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NAME OF FACULTY: Ms. Anjali Dixit

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Meaning of Censorship

The term 'censorship' comes from the Latin 'censere' meaning to give one's opinion, or to assess. In ancient Rome the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens.

Censorship may be applied to both written and oral communications. Its span encompasses books, magazines, newspapers, radio, TV, movies, dramas, paintings, plays, speeches, dance, music, art, literature, photographs, mails, emails, websites etc. deemed to be offensive, indecent, obscene and sexually explicit.

Censorship of Films

Films are considered as a great medium of communication with the people. With the development and progress of the society and also with the progress in the field of science and technology the films have undergone a sea change and by adopting all the available technologies have been able to reach the masses and also significantly contributed to the social and cultural development of the country. In this way the films are equated with the Press as Press is also considered as a great medium of communication. Both the films and the Press enjoy the same status and right so far as constitutional freedom relating to expression of ideas and spreading of ideas and messages are concerned. As is known Article 19(1) (a) of the Constitution guarantees freedom of speech and expression which is extended to the Press also. Therefore, both these mediums are regulated under this provision of the Constitution. Simultaneously as these freedoms are not absolute and subject to constitutional restrictions, both these mediums are also to adhere to this.

As mentioned above, we have the Cinematograph Act, 1952 to see the films fulfill the norms prescribed by the law. The Act provides for the establishment of a 'Central Board of Film Certification', the regulatory body for films in India to issue the certificate to the makers of the film for public exhibition. As per the provision of the law, the Board after examining the film or having it examined could:

- (a) Sanction the film for unrestricted public exhibition;
- (b) Sanction the film for public exhibition restricted to adults;
- (c) Direct such excisions and modifications in the film before sanctioning the film to any unrestricted public exhibition or for public exhibition restricted to adults; and
- (d) Refuse to sanction the film for public exhibition.

K.A. Abbas v. Union of India is perhaps the first case where the question relating to the censorship of films arises. In this case, the Supreme Court considered important question relating to pre-censorship of cinematograph films in relation to the fundamental right of freedom of speech and expression conferred by Article 19(1)(a) of the Constitution. The petitioner in this case challenged the decision of the Board of Film Censors in refusing a 'U' certificate for his film "A Tale of Four Cities". While the case was pending in the Supreme Court, the Central Government to grant the 'U' certificate provided certain cuts were made in the film.

As the petitioner's grievance was completely redressed, the petitioner applied for an amendment enabling him to raise the question of pre-censorship in general, in order that persons who invested money in making films may have guidance on this important constitutional question. The amendment sought by the petition was allowed for consideration by the apex court. The following two issues were before the court for consideration:

- (a) That pre-censorship itself cannot be tolerated under the freedom of speech and expression; and
- (b) That even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action.

Taking into consideration all these, Hidayatullah, C.J. made it clear that censorship of films including pre-censorship was constitutionally valid in India as it was a reasonable restriction within the ambit of Article 19(2).

It was also observed that pre-censorship was but an aspect of censorship and bore the same relationship in quality to the material as censorship after the motion picture has had a run.

However, censorship should not be exercised as to cause unreasonable restrictions on the freedom of expression. Holding the view that "pre-censorship was only an aspect of censorship and censorship of cinematograph film was 'universal', Hidayatullah, C.J. went on to observe that "it had been almost universally recognized that motion pictures must be treated differently from other forms of art and expression, because a motion picture's instant appeal both to the sight and to hearing, and because a motion picture had become more true to life than even the theatre or any other form of artistic representation. Its effect, particularly on children and immature adolescents was great."

The court upheld the general principles which had been laid down for the guidance of the censors and said that the test of obscenity and principles laid down in *Udeshi's case*[4] applied *mutatis mutandis* to an obscene cinematograph film.

In **S. Rangrajan v. P. Jagjivan Ram** the Supreme Court again confronted the question of censorship of films vis-a-vis Article 19(1)(a) of the Constitution. In this case, the Madras High Court revoked the 'U' certificate issued to a film entitled "Ore Oru Gramathile" ("In Just One Village"), and also banned the exhibition of the film as there was some public protest against the film. The film was critical of the reservation policy of the Government of Tamil Nadu. During the pendency of the case, the film received the National Award by the Directorate of Film Festival of the Government of India.

