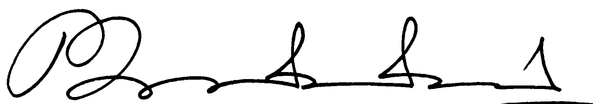
CINEMATOGRAPHIC LICENSING

THESIS SUBMITTED BY V. KESAVANKUTTY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY, FACULTY OF LAW,
UNIVERSITY OF COCHIN

MARCH, 1985

CERTIFICATE

This is to certify that the thesis entitled "Cinematographic Licensing" submitted by Shri V.Kesavankutty for the Degree of Doctor of Philosophy is the record of bona fide research work carried out by him under my guidance and supervision from 29-3-1979 in the Department of Law, University of Cochin. This thesis or any part thereof, has not been submitted elsewhere for any other degree.



Prof.(Dr.) P.Leelakrishnan
(Supervising Teacher)

Cochin 682022,
March 28, 1985.

DECLARATION

I do hereby declare that the thesis entitled "Cinematographic Licensing" is the record of original research work carried out by me under the guidance and supervision of Prof.(Dr.) P. Leelakrishnan, Head of the Department of Law, University of Cochin. This work has not been submitted either in whole, or in part, for any degree at any University.

Cochin 682022,
March 28, 1985.

V.Kesavankutty.

PREFACE

This is a study mainly in Administrative Law and deals with one particular aspect of licensing, viz., the licensing of cinema for public exhibition known as censorship of films. The mechanics of film censorship poses complicated problems. In censoring films the question is how to balance individual rights and interests of society. The parameters of film censorship laws, therefore, become vital. The Central Board of Film Censors, the licensing authority under the film censorship laws, wields enormous discretionary powers. The infra-structure of the licensing authority and the built-in-safeguqrds against misuse of power are relevant in assessing the sufficiency of the mechanism. The study aims at an analytical assessment of various legal issues connected with film censorship in India. The position available in the United States and United Kingdom is examined wherever it is found necessary to make a proper evaluation of the system in India.

The thesis examines the probable alternatives for the present model of film censorship, the adequacy of the present law relating to film censorship and ways and means

to improve the system. Reported decisions and other legal materials in this area are scanty, except the reports of a few expert studies. The conclusions reached in this thesis are based also on the results of an empirical study conducted by the writer.

The layout of this thesis is in five parts. The first part is a general introduction to the study. It consists of four chapters. Chapter 1 is an examination of the scope of the study. Chapter 2 attempts at a probe into the various existing and alternative models of film censorship. Chapter 3 aims at a discussion of indirect censorship on cinema. Chapter 4 is an overview of film licensing laws in India. Part II examines film censorship from an Anglo-American perspective. This part contains two chapters in which a brief discussion of the law relating to, and the working of, the censorial system in the United Kingdom and the United States, is made. Part III containing two chapters, deals with the constitutional limitations of film censorship laws in India. Chapter 7 focuses on an analytical examination of Abbas Case, the important case dealing with the constitutionality of the censorial regulations in India. Chapter 8 is confined to the scope and ambit of the grounds on which censorship is to be carried out.

Part IV containing three chapters, is devoted to a probe into the mechanics of censorship. Chapter 9 examines the process of classification of films. Chapter 10 is an analysis of the question of finality to censorial decisions. Chapter 11 is an examination of sanctions--both administrative and legal--under the law. Part V is an analysis of the empirical data--the opinion of cine-viewers and cine-men. Part VI is the conclusion. This part contains two chapters. Chapter 13 aims at suggesting a model for censorship suitable to Indian conditions. Chapter 14 is a summing up of the study.

The Cinematograph (Amendment) Act, 1984 came into being after the final typing of this thesis. The new amendment omitting Section 6B of the Act provides for enhancing the punishment specified under Section 7 of the Act. A new innovation of the amendment is that it provides for a minimum punishment for exhibition of video films in contravention of the provisions of the Act. The amendment is reproduced in Appendix IV.

Prof.(Dr.) P.Leelakrishnan, Professor & Head, Department of Law, University of Cochin guided me in the preparation of this thesis. Without his encouragement, constant supervision and able guidance, this thesis would not have

come to fruition at all. I am also thankful to Dr.N.S.Chandrasekharan who made some suggestions to improve certain areas of this thesis.

I am thankful to the Librarian and staff of the Library, Department of Law for their ready help and assistance. For their patience and readiness in expressing frank opinions, my thanks are due to all those participated and assisted me in conducting the empirical research. Mr.K.R.B.Kaimal, Lawyer and Part-time Lecturer in Law, Law College, Ernakulam was always ready to extend a helping hand even in the midst of his tight schedule of work. I thank him. My thanks are also due to Dr.A.M.Varkey, Lecturer, Department of Law, University of Cochin and Shri P.S.Gopi--both my students--for the help rendered by them in the monotonous work of comparing the script.

Last, but not the least, I thank Mr.K.Janardanan who neatly typed this thesis.

CONTENTS

		Pages
PREFACE	..	.. i-iv

PART I INTRODUCTORY

Chapter 1	SCOPE OF THE STUDY	.. 1-14
	Licensing a regulatory technique	.. 9-10
	Licensing of cinema	.. 10-14
Chapter 2	MODELS FOR CENSORSHIP	.. 15-46
	Introductory	.. 15
	Desirability of film censorship	.. 15-17
	Theoretical basis for film censorship--pros and cons	.. 17-22
	Censorship models	.. 22-46
	1. Self-regulation type	.. 23-29
	2. Official Pre-censorship	.. 30-36
	3. Criminal Law model	.. 36-41
	4. Civil law model	.. 41-45
	5. Constitutional law approach	.. 45-46
Chapter 3	FILM MAKING--INVISIBLE AND INDIRECT FACTORS	.. 47-59
	Introduction	.. 47-48
	Invisible censorship	.. 48-54
	Indirect censorship	.. 55-59
Chapter 4	THE EVOLUTION OF FILM CENSORSHIP REGULATIONS IN INDIA	.. 60-99
	The Cinematograph Act 1918	.. 61-70
	The Patel Committee	.. 70-71

Pages

	The Cinematograph Act 1952	..	71-78
	The Khosla Committee	..	79-80
	The Abbas Case - A judicial imprimatur	..	81
	1974 Amendment--An abortion	..	82-83
	The Working Group on National Film Policy	..	83-85
	The new set of directions	..	85-86
	The 1981 Amendment	..	86-89
	The structure of the censorial authority	..	89-90
	The present procedure in film certification	..	90-93
	1. Examining Committee	..	90-91
	2. Revising Committee	..	91-93
	Appeals	..	93-95
	Powers of the Central Government	..	96-98
	Conclusion	..	98-99
	PART II ANGLO-AMERICAN PERSPECTIVE		
Chapter 5	FILM CENSORSHIP IN ENGLAND	..	100-142
	Early period	..	101-104
	The Cinematograph Act 1909	..	104-110
	Recognition of the British Board of Film Censors	..	110-112
	Role of Courts	..	112-120
	The Cinematograph Act 1952	..	120-130
	Constitution and structure of the British Board of Film Censors	..	130-132
	Certification of film	..	132-134
	Local authority on Appellate apparel	..	134-136
	Standards of the Board in certification	..	137-139
	Relation of the Board with other agencies	..	139-142
	- Industry	..	139
	- Government	..	140
	- Local authorities	..	140-142

Pages

Chapter 6 FILM CENSORSHIP - U.S. EXPERIMENTS .. 143-186

First Amendment and the States .. 144-148

Motion Pictures and the First Amendment .. 148-155

The Burstyn Case .. 156-160

Prior restraint .. 160-172

Self-regulation of cinema .. 172-176

The legion of decency .. 176-178

The Working of the Code Administration. 178-181

Revisions of the Code .. 182-186

PART III CONSTITUTIONAL LIMITATION IN INDIA

Chapter 7 FILM CENSORSHIP AND THE CONSTITUTIONAL GUARANTEE .. 187-223

General .. 187-189

Motion Pictures and freedom of expression .. 190-193

Restrictions--A general discussion .. 194-199

Pre-censorship .. 199-201

Reasonableness of discriminatory treatment of cinema .. 201-205

Reasonableness of censorship regulations .. 205-213

Abbas - an appreciation .. 213-223

Chapter 8 PRINCIPLES FOR CERTIFICATION OF FILMS .. 224-253

Sovereignty and integrity of India .. 225-226

Security of State and Public order .. 226-231

Friendly relations with foreign states .. 231-233

Incitement to an offence .. 233-236

Morality and Decency .. 236-245

Contempt of Court .. 245-251

Defamation .. 252-253

Pages

PART IV MECHANICS OF CENSORSHIP

Chapter 9 CLASSIFICATION OF FILMS .. 254-290

The need for classification .. 257-260

Constitutionality of classification .. 260-261

Scope of classification of films .. 262-264

British system of classification .. 264-270

American system .. 270-278

- Classification by legion of decency .. 271-272

- The Rating system .. 273-278

Certification in India .. 278-290

Chapter 10 CONCLUSIVENESS OF BOARD'S DECISIONS .. 291-325

Certificate--a bar to prosecution? .. 293-303

Certificate--a bar to civil action? .. 304-325

Civil Court's review power .. 306-313

Locus Standi .. 313-321

The Appellate Authority under the Act .. 321-325

Chapter 11 SANCTIONS .. 326-349

Administrative sanctions .. 329-332

Judicial sanctions .. 332-339

Enforcement machinery .. 339-342

Search and seizure .. 342-349

PART V AN EMPIRICAL PROBE

Chapter 12 CINE-MEN AND CINE-VIEWERS : AN ANALYSIS OF EMPIRICAL DATA .. 350-392

Which way the general public think .. 351-364

(1) Desirability of film censorship .. 353-355

(2) Violence .. 355-359

(3) Sex .. 359-364

Pages

What do the experts say? .. 365-378

(1) Desirability of censorship of films .. 365-368

(2) Who should constitute the censorship agency .. 368-371

(3) Examining Committee and external influence .. 371-373

(4) Censorship of scripts .. 373-376

(5) Categorisation .. 377

(6) Maladies of the Indian cinema .. 377-378

What are the views of those active in the field .. 378-392

(1) Censorship - a must .. 380-381

(2) A model for film censorship .. 381

(3) Working of the Board .. 382-383

(4) Decentralisation of censorial functions .. 383-385

(5) A forum for appeal .. 386

(6) Desirability of separate Boards for each Indian language films .. 386-388

(7) Qualification of censors .. 388

(8) Script censorship .. 389

(9) Adequacy of Enforcement machinery .. 389-391

(10) Role of film societies .. 391

(11) Future of cinema .. 391-392

PART VI CONCLUSION

Chapter 13 A MODEL FOR INDIA .. 393-440

An ideal film censorship model .. 399-415

(i) Censorship Agency .. 415-425A

a) Central Board of Film Certification.. 416-423

b) Regional units .. 423-425

c) Advisors .. 425-425A

Pages

(ii) Appointment of the Board .. 425A-435
a) Qualification .. 430-433
b) Tenure .. 433-434
c) Salary .. 434-435
(iii) Procedure in certification .. 435-437
Finance .. 438-440

Chapter 14 A SUMMING UP .. 441-451

TABLE OF CASES 452-461

BIBLIOGRAPHY 462-468

APPENDIX I 469-498

APPENDIX II 499-501

APPENDIX III 502-504

APPENDIX IV 505-507

PART I

INTRODUCTORY

Chapter 1

SCOPE OF THE STUDY

A well informed public is a sine qua non of efficient administration in democracy. Absence of public participation in the administration may not be in the interest of any democratic set up. In order to achieve the objective of ensuring public awareness of how administration work, modern societies have developed a variety of mass media. News papers, Radio, Television and Cinema are the mass media thus developed.

Cinema assumes much importance inasmuch as it has no limit so far the extent of access to the general public is concerned. The circulation of newspaper is confined. Only the literate read the newspapers. They are prohibitively priced. Though theoretically newspapers in India are free from any external influence, it is often alleged that indirect controls are being exercised. The Government controls it by way of allocation of newsprint. Big industrialists and business tycoons also had their share of undue influence.

The influence of newspapers on the general public is thus regulated. The benefit of discussion and dissemination of news reach only a few people in our sub continent where the majority of the people are illiterate and cannot read.

The transistor revolution in India has really revolutionised our mass communication system hitherto prevalent. An average Indian family owns a radio and the people who cannot read are inclined more often, to tune it and listen. However, the information disseminated by it come only from programmes approved by the Government of India. Television has no different story to tell. It has just started developing in India. The price of television sets are too prohibitive for an average Indian. It is a luxury even for a reasonably affluent Indian family. True it has much potential for developing into an effective mass education medium At present the programmes are overseen by the Government. Naturally it cannot be said that television is a medium as free as the press.

Cinema, for its effectiveness in influencing even the behavioural patterns of the people should have attracted

more stringent restrictions. But fortunately this is not so. It is atleast not under the direct control and management of Government. It has, of late, showed its vitality in mass communication, mass education and entertainment. The lack of direct control by, and unnecessary interference from, the Government has really helped the industry to improve its perfomance. It has thus leap forward in quality and quantity.

Cinema combines the qualities and peculiarities of other mass media. This is the reason why cinema leaves a much more enduring influence on the people than other forms of creative expressions do.[1] It influences the people in a number of ways. Its capacity to influence the minds of matured people is debatable. But its power to shape the behavioural patterns and social habits is clearly approved. Its capacity to influence the children and adolescents is

---

1. See the Report of the Enquiry Committee on Film Censorship (1969), p.60. Hereinafter referred to in this thesis as the "Khosla Report."

undoubted.[2] The unique combination of aural and visual senses, the entertaining capacity and easy and less costly availability account for its popular support. The emergence of television and video have seemed to pose a threat to cinema. However, the experience have shown that even in developed countries, television and video failed to raise any serious challenge to cinema. With its matchless characteristics like wide screen, the peculiar system for sound effect, the darkness in the auditorium and communal seeing, cinema became successful in facing new threats.[3] In India, video and television have not yet reached the common village folk. Even though in big cities the introduction of television and video have resulted in a marginal decrease in box office collections,[4] cinema even today retains its position as the most popular mass media entertainment. The steady

---

2. Abbas v. Union of India, A.I.R. 1971 S.C. 481 at p.489 per Hidayatullah, C.J.
3. "Future of Feature Films" (an abridged report of the conference on "The Theatrical and Television Feature Films" sponsored by the American Film Institute and the Aspen Institute of Humanistic Studies, Aspen), Span, Vol.XXV, No.1, January 1984, p.29.
4. For the opinion of those connected with the film industry in India, see Ch.12 infra.

increase in the number of feature films itself is sufficient to corroborate this preposition.[5] In addition to feature films, every year the Board has to certify much greater number of documentary films and imported films. With a large number of exhibition outlets both in cities as well as in moffusil areas cinema cater to the needs of millions of common folk in India.[6] This steady increase in film production brought India to the forefront of world map as the biggest producer of films in the world.[7] The development of Indian cinema is not confined to quantitative increase alone. In quality also Indian films occupies a not insignificant status among world cinema.[8]

---

5. The 'talkie& cinema came in 1930. From a meagre 27 in 1931, the number of feature films certified in India increased to 763 in 1982. (See D.V.S. Raju,"National Film Development Corporation", Souvenir, Kerala State Film Development Corporation Ltd., (1983), p.7). In 1983 the number of feature films certified was 741 and in 1984 it again increased to 833. (See Indian Express dated February 4, 1985).
6. For a statistics of cine audience in India see infra Ch.7, n.13.
7. D.V.S. Raju, see supra, n.5.
8. John Sankaramangalam, "World Cinema", Souvenir, Kerala State Film Development Corporation Ltd., (1983), 13 at p.16.

But cinema is not a mere entertainment alone. It is a form of expression and therefore entitled to the protection of the guarantee of freedom of speech and expression.[9]

The capacity of mass media to influence the people, necessarily carries with the possibility for misuse. The concept of Welfare State emanates from the sublime principle that the State has a duty to safeguard the overall development of citizens in all walks of life, economic, political and social. In order to achieve this goal, the State has to assume the role of a protector and regulator.[10] Even though the main emphasis is on regulation of economic aspects.[11] States' duty to protect the moral and mental well being of its citizen is equally important. Control of mass media becomes relevant in this context. The Constitution of India confers ample powers on the State to achieve

---

9. See infra Ch.7, n.10.
10. According to a well known jurist, the functions of a modern State may be grouped under five categories - the State as a protector, provider, entrepreneur, economic controller and arbiter. See W. Friedmann, The State and the Rule of Law in a Mixed Economy (1971), p.3.
11. Hary Jones, "The Rule of Law and the Welfare State", 58 Col. L. Rev. 143 at p.144 (1958).

this objective. However, it does not necessarily mean that the State should adopt regulatory techniques over mass media or the State should adopt a uniform regulatory technique over all mass media. A variety of factors may be responsible for determining the form of regulatory mechanics like the nature and extent of the activity in question, the possible effectiveness of the proposed regulatory technique, etc.

In India, the Government has adopted different regulatory techniques over different forms of mass medium. The news papers at present are not subject to any external control. Probably its predominent role in disseminating information and encouraging political thought and the marginal chances or corrupting people may be the reasons why no overt control is exercised over newspapers.[12] To some extent the same rationale may apply to books and other printed materials although the chances of corrupting the minds is greater in books than in newspapers. But any direct regulation may be

---

12. Theoretically it may be possible to impose an overt control under sub-clause (2) of Article 19. It appears that fear of public criticism forbids the Government from doing so.

practically ineffective because many an objectionable books are printed and circulated by the underground press. Thus, if direct regulation is introduced, it may not, in any appreciable degree, be helpful in blocking the circulation of objectionable materials. At any rate, the absence of any direct regulatory techniques does not render the press immune from State control. They are also subject to the post publication penal control.

