



# Freedom of speech and expression: Critical analysis with reference to motion pictures

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## Abstract

One of the most important freedom and right which is provided through the Indian Constitution to its citizens is the freedom of speech and expression. Among other fundamental rights, the freedom of speech is considered the most important freedom because this is the basic right without which other rights have no value until a person has right to express what he feels, his other freedoms are worthless. Freedom of speech and expression has been provided under article 19 (1) (a) of the Constitution of India. India is a democratic country and to preserve the essential feature of democracy, freedom of press as now included in the freedom of speech and expression is necessary. It is important to note that freedom of press was not there in the constitution when it was implemented. The freedom of press was included in the freedom of speech after Supreme Court judgment in the case of Romesh Thaper vs. State of Madras<sup>2</sup>. In this case the apex court observed that the freedom of press is the most important part of freedom of speech and expression. Justice Patanjali Sastri in the instant case observed that freedom of press includes propagation the view and ideas and that freedom is ensured by the freedom of press. Freedom of press includes news papers and films i.e. motion pictures as medium to express the views among which motion pictures are much important because it is interesting as well as easy to express the views with the help of pictures with sound effects and drama. However, presently the concept and quality of pictures i.e. movies, serials etc have completely changed. Though the motion pictures are subject to censorship but the change between the theme, story and concept of the films can be seen apparently from the past to present.

Key Words: Fundamental Rights, Fundamental Duties, censorship, movies, democracy

<sup>2</sup> AIR, 1950, SC

## Introduction

Freedom of press can be called as the medium to entertain the freedom of speech and expression. Freedom of press is the way by which can person can propagate his views to more and more people simultaneously even without moving from one place to another. In past time the news papers were the only medium to express the views; the person could express his views either through news paper or personally. Both the options were not much good because personally he could not travel so much so that he could make known every person about his views. In the other option, many people were uneducated and they could not read news paper. In that case, motion pictures i.e. films were the good option for them to express the views. Therefore freedom of press was included in the freedom of speech and expression. It is important to mention here that freedom of press has not been specifically mentioned in the Constitution. Dr. Ambedkar<sup>3</sup> however made it clear that special mention of freedom of press in the Constitution is not necessary as the press and an individual are the same so far as their right of expression is concerned.<sup>4</sup> The freedom of press was included in the constitution after one of the important judgment of the apex court in the case of Romesh Thaper.<sup>5</sup> It was the most important case in the recent years of implementation of the Constitution. In this case the apex court observed that freedom of speech and expression is the fundamental right that is ensured by the freedom of press as the freedom of press includes the freedom of propagation of ideas that can only be ensured by circulation.<sup>6</sup>

### Freedom of speech under Article 19 (1) (a)

Article 19 provides different freedoms amongst which freedom of speech is first and important one. Article 19 under clause (1) sub clause (a) provides for the freedom of speech as under:

“All citizens shall have freedom of speech and expression.”

As the state can impose reasonable restrictions on the freedom granted by the constitution, such restriction have been imposed upon the freedom of speech under clause (2) of article 19. Clause (2) provides that “The state can impose reasonable restrictions in the interest of sovereignty and integrity of the nation, security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation or incitement of offence.” As freedom of press has been included in the freedom of speech of expression, therefore these restriction are also applicable on the freedom of press.

### Right to speech and motion pictures

As far as motion pictures i.e. films are concerned, these are also made a part of freedom of press by the judgment of the apex court; however, different rules are applicable of the films. The films are subject to censorship by the authority unlikely in the case of news papers. Though the freedom of press includes films but the apex court

<sup>3</sup> Dr. B.R. Ambedkar (Chairman of drafting committee of the Constitution)

<sup>4</sup> Legalservicesindia.com (Manmeet Singh)

<sup>55</sup> Romesh Thaper vs State of Madras, AIR, 1950, SC

<sup>6</sup> Indiakannon.org

specifically observed it as a part of freedom of press in the case of *Union of India vs. Eastern India Motion Picture Association*<sup>7</sup>. In this case, an appeal was filed by the Union of India, State of U.P. and West Bengal against the order of Delhi High Court. The respondent through a writ petition challenged the Cinematography Act, 1952. The act provides for division of films as approved and disapproved by the central government for the purpose of its exhibition. The writ petition was allowed by Delhi High Court against which appeal was filed by Union of India and state governments. In this appeal, the apex court observed that as films are able to stir up the emotions deeply than any other thing or product of art, therefore censorship in the form of division as approved or disapproved is permissible. The apex court dismissed the order of Delhi high court.