After the decision of the Madras High Court, the matter went to the Supreme Court on an appeal and the court reiterated the importance of the freedom of speech and expression and the role of films as a legitimate media for its exercise. The Court was of the opinion that: "if exhibition of the film cannot be validly restricted under Article 19(2), it cannot be suppressed on account of threat of demonstration and processions or threat of violence. That would tantamount to negation of the Rule of Law and surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression"

Again in **Bobby Art International v. Om Pal Singh Hoon**, case, better known as the **Bandit Queen case**, the Supreme Court considering the censorship issue upheld the freedom of expression through films and removed the restrictions imposed on the exhibition of the film "Bandit Queen"[8] on the ground of obscenity. In this case, the petitioner Om Pal Singh Hoon filed a petition asking the court to quash the certificate of exhibition for screening the film "Bandit Queen" and also to restrain its exhibition in India. It was contended in the petition that the depiction of the life story of Phoolan Devi in this film was "abhorrent and unconscionable and a slur on the womanhood of India." The way the rape scenes were depicted and the manner in which such scenes were picturised was also questioned and it was also contended that the depiction of Gujjar community in those scenes amounts to moral depravity of that particular community. The Delhi High Court quashed the order of the Tribunal granting 'A' certificate to the film on the ground that the rape scenes were obscene. When the matter went to the Supreme Court by way of appeal, allowing the appeal, the Supreme Court reversed the decision of the High Court and upheld the decision of the Tribunal in granting the 'A' certificate to be valid. The court was of the opinion that:

"The film must be judged in its entirety from the point of overall impact. Where theme of the film is to condemn degradation, violence and rape on women, scenes of nudity and rape and use of expletives to advance the message intended by the film by arousing a sense of revulsion against the perpetrators and pity for the victim is permissible."

The court rejecting the challenge under the provisions of the Cinematograph Act, 1952 went on to observe that:

"We do not censor to protect the pervert or to assuage the susceptibilities of the over sensitive. 'Bandit Queen' tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did, her rage and vendetta against the society that had heaped indignities upon her."

Constitutionality of Censorship Under Article 19(1)(A)

The Supreme Court for the first time came across the issue of censorship of films under Article 19(1) (a) of the Constitution of India, in **K.A. Abbas v. Union of India**, in this case the Supreme Court upheld the censor of films on the ground 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. A film can therefore, be censored on the grounds mentioned in Article 19(2) of the Constitution.

The Supreme Court held the view that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression."

Further the Court held that:

"Censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition in cinema films. We need not generalise about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interest of society. If the regulations venture into something which goes beyond this legitimate opening the restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution."

Constitutionality of censorship was also held in **S. Rangarajan v. P. Jagjivan Ram**. The case came to the Supreme Court in an appeal relating to the revocation of 'U' certificate to a Tamil film. Reversing the judgment of the Madras High Court, the Supreme Court opined that:

"Though movie enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movies and the other modes of communication. Movie motivates thought and action and assures a high degree of attention and retention. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It has a unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behaviour.

With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as does the newspapers and magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary."

Why Censorship of Films, Not The Press

After discussing in detail about the censorship of films, one question automatically comes to our mind, i.e. why censorship of films, not the press? This question was dominating the Indian scenario for quite a long period. To find a clear cut answer we have to take in to consideration several other factors and aspects along with some of the important decisions of the Supreme Court.

The freedom of speech and expression guaranteed under our Constitution most probably draws its inspiration from the First Amendment of the American Constitution. The First Amendment which deals with freedom of the press is as follows:

"Congress shall make no law respecting an established religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the Press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

The American Supreme Court in Associated Press v. U.S. referring to the First Amendment observed that:

"It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance mono polisatation of that market whether it be by the Government itself or a private licensee."

If we analyse the American First Amendment it is clear that in the first place it advocates for the freedom of the press, and secondly no restrictions are imposed on the freedom of the press. But on the other hand Article 19 (1) (a) of the Indian Constitution guarantees to all the citizens the right to 'freedom of speech and expression' and this freedom includes the right to express one's own views and opinions at any issue through any medium he likes. This right also includes the freedom of the press or the freedom of the communication and the right to propagate or publish

opinion. But unlike American Constitution, this freedom is not absolute, and is subject to restrictions imposed by Article 19 (2) of the Constitution.

