Under Art 7{1}, the union government was empowered to constitute film censorship authorities, each comprising two or more members, to examine and certify films. In 1920, four such boards were created in Bombay, Madras, Calcutta and Rangoon. It also gave additional powers to certain high officials- like the president of the union, the authority of a zone and District Magistrates- to declare a film 'unsuitable' for public exhibition [Art 7{2}- 7{5}].

Under this legal framework, numerous films faced bans in colonial India, revealing how censorship often served the political interests of the British Raj. Bhakt Vidur of 1921, was the first film to ever face a ban for the resemblance of the protagonist to Gandhi. The Film Thyagabhoomi of 1939 was the only Indian film to be banned after release by the British government for depicting scenes of congress volunteers and including a song praising nationalist efforts, which was viewed as seditious.

Post-independence, the demand for a uniform film certification system led to the Cinematograph Act, 1952. This Act replaced provincial laws with a centralized framework, establishing the Central Board of Film Certification (CBFC) and empowering it to classify films. The Act thus laid the foundation of modern film

regulation in India, though its provisions would soon raise constitutional questions. Since its enactment, the Act has seen films being banned or subjected to modifications through cuts, altered titles, or name changes in order to conform to its requirements.

Over time, the framework itself underwent changes- minor amendments were introduced in 1973, while more significant alterations to the rules were brought into force through a notification dated 9 May 1983 issued by the Ministry of Information and Broadcasting. In 1991, the Ministry of Information and Broadcasting issued detailed guidelines for the CBFC, balancing artistic freedom with societal values and public morality. These developments reflected the state's continuing effort to balance cinematic expression with regulatory control, a control that became structurally more assertive following the abolition of the specialized Film Certification Appellate Tribunal (FCAT) in 2021. This long evolution of regulatory oversight culminated in the comprehensive Cinematograph (Amendment) Act, 2023, and the subsequent Cinematograph (Certification) Rules, 2024, which finalized provisions like perpetual certificate validity, introduced granular age classifications (UA 7+, 13+, 16+) and fully digitized the certification process.

CONSTITUTIONAL PERSPECTIVE

The Constitutional framework governing film censorship in India rests primarily on Art 19(1)(a) which guarantees the right to freedom of speech and expression. This fundamental right encompasses various forms of expression, including cinematic films as recognised by the Supreme Court in *Rangarajan v. P Jagjivan Ram*³, where it was opined that movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The combination of act and speech, sight and sound in semi-darkness of

³ 1989 SCR (2) 204

the theatre with elimination of all distracting ideas will have an impact in the minds of spectators.

However, the right to express through cinematic films has been subjected to reasonable restrictions under Art 19(2). The state may limit this freedom in order to protect interests such as national sovereignty, public order, and morality. When a film is censored apart from these reasons, it becomes truly unfair and arbitrary, violating the filmmaker's right to expression.

When a film is censored apart from these reasons, it becomes truly unfair and arbitrary, violating the filmmaker's right to expression. At the same time, the right of the audience to witness or receive a filmmaker's work is being violated. The supreme court has already recognised this right as part of the right to free speech. Therefore, unreasonable censorship not only restricts a filmmaker from doing their work but also hinders the cultural richness that society would receive. In conclusion, there would arise the infringement of two fundamental rights- the right to free speech and the right to receive information, if there happens to be censorial overreach.

Another important constitutional question that arises is whether pre-censorship of films is allowed under Article 19(2). The Indian approach diverges from that of jurisdictions like the United States, where prior restraint is almost entirely prohibited. In *K. A. Abbas v. Union of India*⁴, the court opined that "pre-censorship is but an aspect of censorship and bears the same relationship in quality to the material as censorship after the motion picture has had a run. The only difference is one of the stages at which the state interposes its regulation between individual and his freedom. Beyond this there is no vital difference."

⁴ 1971 SCR (2) 446

CBFC: FUNCTION AND FRAMEWORK

The Central Board of Film Certification (CBFC) is the statutory authority responsible for film censorship in India. It was established under Section 3(1) of the Cinematograph Act, 1952, by the Ministry of Information and Broadcasting. In accordance with Section 4, any individual seeking to exhibit a film is required to submit an application to the CBFC for certification. The board comprises a chairman and not less than 12 and not more than 25 other non-official members, the chairman and all other members are appointed by the central government. The CBFC operates through a decentralized structure, with nine regional offices located across the country, including major cities such as Mumbai, Chennai, Kolkata, and Delhi. Each regional office is supported by advisory panels, whose members are nominated by the central government from diverse fields for a term of two years. These panels are tasked with examining films and making recommendations to the board.