In the case of *S. Rangrajan vs. P. Jagjivan Ram*<sup>8</sup>, the apex court recognized the importance of films and observed that films are the legitimate and important medium in which general issues can be treated. The court further observed that the producer may project his own view regarding the issue raised in the film but others have right to think different and make their own opinions about the issues. The state can't restrict open discussion of the social issues.

In another important case *K.A. Abbas vs. Union of India*<sup>9</sup>, the apex court recognized the value of films and observed that films are different from other arts and therefore have to be treated differently because films stir up the emotions more deeply than any other art. If the regulations venture in to something which goes beyond the legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is abused.<sup>10</sup> The court further opined that classification of films according to the age groups and its unrestricted or restricted exhibition as a part of censorship is valid in the interest of public morality, decency and security of nation.

### **Motion pictures from past to present**

When we talk about the movies or motion pictures, the first thing which comes in our mind is television. However, the first television in India came in 1959 with a small transmitter only. The first transmission was started far later. As far as motion pictures with reference to television are concerned, the films were telecasted far later of getting independence. The journey of films i.e. motion pictures has gone through unbelievable ways till today. The first film made in India named as "Raja Harishchander"<sup>11</sup> was the great experience for Indian Cinema which paved the way for development and progress of cinema in India. Though the film was mute but it was appreciated and liked by people in India very much. After watching the interest of Indian people in cinema, more films were produced and "Alam Ara"<sup>12</sup> was the film with sound. After that another film "Kisan Kanya"<sup>13</sup> with colour and sound was produced. Till the time when television was manufactured in India, films were exhibited in India on projectors called "Parda" in villages. After independence, for many years limited programs were

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<sup>7</sup> AIR, 1999, SC

<sup>8</sup> AIR, 1989, SC

<sup>9</sup> AIR, 1971, SC, 481

<sup>10</sup> International journal of law management and humanities (Vol.5, issue: 3, 1771)

<sup>11</sup> 1913

<sup>12</sup> 1931

<sup>13</sup> 1937

telecasted on television. Channels under the control of government were available of television. First private television channel was launched in 1992 to broadcast over cable. After that many other channels such as discover, CNN etc. were also added.

### Changing concept of motion pictures

As discussed above, for a long time, only government controlled channels were broadcasted on televisions and limited government approved programs and films were telecasted on such channels. By the passing of time after broadcast of private channels cables networks, demands and quality of motion picture have changed. Day by day the quality, story and even platform of films have changed. Social issues which were the theme of films and serials in past time has left very far and now abusing language, sex, body expose and irrelevant concepts have taken the space in the movies and TV dramas. In the name of modernity and culture, the criteria of censorship have also been changed. The thing which was an obscenity in the past years has become the culture of present time and may be need of the future. Various online platforms are now available on which various web series can be seen. People do not need television as they can enjoy with their smart mobile phone which is easy to purchase and carry.

### Freedom of press and censorship

Though freedom of press includes motion pictures but some restriction are applicable on motion pictures only such as censorship. The term “Censorship”<sup>14</sup> has been defined as “The act or policy of censoring books etc.” Though the first television was manufactured in India more than 10 years after the independency but films were being exhibited on projects before independence. Therefore censorship was imposed on the films before its exhibition by Cinematography Act<sup>15</sup>. It is important to mention here that though films are part of freedom of press, censorship is not applicable on press. Only films are subjected to pre-censorship and censorship both. For the purpose of censorship, cinematography act provides for the establishment of “Central Board of Film Certification”. It is a regulatory body of films to issue certificate “A” or “U” in India for the public exhibition of films. The act provides that after examining the film, the board may either sanction the film for unrestricted public exhibition i.e. provide “U”<sup>16</sup> certificate. The board may provide certificate for restricted exhibition i.e. “A”<sup>17</sup> certificate. The board may also refuse to sanction the exhibition of film or may sanction the film after necessary modifications.