Despite the restrictions, in our country the citizens and the press in real practice enjoy this freedom to a large extent because in a democratic set up, such freedoms are necessary and quite helpful for the proper functioning of the democratic process. It has been rightly remarked by Justice Bhagawati in Maneka Gandhi v. Union of India in the following words:

"Democracy is based essentially on free debate and open discussion, for that it is the only corrective of Government action in a democratic set up. If democracy means Government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making choice, free and general discussion of public matters is absolutely essential".

It is clear now that the freedom of press certainly enjoys importance in our democratic process as it seeks to advance public opinion and matters of public interest by publishing it which enables them to form a responsible judgment. Our Supreme Court through various judgments also upheld the dignity of the press and freedom it enjoys by nullifying the attempts to put a curb on it. Accordingly imposition of pre-censorship on a newspaper as held in **Brij Bhushan case**, or prohibiting the newspaper from publishing its own views as in *Virendra*, or imposing a ban on the entry of newspapers and its circulation as in *Sakal Papers case*, and in **Romesh Thapper case**, or trying to put restrictions in some way or other in *Express News paper case* and the **Bennett and Coleman case**, were held by the Supreme Court as encroachment in freedom of speech and expression and opposed to Article 19 (1) (a).

In all the above mentioned cases the Supreme Court has maintained that the freedom of the press cannot be taken away and it would not be legitimate to subject the press to the laws which take away or abridge the freedom of speech and expression. In the words of Justice Mudholkar who gave his opinion in **Sakal Papers (P) Ltd. v. Union of India** as:

"The Courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which

envisages changes in the composition of Legislatures and Governments and must be preserved."

So far as censorship of films are considered, censorship is required because of its mass appeal, the way the presentation and above all, the impact it leaves in the minds of the persons both young and adult. Expression of one's own idea, through the medium he likes is permissible under Article 19 (1) (a) of our Constitution. The medium is vast. But using the films as a medium of expression should be treated differently because this medium is not the same as reading a book or reading a newspaper or magazine. So in the larger interest of the community and the country restrictions as envisaged in Article 19(2) can be imposed. The framers of our Constitution deemed it essential to permit such reasonable restriction as they intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19 (2).

Judicial Pronouncements

Over the years, the Supreme Court and the High Courts through various judgments have contributed immensely in safeguarding the rights of the people of India. Right of free speech and expression through motion pictures, is no exception. In this section, some of the important judgments related to films and documentaries, including few telecasted as television serials, are critically examined to assess the impact of the judiciary.

For the first time before the Supreme Court the constitutionality of censorship under the 1952 Act along with the Rules framed under it was challenged in the case of **K.A. Abbas v. Union of India**. The Supreme Court upheld the constitutionality within the ambit of Article 19(2) of the Constitution 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".

At the same time it cautioned that it should be "in the interests of society". "If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is being abused".

Probably, the most important case regarding the problem dealt herein is the case of **S.**

Rangarajan v. P. Jagjivan Ram. In the instant case, the decision of the Madras High Court which revoked the 'U-Certificate' issued to a Tamil film called 'Ore Oru Gramathile' (In One Village), was challenged through an appeal before the Supreme Court. In the meantime, the film had already won National Award. The film criticized the reservation policy in jobs as such policy is based on caste and was unfair to the Brahmins. It was argued through the film that economic backwardness and not the caste should be the criterion. The High Court had held that the reaction to the film in Tamil Nadu is bound to be volatile considering the fact that a large number of people in Tamil Nadu have suffered for centuries. Certain remarks were also made against Dr. B.R. Ambedkar and several Tamil personalities.

The Supreme Court overruled the High Court decision and upheld the freedom of speech and expression. It stated:

The democracy is a Government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value.

The Court went on to add: Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of it. But he has a right to 'think out' and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however, hateful to its policies.

In doing so, the Court did acknowledge to have a compromise between the interest of freedom of expression and social interests. Censorship is permitted only on the grounds envisaged under Article 19(2) and the standard of judging a film to be applied by the Board or courts should be that of "an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man". It went on to observe that the anticipated danger should not be remote, conjectural or farfetched but should have proximate and direct nexus with the expression and

equivalent of a "spark in a powder keg".

The Court criticized the State and emphasized that freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. "It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem."

There is no separate censorship required for television serials or films as they are telecasted only if they are certified by the Board. An incident came up concerning a television serial 'Tamas' (Darkness) which depicted the Hindu-Muslim and Sikh-Muslim tension before the partition of India.