Cinema presents a different picture. As noted above, radio and television in India are under the direct control and management of the Government. The Government can, without any direct regulatory system, control the activities of these media. Even though films are better vehicles for dissemination of ideas, this aspect has not been fully explored by film makers. To a great extent commercial element is the dominant factor in motion pictures although it can very well be argued that this commercial factor is present in other mass media as well. Besides, it is comparatively easy to implement a system of direct control over the movie. Its capacity for instant appeal presents another reason for

introducing direct regulation. To the ordinary illiterate masses, film presents a real world and they are prone to accept the incidents in films in its face value. An unreal and sophisticated version of society, may injuriously affect the public. Probably all these factors may have weighed with the authorities in providing for a direct regulatory technique over cinema. Such a direct regulation of cinema is a world wide phenomenon. In a majority of countries, a system of licensing as a regulatory technique is adopted.

Licensing: a regulatory technique.

The technique of licensing as regulatory mechanics has gathered momentum during recent years. The system is adopted by a modern State as a means to do justice to the public.[13] The reasons for adopting such a course are manifold largely depending upon the nature of the activity sought to be regulated. Preventing harm to innocent victims and thereby relieving them from the trouble of initiating a prosecution or a suit for damages, minimising chances of committing dishonesty, ensuring proper safeguards in activities endangering

13. Harry Street, Justice in a Welfare State (1975), p.70.

health of people, assuring the welfare of youth and disabled, guarenteeing an equitable distribution of rare commodities and streamlining the practice of any profession in public interest are the important among them.[14] One or more reasons may weigh with the Government in determining the suitability of a system of licensing to regulate a particular activity.

Licensing of cinema.

Though the system of licensing is usually adopted for regulating economic activities, it can very well be used for regulating activities affecting a healthy societal set-up like the cinema. As noted above most countries adopt a system of pre-censorship for regulation of cinema. A system of official pre-censorship is only one aspect of licensing. Here the suitability of the film is decided by an expert authority. On the basis of this suitability, permission is granted for public exhibition of cinema. Such a system of pre-censorship can effectively prohibit avoidable harm without doing any injustice to the film maker. The interest of minors can well be safeguarded by this process when the public acceptability

---

14. Id. at pp.70-73.

is decided by a competent and expert body. It is also comparatively easy to implement the scheme.

Licensing of cinematograph exhibition in India started within a few years of the emergence of cinema. From the very beginning a system of licensing by an expert body was envisaged. However, the system was streamlined and brought in a proper manner only in 1951. Later, the system was reintroduced by the Cinematograph Act 1952,[15] hereinafter referred to in this thesis as the Act. So far as it relates to censorship of films, the Act contains a few provisions. It provides for the establishment of a licensing authority,[16] for the purpose of previewing and certifying films for public exhibition.[17] They are also empowered to assign suitable categories to films certified by them, to order for excision of scenes or to refuse certification altogether.[18] However, if they decide to grant a certificate other than a certificate

15. For the text see Appendix I _infra_.
16. _Id_., S.3.
17. _Id_., S.4.
18. _Id_., sub-clause (1) of S.4.

for unrestricted public exhibition or when they order for some excision or for a total rejection of the film, the grounds on which such conclusion is reached have to be intimated to the applicant.[19] In order to help the censorial authorities in discharge of its functions, the Central Government may appoint advisory panels.[20] After the examination of film, if the authority decides to grant permission for exhibition of the film it has to issue a suitable certificate.[21] The Act provides for some norms for the guidance of censors.[22] Besides, the Central Government is also authorised to issue directions to censors incorporating further guidance but only in conformity with the statutory guidelines.[23]

Till recently the Central Government was the appellate authority under the Act. By an amendment in 1981, it was substituted by an independent appellate tribunal.[24] The

---

19. Id., sub-clause (2) of S.4.
20. Id., S.5.
21. Id., S.5A.
22. Id., S.5B(1).
23. Id., S.5B(2).
24. Id., S.5C.

statute confers many powers on the Central Government. The Central Government has the extraordinary power to revoke or suspend a licence when the film is being exhibited in violation of the certificate.[25] It can also exercise wide revisional powers.[26] The Act provides for penalties for violation of the censorship regulations.[27] The Central Government can promulgate rules for the purpose of carrying into effect the provisions of the Act.[28]

In pursuance of the powers conferred on it by the Act, the Central Government promulgated detailed Rules for regulating the process of film censorship,[29] hereinafter referred to in this thesis as the Rules. The Central Government also issued directions to censors.[30] The Act, the Rules and the directions were subject to a number of amendments from time to time.

---

25. Id., S.5E.
26. Id., S.6.
27. Id., S.7.
28. Id., S.8.
29. The present rule - the Cinematograph (Certification) Rules was promulgated in 1983.
30. The directions currently in vogue were issued by the Central Government in 1979. It considerably abridged and modified the earlier directions issued in 1960.

Two important National Commission, the Khosla Commission in 1969 and the Working Group on National Film Policy in 1980, had applied their mind to the sufficiency or otherwise of the licensing system envisaged by the Act. It is interesting to examine what weight the Government gave in giving effect to the recommendations of the Committees.

Thus, the Act read with the Rules and directions envisage a system of licensing of cinema. Is it really effective in its actual working? Is the licensing authority properly constituted? Are these regulations constitutionally valid? Do the regulations provide for fair procedure in licensing? Can the system be improved further? Is the grading adopted by the Act sufficient? Is there a need for an enlargement of grading system? Is it necessary to replace the present system by another model? What about the efficacy of enforcement machinery?

These are a host of questions. An attempt is made in the following pages to examine these questions.

Chapter 2

MODELS FOR CENSORSHIP

Introductory.

The term 'censorship' has different shades of meaning. In a narrow sense it may denote external and visible controls. Such controls may be direct or indirect. Direct censorship regulates the activities of individuals and may directly interfere with the rights of individuals to carry on such an activity. In this sense, film censorship embraces only those activities intended to regulate directly the contents of cinema. The term censorship is used in this thesis in this sense.[1] Even in spite of the aversion for censorship, those who argue against all forms of film censorship are few in number and weak in their assertion. The majority favours the retention of some sort of censorship of films.

Desirability of film censorship.

Once the need for censorship of speech and expression is recognised[2] it necessarily follows that censorship of

---

1. The effects of other forms of censorship on cinema is considered in Ch.3 *infra*.
2. For an examination of the proposition see *infra* Ch.7, nn.7 to 9 and the text accompanying them.

film which is a significant medium of expression[3] is also permissible in theory provided the censorship is resorted to for securing the wider interest of society. The immense possibilities of cinema to mould the habits and behaviour of people, especially that of the children, are accepted facts. The Khosla Committee observes:[4]

> "A modern sound film, specially the version in vivid realistic colours, is unique among all art forms and media for its evocative potential. The viewer is apt to forget the real world around him, because it is completely hidden from him by the impenetrable curtain of darkness which surrounds and envelopes him. The device of photographing faces and expressions from extremely close quarters accentuates the realism of what happens on the screen, and not only facilitates but compels a sense of identification with the characters in the film.... The continuous concentration on the subjects, the feeling of isolation in the darkened cinema hall and the vividness of the moving and speaking pictures conjure up an atmosphere of reality about the whole experience.... The impact made by the film is vivid, immediate and compulsive..."

The huge involvement of money in film production enhances the commercial exploitation of the medium. It is because of these

---

3. Now it is generally accepted that cinema is a medium of expression. To begin with, cinema was considered only as an entertainment and not as a form of expression. See Mutual Film Corporation v. Industrial Commission of Ohio, 236 U.S. 230 (1915). But subsequently cinema was recognised as a medium of expression entitled to the protection of the constitutional guarantee of free speech. See Burstyn v. Wilson, 343 U.S. 495 (1952). In Abbas v. Union of India, A.I.R. 1971 S.C. 481 the Supreme Court of India accepted this preposition as a well established one. See also Khosla Report, p.47.
4. Khosla Report, p.60. See also the observation of Hidayatullah, C.J. to the same effect in Abbas v. Union of India, A.I.R. 1971 S.C. 481 at p.489.

extra-ordinary features, cinema has been viewed with suspicion and subjected to some sort of censorship throughout the world.

Theoretical basis for film censorship - pros and cons.

The underlying causes of film censorship are manifold - psychological, political, parental, constitutional and social - and therefore, the censorship model available in a country at a particular time and the degree of control depends on the interplay of these various forces. The superiority complex of some people among us, the interest of the political sovereign to prevent dangers to the existence of the State, the inability of the parents to keep their children off the undesirable influences, the quest of society to maintain the status-quo and to prevent unwelcome ideas and constitutional trust given to the fundamental rights of citizens are, in other words, the determining factors that condition a sound censorship model. It is the paramount duty of the Government to maintain and protect its subjects from incitement to crime and acts against public order and to evolve healthy international relations and norms. Film censorship is carried on on a number of grounds. The commonly used, and

perhaps the most controversial one is censorship on grounds of public morality and decency. Censorship on this ground is resorted to with a view to protecting individuals.[5]

This argument presupposes the existence of certain standards in society. On the other hand it has been argued that people are quite capable of protecting themselves and any direct attempt to force a moral code by a group of persons professing to be the guardians of public morality underestimates the capacity of people at large and unduly encroaches upon the rights of citizens.[6]

Both these arguments - one for and the other against censorship - are moralist arguments based on some assumptions unsupported by evidence.[7]

---

5. It is argued that obscenity and violence *per se* produces an attitude of moral laxity which in turn results in increasing sex crimes and violence and therefore, the main object of censorship is to eliminate these vices. See Rajeev Dhavan, "Existing and Alternative Models of Obscenity Law Enforcement", in Rajeev Dhavan and Christie Davies (Eds.), *Censorship and Obscenity*, 56 at pp.56-57 (1978).
6. This is the libertarian argument which shows more faith in individual will. See Rajeev Dhavan, *supra*, n.5 at p.57.
7. According to Christie Davies, a 'moralist' is "one who decides whether or not an activity should be banned by law on the basis of the intrinsic wickedness (or virtue) of the activity concerned". Christie Davies, in Introduction to *Censorship and Obscenity*, *id.* at p.2.

Eventhough the people in general are capable of protecting themselves they can be misled. They may get themselves confused by indiscriminate advertising.[8] Here the censorship plays a role. It is directed not against the contents of the film. But it prevents indiscriminate commercial advertising with a view to misleading people. Another elaboration of the 'protection theory' is that the people are always busy with their life. They do not have the expertise in determining what is objectionable. Censorship affords only a guidance. The Censor acts as an information service without power to ban anything.

Another manifestation of protection theory is found in the plea that censorship affords protection to children. They by reason of their immature nature of mind are not in a position to distinguish between good and bad.[9] Some people maintain that the susceptibility of minds of children to

---

8. For a general discussion on protection theory, see Rajeev Dhavan, supra, n.5 at p.57.
9. Director of Public Prosecution v. A and B.C. Chewing Gum, [1968]1 Q.B. 159.

evils is not scientifically proved and therefore there is no need to protect children from the so-called harmful cinemas.[10] However, there is near unanimity on the necessity for protecting children. Here, censorship is restricted for children alone and not for adults. An objection to this is that the parental responsibility is interfered with.[11] As in the case of other pleas here also is a counter argument. Most parents have no time and expertise to determine what is good for their children. So this type of censorship affords a warning to parents.

Another argument for censorship is that it helps to maintain the standards of films. Depiction of vulgar, obscene or excessively violent scenes affect the public image of the medium itself. Thus censorship affords protection to good cinema.

In recent years censorship as a regulatory technique has been invoked to safeguard the best interests of society. In a modern welfare State, the State is interested not only

10. Guy Phelps, Film Censorship, p.119 (1975).
11. See the resolution adopted by the Motion Picture Association of America in 1966 as reproduced in Trevelyan, What the Censor Saw, p.260 (1973).

in the material well being but also in the moral well being of its citizens. When there is a conflict between the right of individual and the wider interests of society, the individual right must yield to the interest of society at large. The regulatory technique has acquired greater significance in the present day where the old individualistic doctrine has given way to the theory of Welfare State. Apart from questions of morality, the State is entitled to regulate all activities against the ordered society.[12]

The communist countries justify censorship for the benefit of society whereas a non-communist country justifies censorship on the wider interest of society by a proper balancing of the right of individual and the interest of society. The communist countries, especially the Soviet

---

12. Justice K.K. Mathew observes:

> "No one can doubt that, in any well-governed society, the legislature has both the right and the duty to prohibit certain forms of speech. Libels must be forbidden and punished; so too, must slander. Words which incite men to crime are themselves criminal and must be dealt with as such. Sedition, if there is such a thing, and treason may be expressed by speech or writing. They may not be encouraged".

See Upendra Baxi (Ed.), K.K. Mathew on Democracy, Equality and Freedom, p.112 (1978).

Union recognised the immense possibilities of cinema from the very beginning and transformed it as an effective tool for party propaganda.[13] The duty of artist is to aid the Government in building up a new society as envisaged by the communist party. The individual opinion of the artist is irrelevant.[14]

Thus in communist countries, film production and exhibition are under close control at each and every stage. Political censorship is openly practiced and anything in a film against the interest of the Government or the Communist Party is automatically banned.

Censorship models.

The models adopted for censorship of films by different

---

13. Khrushchev observed:
"On questions of creative art the General Committee of the Party will demand of every one that he abides unswervingly by the Partyline". See Nikita Khrushchev, The Great Strength of Soviet Literature and Art, p.31 (1963), as quoted in Nevelle March Hunnings, Film Censors and the Law, p.386 (1967).

14. Again to quote Khrushchev:
"If every one tries to foist his own subjective views on to society as a rule to be followed by all and seeks to secure the acceptance of those views, contrary to the generally accepted standards of socialist society, this will inevitably lead to disorganisation of the normal life of the people and of the activity of society. Society cannot permit anarchy and self-will on the part of anyone". See id. at p.387.

countries vary considerably depending upon the nature of constitutional guarantees, if any, the prevailing political dogma, respect for human rights by the Government and the governed and the sense of responsibility of the film makers. The important censorship models may be examined with a view to determining the best film censorship model for India.[15]

1. Self-regulation type.

In this model, censorship of film is carried on by the industry itself. No external agency, especiallythe Government, interfere. On a philosophical plane, this is the best form. As this is a form of regulation, voluntarily adopted by the members of the industry, no question of any subordination of rights of individuals is involved. Although it reveals the awareness of the industry on the need for regulation, the system presents a paradox - accepting the libertarian philosophy of the supremacy of individual rights, it voluntarily accepts the need for regulating individual right in the interest of society. Flexibility in approach is the

---

15. What ought to be the model for India is discussed in Ch.13 *infra*.

most important advantage of this model.[16] That political censorship can be excluded to the maximum is another merit. Since the Government have no voice in the constitution or working of these censorial authorities, they are not bound to give effect to the wishes of the Government.[17]

The system is not without defects.[18] Being industry based it is concerned more with the aspects of distribution, exhibition and market than with the contents of the film. During the process of censorship, the integrity of the film may be ignored altogether.

---

16. The main object of film censorship is to see that standards of decency and morality are not violated. The standards of morality and decency in a society at a given time are never static. Again the public outlook on matters of morality vary considerably in different parts of one country. Therefore, it is necessary for the censor to change his policy according to the changing norms of morality and decency in society. A self-censorship system can quickly accommodate these changes in society than any other type of censorship.
17. Even then political censorship cannot be avoided altogether as is clearly seen in the case of the British Board of Film Censors. Here the phrase political censorship is used in a wider sense to denote censorship to safeguarding the very existence of the State. But if the term political censorship is intended to denote censorship to give effect to the wishes of the Government in power, the prospects for such a political censorship is very limited in self-regulation. However, it may be noted that even in the case of statutory official censorship, the possibility for such an action can be reduced by a proper judicial review.
18. For a discussion, see Hunnings, op.cit., p.391.

An efficient self-censorship system necessarily postulates consensus of the members of the industry. For this there is the need for a compact concentration of film industry. But this may lead to monopoly. Bereft of concentration there is no common consent. The experience in the United States is an eye opener.[19] The main drawback of the system of self-regulation is its inability to enforce its decisions. The industry-oriented censorship board is helpless in many ways. A producer may refuse to submit his film for censorship. He may refuse to carry out the decision even after submitting the film for censorship. Perhaps the only sanction available is that the industry can boycott the film in question. But this is possible only if there is a close concentration of the industry. However, the proliferation of film makers and exhibitors and the tight commercial competition involved in film exhibition in recent years made these types of concentration impossible. A new set of film producers and directors emerged. They opposed the self-regulating codes. All these really accounted for the break

19. See infra Ch.6, n.100.

down of the system, especially, in the United States.[20]

There is another draw back. Even after the decision of the self-regulating, industry-oriented censorship agency is in favour, the film is not immune from any subsequent legal action. One of the important merits of pre-censorship is that it affords protection from law.[21] But this purpose can be defeated at any time by the self-regulatory system.