The Board functions as a two-tiered body, comprising an Examining Committee and Revising Committee, both of which play crucial roles in the certification process. Additionally, the framework previously included the Film Certification Appellate Tribunal (FCAT), as an appellate authority, which was abolished in 2021, shifting the appeal burden to the High Courts.

The Cinematograph (Certification) Rules, 1983 provide the procedure for certification procedure. The process begins with the Examining Committee, which generally consists of an Examining officer and members drawn from the Advisory Panel—typically four in the case of feature films, with a mandatory requirement for female representation. The Committee undertakes the initial viewing of the film and recommends the appropriate certificate category, along with any proposed cuts or modifications deemed necessary.

If the filmmaker is dissatisfied with the decision of the Examining Committee, an appeal may be made to the Revising Committee, a higher authority within the CBFC.

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The Revising Committee is composed of the CBFC chairman (or a Board Member in their absence) and up to nine members drawn from both the main Board and the Advisory Panel. The Committee reviews the appeal and issues a final decision. In cases, where parties remain aggrieved by the Revising Committee's ruling, the recourse previously offered by the FCAT has been abolished. Aggrieved parties must now directly seek judicial intervention from the High Court.

The Cinematograph (Amendment) Act, 2023 introduced a significant reform in the film certification framework by abolishing the Central Government's revisional power over films that are certified or pending certification. This change effectively enhances the CBFC's decisional autonomy within the statutory scheme. Complementing this, the Cinematograph (Certification) Rules, 2024 modernized the operational process by enabling fully online certification and digital workflows, thereby reducing procedural delays and introducing a priority screening mechanism consistent with the government's motto of 'Ease of Doing Business.'

The primary mandate of the Central Board of Film Certification (CBFC) is the grant of a certificate for public exhibition, a function rooted in Section 5A⁵ of the Cinematograph Act, 1952. The Act fundamentally prescribes four principal certification categories, namely:

U - This classification is conferred upon films deemed suitable for viewers of all age groups, permitting unrestricted public exhibition.

U/A - While cleared for universal exhibition, this category mandates parental discretion for minors. Critically, the Cinematograph (Amendment) Act, 2023, and the Cinematograph (Certification) Rules, 2024, subdivided this category into age-specific

⁵ The Cinematograph Act, 1952, § 5A.

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markers (U/A 7+, U/A 13+ and U/A 16+). These endorsements serve to inform parents or legal guardians that content may require consideration for children below the specified age threshold.

A - This certification strictly limits public exhibition to individuals who have attained the age of majority, that is, adults.

S - This category restricts the film's exhibition exclusively to members of a specified profession or defined class of persons.

A key reform introduced by the Cinematograph (Amendment) Act, 2023 is the grant of perpetual validity to film certificates, thereby eliminating the earlier restriction that limited their validity to ten years. Additionally, films classified under the 'A' or 'S' categories are now required to undergo separate recertification- involving mandatory modifications- before being permitted for exhibition on television or other prescribed media. The board derives its authority to grant or refuse certification primarily from Section 5B of the Cinematograph Act ⁶. It states that "A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of [the sovereignty and integrity of India] the security of the state, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence". This provision essentially mirrors the grounds for reasonable restrictions on the freedom of speech and expression under Article 19(2) of the Indian Constitution. It ensures that while filmmakers enjoy creative liberty, such expression remains within constitutionally permissible limits.

⁶ The Cinematograph Act, 1952, § 5B.

CENSORSHIP IN PRACTICE: JUDICIAL SCRUTINY AND THE ROLE OF THE CBFC

The jurisprudence of the Indian higher judiciary has consistently affirmed the primacy of cinematic expression under the Indian Constitution. Confronting the inherent tension between State regulatory authority (censorship) and creative liberty, the courts strictly distinguish constitutionally valid restrictions from arbitrary overreach, thereby safeguarding fundamental rights. Through landmark judgements, the judiciary has successfully delineated the operational limits of the CBFC, ensuring its powers are exercised equally with the rule of law and do not disproportionately infringe upon the central idea of creative expression.

This judicial imperative to uphold constitutional guarantees was first articulated in the landmark case *K. A. Abbas v. Union of India*⁷. In addition to addressing the Constitutionality of pre-censorship, the case also represents one of the earliest instances of judicial scrutiny of the film certification process itself. When the filmmaker's documentary "A Tale of Four Cities" faced demands for extensive cuts and deletions on the grounds of alleged obscenity- specifically, scenes depicting the living conditions in a red-light district- the Supreme Court ultimately held that the certifying authority must draw a careful distinction between works intended for genuine artistic or social expression and those designed merely to appeal to prurient interests. The ruling fundamentally curbed the CBFC's censorial overreach, establishing the principle that the depiction of unsettling social reality cannot be suppressed under the pretext of public morality, provided the film's theme retains a legitimate artistic or reformist purpose. This judgement, therefore, mandated a

⁷ Supra note 3.