Appeal was preferred before the Supreme Court against the judgment of Bombay High Court (which allowed the screening of the serial) in *Ramesh v. Union of India* to restrain the screening of the serial as it was violative of Section 5B of the 1952 Act. It was alleged by the petitioner that the screening of the serial on Doordarshan (the State television network) would be against public order and it was likely to incite the people to indulge in the commission of the offences. The Supreme Court affirmed the High Court decision and dismissed the petition.

Commenting on the reaction of the average men, the Court held that the average person would learn from the mistakes of the past and perhaps not commit those mistakes again. They concurred with the High Court that "... Illiterates are not devoid of common sense ... and ... awareness in proper light is a first step towards that realization". Incidentally, the serial was given 'U' certificate by the Board.

In ***Sree Raghavendra Films v. Government of Andhra Pradesh***, the exhibition of the film 'Bombay' in its Telugu (the official language in the State of Andhra Pradesh) version was suspended in exercise of the powers u/Sec.8(1) of the A.P. Cinemas Regulation Act, 1955, despite being certified by the Censor Board for unrestricted exhibition. The suspension was imposed citing the cause that it may hurt sentiments of certain communities. The Court discovered that the authorities who passed the impugned order did not even watch the movie.

Hence, the Court quashed the order as being arbitrary and not based on proper material.

In another case, Doordarshan 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 matter came before the Supreme Court in the case of *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*. The reasons cited by Doordarshan were inter alia, the political parties had been raising various questions concerning the tragedy, and the claims for compensation by victims were sub judice. Upholding the freedom of speech and rejecting the abovementioned arguments, 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 topic 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 importance. 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".

Award winning documentary film, 'In Memory of Friends' by Anand Patwardhan about the violence and terrorism in Punjab, though granted 'U' certificate by the Censor Board, was rejected by Doordarshan reasoning that if such documentary is shown to people, it would create communal hatred and may lead to further violence. The Bombay High Court quashed the order emphasizing: "Everyone has a fundamental right to form his own opinion on any issue or general concern. He can form and inform by any legitimate means."

In case of 'War and Peace', Patwardhan appealed before the FCAT against the decision of the Board. The FCAT viewed the film and directed issuance of 'U' Certificate, provided that Patwardhan carried out two cuts and one addition as per its order. He challenged the order before the Bombay High Court. In its conclusion, the High Court was very candid to hold that the cuts recommended by FCAT were merely to harass the petitioner. Regarding addition, the Court

observed that it must be left to the discretion of the filmmaker.

As already acquainted with the fact that many of the movies on Gujarat riots ran into controversy with the Censor Board, they required the Court's assistance to see the light of the day. Allowing the film, 'Aakrosh', the Bombay High Court aptly reasoned that riots were a part of history by then and hence:

... When the hour of conflict is over it may be necessary to understand and analyze the reason for strife. We should not forget that the present state of things is the consequence of the past; and it is natural to inquire as to the sources of the good we enjoy or for the evils we suffer.

In another case, while overruling the FCAT's order to censor the movie, 'Chand Bujh Gaya', the Bombay High Court in **F.A. Picture International v. Central Board of Film Certification** opined: "Censorship in a free society can be tolerated within the narrowest possible confines and strictly within the limits which are contemplated in a constitutional order."

It strongly criticized the role of the concerned authorities:

"... The view of the censor does no credit to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme. The certifying authority and the Tribunal were palpably in error in rejecting the film on the ground that it had characters which bear a resemblance to real life personalities. The constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditioned on the premise that he must depict something which is not true to life. The choice is entirely his".

In Da Vinc controversy as well, the Supreme Court rejected the writ petition by the All India Christians Welfare Association seeking a ban on the movie on the ground that it hurt the religious sentiments of Christians. The court found no point of objection when the Censor Board and the Central Government has given a green signal. It also held that that no predominantly Christian country had banned the film and there has been no definite reason forwarded by the petitioners to ban the movie in India. In the States of Andhra Pradesh, Kerala and Tamil Nadu, the respective High Courts quashed the bans imposed by the State Governments and also

imposed costs on the governments. Upholding the right to freedom of speech and expression, the Courts found the act of Governments 'irrational' and 'unconstitutional'. They were of the opinion that the bans were imposed mechanically due to the veto of a few sections of people who objected rather than arriving at a decision based on informed satisfaction.