In all countries having a self-regulatory system for cinema, the criminal law model described later,[22] also

---

20. For a discussion, see _infra_ Ch.6.
21. Geoffrey Robertson observes:
    "The purpose of pre-censorship is protection from law: it affords insurance to promoters, securing investments against legal suppression, at the expense of the work of creative artists. Courtroom battles for literary freedom have been fought by publisher and author standing together against the official custodians of morality, but where pre-censorship operates these ranks are broken as creator fights against promoter, and the artistic interest in preserving a work in tact is subordinated to the commercial interest in avoiding the cost and inconvenience of possible legal action. The most determined champions of prior restraint have been societies of theatre managers, independent television companies and the film industry, all craving protection from an obscenity law which book publishers must endure with fortitude. Censorship bodies...., have operated to keep them out of trouble by excising sexual indelicacy and, occasionally, suppressing political comments embarrassing to those in authority". See Geoffrey Robertson, _Obscenity_ pp.244, 245 (1979).
22. See _infra_ text accompanying nn.41 to 49.

function side by side. For instance take the case of the British system. In Britain there is an industry based British Board of Film Censors which has a semi-official status. Still the judiciary thought it fit to invoke the common law offences against film makers and exhibitors who were accused of corrupting public morals and outraging public decency.[23] Later Parliament extended the provision of the Obscene Publications Act 1959 to films passed by the Board.[24] However, it is still a debatable question whether an official pre-censorship operates as a protection from further legal action. In India it is now judicially as well as statutorily recognised that it affords such a protection.[25]

In countries where self-regulation of film is practised, the system was invested with a view to excluding official pre-censorship. The history of the British Board of Film Censors shows that the main object in creating the Board was

---

23. See R. v. Greater London Council, ex-parte Blackburn, [1976] 3 All E.R. 184.
24. The Criminal Law Act 1977, S.53(1). For the text of the section, see infra Ch.5, n.79.
25. Raj Kapoor v. Laxman, (1980)2 S.C.C. 175. Also see Proviso to S.5A(1) of the Act. For a further discussion see infra Ch.10, text of nn.10-40.

to fight against local censorship and to project a good public image to cinema.[26] The same reasons persuaded the industry in the United States to set up its own censorial system.[27] The position is not different in other countries.[28]

A crucial feature of self-censorship deserves special consideration. The countries which adopted a self-regulation system were forced to accept the system as a compromise between official pre-censorship and no censorship at all. The constitutional provisions or conventions was a stumbling block in the way of implementing an official pre-censorship.[29] But

---

26. See <u>infra</u> Ch.5 nn.20 to 23 and the accompanying text.
27. See <u>infra</u> Ch.6.
28. The <u>Khosla</u> Committee observed:
    "The fear of State Censorship has maintained the importance and prestige of voluntary systems in Britain and U.S.A. It has been realised that the development of good taste in artistic and literal productions is a matter which must be left to the natural processes of cultural education or voluntary bodies, leaving the State to concern itself with question of law and order".
    The Khosla Report, p.45.
29. In the United States the Constitution guarantees freedom of speech and expression in absolute terms and the courts, especially the Supreme Court took a hostile attitude towards 'prior restraint'. In the United Kingdom, eventhough there is no written Constitution, these fundamental freedoms of citizen, especially the freedom of speech and expression, are always honoured with high esteem. Prior censorship of speech and expression were always viewed with contempt mainly due to historic reasons. In the light of the constitutional provisions and in the light of

(contd....)

at the same time, the forces in favour of prior censorship on cinema were so strong that they could not be resisted. The film industry itself, realising the need for censorship of films in order to project a good image of cinema in the minds of public, started censorship of films. Thus the attempt was to pacify both rival groups - those who wanted to reject official prior censorship altogether and those who wanted to retain it. With all its defects, the self-regulating system was the only possible one acceptable to both rival groups - exponents of official censorship and their opponents.[30]

The aversion for governmental participation in censorship process is typical of the laissez faire approach.[31] In the dying days of laissez faire the charm of self-regulatory system also faded out.

(f.n.29 continued)
classical aversion for 'prior restraint' it was found difficult to impose official prior censorship on cinematograph exhibitions. See infra Ch.6. See also Cooley, Constitutional Law, pp.272-275 (1981). Germany and Japan resort to self_regulation of cinema because of a constitutional prohibitions against film censorship. Hunnings, op.cit., p.392.

30. Hunnings, op.cit., p.393.

31. The libertarians attack the protection argument on the following grounds. Firstly, the very foundation of the protection argument that censorship is necessary to protect the common standards of morality in society itself is wrong. Secondly, the development of personality of

(contd....)

2. Official pre-censorship.

Censorial powers may be exercised legally by an authority specially constituted for that purpose alone. The nature, structure and powers of such an authority vary from country to country depending upon the political, social and cultural factors.

There is a general hatred and aversion towards official pre-censorship of speech and expression. Hence it may be interesting to enquire into the reasons why it is accepted as a model for film censorship. One of the reasons is historical. Cinema emerged as a new medium just before the dawn of the twentieth century. Then it was considered as a mere entertainment. The regulation applicable to minor entertainments were also applied to

---

(f.n.31 continued)

a mature free man should be in his own hands. Thirdly, censorship constitutes a serious inroad into the right of privacy of individuals. For a discussion, see Rajeev Dhavan, *supra* n.5 at pp.60-61.

cinema. Both in England[32] and in the United States[33] cinema was considered at the early stages as business pure and simple.

Cinema, though a form of expression, is closely associated with business because of the huge investments. This aspect of the inseperable union of money and art distinguishes cinema from other mass media. The investor is naturally interested in profit. Therefore, there is a greater possibility for misuse of the medium. Every producer may have lofty claims. But he always has an eye on box-office. This inextricable mixture of commerce and art affords a plausible explanation for subjection of the medium to severe restrictions than other forms of expression. The severe restrictions can only be made by official pre-censorship.

---

32. Hunnings observes: "The natural attitude to the new born cinematographe or 'living pictures' was to regard it as merely one more amusement among many such to be seen in showmen's booths and the variety and music halls, and to control it in the same way and according to the same rules. Subsequent development then depended upon the means by which the control, once assumed, could be maintained even when the cinema, outgrew its fairground origins, its quality as a spectacle de curiosite and became as individualistic a form of entertainment as the theatre". Hunnings, op.cit., p.383.
33. Mutual Film Corp. v. Industrial Commission, Ohio, 236 U.S. 230 (1915). Cf. Burstyn v. Wilson, 343 U.S. 495 (1952).

Another reason for the differential treatment of film, subjecting it alone to official pre-censorship is its greater succeptibilities to influence the minds of people, especially the young and adolescent. The wide popularity of cinema, its capacity of social penetration, its unique power of suggestion and the true life depiction of events have their impact on social attitudes. A popular publication in India has commented,[34]

> "Perhaps the single most telling influence on the lives of this country's million is, next to religion, the cinema. So what passes for entertainment on the silver screen is significant not just for those few hours....but also because it leaves a much more enduring influence on social attitudes and action. The cinema is, in a word, a kind of social touchstone."

Inevitably the instant appeal of cinema to social attitudes makes a preexhibition model of official censorship as more suitable for film consorship. With this model evils are nipped in the bud before they reach the public. There is no other reason why Prof. Harry Street argues strongly for

---

34. Editorial, India Today, Vol.V, No.19, October 1-15, 1980.

pre-censorship of films when he observes:[35]

> "It is not inconsistent to have abolished theatre censorship and yet to retain national censorship of films, either legal or unofficial. Factors like the large attendance of children and the facility for portrayal of horror justify making a distinction between the two media."

Official pre-censorship system is preventive in nature; the evils are suppressed before its exhibition. This remedy is more satisfactory than a criminal law model where punishment is imposed only subsequent to the exhibition of the film in question.

The model seems to be certain, quick and cheap. Since the decision is taken by the officialdom before the exhibition of the film, the producer is in a position to know in advance what is objectionable.

The main criticism levelled against this model is that the system permits suppression of speech and expression before its publication and that too without the safeguards of a judicial proceedings.

An official pre-censorship model may assume many forms depending on the authority on whom censorial powers are given. Britain follows a system of local censorship.

---

35. Harry Street, Freedom, the Individual and the Law, p.74 (1972).

There are bouquets and brickbats to local official censorship. In this system, film censorship is carried on by the local authorities. The system is justified on the ground that the councillors are better situated to guage the standards available in society. The correctness of this assumption is open to doubt.[36] Lack of special means of knowledge on the part of councillors to assess contemporary standards in society, their inexpertise, infusion of politics into the process of censorship and lack of uniformity and consistency in censorial decisions not only by different local bodies but also by the same body make it highly unsatisfactory.[37] In a system of pre-censorship by administrative authorities the power to censor films is conferred on an administrator specifically constituted for that purpose. The members of the authority are experts. Even if they are not at the time of appointment, expertise can be acquired very shortly because of their constant contact with the problems. The censors have to adopt uniform standards. Hence there is uniformity in approach.

---

36. Guy Phelps, op.cit., pp.274-77; Harry Street, op.cit. p.72
37. Ibid.

However this system provides more room for political censorship. The censor, being a Government nominee whose services can be terminated by the Government at any time, is more prone to governmental influences. The Government can use the system for suppressing political ideas embarrassing to it. The objection is valid to some extent. All censorship are political in nature and the possibility for political intervention by the Government cannot be ruled out.[38] However, the objection is more imagined than real. This objection springs from the premises that all administrative authorities can be subject to political interference by the Government and therefore no such authority can be constituted. The present trend of thinking is to confer more and more powers on administrative authorities because of the added advantages of such a process.[39] The endeavour is to eliminate the defects by making the system to be independent of Government and further requiring it to follow a fair procedure. Prompt judicial review will effectively minimise political intervention.

---

38. See <u>supra</u> n.17.
39. According to Prof.Robson, the hegemony of the executive is now an accomplished fact. Robson, <u>Justice and Administrative Law</u>, p.34 (1951), See also Jain and Jain, <u>Principles of Administrative Law</u>, p.5 (1979).

It is true that official pre-censorship empowers the authority to take decisions on crucial questions affecting freedom of speech and expression. But it may not be that this is done solely on the basis of purely subjective satisfaction of the authority and without following a fair procedure. When discretion is properly structured, confined and checked its defects can be cured.[40]

3. Criminal law model.

This is essentially a post-censorship model. The film maker or distributor or exhibitor thereof is punished for violation of the standards set by the criminal law. Here, there is neither a ban nor censorship on the film. Which matters are objectionable or not is determined judicially. The accused is entitled to all the advantages of a criminal trial presumption of innocence, burden of proof on the prosecution, protection against double jeopardy and an impartial assessment of evidence on record.

It is a cardinal principle of criminal law that punishment can be imposed only if it is possible to ascertain in advance with some precision that the conduct in question is

---

40. Davis, Discretionary Justice: A Preliminary Enquiry, p.216 (1969).

unlawful. A contrary situation place the people in the dark. The accused may not know whether a particular act is punishable. Glanvile Williams observed:

> "The citizen must be able to ascertain beforehand how he stands with regard to the criminal law; otherwise to punish him for breach of that law is purposeless cruelty. Punishment in all its forms is a loss of rights or advantages consequent on a breach of law. When it loses this quality it degenerates into an arbitrary act of violence that can produce nothing but bad social effects". 41

As another criminologist[42] has remarked that the criminal law model of censorship is essentially a violation of rule against expost facto law because the accused does not invariably know in advance the illegality of the act. In the area of public morality, this prime requirement of criminal law, namely fixation of criminal conduct in advance, is absent. Public decency or public morality are elusive concepts. Judiciary tried their best to define them. Still it remains confused and the terms remain undefinable.[43] Thus, the criminal law model appears to be

---

41. Glanville Williams, Criminal Law (The General Part) p.575 (1961). The rule embodied in the maxim, Nullum crimen sine lege, Nulla poena sine lege - that there must be no crime or punishment except in accordance with fixed, predetermined law - has been generally regarded as a self-evident rule.
42. G.Zellick, "A New Approach to Control of Obscenity", 33 Mod. L.R. 289 at p.290 (1970).
43. Geoffrey Robertson, op.cit., pp.307-311. See also the observation to the same effect by Justice Brennan in

(Contd...)

highly unsuitable to abate a public nuisance like violations of norms of public decency and morality. A film producer or exhibitor is not in a position to ascertain beforehand whether the film or any part thereof is against current norms of public decency and morality. "Nullum crimen is an injunction to legislature not to draw its statutes in such broad general terms that almost anybody can be brought within its sweep at the whim of the prosecutor or judge".[44] Glanville Williams goes on,[45]

> "Where it is impossible to draft a clear prohibition, the better practice is to allow for an administrative ruling, before the conduct is embarked upon, to settle the question of legality vel non. ....licensing may be a lesser evil than a vague criminal prohibition that is given its substance ex post facto by the courts."

It is a pity to castigate producers, directors or exhibitors as criminals, who by no strength of imagination conform to the customary notions of criminality, for depicting scenes alleged to be against public decency or morality especially when there is no yardstick to measure in advance what constitutes a violation of public morality.[46]

(f.n.43 continued)

Paris Adult Theatre v. Slaton, 413 U.S. 49 at p.84 (1973). For a discussion, see infra ch.8.

44. Glanville Williams, op.cit., p.578.
45. Id., at p.579.
46. G.Zellick, supra n.42. His observation about authors of books shall also apply to film makers.

The criminal court has no power to act suo moto. The criminal machinery can be set in motion only by prosecution. The offence can be committed with impunity until it is brought to the notice of the court. Since the appeal of cinema is instant, such delay may be crucial. By the time when an action is brought before the court the injury (if the exhibition of the film is subsequently found to be objectionable) might have already been done. There might not be anything which remains to be curbed. In a criminal law model it is not the film but the producer or exhibitor that is on trial for violation of public morality. There is no universal finding on the film. Hence prosecution from different quarters may have different results in different courts leading to conflicting judicial opinion on the objectionable nature of the film.

Use of criminal law as a model for censorship of books and literature has been condemned by many writers.[47] Can not of this rationale opposition be applied to cinema exhibition as well? In fact criminal law model as a form of censorship of films should be least satisfactory. One can agree that if it is necessary to regulate the freedom of producers

---

47. See D.G.T. Williams, "The Control of Obscenity-II" Cri.L.R. 522 at p.531 (1965), G.Zellick, supra n.42, Geoffrey Robertson, op.cit., pp.306-318.

or exhibitors in the interest of society at large, depiction of scenes or events against such interests has to be condemned. However, a criminal law model appears to be highly inappropriate for this purpose.

These intrinsic defects of criminal law as a model of censorship induce many writers to plead for scrapping of all criminal laws on obscenity.[48] However criminal law may supplement a system which provides for an expert and competent body like a statutory Board to determine questions concerning the grounds of censorship. The criminal law can be used for punishing those who violated the decisions of the censorship body. Here, the criminal court is competent only to determine whether there is violation of the decisions of censorship body and if so, what punishment is to be awarded.

---

48. Geoffray Robertson, op.cit., p.315. Harry Street, op.cit., pp.73-74; D.G.T. Williams, supra n.47. Williams maintains that statutory censorship may not have much effect in the area of literature because "much of the obscene materials are furtive and secret and therefore the tycoon of hard core pornography would soon bypass a censorship system designed to protect responsible publishers and we would be back where we started." (Id. at p.531). Geoffrey Robertson suggests a Classification Board similar to the one constituted by New Zealand. The Indecent Publications Act 1963 of New Zealand provides for a variable definition of obscenity with a defined range and spectrum like indecent, not indecent, indecent

(Contd...)

In some countries, especially those following a self-regulatory system, criminal law is used for censorship of film as an additional model. This practice can be justified. The State is primarily responsible for checking activities against the interests of State. The censorial authority being a private body set up by the industry, its decision on these issues cannot be accepted by the State as conclusive. However, there is no such justification for the use of criminal law as a model, additional to official pre-censorship.

4. Civil law model.

In this model, the power to censor a film is conferred on civil courts. Criminal law shall step in only for a violation of the orders of the civil court. In Kingsley Books[49] such a model was accepted by the Supreme Court of United States as a valid form for censoring

---

(f.n.48 continued)

in the hands of persons of a specified age, indecent unless its exhibition is restricted to specified persons or classes of persons and indecent unless used for a particular purposes. (Id., section 10). The Classification Board is empowered to decide the question of indecency or otherwise of a publication in conformity with the provisions of the |New Zealand|Act. For a discussion, see Geoffrey Robertson, op.cit., at pp.311-312.

49. Kingsley Books v. Brown, 354 U.S. 436 (1957). The Court was called upon to decide the validity of a New York law intended to suppress obscene books. The

(Contd...)

obscenity in books. In this case Justice Frankfurter brought to light the merits of the civil law model comparing it with the criminal law model.[50] In the latter, the bookseller is under constant fear that the offer for sale of a book may, without prior warning, subject him to a criminal prosecution with the hazard of imprisonment. The civil law model on the other hand assures him that such consequences cannot follow unless he ignores a court order specifically directed to him after a prompt and carefully circumscribed determination of the issue of obscenity.

The genesis of the law involved in the above can be traced to a Massachusetts law of 1945 providing for a declaratory remedy for adjudging obscenity in publications.[51]

(f.n. 49 continued)

scheme of the law is as follows: The law authorises the chief executive or the legal officer of a municipality to invoke the injunctive remedy against the sale and distribution of written and printed matters alleged to be obscene. When such a remedy is invoked, the defendant is entitled to a trial of issues within one day after joinder of issues. The Court is bound to render a decision within two days of conclusion of trial. If the article is found to be obscene after due trial, the Court can order for the surrender of the condemned publication. When such an order is violated, the municipal authorities can request a criminal court for seizure of the condemned article. The Supreme Court found that the procedure did not amount to prior restraint.

50. _Id._ at p.442.

51. Massachusetts General Laws, Ann. C. 272. For a discussion of the law, see G.Zellick, _supra_ n.42 at pp.290-291. The declaratory order has to be passed by the (Contd....)