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reasonable and non-arbitrary application of the statutory restrictions defined in section 5B.

In *S. Rangarajan v. P Jagjivan Ram*⁸, the Tamil film “Ore Oru Gramathile” which critiqued the government’s reservation policy, was initially granted a U certificate that was later revoked by the Madras High Court for allegedly inciting social unrest. On appeal, the Supreme Court restored the certificate, holding that democracy thrives on open dialogue and that expression cannot be curtailed merely for being critical or controversial. The Court reaffirmed cinema as a legitimate medium of political and social discourse and emphasized that tolerance is the cornerstone of constitutional freedom.

In *Bobby Art International v. Om Pal Singh Hoon* ⁹, the Supreme Court reaffirmed judicial deference to expert film certification and set limits on judicial intervention. The case concerned *Bandit Queen*, a biopic of Phoolan Devi, which petitioners claimed portrayed women and the Gujar community obscenely. The Supreme Court held that films must be assessed in their entirety, emphasizing that depictions of nudity or sexual violence are constitutionally permissible when integral to the narrative and intended to highlight social issues rather than titillate. The Court clarified that censorship cannot cater to hypersensitivity or subjective morality, recognizing the scenes as essential to conveying the protagonist’s trauma and the film’s social critique.

Similarly, the Supreme Court in *Prakash Jha Productions v. Union of India* ¹⁰ upheld the inviolability of CBFC certification against state interference. After the film *Aarakshan* was suspended by certain State Governments on the pretext of preventing public disorder, the Court held such suspension to be unconstitutional. It ruled that

⁸ Supra note 4.

⁹ (1996) 4 SCC. 1

¹⁰ (2011) 8 SCC 372

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once a film is certified by the CBFC, State Governments have no authority to re-censor or restrict its exhibition. Their role is limited to maintaining public order, not to regulating artistic expression. This judgment reaffirmed the Rangarajan principle and firmly established the CBFC as the sole statutory body empowered to certify films.

Beyond judicial pronouncements, several films have also sparked significant censorship controversies that reveal how the CBFC's decisions operate in practice, often leading to a tussle between creative expression and state authority. In a recent case, the CBFC refused to certify the film *Udta Punjab* and suggested almost 13 cuts in the movie as a mandatory measure to seek certification¹¹. The movie was a fictional crime thriller highlighting youth drug abuse in Punjab and its political nexus. The Bombay High Court intervened decisively, quashing all but one minor cut. This ruling served as a stern reminder that the CBFC is a body of certification, and that films depicting social realities cannot be mutilated due to political discomfort.

The controversy surrounding the film *Janaki v. State of Kerala* (or *JSK- Janaki V vs State of Kerala*) represents a recent and troubling instance where the CBFC has employed the threat of non-certification to coerce filmmakers into making arbitrary, non-statutory changes, thereby weaponizing the censorship process itself. The CBFC objected to the use of the word "Janaki" as both the film's title and the name of its protagonist. The Board contended that since the character named after Goddess Sita (Janaki) is depicted as a rape victim and is cross-examined by an individual belonging to another religion, such representation could potentially disrupt public order. The filmmakers approached the Kerala High Court challenging these objections, arguing that they were arbitrary, unreasonable and unconstitutional. The CBFC's stance

¹¹ Rahul Bhasin, 'Don't be oversensitive', Bombay HC tells CBFC, clears *Udta Punjab* with one little cut, *INDIAN EXPRESS*, [https:// indianexpress.com/article/india-news-india/censor-wanted-13cuts-court-clears-udta-punjab-with-one-2850991/](https://indianexpress.com/article/india-news-india/censor-wanted-13cuts-court-clears-udta-punjab-with-one-2850991/) (last visited 27 sept 2025)

appeared to rest solely on a speculative apprehension of offending religious sentiments or disturbing public harmony. To resolve the dispute, the Board ultimately directed the filmmakers to modify the title to “JSK- Janaki V vs. State of Kerala”. Although the matter remains sub judice, the filmmakers consented to this change before the High Court. Such objections by the CBFC lack a rational nexus with Section 5B of the Cinematograph Act, 1952, which delineates the grounds on which certification may be denied. The Board’s authority to order cuts or modifications extends only to ensuring age-appropriate suitability and cannot be expanded to enforce subjective moral or cultural standards. It is also not understood how using a name as common as “Janaki” in the title of a movie about a rape case is detrimental to public order and hurts religious sentiments and merely changing it to “Janaki V” remedies the issue ¹².