In all those cases of *Da Vinci*, it was alleged that the film violated inter alia, Article 25 of the Constitution with respect to the Christian community.^[58] Particularly in the case of Tamil Nadu, the Madras High Court was of the opinion that for a harmonious interpretation of Articles 25 and 19, it is clear from a reading of those provisions that the rights under Article 25 are subject to the other provisions of Part III; which means they are subject to Article 19(1). It was also not clear before the court how the exhibition of the film will interfere with anyone's freedom of conscience or the right to profess, practice and propagate a particular religion. Moreover, the Court expressed that under no circumstances 'blasphemy' is a ground under Article 19(2). The reasoning makes greater sense when no empirical evidence across the world has also proved the right to freedom of religion is better served, or protected with or through blasphemy laws.

Another interesting aspect of this phenomenon is that irrespective of the effect of the movies, there is often a call for a total ban without exploring any other possibilities. The Supreme Court in ***State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat*** stated that a total prohibition under Article 19(2) to (6) must also satisfy the test that a lesser alternative would be inadequate.

The aspect of right of the viewers with regard to freedom of information has not gone unnoticed by the Courts. Freedom of information is, of course, inseparable from freedom of speech. If a speaker cannot express a view, then hearer cannot receive information. In the case of ***Secretary, Ministry of I & Bv. Cricket Association of Bengal***, it was held by the Supreme Court that freedom of speech and expression includes "right to acquire information and to disseminate it to public at large". Hence, Article 19(1)(a) also includes the right of viewers. Further, in ***Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India***, it was held by the Supreme Court that the people have a right to be informed of the developments that take place in a democratic process.

Finally, it is important to note that in the case of ***Union of India v K.M. Shankarappa***, the

Supreme Court disapproved of the Government retaining powers by enacting Section 6(1) of the 1952 Act and declared it ultra vires the Constitution. It held:... The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal [FCAT], consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the executive and the Government is concerned.... The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution... . The Executive cannot sit in an appeal or review or revise a judicial order. It emphasized that the only way to nullify the Court order would be through appropriate legislation. Otherwise, "... the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal."

On the apprehension of law and order problem, the Court reminded the Government about their duty:

In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the Executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law.

Some recent controversial films:

a) PK and the controversy: Initially when PK was released it was a big hit and also got a good response in the box-office and now it has been considered as one of the highest earning film both in India and abroad. But even after that the controversy erupted against it and some of the religious groups started protesting the screening of the film and the film makers as it is hurting the religious sentiments.

b) MSG (Messenger of God): The controversial film the Messenger of God "MSG" is based on the Dera Saccha Sauda chief Gurmeet Ram Rahim Singh was written, produced and directed by the Dera Chief himself and Jeetu Arora under the Hakikat Entertainment Pvt. Ltd. Banner

with Singh in a lead role. The film was supposed to be released on 16th January 2015 but was stuck with the censor board for its clearance. The film underwent the Board's examination that raised objections against the film alleging that it is showing the self-styled guru projected himself as a godman.

The censor board refused to grant clearance certificate as according to it the film was unsuitable for public exhibition. The producer of the film preferred an appeal before the FCAT at Delhi. The matter was fast tracked by the FCAT and the film has been cleared within 24 hours which normally takes 15 to 30 days as per the procedure. The FCAT has directed the CBFC to issue the clearance certificate. The film has been scheduled to be released with a mandatory disclaimer on February 13, 2015 across the country targeting 3,000 to 4,000 screens. This has resulted into the resignation by the CBFC chief Ms. Leela Samson followed by mass resignations by the other board members.

In the meantime the film has also been banned by the Punjab and Haryana Governments from the screening. Recently, a petition seeking directions to ban the screening of the MSG movie in the States of Punjab and Haryana was filed before the Punjab and Haryana High Court by Mohali based Sikh body "Kalgidhar Sewak Jatha. The body argued that the screening of the movie, MSG would be a serious threat to the law and order situation and peace of the States of Punjab and Haryana. It is further alleged that the self-style head of Sirsa based Dera Saccha Sauda (DSS), Gurmeet Ram Rahim Singh had tried to project himself as messenger of God in the movie while he is an accused several heinous crimes including rape, murder and castration of his followers. The cases are being still investigated by the CBI officers.