According to Zacharia Chafee[52] such a statute permits an advance decision on the indecency without obliging anybody to commit a possible crime and run the risk of punishment and supplies the best method yet devised for drawing the line between decency and indecency.

In Freedman v. Maryland,[53] Supreme Court of United States recommended this model for prohibiting the exhibition of obscene films.[54] However, the Supreme Court considered this model also as a form of prior restraint and insisted for procedural standards laid down in Freedman.[55]

Nevertheless, the civil law model is more satisfactory than the criminal law model.[56] It can substitute the latter

---

(f.n.51 continued)

civil court after a proper trial. The order as such has no coersive force. But the decision constitutes a conclusive proof as to obscenity in a subsequent criminal trial for publishing obscene matters.

52. Zacharia Chafee, Government and Mass Communication, Vol.I, p.229 (1947).
53. 380 U.S. 51 (1965). For a discussion of the case, see infra Ch.6, nn.74-77.
54. The same view was previously expressed in Note, Entertainments, Public Pressures and the Law, 71 Harv. L. Rev. 326 at p.340 (1957-58).
55. Carolvance v. Universal Amusement Co., Inc., 445 U.S. 308 (1980). For a criticism of the view, see William T. Moyton, Towards a Theory of First Amendment Process, Injunction of Speech, Subsequent Punishment and the Costs of Prior Restraint Doctrine, 67 Cornel. L. Rev. 245 at pp.274-280 (1981-82).
56. G.Zellick, supra n.42 at p.291. The merits pointed out by him though with reference to censorship of books and literature shall apply with same force to films as well.

in the realm of control over films as there will be a prior determination of obscenity without any evil consequences. Such consequences follow only if a film declared as obscene in the previous civil proceedings continues to be exhibited. At the initial stage there is no accusation of anyone. The film itself is tried before the court and there is a universal declaration of obscenity or otherwise of the film. Apart from the fact that the merits of the criminal law model is present in it, the civil law model is superior because no one is accused of any offence. If at all the obscenity is determined, it is with reference to the film itself.

The question is that whether the civil law model can be preferred to an official prior censorship. The answer seems to be in the negative. The civil court, like the criminal court, is not an expert on questions relating to public morality. Therefore its decision, by its very nature, is based on the subjective satisfaction of the judge and cannot be deemed to reflect contemporary community standards. The process is costly and time consuming.[57] It also affords an

---

57. Note, "Entertainments, Public Pressures and the Law", supra n.55 at p.341. However, the defect of delay can be minimised by providing for a time bound procedure as contained in the New York or Massachusetts laws. Even

(contd....)

opportunity to the concerned authority to select the judge.[58] The remedy is curative and not preventive. Therefore civil law system is not helpful for effective suppression of vice.

5. Constitutional law approach.

The Constitutional guarantee of the rights to citizens poses difficulties in the selection of a censorship model. As will be seen later on,[59] the First Amendment to the United States' Constitution guarantees the right to freedom of speech and expression in absolute terms but the judicial interpretations specifically recognises the need for social control. The Constitution of India guarantees the freedom of speech but expressly permits the State to impose reasonable restrictions. However the State can in no way go beyond limits of these restrictions.[60]

(f.n.57 continued)
then, the heirarchy of appeals provided by the general law may result in inordinate delay in getting a final verdict. Anyway it is still possible for the legislature to limit the number of appeals and to provide for time limit in disposing of the appeal and thereby can eliminate the defect of delay.

58. Ibid.
59. See infra Ch.6 nn.15-17.
60. See infra Ch.8 pp.235, 236.

The models for censorship, discussed above, have both merits and demerits. Once the need for film censorship is accepted, the model has to be selected. This naturally will depend upon the social, cultural and political conditions available in a country.

Chapter 3

FILM MAKING - INVISIBLE AND INDIRECT FACTORS

Introduction

Censorship in a broad sense includes every type of restraints on the pursuits of individuals. A variety of factors - the social set up of the day, the moral standards of society, the personality of the individual, the nature of the particular activity in question and various other connected matters - mould the final shape of individual activities. The nature and extent of these matters are incapable of any precise articulation. The commercial nature of cinema makes these invisible factors play a vital role in the form and content of the final product presented before the audience.

However some of the visible and external regulatory measures, though not intended directly to control film contents, may have an indirect effect of censoring film contents. These invisible and indirect censorship,[1] though

---

1. In this chapter, the term censorship is used in a wider sense different than the one used in other parts of this thesis.

falls outside the main stream of this thesis, is discussed at some length because of the greater effect of these factors on film makers and film making.

Invisible censorship.

A number of invisible factors curtail the creative freedom of film makers. In fact overt censorship plays only a minor role and the final content and nature of a film is determined by the indirect pressures. Hunnings has rightly observed:[2]

> "It should also be remembered that films are cut or withheld for reasons other than a censor's or licensing authority's ban. Not only the non-co-operation of public bodies, but also the action of the industry itself may prevent the exhibition of a film, and exhibitors have successfully boycotted a number of films. The hidden 'censorship' exercised in the offices of film companies themself would lead to an examination of the financial control of, and the degree of monopoly or oligopoly in, the film industry and thence to a detailed investigation into the whole film-making and financing process".

The most important and crucial latent factor is the role of finance. Film production is a curious combination of

---

2. Hunnings, Film Censors and the Law, p.148 (1967).

finance and art. This extra-ordinary marriage of money and art often calls for compromise more in favour of finance.[3] It is only natural that the producer who invests such a huge amount is keen to get the money back with a reasonable profit resulting in surrender of art in favour of 'box office formula.' Even a director who is a staunch supporter of the freedom of 'creative artists' cannot resist these force.[4]

Generally, a film maker has to raise the funds from private financiers. The distributors and exhibitors only

---

3. It has been said that an average Indian film requires a minimum of fifteen to twentyfive lakhs of rupees for its completion. In big budget films, the cost of production will shoot up like anything. The Report of the Working Group on National Film Policy, p.17 (1980). Hereinafter referred to in this thesis as the Report of the Working Group.
4. Film Director Joseph Lesey observed:
   "The most important kind of censorship is right at the very initiation of a project: one finds there are certain taboo subjects or certain subjects considered to be non-commercial or subjects which haven't a current vogue or are supposed to be worn out... I know of very few directors who have had full freedom of choice in their selection of subjects. Almost none. So choice boils down to the freedom not to make certain subjects which one feels to be potential vicious or which one feels one 'can't do anything with.' This is the censorship of fear and ignorance, a pressure to conform that applies in almost every country: the conservation of money."
   See Guy Phelps, Film Censorship, p.253 (1975).

Look into the monetary side. In the present set up, a film maker cannot exhibit his film before the public without the coöperation of distributors and exhibitors. The creative artist behind the film - the director - is forced to make some adjustments which in turn will affect the quality of the cinema itself.

In order to improve the quality of cinema, it is necessary to liberate cinema from the grip of private financiers who advance money with usurious rate of interest, the distributors and exhibitors. The Working Group on National Film Policy observes:[5]

> "Entertainment is one of the essential needs of life and the quality of entertainment being provided by a mass medium like cinema should be of obvious concern to the Government. However, it is not by external restraints such as censorship that the entertainment content of films can be improved. Popular entertainment films have to be liberated from over-dependence on standard box-office ingredients and these films should also provide an opportunity for creative expression. This can only be done if producers of popular entertainment films are freed from the cluches of financiers and are given an opportunity to make interesting films on moderate budgets with institutional finance."

---

5. <u>Report of the Working Group</u>, p.19.

The Working Group therefore suggested that institutional finance should be made available for all films, preference being given to low budget films.[6] Another important recommendation of the Working Group is that film production should be recognised as an industry for the purpose of the Industrial Development Bank of India Act 1964 thereby extending

---

6. The Estimates Committee (1973-74) in its 58th Report recommended that loan facilities of nationalised banks should be made available to film industry. The Committee observed: "The Committee consider that the existing system of financing of the film industry is the main factor responsible for the present deterioration of standards of Indian films. The Committee are unhappy that the authorities have not taken effective steps to provide the film industry with institutional finance, in spite of the recommendations made by the earlier Enquiry Committees. The result is that this industry has been left at the mercy of unscrupulous financiers and black money has come to play a dominant role in this country. The Committee feel that if any purposeful improvement is intended to be made in the standard of films and the films are to be converted into a vehicle of communication for uplifting the masses, it is imperative that system of providing finances to the film industry at reasonable rates of interest and acceptable terms have to be evolved... The Committee see no difficulty why Government nationalised Banks cannot see their way to make institutional finances available to the film industry on a stable and long term basis, to enable this vital industry with immense power to influence the masses of the country particularly the youth, to run on sound lines and improve its standards." See ibid.

the credit facilities under the Act for film industry as well.[7]

Although the institutional loan facilities may go a long way in helping the producers by making available finance at reasonable rate of interest, the hidden censorship may continue to exist; it is transferred from private financiers to bank or Government authorities because while sanctioning loans, they have to get satisfied as to the possibility of prompt repayment. Can it not be said that such a course would bring film industry subservient to Government?

The taste of audience is another factor which hampers the freedom of film maker. He is always bound to take into account the likes and dislikes of probable cine-viewers.

Another important hidden censorship is the fear of censors. The film maker is always bound to take into consideration the attitude of, and the standards adopted by,

---

7. Ibid. The National Film Development Corporation and State Film Development Corporations have schemes for providing financial assistance to 'good' films. The Working Group suggested that such a system may continue for giving financial aid to good and quality films, but institutional finance may be made available to all type of films.

the censors. Because of the heavy stakes involved in film production, a cut or an order for making modification will result in heavy financial loss and therefore a film maker always tries to produce his film in conformity with the standards adopted by censors.[8] By way of abundant caution in saving the film from the scissors of censorship the film maker usually adopts a standard more restrictive than that of the censors, in some cases even sacrificing the quality and artistic merits.

The organised pressure groups also exert considerable influence in the final shape of things to come. A public criticism may adversely affect the financial prospects of a film. So the film maker must shape the film to suit the standards of these pressure groups. In England and the United States of America the organised public pressure groups play a vital role in controlling the freedom of expression through this medium. In United States the Legion of Decency was a major force in controlling the film industry

---

8. Guy Phelps, op.cit., p.255.

in the past.[9] Even today no film maker who has an eye on wide circulation of his film can disregard the National Catholic Office, the successor of Legion of Decency. In England, organised pressure groups[10] like National Viewers and Listners' Association are very vigilant in seeing that public mass media conform to certain moral standards. Although the main concern of the Association is directed against television, the moral standards envisaged by it has to be taken note of by the film makers as well.

In India there is no such organised public pressure groups. Occasionally some social groups or women's associations raise their voice against depiction of indecent and immoral scenes in films or indecent cine advertisement. Such isolated criticisms hardly serve as an indirect factor influencing the censorial process on films at the stage of production.

---

9. For a discussion on the influence of Legion of Decency, see <u>infra</u> Ch.6, nn.94-99 and the text accompanying them.
10. For a detailed discussion about these pressure groups, see David E. Morrison and Michael Tracey, "American Theory and British Practice: The Case of Mrs. Mary Whitehouse and the National Viewers and Listeners Association", in Rajeev Dhavan and Christie Davies (Eds.), <u>Censorship and Obscenity</u>, pp.37-54 (1978).

Indirect censorship.

A number of legislations which are not intended to have the effect of direct regulation of contents of films, indirectly affect production and distribution of films. A general regulatory law, not intended to control speech, but indirectly limiting the free exercise of the right cannot be considered as an abridgement of the freedom of speech itself.[11] But the fact remains that the freedom is restricted to some extent.

A conspicuous instance of such indirect censorship of film is the taxing statutes notably the Entertainment Tax laws. In India entertainment tax is levied by the State Government.[12] The policy of various State Governments differ widely. The rate of entertainment tax also differ widely.[13] However, the tax is imposed with the sole object of raising maximum revenue totally disregarding the status of cinema as

---

11. Upendra Baxi (Ed.), K.K. Mathew on Democracy, Equality and Freedom, p.143 (1978). See also Express Newspapers v. Union of India, A.I.R. 1958 S.C. 578; Young v. American Mini Theatres Inc., 427 U.S. 50 (1976).
12. The power to levy the tax is contained in Entry 62 of List II of the Seventh Schedule to the Constitution of India.
13. For different rate of entertainment tax, see Report of the Working Group, p.38.

a vehicle of culture, education and communication.[14] The Estimates Committee of the Indian Parliament further observed:[15]

> "The high rate of tax is pushing the cinema house beyond the reach of common man. What is more disquieting is that practically no part of tax money collected, is being ploughed back into the industry with the result that this policy of high taxation is driving the industry into the hands of those unscrupulous people from whom it needs to be rescued. The Committee feels that there is need for rationalisation of rate of entertainment tax".

The Patil Committee[16] also examined this question and had recommended for rationalisation of entertainment tax at the gross rate of 20 per cent of box office collections.[17] In spite of the fact that the Governments have accepted this need,[18] no substantial change occurred so far. Pointing out that the subject of cinema should be brought within the Union or Concurrent List, the Working Group on National Film

---

14. Id. at p.39.
15. 58th Report of the Estimates Committee 1973-74.
16. The Film Enquiry Committee (1949) under the Chairmanship of Sri S.K. Patil.
17. The Report of the Patil Committee. See Virendra Kumar, Committees and Commissions in India, Vol.I, p.140 (1975).
18. Report of the Working Group, p.39.

Policy, expressed its hope that the Central Government would formulate a uniform policy by reducing tax rate.[19]

The other taxes affecting film production are the show tax, excise and customs duties on raw films and cinema equipments. These levies are also high. The cry of the Working Group for rationalisation of these taxes fell on deaf ears.

Another instance of indirect censorship can be found in zoning regulations. Even in countries where obscenity laws are liberalised, restrictions are imposed on exhibition of obscene films. Such films can be exhibited only in theatres situated in a particular place earmarked for that purpose. In Young v. American Mini Theatres Inc.[20] the Supreme Court of the United States declared that zoning and other licensing requirements would not constitute a violation of the First Amendment guarantee. In India there is no such regulation confining cinema houses to particular areas.

---

19. Ibid.
20. 427 U.S. 50 (1976).

The various State Legislatures have enacted licensing regulations for cinematograph exhibitions.[21] The more strict licensing regulations are, the more will be the adverse effects on the number of cinema houses. In other words strict licensing of cinema houses indirectly affect exhibition of films. The publication is the very essence of the right of expression without which the right is only an empty husk. Thus the system of distribution and exhibition assume paramount importance. The present cinema house regulating laws made by State Legislatures are archaic, cumbersome and restrictive. They make construction of cinema houses prohibitively expensive, thereby indirectly tampering the free exhibition of cinema. The Working Group on National Film Policy goes on:[22]

> "....the existing regulation for theatre construction trend to treat cinemas as almost an undesirable activity which has to be kept at a safe distance from community centres. The rules laid down

---

21. The subject of cinema except sanctioning of cinematograph films for exhibition falls within the State List (Item 33 of List II of Seventh Schedule to the Constitution of India) and therefore the State is the competent authority to enact legislation on this subject.
22. Report of the Working Group, p.25.

> by most of the State Governments provide that Cinema Houses cannot be constructed near schools, colleges, places of worships, residential areas and even Government offices. There are also restrictions as to the minimum size of plot, multiple cinemas at one place, liberal requirements of parking space, elaborate fire safety conditions which were originally evolved when the cinema film was highly inflammable because of nitrate base, etc."

Compared to the increase in film production it may be said that the number of theatres are very few. This will have serious repercussions on film industry. Good films will find it difficult to get an outlet. Evidently simplification of these cumbersome and complex regulations is a dessideratum.[23]

---

23. For details of recommendations, see *Id.* at p.

Chapter 4

THE EVOLUTION OF FILM CENSORSHIP REGULATIONS IN INDIA

The history of Indian films starts with the twentieth century.[1] No need was felt for censorship in the early days. Most of the films were based on religious themes. No body did really realise the potential of film as a creative art or as a propaganda medium or as a source of dangerous influence on the minds of the people.[2]

---

1. The story of film exhibition in India starts from July 7, 1896 when the representatives of Lumiers Brothers began public showing of their 'cinematograph' in Bombay at Watson's Hotel. This took place barely within six months from the first exhibition of cinematograph in Paris on 28th December 1895. Within a short period India also entered the field of film production. The first Indian feature film Raja Harischandra produced by Dadasahab Phalke was released for public exhibition on 3rd May 1913. See the Report of the Working Group, p.1 (1980).
2. "The world had not yet received the violent impact of two world wars which shattered many of the old values about morality, right and wrong, decency, politics and human relations. Also world had not yet been telescoped and made smaller by the increase in the speed of communications. Lastly, the producers of films had not yet realised the full potential of the newly invented medium as a form of creative art, possessing aesthetic, entertaining and propaganda value. They were, loath to do anything which might provoke violent public reaction. They, therefore, extremely cautious and circumspect in the choice of subjects and in the manner of dealing with them. Censorship in these circumstances was scarcely necessary nor did any one think of evolving rules and regulations for censorship." See Khosla Report, p.5.