SUGGESTIONS FOR REFORM

The Central Board of Film Certification (CBFC), though primarily responsible for certifying films, continues to hold the authority to order excisions or modifications under the recently amended Cinematograph Act, 2023. This power, which is retained under Section 4(2)(iv), can only be justified when a film contains content that falls within the objectionable categories mentioned in Section 5B. Even then, the Board is expected to act in line with the principle that artistic expression and creative freedom should not unduly curbed. In practice, however, the current structure shows a clear regulatory gap. The Board often orders cuts simply “as it may deem necessary”, allowing wide discretion and resulting in decisions that sometimes lack a clear nexus to the public order grounds under Section 5B. To ensure accountability, the Board

¹² C. George Thomas & Ansh Mittal, *Censorship and Films: Silencing Cinematic Voice*, SCC Online (July 20, 2025), <https://www.sconline.com/blog/post/2025/07/20/censorship-and-films-silencing-cinematic-voice/>.

should be mandated to issue reasoned written orders specifying the exact provision of Section 5B (1) violated and demonstrating that the change is the least restrictive measure, especially when graded certifications such as UA 16+ could suffice. Such reform would promote transparency and align the CBFC's authority with constitutional protection for creative freedom. The notions of morality and decency are subjective and evolve overtime. Therefore, the power to order direct excisions on these grounds should be revisited. Such powers must be retained only where the content directly threatens the sovereignty, integrity, or security of the State, or incites the commission of an offence. In all other cases, a more balanced approach would be to rely on age-based certification – either by stricter application of the existing 'A' certificate or by introducing a new, restrictive 'X' category for extreme or niche adult content. This would protect creative freedom while ensuring responsible viewing consistent with Article 19(1)(a) of the Constitution.

FCAT was the place disgruntled filmmakers walked into as a penultimate resort to challenge edits suggested to their films by the CBFC.¹³ The subsequent abolition of the Film Certificate Appellate Tribunal (FCAT) in 2021 pushed the appellate burden onto the already saturated High Courts, significantly slowing down the justice process and imposing high financial costs on filmmakers. To counter the chilling effect on freedom of expression, it is essential to reconstitute a specialized and independent appellate body- whether through the revival of the FCAT or the establishment of an equivalent Cinema Appellate Authority. This body should comprise a balanced panel of retired judicial officers alongside cultural and cinematic experts, ensuring that appeals are addressed with both legal precision and artistic sensitivity. Such a reform would

¹³ Pradeep kumar, Abolition of Film Certification Appellate Tribunal Leaves Film Industry Puzzled, Anxious, The Hindu (April. 10, 2021), <https://www.thehindu.com/entertainment/movies/abolition-of-film-certification-appellate-tribunalleaves-film-industry-puzzled-anxious/article34288969.ece>.

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facilitate timely, expert, and consistent review of CBFC decisions, thereby reducing judicial proceedings. To minimize political influence and subjective bias in certification decisions, the appointment process for the chairperson, board members, and advisory panels should be formalized and transparent. It must prioritize merit, ensure diverse regional representation, and include professionals with expertise in filmmaking, law, and social sciences, rather than favouring political patronage.

CONCLUSION

Cinema is an influential art form, and the creative expression of diverse viewpoints must not be unjustly curtailed or tainted by dishonest intentions. At the same time, the State bears a constitutional mandate to impose reasonable restrictions to safeguard public order and societal morality. Striking an appropriate balance between these objectives is crucial, as the continued reliance on mandatory cuts and modifications reflects an imbalance where paternalistic authority overrides artistic intent and the rights of the adult audience. This research concludes that discretion over consumption must be restored to the individual viewer, emphasizing the non-governmental checks inherent in a free and informed marketplace. This principle is best summarized by the argument that the most potent check on expression lies with the consumer, not the censor: "Any person or group has the right to protest against what they perceive is in contravene of their values but if they truly want to hurt an artist or the art where it hurts, they should refuse to pay or subscribe to their work."¹⁴ By empowering audiences to choose and limiting regulators to classification, the film system can uphold artistic freedom while ensuring governance by constitutional, not subjective, principles.

¹⁴ Devang Pathak, Understanding India's Dangerous History of Film Censorship & Its Implications, Homegrown, June 8, 2021, <https://homegrown.co.in/homegrown-voices/understanding-indias-dangerous-history-of-film-censorship-and-its-implications/>.