The most recent case where in the judiciary stepped in and whipped the central board of film certification on its overreach is that of the controversy surrounding the film *Udta Punjab*. In this case, the board refused to certify the film *UDTA PUNJAB* which is based on the drug menace prevailing in the state of Punjab. In addition to its refusal to certify, the board suggested almost 13 cuts in the movie as a mandatory measure to seek certification. However on appeal by the filmmaker, the Bombay high court criticized the central board of film certification for its conduct and poor way of handling issue. The court made a very important observation that the board is

not necessarily empowered to censor films. The word censor is not found in the cinematograph act. The board can make changes in the film but this power must be exercised in consonance with constitutional guarantee and Supreme Court orders. It can be seen that the board has wrongly widened its power which actually meant to be restricted to certification of films for exhibition only, to now include within it the power to censor also. Such an attitude of the board, which many a time is politically motivated, can put the rights of the citizen in danger.

An urgent reform of the Central Board of Film Certification is paramount task. The drive to change the certification ages as well as getting filmmakers and industry voices in charge of the Board is an indispensable change which needs to be put into effect as soon as possible.

Various committees had been set up by the government in the recent past with the aim of suggesting measures to bring reformation in the Boards. However little has been done to implement the suggestions forwarded by these committees. The Government of India did set up an Expert Committee entrusted upon it the task of reviewing and recommending ideas which can be put forward through legislation which will regulate and certify as well as license the facets of this ever changing and precocious art form. The Committee came up with its report after a detailed study of the area of film certification and changing dimensions of certification of films around the globe. The Committee suggested the following principles for guidance in certifying the films.

While examining a film or causing a film to be examined for certification, the Board should be guided by the following principles:

• The medium of the film should remain responsible and sensitive to the values and standards of society and as far as possible the Film should be of aesthetic value and cinematically of a good standard.

• Artistic expression and creative freedom should not unduly be curbed and certification should be responsive to social change.

• The film should be examined in the light of the period depicted in the film, context, containing

theme and people to which the film relates and should be judged from the point of view of its overall impact and the contemporary standards of the country.

• Notwithstanding any stated above, a film should not be certified for exhibition if in the opinion of the Board, the film or any part of it is against 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 involves defamation or contempt of court or is likely to incite the commission of any offence.

• Subject to the provisions stated above in sub-section (1) and (2) above the Central Government can issue such directions as it may think fit setting out the principles which shall guide the Board while granting a certificate under the Cinematograph Act for sanctioning films for public exhibition.

Apart from the suggestions mentioned above, the Committee also recommended various other reforms which can be initiated by the government in the overhaul of the Certification Board. However as of now, no reformative steps as suggested by the Committee have been taken by the government in order to initiate the reformation process.

Another committee under the head of the renowned film maker Shyam Benegal was setup by the Government of India in January 2016 to lay down norms for film certification that takes into consideration best practices in various parts of the world and to suggest practices which can aid the reformation in the certification process by the Certification Board. Some of the major recommendations suggested by this Board are:

• Certification Board should restrict its domain only to certification of films in order to categorize the suitability of the film to the audience groups on the basis of age and maturity.

• The Committee also suggested that the role of the Chairman of the Certification Board should be curtailed to be of advisory nature only. The Committee also suggested minimizing the size of the Board keeping in mind its limited functions.

However, the Committee refrained from touching the restrictions imposed under section 5.1(B) of the Cinematograph Act which in the opinion of the Committee should continue to serve as the ground of refusal of certification by the Board.

SELF-TEST QUESTIONS

| S.NO | Question | Option (a) | Option (b) |
|------|--|------------|------------|
| 1. | The term 'censorship' comes from the Latin 'censere' meaning to give one's opinion, or to assess. | True | False |
| 2. | In ancient Rome the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens. | True | False |
| 3. | Censorship's may be applied to both written and oral communications. Its span encompasses books, magazines, newspapers, radio, TV, movies, dramas, paintings, plays, speeches, dance, music, art, literature, photographs, mails, emails, websites etc. deemed to be offensive, indecent, obscene and sexually explicit. | True | False |
| 4. | Films are considered as a great medium of communication with the people. | True | False |
| 5. | we have the Cinematograph Act, 1952 to see the films fulfill the norms prescribed by the law | True | False |

Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)