The Cinematograph Act, 1918

In India, the first major legislative attempt to control cinema took place in 1918 when the Cinematograph Act[3] was enacted. The statute provided for two things - (i) licencing of cinema theatres, and (ii) censoring of films. It was designed to ensure proper control of cinematograph exhibitions with particular regard to the safety of those attending cinemas and to prevent the presentations to the public of improper or objectionable films.[4] The law prohibited the exhibition of films elsewhere than in a place licenced under the Act by the licensing authorities and in violation of the licence conditions.[5] A licencing authority was also constituted.[6] The main consideration for licencing was, of course, the safety of the persons attending

---

3. Act 2 of 1918. For the text of the Act, see The A.I.R. Manual, Vol.3, pp.197-205 (1979).
4. The circumstances leading to the legislation were declared in the following words: "The existing law of the country contains certain scattered provisions, affecting such exhibitions and certain local enactments also bear on the subject; but the rapid growth in the popularity of cinematograph and increasing number of such exhibitions in India have rendered these provisions inadequate for the protection of the public from indecent or otherwise objectionable representations. Further, the special danger from fire which attends cinematograph exhibitions, as has been illustrated by the terrible catastrophies due to this cause in other countries, rendered it important to secure, in the interest of safety of spectators, a proper regard to the structural conditions of the premises utilised". See the Object and Reasons, Gazette of India, 1917, Part V, p.74.
5. The Cinematograph Act 1918, S.3.
6. Id., S.4. The District Magistrate or the Commissioner of Police was designated as the licencing authority under this Act.

exhibition of films.[7] As regards certification of films for public exhibition, the statute authorised the Local or Provincial Governments to constitute an Authority for that purpose.[8] It did not lay down any principles to be followed by such authority while it decided the suitability or otherwise of films. Thus it could be said that the law conferred very wide discretion on the authority to grant or refuse certificate. The Act also provided for an appeal to Local or Provincial Governments whose decision was final.[9]

As far as licencing provisions were concerned, the Act of 1918 was generally modelled on the British Statute, viz., the Cinematograph Act of 1909.[10] Local self government system was not introduced into India at that time. The Act of 1918, therefore, could not envisage licencing by local-governments. It conferred licencing powers on the District Magistrates in mofussil areas and on Commissioner of Police in Presidency towns. However, the Indian model of censorship

---

7. Id., S.5(1)(b).
8. Id., S.6.
9. Ibid.
10. For a discussion on the British Statute, see infra Ch.5, nn 16-19.

under the Act of 1918 was different from the British model. While the Indian censorial authorities were institutionally part of the officialdom, the British practice was that the job was arried out by local bodies and the Board of Censors. The absence of local bodies and an organised association of the film industry persuaded the British authorities to introduce a more practicable method of censorship in India through official bodies.

In 1920 Boards of Film Censors were set up at Bombay, Calcutta, Madras and Rangoon. These Boards were authorised to carry on censorial activities with the help of Inspectors. In the rules[11] framed by them, the Boards drew up some guidelines for the Inspectors. The guidelines issued by the Bombay Board were very elaborate and notable furnishing a pattern for subsequent developments of censorship in India.[12]

The guidelines warned against rigidity and called for logical decisions judging films on their own merits. The honest opinion of the Inspectors on the moral impact of a

---

11. The Cinematograph Act 1918, S.8(2). The provision conferred power on the Boards to frame rules for censorship of films.
12. The guidelines were similar to those issued by the British Board of Film Censors. For a text of the guidelines both Indian and British (43 Rules of T.P.O.'Connor), see <u>Khosla Report</u>, pp.6-8 and 30,31 respectively.

film was endorsed. Extenuation of crime, glorification of criminals and vicious characters, contempt again the institution of marriage, exhibition of nudity, character assasination, disrespect to foreign nations, fermenting social unrest and spreading disaffection or resistence to government were the important objectionable practices prohibited under the guidelines. The Inspectors were to assess the film on the basis of the imprèssion likely to be made on an average cinema audience in India. While considering the effect of a cinema, the bad reputation, if any, of the book on which it was based should also be taken into account by Inspectors. The Inspectors were further authorised to order for a change in the title or subtitle of the film or to cut out portions from films. Further, the guidelines listed fortytwo specific matters that were objectionable for public exhibitions.[13]

---

13. Id. at p.7,8. This list was virtually a copy of the Fortythree Rules' framed by T.P.O'Connor in 1916 for the guidance of the British Board of Film Censors except one item viz, 'the effects of vitriol throwing'. For the text of the 43 points, see. supra n.12. The copying from British Rules could be justified because at that time most of the films shown in India were imported from outside. These guidelines provided for a uniformity in approach by the censorial authorities in India and Britain.

The other Boards in India also drew up rules for censorship but they were less elaborate.[14] The Britishers and the Indians criticized the working of these Boards.[15] It was alleged by the former that films as certified by the Boards presented a distorted version of normal life of westerners lowering the respect for western civilisation in the minds of Indians. The Indian view was that such films polluted Indian culture and norms of morality, and copied the worst in western films like excessive love making, indecently dressed women, scenes of cruelty and torture, criminal acts and the use of violence.

In time the Indian film industry began to develop. Coming out of their shell of religious themes they began to imitate the American movies shown in India mostly of a lower quality. This aroused public criticism. The Government

---

14. The rules framed by the Calcutta Board laid down four principles which were to be borne in mind by the Censor viz., moral, racial, religious and political. The rules also mentioned eight subjects as undesirable and objectionable viz., rape, drawing of young girls astray, prostitution, feminine nudity, scenes showing women in a drunken state, exaggerated scenes of debauch at cabarets and saloons, scenes based on desecration of religious places of worship and torture or cruelty scenes by Whites *versus* Blacks or vice versa. See *Id.* at p.9.
15. They highly criticised the Boards for their laxity but on different grounds. According to the Khosla Committee "So, whereas our white rulers wanted to remain aloof,

(Contd...)

appointed an Enquiry Committee, the Rengachariar Committee, to look into the entire aspects of film censorship.[16]

The Committee rejected the old criticisms on censorship,[17] and cleared the Censor Boards of the charges of laxity and dereliction of duty.[18] The Committee further found that the cinema was not responsible for increase in delinquency or in shaping the modus operandi of criminals. Based on the evidence of police witnesses, the Committee opined that cinema had not in any way, increased the criminal propensity of an individual.[19]

(f.n. 15 contd.)

superior and beyond our ken, we want to preserve ourselves by remaining pure and apart and by denying ourselves the knowledge of what the whites think and do". Id. at p.11.

16. This Committee was appointed in 1927. The terms of reference included examination of the organisation and the principles and methods of censorship, survey of the organisation for the exhibition of cinematograph films and the film producing industry, and consideration of the steps to be taken to encourage the exhibition of film produced within the British Empire generally and the production and exhibition of Indian film in particular. For a discussion about the committee and its recommendations, See Khosla Report, pp 12-14.

17. The Committee maintained that thoughtful Indians and Europeans wanted a more liberal censorship on the ground that cinema by showing different kinds of civilisation, higher standards of living, finer buildings and the like tends to open the eyes of Indians and to make known to them the good points of Western civilisation. As quoted in Khosla report, p.13.

18. It was found that the "overwhelming majority of the films certified for public exhibition in no way tend to demoralise the Indian public or to bring western civilisation into contempt". Ibid.

19. The opinion of the Committee was that most of the

(Contd...)

Setting up of a Central Board of Film Censors with a whole-time chairman and non-official members, appointment of whole time Chief Censor and Deputy Censors and provision for an appeal from the decision taken by the Board were some of the salient features of its liberal approach to censorship.[20] The Committee was against any classification system. Still, it recommended for the adoption of the then existing British practice of issuing two types of certificates, one for universal public exhibition and the other for public exhibition restricted to adults.[21]

The Committee's recommendations remained unimplemented for a long time probably because they gave a green signal to the working of the then existing Boards or because political[22] and constitutional issues[23] stood in the way. However, the

---

(f.n.19 continued)
criticism against cinema was based on vulgar posters and advertisements and in many cases the critics entirely relied on these posters and advertisements without seeing the films.

20. Khosla Report at p.13.
21. Id. at p.14.
22. The political situation at that time was very tense due to the intensity of India's freedom struggle. The Government was pre-occupied with such grave questions and topics of minor importance like film censorship was naturally discarded.
23. Under the Government of India Act 1935, film censorship was included in the Concurrent List (Item No.33) and therefore the Government had some difficulty in implementing this recommendation.

Bombay and Madras Governments issued a Production Code for the guidance of producers in the production of feature films.[24]

It was in 1949 that the recommendations of the Rangachariar Committee were implemented. The Cinematograph (Second Amendment) Act 1949[25] introduced two types of censor certificates[26] - 'U' certificate for unrestricted public exhibition and 'A' certificate for public exhibition restricted to adults, i.e., persons who have completed the age of eighteen years.[27] The amendment Act made provision for the constitution of an Authority to censor films.[28] The Central Board assumed the powers of the previous Provincial Boards. But these Boards redesignated as Regional Boards subordinate to the Central Board, retained with them the

---

24. The industry did not reject it but it is doubtful whether "it resulted in any substantial improvement in the selection of themes chosen by film producers or the manner in which themes were handled". Khosla Report, p.14.
25. Act No.62 of 1949. The amendment came into effect from 15th January 1951.
26. See supra n.21.
27. The Cinematograph Act 1918 as amended by Act 62 of 1949 S.6(2).
28. Id., S.6(1). See also supra, n.20.

powers of previewing films.[29] Another feature of the Amendment Act 1949 was conferment on the Central Government of an appellate jurisdiction.[30] Central Government was given power to make rules inter alia, providing for the conditions under which censorial powers were to be exercised by the authority,[31] and a reserve power to overrule the decisions of the Board.[32] The State Governments or local authorities were conferred with the power to suspend the exhibition of a film if they were satisfied that the film was likely to cause a breach of peace.[33] The hands of the censorial authority were strengthened by another ingenious technique of imposing on the State Government certain obligations to put conditions on the holders of cinema house licences which the State are empowered to issue. No film other than a film certified by the Board shall be exhibited in a cinema house; a person below eighteen years shall not be admitted to view

29. This provision was inserted after much discussion regarding assumption of power of film censorship by the Centre.
30. The Cinematograph Act 1918, as amended by Act 62 of 1949 S.6(4).
31. Id., S.9(1)(e).
32. Id., S.6(7).
33. Id., S.7.

a film certified as fit for adults only; the licensee shall not violate any decision rendered by the Central or Regional Board.[34]

The Central Government promulgated the Cinematograph (Censorship) Rules in 1951 and issued elaborate directions in 1952 for the guidance of the Board.[35] The effect of all these measures was to bring the Board completely under the control of Central Government.

The Patil Committee.

Although the main function assigned to it was only to enquire into growth, organisation and development of film industry in India, the Patil Committee[36] made significant

34. Id., S.5(2).
35. The new set of directions were modelled on the Bombay Rules. For Bombay rules, see supra, nn.12, 13.
36. The Enquiry Committee on Films set up by the Government in 1949 under the Chairmanship of Sri.S.K. Patil, (hereinafter referred to as the Patil Committee). The Committee was asked to enquire into the growth and organisation of film industry in India, to suggest the lines on which future developments in the media should be directed and to recommend ways and means to improve the contents of Indian films.

suggestions[37] for change in the censorship system. The Committee recommended for the setting up of a Film Council of India[38] and a Production Code Administration with regional offices.[39] The Production Code Administration should be under the control of the Film Council of India. The Committee further recommended that control of production of cinema should vest with the Central Government.

The Cinematograph Act 1952.

With the commencement of the Constitution of India some changes occurred in the powers of State and Central Governments relating to cinema. The Centre became the competent

---

37. For the recommendations of the Patil Committee, see Virendra Kumar, Committees and Commissions in India, Vol.I, pp.140-142 (1975).
38. The Film Council was intended to be a Central Authority to superintend and regulate the film industry and to advice the Central and State Governments in all matters relating to cinema. Id. at p.140.
39. The Production Code Administration should be on the same lines and on the same principles as the Production Code Administration of the United States. The Production Code Administration should have for Regional Offices at Delhi, Calcutta, Bombay and Madras. Each Regional Committee should consist of five members and a chairman nominated by the Central Government and the members, as far as possible, were to represent the regional languages of the territories coming within the jurisdiction of the Regional Office. Id. at p.14. For a discussion on the Production Code Administration of the United States, see infra Ch.6, nn.93 to 99.

authority in the matter of 'sanctioning of cinematograph films for exhibition'.[40] The power of the State to deal with cinemas was subject to the power of the Centre.[41] In the changed setting there was difficulty in administering the then existing law relating to cinema.[42] There were calls for greater Central control[43] and for separation of film censorship from cinema house licensing.[44] The Cinematograph Act 1952,[45] hereinafter called the Act in this thesis and the present law relating to film censorship,[46] attempted to obviate these difficulties. Subsequent

---

40. The Constitution of India, Seventh Schedule, List I, Entry 60.
41. Id., List II, Entry 30.
42. The Cinematograph Act 1918 dealt with two separate matters concerning cinema, viz., examination and certification of films for public exhibition and regulation of exhibition of cinema including the licensing of cinema houses. After the commencement of the Constitution, the administration of the provisions of the Act became difficult because the powers to administer the Act fell on both the Central and State Governments.
43. Both the Rangachariar Committee and the Patil Committee stressed the need for greater Central control over cinema. See supra, nn.20, 38, 39.
44. After the commencement of the Constitution, the Central Government have no power to deal with regulation of cinemas except censorship of films.
45. Act 37 of 1952. For a text of the Act as enacted in 1952, see A.I.R. 1952 (Indian Acts Section), pp.66, 67.
46. Id., S.1(2). Part III of the Act contains provisions regarding licensing of cinema houses but the same is applicable only to Union Territories.

amendments to the Act in 1959[47] and 1981[48] did not change the basic frame work of the Act.

Under the Act the Central Government is empowered to constitute a Board of Film Censors fornexamining and certifying films for public exhibition.[49] Originally the rules framed under the Act prescribed the procedure for censoring films. However, films were practically censored by the Regional Offices constituted under the Rules. Even the composition of the Board was regulated by the Rules.[50] The Amendment Act of 1959 introduced express provisions in this regard in the Act itself[51] and further incorporated the principles for guidance in certifying films.[52]

The 1958 Rules considerably revising the then existing 1951 Rules provided for the structure and procedure of the Central Board, and Regional Boards. In 1960 the Central Government by virtue of its powers under Section 5B(2)

---

47. The Cinematograph (Amendment) Act 1959 (Act 3 of 1959). For a discussion see _infra_, nn.51, 52.
48. The Cinematograph (Amendment) Act 1981 (Act 4 of 1981). For a discussion see _infra_, nn.108 to 112.
49. S.3 of the Act.
50. The Cinematograph (Censorship) Rules 1951 and later substituted by the Cinematograph (Censorship) Rules 1958.
51. The Act as amended by Act 3 of 1959, Ss.4 and 5. See the object and reasons of the Cinematograph (Amendment) Act 1959, _The Gazette of India_, Extraordinary, Part III, Section 2, No.54 dated 12th December 1958, p.1264.
52. _Id_., S.5B(1).

issued 'directions'. These directions were for the guidance of the Central Board of Film Censors and the Regional Boards in dealing with the objectionable matters in films and intended to achieve uniformity in standards of censorship by the various Regional Boards.[53] The directions laid down four specific rules[54] as well as broad outlines.[55] The instrument of issuing directions was a potent one. Even the

---

53. For a text of the directions, See Khosla Report, pp.19-22.
54. First one dealt with matters unsuitable for public exhibition even to adults. These matters included delination of and incitement to, crime, vice and immorality, contempt of armed forces or other public authorities entrusted with the administration of law and order, wounding of the feelings of foreign nations or any of religious communities and promoting disorder, violence, breach of law or disaffection or resistence to Government. The second rule dealt with subjects objectionable in a context in which either they amounted to indecency, immorality or illegality or incitement to commit a breach of law. Third one enjoined the Board not to refuse a certificate if the objectionable portion could be deleted from the film. The fourth rule cast on obligation on the Board not to grant a certificate for unrestricted public exhibition if the film contained anything unsuitable for children.
55. The broad guidelines for the Board was embodied in the General Principles which read as follows:

    "1. No picture shall be certified for public exhibition which will lower the moral standards of those who see it.

    Hence the sympathy of the audience shall not be thrown on the side of crime, wrong doing, evil or sin.

    2. Standards of life, having regard to the standards of the country and the people to which the story relates, shall not be so portrayed as to deprave the morality of the audience.

    3. The prevailing laws shall not be so ridiculed as to create sympathy for violationg of such laws".

Khosla Committee was highly critical of this mechanism.[56]

The 'directions' were so elaborate that it completely took away the discretion of the Board, thereby reducing the work of the Board to a mechanical application of the rules contained in the 'directions'.[57] In such a situation it was not at all necessary to confer censorial powers on an expert body like the Central Board, for, even a layman could carry on the censorial activity with such a specific and

---

56. The Committee observed:
"A strict interpretation of the application of General Principles will result in almost all films being refused a certificate. It is this circumstance which has given rise to so much criticism over our censorship system by the industry as well as by many sections of society, and has driven producers to resort to indirect, unrealistic and often unaesthetic modes of expressing their ideas. Also the Censors have felt obliged to turn a blind eye to many objectionable sequences and to permit much that is vulgar and in bad taste. At the same time they (the Censors) have felt the construction of the detailed and exhaustive terms of the Government's instruction and have refused to certify any film in which social problems are treated in a bold, direct and realistic manner, with a persistence which has galled the imaginative film makers." The Khosla Report, p.23.
57. For a discussion about the constitutionality of 'directions' see infra Ch.7, nn.82-90. See also infra, Ch.13, n.63.

elaborate direction from the Central Government. In these circumstances, even though the Supreme Court did not go into details regarding the constitutionality of the specific directions the insistence of the Supreme Court for giving importance to art had added importance.[58]

This extreme strictness and rigidity of the directions could be attributed to the over sensitiveness of the Government to the criticism over cinemas. As compared to foreign films, sex and violence is marginal in Indian cinema. It was especially so during 1950s. But still, the press, Parliament and the public were hostile towards cinema. In 1954, the Rajya Sabha, the Upper House, passed a motion for stringent control over films.[59] In 1956, the Lok Sabha adopted a private member's resolution suggesting that Government must seek additional powers, if necessary, to control

---

58. Abbas v. Union of India, A.I.R. 1971 S.C. 481. For a discussion see infra Ch.7, nn.58-65.
59. A motion passed by Rajya Sabha reads as follows: "This House is of the opinion that moral standards in the country are affected to a considerable extent as a result of the exhibition of undesirable films and recommends to the Government to take such steps as are necessary either by legislation or otherwise, to prohibit the exhibition of such films, whether foreign or Indian." 1954 Rajya Sabha Debates, C. 1489.

the flow of objectionable films in the interest of national unity and social progress.[60] The Minister maintained that the Government could not be blamed for this because the power to censor films was conferred on the Board.[61] Even in spite of this ministerial statement the Government sought to make film censorship more stringent by issuing new directions in 1960.