Regarding the censorship the first case which came before the Hon’ble Supreme Court was ***K. A. Abbas vs. Union of India***<sup>18</sup>. In this case the petitioner challenged the decision of censorship board refusing to grant “U” certificate for the exhibition of the film. The petitioner challenged the decision of the censorship on the ground

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<sup>14</sup> Oxford Dictionary

<sup>15</sup> Cinematography Act, 1952

<sup>16</sup> Unrestricted exhibition of films

<sup>17</sup> Exhibition of film to adults only

<sup>18</sup> AIR, 1971, SC

that pre-censorship is unconstitutional as it violates the freedom of speech and expression. The apex court made it clear that pre-censorship of films is constitutionally valid as it comes under the ambit of reasonable restriction as provided under clause (2) of article 19.

Again in the case of *Boby Art International vs. Om Pal Hoon*<sup>19</sup>, the issue regarding censorship was raised. In the instant case, a movie named as “Bandit Queen” came in question. This case came before the apex court in the form of an appeal against the order of Delhi High Court. The respondent filed a writ before Delhi High Court praying to quash the “A” certificate granted to the film by censorship board. It was contended by the petitioner that the rape scenes are obscene and the way in which such scenes are picturised are questionable. Delhi High Court quashed the certificate granted by the censorship board against the order of which an appeal was filed before Hon’ble apex court. The court reversed the order of Delhi High Court and upheld the decision of censorship board granting “A” certificate to the film. The court was of the view that the film must be seen in its entirety. The rape scenes are actually shows the suffering of a helpless woman.

#### Censorship of film: why necessary

The task of censorship i.e. examining the film regarding its approval or non approval for public exhibition has been given to the central censor board. But the question arises why censorship is necessary. The question was answered by the apex court in the case of *S. Rangrajan vs. P. Jagjivan Ram*<sup>20</sup> observed that censorship is necessary because a film motivates thought and action a high degree of attention and retention as compared to the print word. Therefore the films should be such as not to corrupt the mind of the viewers.

#### Conclusion

Democracy is the fundamental aspect of Indian constitution. Democracy means government of the people, for the people and by the people. In such a government, people have full freedom to express their view and opinion in all matters. One of the medium such expression is press through which a person can express his opinion to society at large at one time. Though freedom of press was included in the Constitution neither specifically nor by amendment but the freedom has been declared as a fundamental right under the ambit of freedom of speech and expression as the freedom of speech can’t be ensured without freedom of press. But like other freedoms and even freedom of speech and expression, freedom of press is not absolute. Reasonable restriction can be imposed upon the freedom in interest of security of nation, morality, decency, friendly relations with other states etc. as decency and morality grounds of imposition of reasonable restrictions, censorship of films is provided by the censorship board under cinematography act. Censorship is necessary because films impact the people mentally. Censorship of film is necessary because films stir up the emotions more deeply than any other art. People of India have shown keen interest in movies and dramas. Sometimes the movies are real and sometime made on hypothecated stories. In such situation, the film may either motivate or de-motivate a person because many

<sup>19</sup> AIR, 1996 ,SC

<sup>20</sup> AIR, 1989, SC

people assume themselves in such situation. Apart from this, sometimes, the story may insult or hurt the feeling of others. The case of famous tv shows maker Aketa Kpoor is recent one when Hon'ble Supreme Court dismissed her petition of early hearing observing that she is making the mind of young people to be corrupt. Warrant was issued to Aketa Kapoor regarding her series titled as "XXX" (triple X) that in the series it has been shown that when the soldiers do their duty at border, their wives involve with other man in illicit sexual activities. The series was objected due to the objected representation of woman of soldiers in illicit relationship in the absence of their husband. The apex court asked Aketa Kapoor to withdraw her petition and said that she should not corrupt the mind of youngsters. Freedom of speech and expression enables the person to express himself and become the voice of others but in no way such right should be used to defame others.