Under the then existing provision of the Act and the Rules a person desiring to exhibit any film had to apply for a certificate.[62] The power to grant a certificate was conferred on the Central Board. However, the actual viewing of the film so submitted was conducted by the Examining Committee.[63] While making the recommendations for grant of certificate, whether for unrestricted public exhibitions or for public exhibitions restricted to adults alone, they

---

60. 1956 Lok Sabha Debates, C. 3757.
61. Dr. Keskar, the Minister for Information and Broadcasting in the Rajya Sabha on February 18, 1959.
62. S.4(1) of the Act and the Cinematograph (Censorship) Rules 1958, R.22.
63. The Examining Committee consisted of a Regional Officer and a few members of the advisory panel who were appointed by the Central Government.

could also recommend for cuts in films.[64] Thereupon a certificate could be issued by the Central Board on the basis of the recommendations.[65] Anyhow, either on his own motion or on the request of the applicant the Chairman of the Central Board could constitute a Revising Committee to function as an appellate authority.[66] An applicant aggrieved by the decision of the Revising Committee could file an appeal before the Central Government.[67] The Central Government further retained a revisional jurisdiction,[68] and the power to uncertify a film already certified by the Board.[69] The decision of the Central Government, either by way of appeal or by way of revision would be final. Thus the Act with amendments, rules and directions envisaged a highly centralised, Government dominated system of film censorship.

---

64. Cinematograph (Censorship) Rules 1958, R.23(3)(c).
65. Id., R.24. However, the power to grant licences could be delegated to the Regional Boards.
66. Id., R.25. The Revising Committee was to consist of the Chairman of the Board and the resident members of the Advisory Panel other than those constituting the Examining Committee.
67. S.5C of the Act.
68. Id., S.6(1).
69. Id., S.6(2) and the Cinematograph (Censorship) Rules 1958, R.32.

The Khosla Committee.

This completely Government dominated system of film censorship was subject to severe criticism from all quarters especially by the film industry. On May 7, 1965 the Rajya Sabha passed a resolution demanding for a thorough enquiry into the working of the censorship regulations in India. The Central Government therefore decided to set up an Enquiry Committee on Film Censorship in 1968 under the Chairmanship of Justice G.D. Khosla to enquire into "the working of the existing procedures for certification of cinematograph films for public exhibition in India and allied matters".[70]

The Committee conducted extensive studies and went deep into the matter. It produced an excellent and massive report. Its recommendations though controversial, were notable. They said that Regional Boards should be abolished.[71] In their place the Central Board should exercise the whole censorial powers. The Board should consist of about twenty persons

70. Resolution No.14/35/64 F.C. dated 28th March 1968 by the Ministry of Information and Broadcasting.
71. The Khosla Report, p.100.

drawn from different regions and should view all films before certification is given. The decisions of the Board shall be made final and the Central Government should be diverted of its appellate as well as revisional powers.[72] Significantly, the Committee recommended for scrapping the entire 'directions'.[73] Another remarkable recommendation of the Committee was to widen the categories of certificates.[74]

The Khosla Commission opined that the censor while censoring films should evaluate the overall impression of the films on the viewers.[75] This recommendation was in due course accepted by the Government[76] although the others still remained as paper rhetoric.

---

72. Id. at p.95.
73. Id. at p.110. This view was also endorsed by the Working Group on National Film Policy, see the Report of the Working Group, p.76.
74. Id. at p.102. For a discussion see infra, Ch.9, nn.80-82
75. Id. at p.53. The same view has been expressed by the Supreme Court in Abbas v. Union of India, A.I.R. 1971 S.C. 481.
76. A fresh set of directions issued in 1978 enjoined the censors to consider the overall impression of films on viewers. See infra, n.102.

The Abbas case - A judicial imprimatur.

Soon after the submission of the report of the Khosla Committee, the Supreme Court had the occasion to examine the validity of censorship regulations.[77] The Court upheld the validity of these regulations. Unfortunately the Court did not go into the constitutionality of the various items contained in the 'directions' but on the other hand laid emphasis on the need for flexibility in approach by the censors. The Court insisted that the censors should take into account the artistic excellence in presenting the theme by film makers.[78] This line of thinking led the Court to disapprove the mechanism of Government or in other words the bureaucracy to hear appeals against censorial decisions and make a suggestion for institution of an independent appellate authority which the Government conceded in the case.[79]

---

77. Abbas v. Union of India, A.I.R. 1971 S.C. 481. For a detailed discussion of the decision, see infra Ch.7.
78. Id. at p.497.
79. Id. at p.485.

1974 Amendment - An abortion.

With great enthusiasm and zeal and in pursuance of the recommendations of the Khosla Committee,[80] the Central Government piloted an amendment to the Act in 1974.[81] Accordingly the power of the Regional Boards was taken away and the Central Board[82] was enjoined to preview films for censorship[83] with the help of assessors.[84] There were provisions for review by the Board[85] and for hearing appeals by an appellate tribunal.[86] The Central Government would have the all comprehensive power to revising the decision of the Board and

80. See the object and reasons of Act 27 of 1974, Gazette of India dated 20th August 1974, Part II, Section 2, p.749. For a discussion on the recommendations of the Khosla Committee, see the text accompanying supra, nn.71-75. However, the recommendation of the Committee to widen the category system was not accepted.
81. The Cinematograph (Amendment) Act 1974, Act 27 of 1974.
82. The Central Board of Film Censors was to consist of a Chairman, five other whole time members and six honorary members, appointed by the Central Government. The Cinematograph (Amendment) Act 1974, S.3.
83. Ibid.
84. Id., S.3. It was the duty of assessors to assist the Board in previewing films.
85. Ibid. The review had to be undertaken by a Revising Committee consisting of the Chairman, one whole time member and one part-time member of the Board or two whole-time members and one part-time member of the Board.
86. Id., S.10.

the appellate tribunal.[87] All these were noval provisions. But the amendment had early abortion and did not come to fruition at all.[88]

The Working Group on National Film Policy.

Itappears that the Government could not evolve a well thought out policy towards censorship of films even for the next five years. An attempt was again made in 1979 when the Working Group on National Film Policy was assigned the task of formulating an integrated film policy.[89] The Working Group accepted the Khosla recommendations in general.[90] Its new suggestions are notable. According to the Working Group, although it is necessary to confer appellate jurisdiction on an independent tribunal, the Central Government should have revisional and appellate jurisdiction on certain areas such

87. Id., s.11(b).
88. The radical changes proposed by the 1974 Amendment were not implemented and finally the same was repealed by the Cinematograph (Amendment) Act 1981.
89. The Working Group was set up in pursuance of the decision of the Conference of State Information Ministers held in New Delhi on November 14, 1977. See the Report of the Working Group, p.1.
90. The independence of the Central Board with discretion to frame and send to the Regional Boards directions, the abolition of appellate and revisional powers of the Central Governments subject to its new suggestion to retain such powers on the Central Government on certain areas and the introduction of a new category for quality films are some of the matters reiterated by the Working Group. For details, see, id., pp.74-79.

as censorship on grounds of integrity and sovereignty of India, security of State and friendly relations with foreign States as these are pre-eminently the concern of the Government.[91] Another significant recommendations was the introduction of an additional category of censorship certificate with a view to warning the parents on the unsuitability of the film to be seen by children below twelve years of age.[92] The organisational structure of the Board envisaged by the 1974 Amendment[93] was endorsed by the Working Group.[94] The next recommendation was for the introduction of three additional Regional Boards.[95] It further stressed the need for strengthening the enforcement machinery under the Act.[96] According to the Working Group, the Board should constantly try to maintain a balance in a continuously changing environment.[97]

The recommendations regarding the introduction of an additional category of censorship certificate, the setting

---

91. *Id.*, p.77.
92. *Ibid.*
93. See *supra*, n.82.
94. *The Report of the Working Group*, pp.78-79.
95. *Id.*, p.79. The proposed additional Regional Boards were to be set up at Bangalore, Hyderabad and Trivandrum.
96. *Ibid.*
97. *Ibid.*

up of an independent tribunal and the introduction of additional Regional Boards were in due course accepted by the Government. The other recommendations met with the fate of the Khosla Report.

<u>The new set of directions</u>.

Another significant event in the field of censorship took place in 1978. A new set of regulations were issued by the Central Government.[98] In fact they did not deal with new areas but considerably simplified the old directions[99] and made them compact. Emphasis is laid on the broad objectives of film censorship.[100] Attention of the Board is drawn to some specific objectionable[101] matters in cinema. It is

---

98. For the text of the 'directions', see <u>infra</u> Appendix II.
99. See <u>supra</u>, nn.53-55.
100. According to the directions the broad objectives of film censorship is to ensure that the medium of film remain responsible and sensitive to the value and standards of society, artistic expression and creative freedom are not unduly curbed and censorship is responsive to social change. See paragraph 1 of the 'directions'.
101. The objectionable matters are: glorification or justification of violence, <u>modus operandi</u> of criminals or other visuals or words likely to incite the commission of any offence; pointless or avoidable scenes of violence, cruelty and horror; vulgarity, obscenity and depravity; visuals or words contemptuous of racial, religious or other groups; depiction of scenes or visuals affecting sovereignty and integrity of India; security of the State; friendly relations with foreign States or public order; and visuals or words involving defamation or

(contd...)

also laid down that the Board shall ensure that the film is judged in its entirety from the point of its overall impact and examined in the light of contemporary standards of society and the people to which the film relates.[102] Films that meet the above mentioned criteria but are considered unsuitable for non-adults shall be certified for exhibition to adults only.[103]

However, it may be noted that the directions are too brief and therefore insufficient in fencing the wide discretion of the Board.[104]

<u>The 1981 Amendment</u>.

The attitude of the Government towards the host of studies and legislative changes was neither serious nor rewarding. Neither did they accept the recommendations in full of the Expert Committees they themselves appointed nor did they implement the amendment they enthusiastically

---

(f.n.101 continued)
contempt of court. *Id*. paragraph 2. Later two additions are also made to these objectionable matters, viz. glorifying or justifying drinking; visuals or words depicting women in ignoble servility to man.

102. *Id*., paragraph 3. *Cf*. *Miller* v. *California*, 413 U.S. 15 (1973). *Ranjit Udeshi* v. *State of Maharashtra*, A.I.R. 1965 S.C. 881.

103. *Id*. paragraph 4.

104. Report of the Working Group, p.76.

attempted to bring about. Strangely enough the Government gave more respect to the judicial remarks[105] to the studied recommendations of Expert Committees. Accordingly the Cinematograph (Amendment) Act 1981[106] was promulgated. However, it implemented one recommendation of the Working Group on National Film Policy, viz. the introduction of an additional category of film certificate - 'UA' category[107] - with a view to giving guidance to parents.[108] The amendment Act further introduced a new category - 'S' category - for public exhibition restricted to members of any profession or any class of persons having regard to the content and theme of the film.[109] It appears that this new category is intended for permitting exhibition of uncensored classical films by film societies and other professional groups.

---

105. The main change introduced by the Act is to provide for the setting up of an independent Appellate Tribunal, an essential requirement of a fair censorship system as opined by the Supreme Court in Abbas case (A.I.R. 1971 S.C. 481) at p.485). Another suggestion of the Court to provide time limits for censorial decision was also accepted. (Ibid.) However, it appears strange that the Government took more than a decade to implement these suggestions of the Court which were conceded by the Government.
106. Act 49 of 1981.
107. See supra, n.92.
108. S.5A(1)(a) of the Act after its amendment in 1981.
109. Id., S.5A(1)(b).

The 1981 amendment introduced some other significant changes. The widening of Section 5B of the Act by including one more ground in it viz., the integrity and sovereignty of India, change in the name of censorial authority,[110] revising the structure of the Board,[111] strengthening the enforcement provisions[112] are noteable among them. Subject to these changes the amendment continued with the existing system.

In 1983, the Central Government issued a new Cinematograph (Certification) Rules, hereinafter referred to in this thesis as the Rules. The video films which were not subject to censorship under the Act or Rules posed serious threats to morality and decency and to the film industry. In order to bring video films under the censorship system, the Rules were amended in 1984.[113]

---

110. The amendment changed the name of censorial authority to Central Board of Film Certification. See id., S.3.
111. Ibid.
112. Id., S.5E, 6 and 7. For a discussion see infra Ch.11.
113. For a text of the amendment see G.S.R.83(E) dated 28th February 1984, published in Gazette of India (Extraordinary), Part II, S.3(1), No.55 dated 28th February 1984.

The Cinematograph Act 1952 with the various amendments[114] the Cinematograph (Certification) Rules 1983 as amended in 1984 and the directions issued by the Central Government in 1978 constitute the present film censorship regulations.

The structure of the censorial authority.

The statutory power to certify films for public exhibition in India is conferred on the Central Board of Film Certification.[115] The Board consists of a Chairman and some other members appointed by the Central Government.[116] No specific qualifications are prescribed for the Chairman or other members of the Board. Subject to the pleasure of the Central Government, they hold office for a period of three years.[117] The Central Government is also empowered to nominate members of the advisory panels attached to the

---

114. Act 3 of 1959 and Act 49 of 1981 are the important amendments to the Act.
115. S.3 of the Act.
116. *Ibid*. The maximum and minimum number of members provided by the sections are 25 and 12 respectively.
117. R.3 of the Rules.

Regional Offices.[118] Some of them are nominated after consulting with the Chairman whereas the others are nominated by the Government without any such consultation.[119] They are appointed for two years[120] on a part-time honorary basis.[121] They must be qualified, in the opinion of the Central Government, to judge the effect of films on the public.[122] Each regional office is under the charge of an officer who is a regular civil servant under the Central Government.[123]

Present procedure in film certification.

1. Examining Committee.

The Rules prescribe elaborate procedure for preview of films for the purpose of certification. On receipt of an application for certification, the Regional Officer shall constitute, and refer the film to an Examining Committee.[124] The Examining

---

118. S.5(1) of the Act.
119. R.7(3) of the Rules. Cf. Khesla Report, pp.16, 17.
120. Id., R.8(1) and (2).
121. Id., R.13.
122. S.5(1) of the Act.
123. R.9(1) of the Rules.
124. The Examining Committee shall consist of, in the case of a short film, the examining officer and a member of the advisory panel and in the case of a long film, the examining officer and four members of the advisory panel. Id., R.22(2) If the Examining Officer is absent, another member of the advisory panel may be nominated in his place. (Id., Proviso to R.22(2). An Examining Officer means a Chief Executive Officer or a Regional Officer or the Secretary to the Chairman or such other officer who is a member of the Examining Committee. |Id., R.2(viii)|.

Committee shall examine the film with reference to the guidelines contained in the Act and in the light of the directions issued by the Central Government.[125] Immediately after the examination of the film each member of the Committee has to record his opinion about the film.[126] The Committee then decide whether or not they should give certification to the film.[127] If they decide to give, they will categorise the film.[128] It is the duty of the examining officer to forward the recommendations of the Committee to the Chairman of the Board.[129] The Chairman, unless the film is referred to a revising committee, shall direct the Regional Officer concerned to grant or refuse certificate in conformity with the majority decision of the Committee.[130] The whole proceedings of the Examining Committee shall be treated as confidential.[131]

2. Revising Committee.

There is provision for revision by the Board itself. On the receipt of the recommendations of the Examining Committee,

---

125. Id., R.22(8).
126. Id., R.22(9).
127. Ibid.
128. Ibid. S.5A(1) of the Act provides for various categories. For a discussion on classification of films, see infra Ch.5
129. Id., R.22(12). The recommendations of the Committee shall be forwarded within three days of the preview of the film. Id., R.41(5)(a).
130. Id., R.23.
131. Id., R.22(4).

the Chairman may, either suo moto or on the request of the applicant refer the film to a Revising Committee.[132] The Revising Committee shall examine the film de novo. The procedure prescribed for the Examining Committee shall, mutatis mutandis, apply to the Revising Committee.[133] The decision of the Revising Committee shall be the decision of the majority of the members attending the examination of the film and in case of equality of votes, the presiding officer shall have a casting vote.[134]

If and when some excisions are proposed by the Examining or Revising Committee, the Regional Officer shall before granting the certificate, satisfy himself that such excisions are carried out in the negative and in all copies thereof.[135] The excised portions have to be surrendered to the Regional Officer.[136] The applicant for certification has to submit

---

132. Id., R.24(1). The Revising Committee is constituted by the Chairman consisting of himself and not more than nine members nominated by him, being the members of the Board or members of any of the advisory panel except the members of the concerned Examining Committee. Id., sub-rule (2) read with rub-rule (5) of R.24.
133. Id., Sub-rule (6) and (9) of R.24.
134. Id., R.24(12). If the Chairman disagrees with the decision of the majority of the Committee, the Board itself shall examine the film or cause the film to be examined again by another Revising Committee and the decision of the Board or the second Revising Committee, as the case may be, shall be final. Id., proviso to R.24(12).
135. Id., R.26(1).
136. Ibid.

to the Regional Officer a copy of the certified film or all documents relating to it.[137]

The certificate granted by the Board shall be valid for a period of ten years.[138] Thereafter a fresh application has to be submitted for certification.[139]

Appeals.

The 1981 Amendment introduced a welcome change by envisaging the setting up of a long awaited independent Appellate Tribunal.[140] According to the Act and the Rules, the Tribunal is, both structurally and functionally independent.[141] The Tribunal shall consist of a Chairman and not more than four other members appointed by the Central

---

137. *Id.*, R.28.
138. *Id.*, R.29 and S.5A(3) of the Act.
139. Normally such an application will be treated as an original application for a certificate and the procedure for certification of a new film will be applicable here also (*Id.*, R.29(2)). However, the Regional Officer may, with the prior approval of the Chairman, waive this procedure if the application is for the issue of a certificate in the same form in which it was issued earlier. *Id.*, proviso to R.29(2).
140. S.5D(1) of the Act.
141. However, two provisions stand in the way of independence of the Tribunal. The first is that the Chairman and other members of the Tribunal shall, subject to the pleasure of the Central Government, hold office for a period of 3 years. *Id.*, S.5D(9) read with R.43(1), (2) and (3) of the Rules. The second is that the Chairman and members of the Tribunal are eligible for reappointment. (R.43(4) of the Rules).

Government.[142] The Chairman shall either be a retired Judge of a High Court or any person who is qualified to be appointed as a Judge of a High Court.[143] The members of the Tribunal shall, in the opinion of the Central Government, be qualified to judge the effect of films on public.[144] The Chairman, if he is a full-time officer, is entitled to the salary and allowances admissible to a serving Judge of a High Court and shall also be entitled to all facilities and concessions not less favourable than those admissible to a serving judge of a High Court.[145] Every honorary member, including the Chairman where he does not receive any salary, is entitled to a consultency fee, travelling allowance and daily allowance.[146]

Any applicant aggrieved by the decision of the Board may, within thirty days from the date of such order[147] prefer an

---

142. Id., S.5D(3).
143. Id., S.5D(4). The qualification of a High Court Judge is prescribed by Article 217(2) of the Constitution of India.
144. Id., S.5D(5).
145. R.43(12) of the Rules. When a retired judge of the High Court is appointed as the Chairman, the pay and other terms and conditions of service shall be the same as are applicable to the re-employed judges of High Court under the orders of Central Government. Id., proviso to R.43(12).
146. Id., R.43(13).
147. S.5C(1) of the Act. The Tribunal is also competent to condone the delay in prefering the appeal on sufficient cause. Id., Proviso to S.5C(1).

appeal to the Tribunal.[148]

Neither the Act nor the Rules provide for the procedure to be followed by the Tribunal in disposing of the appeals preferred to it.[149] The Tribunal may, after hearing the Board and the appellant and after making such inquiry into the matter as it deems fit, dispose of the matter.[150] The Board is bound to issue necessary orders in conformity with the decisions of the Tribunal.[151]

The Central Government constituted the first Film Certification Appellate Tribunal in March 1984.[152]

---

148. The appeal shall be made by a petition in writing and shall be accompanied by a brief statement of reasons for the order appealed against where such statement has been furnished to the appellant and by such fees as may be prescribed subject to a maximum of one thousand rupees. (Id., S.5C(2)). The fees prescribed for appeal is Rs.750/- for long film (irrespective of length and guage) and Rs.100/- for short films. (R.44(1) of the Rules). For reasons to be recorded in writing, the Chairman of the Tribunal may waive the payment of fees in a particular case. Id., R.44(2).
149. The Act empowers the Tribunal to regulate its own procedure. Id., S.5D(10).
150. Id., S.5D(11).
151. Ibid.
152. Presently the Tribunal consists of Mr. Justice Vyas Dev Misra, Retired Judge of Himachal Pradesh High Court (Chairman), and Messrs.N.J. Kamath, former Secretary to the Ministry of Housing and Man Mohini Saigal, member, Indian Council for Child Welfare, (members). The head quarters of the Tribunal is at Sastry Bhavan, New Delhi.

<u>Powers of the Central Government.</u>

The Central Government retains an overriding power to revise the decisions made by the Board or the Tribunal. In exercise of this power, the Central Government may of its own motion, call for the records of any proceedings in relation to a film which is pending before, or has been decided by, the Board or decided by the Tribunal as the case may be. It may conduct such enquiry into the matter as it considers necessary and make such order it deems fit. The Board shall dispose of the matter in conformity with such orders.[153] However, any such order shall not be made against a person applying for a certificate or against a person to whom a certificate has been granted without giving him a reasonable opportunity of being heard.[154]

The Central Government has the all embrasing power to uncertify any film duly certified by the Board. The Central Government may by a notification in the Official Gazette direct that a film to which a certificate has been granted shall be deemed to be an uncertified film or a film to which

153. S.6(1) of the Act.
154. <u>Id</u>., proviso 1 to S.6(1).

a 'U' or 'UA' or 'S' certificate has been granted shall be deemed to be an 'A' certificate film.[155] Before issuing such a notification the Central Government has to give a reasonable opportunity of being heard to the person concerned.[156] When the Government notified any film to which a 'U' or 'UA' or 'S' certificate has been granted as an 'A' certificate film, the person to whom the certificate has been granted or the person to whom the right in the film has passed is bound to surrender the original certificate and all duplicate copies thereof to the Board for the issue of a new certificate.[157] The Central Government also retains the power to revoke or suspend a certificate when it is satisfied that the film is exhibited in violation of the certificate granted by the Board.[158]

Another striking feature of the governmental authority over film censorship is the power of the Central Government to issue directions to the Board so as to limit the discretion of the Board.[159] Even in spite of the sharp criticism

---

155. Id., S.6(2).
156. Id., Proviso to S.6(2).
157. R.34 of the Rules.
158. S.5E and 5F of the Act. For a discussion, see *infra* Ch.11, nn.13 to 25.
159. Id., S.5B(2). For a discussion, see *infra* Ch.7, nn. 78-81.

levelled against the governmental exercise of such a power by the two important National Commissions[160] the Central Government refuses to relinquish the power.

Conclusion.

The above discussion shows that the present film censorship in India is under the tight control of the Central Government reducing the Board to a supine subordinate authority. At all stages, the cinema licensing is under the Government control and supervision. Even the recent innovation of an appellate tribunal, has not improved the position to any considerable extent due to the extraordinary powers of the Central Government.[161] The 1981 amendment introduce only superficial changes. Basically, the Indian system of censorship is nothing more than a pre-censorship by the Government itself. The attitude of the Government, it appears,

---

160. The Khosla Commission and the Working Group on National Film Policy, see *supra*, n.73.
161. The Government can even revise the decisions of the Tribunal. S.6(1) of the Act. See also *supra*, n.153.

G3486.

is not serious towards film censorship. This is clear from the approach of the Government towards the well studied reports of two National Commission set up after independence.[162] A thorough change from top to bottom is an urgent need of the day.[163]

162. Supra, n.105.
163. For some suggestions to this effect, see infra Ch.13.

PART II

ANGLO-AMERICAN PERSPECTIVE

Chapter 5

FILM CENSORSHIP IN ENGLAND

While cinema was regulated under various statutes in earlier times,[1] a statute which has a closer relation with regulation of film was passed in 1909.[2] However, no specific power to censor films was conferred on any authority under this statute. The local authorities secured this power by a process of interpretation by Courts.[3] The parallel development in censorship enabled the British Board of Film Censors, constituted by the industry, to exercise practically the whole power to censor films.[4] Thus, as Sir Herbert Morrison[5]

---

1. For a discussion about these statutes, see *infra* nn.7-15. Further, Sunday Observance Act 1780, was used to prohibit exhibition of cinema on Sundays. However, these statutes were not intended to control the contents of cinema. The need for such a control arose only subsequently. See *infra* n.17.
2. The Cinematograph Act 1909. See *infra* nn.16-20.
3. For a further discussion, see *infra* nn.31-50.
4. For a discussion of the history of origin of film censorship in England, see Neville March Hunnings, *Film Censors and the Law*, pp.29-47 (1967); Guy Phelps, *Film Censorship* pp.26-51 (1973).
5. Sir Herbert Morrison, the Home Secretary, said in the House of Commons in 1942:
   "I freely admit that this is a curious arrangement, but the British have a very great habit of making curious arrangements work very well, and this works."
   as quoted in John Trevelyan, 'Film Censorship and the Law', in Rajeev Dhavan and Christie Davies (Eds.), *Censorship and Obscenity*, p.100 (1978).

has observed, England has a curious system of film censorship.

Early period.

There were two statutes regulating entertainments, the Playhouse Act 1737 and the Disorderly Houses Act 1751. The former[6] regulated the stage and the latter was intended to regulate other forms of entertainments.[7] The Disorderly Houses Act 1751 had only a limited territorial application, viz. within twenty miles of the city of London. This Act, though enacted in 1751, was adapted to changing circumstances brought about by the developments in form, content and manner

---

6. This statute was intended to regulate 'legitimate' theatres conducting stage plays, by conferring censorial powers on Lord Chamberlain to censor dramatic performances. The Act was repealed and replaced by the Theatres Act 1843. Finally the censorial powers of Lord Chamberlain were completely taken away by the Theatres Act 1968.
7. The Act was enacted to control theft and robberies and other immoral activities within the places where opperattas, burdettas and other like forms of entertainments were conducted. Any house, room, garden, or other place of public dancing, mime or other public entertainments of the like nature, was deemed to be disorderly houses, unless a licence was secured from the local authorities.

of public exhibitions by a process of interpretation by the judiciary. Thus it was held that the Act could be applied to minor theatres and houses conducting entertainments of all sorts provided music or dance was an essential attribute of it.[8] After almost one and a half century since its enactment the law was used to regulate places where cinemas were exhibited.

To begin with there was no difficulty in applying the statute to films because they were exhibited in the minor theatres and music halls already licensed under the 1751 Act and other similar statutes.[9] Imposition of certain additional conditions to the licence already issued was sufficient to control film exhibitions. However, with the rapid development of technology and with the increasing popular support, cinema soon came out of music halls to new places intended for

---

8. Fay v. Bignell, (1883)1 Cab. and El. 112; Bellis v. Beal, 170 E.R. 466; R. v. Hallinam, (1909)73 J.P.N. 458. quoted in Hunnings, op.cit., pp.31-34.
9. Certain local improvement laws conferred similar powers on the licensing authorities. The Public Health Acts Amendment Act 1890 extended the provisions of Diserderly Houses Act 1751 to any other part of the country when the local authorities adopted it. The Music and Dancing Licences (Middlesex) Act 1894 conferred similar powers on the County of Middlesex.

exhibition of films only. This development created difficulties. The licensing authorities[10] were doubtful whether they could regulate the new cinema houses under the then existing laws. They showed the bogy of fire risks[11] and requested the Home Office to enact a separate legislation empowering them to regulate cinematographic exhibitions.[12] The fact is that even without such a new legislation the local authorities could have continued to regulate cinema houses under the Disorderly Houses Act 1751 as indicated by

---

10. The Disorderly Houses Act 1751 conferred licensing powers on Magistrates. By the Local Government Act 1888, the County Councils became the licensing authorities under the 1751 Act and other relevant statutes.
11. During Eighteenth and Nineteenth Century, fire was frequent in theatres. For an account of fire danger, see Guy Phelps, _op.cit._, p.26.
12. In May 1908, the Vice-Chairman of the Theatre and Music Hall Committee of London County Council maintained:

    "At present we have no authority over clubs and other entertainments where music licences are not taken out. A bioscope performance for instance, does not need a music licence, though an electric piano may play. As long as no money is taken at the doors we cannot, as the law stands, take action against any Sunday performance. If we get the parliamentary power we seek, by which we shall be able to control every branch of amusement, every entertainment caterer will have to take a out licence." Quoted in Hunnings, _op.cit._, p.44.

the judicial decisions.[13]

The film industry, which, by this time became somewhat organised,[14] did not seriously object to the demands of local authorities. They argued that risks of fire was meagre. This was so because of the adoption of safety measures required by regulations issued earlier by the local bodies[15] and also because of the expertise acquired by the kinetograph operators. This argument did not convince the local bodies and they strongly pressed their demands for a new legislation.

The Cinematograph Act 1909.

Finally, with the bickerings of the members of the film industry who failed to put a strong collective protest, the Cinematograph Act 1909 was enacted which came into force on

---

13. See supra, n.8.
14. The Kinetograph Manufacturers' Association was formed in 1906 and the Bioscope Operators' Association was formed in 1907.
15. For instance, in 1898 the London County Council issued its first safety regulations in cinemas, relating to construction and illumination of lanterns (projectors), smoking, etc. In the same year the Middlesex County Council resolved that no cinematograph exhibitions could be conducted in places licensed by them until they were satisfied about the precautions against fire danger. The licensing authorities generally insisted that cinematograph apparatus should be enclosed in a fire proof chamber. These regulations were successful in minimising fire risk in places where cinematograph exhibitions were conducted.

1st January 1910,[16] "to make better provision for securing safety at cinematograph and other exhibitions." The Statute provided that cinematographic exhibitions could be conducted only in places licenced under it. The instructions issued by the Home Office under this Act dealt only with fire regulations. Thus at the time of enacting the Cinematograph Act 1909 neither the legislature nor the local bodies had any intention to censor the contents of films.

At that time there was no serious challenge to the contents of the film except some isolated complaints by clergy men about violence and bloodshed. The British Film Industry was also keen in not importing or producing films of doubtful contents.[17]

---

16. For the text of the Act, see L.R.(Statutes) Vol.XLVII, 107.
17. Hunnings observes at pp.42, 43.
"....there would seem to be little that was truly objectionable (in films) for the renters and manufacturers exercised considerable powers of selection in the films they would make or import. Such discretion did not disarm organisations like the Manchester Purity League or the correspondents of the Free Church Chronicle, but very rarely was the idea of a censor mentioned and then only in the most general terms."

At any rate, signs of usurpation of powers by local authorities were found even at that time. Immediately before the commencement of the Act of 1909, the London County Council announced that they would not permit film shows on Sundays.[18] It also resolved to consider application for licences under the Act of 1909 just like application for licences to music halls. Similar decisions were taken by other councils. Eventhough these decisions had not the effect of censoring the contents of the film, they were clearly beyond the purview of the powers of the local authorities under the Act of 1909. Strangely, imposition of conditions other than fire regulations were approved by the court in London County Council v. Bermondsey Bioscope Co. Ltd.[19]

Although this decision only approved the practice followed by the councils in imposing conditions in licences to cinematographic exhibitions based on same considerations as in the case of music and dancing licences, its impact was far reaching. The licencing authorities began to enlarge

---

18. Exhibition of film or other entertainments were prohibited by the Sunday Observance Act 1780.
19. [1911] 1 K.B. 445. See *infra*, nn 31 to 35.

their powers by imposing ban on exhibition of films of an objectionable character.[20]

Alarmed with the new and unexpected development, the film industry, with a view to improving public image of films, approached the Home Office with a suggestion to appoint a censor nominated by the industry. According to the industry it would be an aggrevating and costly affair to submit fiàms to each and every licencing authorities before exhibition of the film.[21] The industry further thought that a censorship system would be advantageous to the industry but that it should be done by the industry itself with the approval of the Home Office. The Manufacturers and Renters' Association jointly sent a deputation to Home Office in 1912 with the plan to appoint three or five men, with the approval of the Home Office, to preview each film and to decide on its suitability for public exhibition and further to constitute an appellate authority to be appointed by the Home Office. The Home Secretary welcomed the idea to appoint a trade censor. But he was not

---

20. Guy Phelps, op.cit., p.28.
21. John Trevelyan, "Film Censorship and the Law", supra, n.5 at p.99.

so enthusiastic for a Government controlled censor to deal with the controversdal problem of film censorship. It appeared to be his view that the then existing provisions were sufficient and satisfactory.

Although the gruelling attempts to persuade the Home Office and the local authorities[22] in endorsing the system of self-regulation did not bear fruits, the industry made an adventurous, risky and desperate decision to appoint a trade censor, viz., the British Board of Film Censors.[23]

Within a very short period the Board announced that all films exhibited in Britain would bear its certificates. This was only a cherished desire of the Board because there was no obligation on the part of producers or exhibitors to submit films for the approval of the Board. However, as a matter of fact the Board being an authority constituted by film industry, the members of the trade were normally

---

22. With the failure of its mission to the Home Office, the industry approached the licencing authorities, especially the London County Council with a view to persuading them to accept an industry appointed censor. But the authorities paid no attention. At the same time, many of them, at that time, were in the dark how to set up a cenorial system. The industry had the fear whether, in spite of all these, the local authorities would create their own censors because the press as well as the religious and reform groups were making mounting attacks on films. Not yet disheartened by the initial set back, the industry continued its campaign in the press.
23. In November 1912, the Kinetograph Manufacturers' Association and the Cinematograph Exhibitors' Association jointly (Contd...)

bound to submit for the approval of the Board all films either produced in, or imported into, the United Kingdom. At the same time an exhibitor or a distributor who was not a member of the Association could refuse to submit film to the Board.

The Board had other constraints. The local authorities who had to issue licences were not bound to give effect to the censorship decisions of the Board. Only a few local authorities co-operated.[24] Leading local authorities such as the London County Council did not care to give any recognition to the system of censorship by the Board. The industry was again in a dilemma leading to further deputation to Home Office for appointing an official censor.[25] Even though the new Home Secretary accepted the proposal,[26]

(f.n.23 continued)

set up the British Board of Film Censors. Mr.G.A.Redford, a retired examiner of plays under Lord Chamberlain was appointed as the President of the Board by a joint Committee of the said two trade associations. The Board started its work on the 1st of January 1913.

24. By 1915 only thirty five licencing authorities co-operated with the Board. Guy Phelps, op.cit., p.28.
25. The increasing public criticism brought home the inadequacy of the then existing system. Both the industry as well as the local authorities felt the need for an official censor and therefore both of them requested the Home Office to appoint an official censor for films. Id. pp.28-29.
26. A Cabinet reshuffle in 1915 provided a favourable climate for reform. A new Home Secretary agreed with the proposal (contd....)

it could not become law as a new Government subsequently came to power.

Recognition of the British Board of Film Censors.

Two things[27] projected the public image of the Board, its Presidentship by a distinguished member of Parliament and an enquiry report favouring the work done by the Board. With added strength, the Board was successful in getting the co-operation from more and more licencing authorities including the London County Council. In 1921, the London County Council framed censorship rules. The Home Office

---

(f.n.26 continued)

to appoint an official Board of Censors consisting of a President appointed by the Home Office and representatives of the Government and the industry, nominated or approved by the Home Office. However, the scheme retained the powers of local authorities. The industry was amenable to the appointment of an official censor mainly for the purpose of avoiding a greater evil of local censorship. Since the scheme retained local censorship, the industry objected to it. In spite of the objection, the Home Office went ahead with the scheme by circulating a model licencing condition among the local authorities. The model condition highlighted the principles of censorship, viz., no film or posters or advertisements thereof, shall be permitted to be shown which was likely to be injurious to morality or to encourage or to incite to crime or to lead to disorder or to be in any way offensive in the circumstances to public feeling or which contained any offensive representation of living persons. The model condition further provided that a film not passed by the Board shall not be shown without the previous approval of the Board. A film passed by the Official Board could be exhibited only in the form in which it was certified. See John Trevelyan, What the Censor Saw, p.28 (1973). For a text of the model licencing condition, see Hunnings, op.cit., p.64.

27. In November 1916, Mr.T.P.O'Connor, a member of Parliament (Contd...)

accepted the Rules and in 1923 it sent a circular letter to all licencing authorities recommending its adoption. This resulted in the adoption of the Rules by most of the licencing authorities by 1924. The new Censorship Rules[28] adopted by the London County Council in November 1924 incorporating the Home Office Safety Regulations _inter alia_ provided that no cinematograph film shall be exhibited which is likely to be injurious to morality or to encourage or to incite crime or to lead to disorder or to be in any way offensive in the circumstances to public feelings or which contains any offensive representations of living persons. It further provided that a film not certified by the Board should not be exhibited in public without the express consent of the Council. A duty was cast on the exhibitor to display legibly the certificate of the Board before the commencement of each show. The Rules

---

(f.n.27 contd.)

and a man of outstanding personality became the President of the Board succeeding Mr.Redford. This appointment gave a new and glaring public image to the Board. In its report submitted in October 1917, the Cinema Commission of Enquiry set up by the National Council of Public Morals, the Board was found not guilty of many charges levelled against it. It further reported favourably on the work done by the Board.

28. This Rule was approved in _Mills_ v. _London County Council_, [1925] 1 K.B. 213. See _infra_, n.46.

embodying the requirement in the old 1921 Rules, prohibited the entry of children below sixteen years of age to an 'A' certificate film, i.e. a film passed as generally suitable for public exhibition unless he was accompanied by parent or a bona fide adult guardian.[29] However, the Rules expressly reserved the independent power of the Council to Gensor films,[30] on being satisfied that the film was detrimental to the public interest.

These conditions, accepted by all the local authorities except a few, formed the basis of censorship of films in England and the system continues without much substantial changes except in classification of films.

Role of Courts.

In view of the fact that the Cinematograph Act 1909 did not confer any censorial powers but only certain powers for guarding against fire risks, the responsibility fell on the Courts to interpret the law in such a manner as to infer and endorse the possession of censorship powers by the licensing authorities.

---

29. For a discussion, see *infra*, ch.9, nn.27 to 30.
30. This rule was based on the decision in *Ellis v. Dubowski*, [1921]3 K.B.621. See *infra*, n.42 to 44.

L.C.C. v. Bermondsey Bioscope Co. Ltd.[31] is an interesting case decided soon after the commencement of the cinematograph Act in which the powers of licencing authorities to include conditions in licences fof purposes other than safety came up for consideration. One of the conditions on which licence was granted by the County Council was that the premises should not be opened for exhibition of films or other optical effects on Sundays, Good Friday and Christmas day.[32] The Kings Bench Division held that the provision in the Cinematographic Act was "intended to confer on the County Council a discretion as to the condition which they will impose, so long as these conditions are not unreasonable."[33] It was also pointed out that under Section 2 not only was

---

31. [1911] 1 K.B. 445. The respondent was charged for violating a clause in the licence prohibiting film shows on Sundays.
32. This was done under Sub-Section (1) of Section 2 of the Cinematograph Act 1909 which read,
"A County Council may grant licences to such persons as they think fit to use the premises specified in the licence for the purpose aforesaid on such terms and conditions as, subject to regulations of the Secretary of State, the Council may by the respective licence determine."
33. L.C.C. v. Bermondsey Bioscope Co. Ltd., [1911] 1 K.B.445 per Lord Alverstone, C.J. at p.451. It was so held after drawing a distinction between Sections 1 and 2. Section 1 reads as follows:
"An exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus for the purpose of which inflamable films are used,

(Contd....)

the licence to be subject to the regulations of the Secretary of State for securing safety but the licence could be granted to such persons, as the Country Council thought fit and on such terms and conditions and under such restrictions as they might determine.[34]

It was also maintained that the legislative intent was to confer a general power to County Councils apart from the regulations of Secretary of State aimed at to secure safety even though such terms and conditions would not directly relate to the question of safety.[35]

This decision was later extended by the Court[36] to confer discretionary powers on licencing authorities to impose any condition in the licence provided such conditions were reasonable and in public interest.[37] The power of

---

(f.n.33 contd.)

shall not be given unless the regulation made by the Secretary of State for securing safety are complied with or save as otherwise expressly provided by this Act, elsewhere than in premises licenced for the purpose in accordance with the provisions of this Act".

34. Id. at p1453.
35. Id. at p.453 per Pickford, J.
36. Theatre de Luxe (Halifax) Ltd. v. Gledhill, [1915] 2 K.B. 49; R v. L.C.C. ex parte London and Provincial Electric Theatres Ltd., [1915]2 K.B.466; Stott v. Gamble, [1916]2 K.B. 504; Ellis v. Dubowski, [1921]3 K.B. 621; Mills v. L.C.C., [1925]1 K.B. 213.
37. In a dissenting judgment Atkin, J. in Theatre de Luxe (Halifax) Ltd. v. Gledhill, [1915]2 K.B. 49, insisted

(Contd....)

licensing authorities to impose any reasonable condition in the licence was generally accepted and when it came to censorship of contents of films, the point was conceded in favour of the licensing authorities.[38] However the Court insisted that in order to be valid, the condition should contain

---

(f.n.37 continued)
that the licensing conditions should be reasonable and in public interest. In this case, the appellant company was charged for admitting two children for film shows after 9 p.m. in violation of the licence conditions. The majority, Lush and Rowlatt, JJ. held that the impugned condition had no rational connection with the object of licensing under the Cinematograph Act 1909 and therefore was ultra vires the powers of licensing authorities. Atkin, J. in his dissenting note approved the unlimited powers of licensing authorities under the statute to impose any condition in the licence subject to the conditions that it must be (1) reasonable; (2) in respect to the use of licensed premises and (3) in public interest.

38. R. v. London County Council, ex-parte London and Provincial Electric Theatres, [1915] 2 K.B. 466. This was not a case involving censorship of films but related to the validity of refusal of a licence to the company which was controlled by an enemy alien. The Company conceded the powers of the County Council to impose any reasonable conditions in the licence but its argument was that the Council had taken into consideration extraneous matters in granting or renewing licence. The Court rejected the contention. In R. v. Burnley Justices, Ex-parte Longmore, [1916-17] All E.R. Reprint 346 at p.349 Darling, J. accepted the minority view of Atkin, J. in Theatre de Luxe (Halifax) Ltd. v. Gledhill, (See n.37 supra) and circumscribed the majority view to the facts of the case.

specific and reasonable grounds for censoring films.[39] Conferment of unfettered discretion on the licensing authority to censor films was disapproved.[40] These decisions settled the legal position as to the authority of local authorities to censor films by imposing conditions in the licence.[41]

The extent of the powers of local authorities to delegate the duty to censor films to the British Board of Film Censors

---

39. Stott v. Gamble, [1916]2 K.B. 504. In this case, the licence reserved the power of the licensing authorities to ban the exhibition of films on specified grounds such as indecent or tending to educate the youth on wrong direction or likely to produce riot, tumult or breach of peace or containing offensive representations against living persons. The authority objected to a film by name "Five Nights". In a civil suit, the Court held that the conditions was not only reasonable but also desirable. However, in a previous writ prodeedings, initiated by the same person, the Court dismissed the petition on a technical ground that the petitioner had no *locus standi*. Ex-parte Stott, |1916|1 K.B. 7.
40. R. v. Burnley Justices Ex parte Longmore, [1916-17] All E.R. Reprint 346. The conditions of licence *inter alia* enjoined the exhibitor not to exhibit a film if objected to by any three Justices sitting in Petty Sessions. The condition was declared unreasonable. Darling, J., opined that a condition similar to the one involved in Ex parte Stott, (See n.39 *supra*) would have been ideal. *Id.* at p.350.
41. In Harman v. Butt, [1944]1 K.B. 491, Atkinson, J. observed: "... the discretion of the licensing authority as unlimited save that it must be exercised in a reasonable way." *Id.* at p.499.

was considered in Ellis v. Dubowski.[42] The Middlesex County Councils' licence while retaining its authority to ban any film on the grounds specified in the licence, also provided that no film passed by the British Board could be exhibited. In pursuance of the provision, the Council banned the exhibition of a film rejected by the Board. The Court declared the licensing condition ultra vires the Cinematograph Act 1909 as it delegated its powers to the Board without authority.[43] However, the Court made it clear that an unconditional delegation alone was prohibited and if the Council retained the final authority to review the decisions of the Board, such delegation would not become ultra vires.[44]

It appears that the Court had difficulty to recognise an independent trade association like the British Board of Film Censors. If the full authority had been delegated to

---

42. [1921]3 K.B. 621.
43. According to the Court, the County Councils could delegate its powers only in accordance with S.5 of the Cinematograph Act 1909 and that section only enabled the County Councils to delegate their licensing powers to the Committees of the Council, the District Councils or to Justices sitting in Petty Sessions. Per Lawrence, CJ. at p.625.
44. Ibid. During the course of argument Shankey, J. suggested such an interpretation which was incorporated in his judgment by Lawrence, CJ.

the Board by the licensing authorities the aggrieved party would be left with no effective remedy if the Board acted ultra vires. On the other hand, if the ultimate authority was retained by the Councils themselves, the aggrieved party could effectively challenge the decisions of the Board if and when necessary. This apprehension was clearly stated by Justice Avory.[45]

> ".....as the condition stands the Board could prohibit the exhibition of a film although it might be neither injurious to morality, nor an encouragement to crime or disorder nor contain offensive representations of living persons. The Board are thus given absolute power to prohibit for reasons which may be private or may be influenced by trade considerations."

The judgment was another fatal blow to the Board as well as the film industry which wanted to confer the whole power of censorship of films on the Board itself without interference of any sort by local authorities. The London County Council had the hint given by Lawrence, CJ. and Shankey, J. when it framed its censorship rules in 1921. Dissatisfied with this provision in the licence rules, the industry was successful in persuading the Magistrate to state a case and

---

45. Id. at p.626.

the Court in Mills v. London County Council[46] approving its earlier decision in Ellis v. Dubowski[47] upheld the condition in the London County Council's censorship rules.[48] Chief Justice Lord Hewart found that the London County Council rules reserved the right to review the decisions of the Board and therefore, it was not ultra vires or unreasonable.[49]

The decisions in the above cases clearly settled the legal provisions relating to censorship of films in Britain.[50] Firstly censorial powers were conferred on the local authorities. Secondly the British Board of Film Censors was accepted only as a delegate of the local authorities. Further, the licensing authorities could delegate the power to censor films only if they reserved the right to review the decisions of the Board.

---

46. [1925] 1 K.B. 213.
47. [1921] 3 K.B. 621.
48. See n.44 supra and the discussion thereof.
49. [1925] 1 K.B. 213 at p.221.
50. Mills case was approved in a recent decision in R. v. Greater London Council, Ex parte Blackburn, [1976] 3 All E.R. 184. Lord Denning held:
"I do not think the County Councils can delegate the whole of their responsibilities to the Board but they can treat the Board as an advisory body whose views they can accept or reject, provided that the final decision - aye or nay - rests with the County Council." (Id. at p.188).

The judicial activism on the one hand resulted in conferring the power of film censorship on the local authorities - a power not clearly conferred by the legislature - and on the other, went on to push the British Board of Film Censors to the background.

In spite of the above legal position, the Board in practice acquired much power in course of time.[51] For all practical purpose film censorship in Britain is carried on by the Board. There were occasional struggles between the Board and the local authorities. Still, the decision of the Board is generally accepted by the local authorities.

The Cinematograph Act 1952.

The Cinematograph Act 1909 intended to impose some safety measures in cinematographic exhibitions conducted with inflamable films.[52] At the time of enactment of the Act all cinema exhibitions were conducted with inflamable films and therefore, there was no difficulty in the implementation of the law. However, subsequent technological developments resulting in

51. Geoffrey Robertson, Obscenity, p.260 (1979); Guy Phelps, op.cit., p.269.
52. Section 1. For the text, see supra, n.33.

the discovery of non-inflamable films and the inadequacy of the Statute to regulate such films[53] necessitated the introduction of a new legislation. After a study into various issues,[54] the Cinematograph Act 1952 was enacted. However, the same was given effect to only in 1955.

The new Act, apart from abandoning all references to safety and inflamability, introduced three major changes.

---

53. Even though the safety regulations under the Act of 1909 were not applicable to places where film shows were conducted with non-inflamable stock, such premises were subject to licensing under other enactments dealing with regulation of public entertainments. For example see the Disorderly Houses Act 1751, the Public Health (Amendment) Act 1890, etc. When the place of exhibition of film with non-inflamable stock was already licensed under the Cinematograph Act 1909, the conditions of licence would also apply to such film shows. See Ellis v. North Metropolitan Theatres, [1915]2 K.B. 61.
54. During the post war period, the major distributors began to handle more and more 16 mm. non-inflamable films with a view to bypass the Cinematograph Act 1909. The local authorities requested the Home Office to plug this loop hole in the legislation. In 1947 the Government appointed a Committee under the Chairmanship of K.C. Wheare to consider the pros and cons of the existing censorship machinery. In its report submitted in 1950, the Committee inter alia recommended that non-inflamable films should also be subjected to the same regulations and restrictions applicable to inflamable films and that the regulatory powers of local authorities over cinema should be continued.

Firstly, it provides for regulation of commercial cinemas whether conducted with inflamable or non-inflamable films.[55] Secondly, powers exercised by the English local authorities are extended to Scottish local authorities.[56] Thirdly, accepting the recommendations of Wheare Committee, a specific duty is imposed on the local authorities to protect the interest of children.[57]

The Cinematograph Act 1952 made a more logical distinction between commercial and non-commercial cinema putting the former subject to regulations and the latter not.[58] The above distinction was made for exempting the film societies from the purview of the legislation.[59]

A noteable provision in the Cinematograph Act 1952 is that it gives recognition to the British Board of Film Censor

---

55. The Cinematograph Act 1952, S.2.
56. Id., S.10.
57. Id., S.3.
58. Id., S.5. Exhibition of films to which public are not admtted, or admitted without charges, or conducted by an 'exempted organisation' are exempted from the purview of this Act. An exempted organisation means an organisation running without profit motive. Id., S.5(4).
59. Such film societies were also exempted from the purview of the 1909 Act because of the use of 16 mm. non-inflamable films.
60. Section 3 of the 1952 Act empowers the local authorities to delegate its function to censor films for children to any authority designated in the licence. It is said that while enacting the provision Parliament had in mind the

(contd...)

It also provides for appeals from local authority decisions.[61]

At the time when the Obscene Publications Act was enacted in 1959,[62] all the authorities were satisfied with the performance of the Board and the supervision exerted by the local authorities.[63] The Parliament, therefore, deliberately excluded cinema from the ambit of this Act.[64] The model conditions

---

(f.n.60 continued)
Board as the body designated in the licence. R. v. Greater London Council, Ex-parte Blackburn, [1976] 3 All E.R. 184. Per Lord Denning, M.R. at p.188. It has been further added by the learned judge that Councils have no authority to delegate the whole censorial powers, the delegation will be valid only if they retain the final authority. Ibid.

61. The 1952 Act empowers any person aggrieved, by the refusal or revocation of a licence, or by any term, condition or restriction in a licence to appeal to a crown court judge. Id., S.6.
62. This Act was later amended by the Obscene Publications Act 1964.
63. Geoffrey Robertson, op.cit., p.263.
64. The Obscene Publications Act 1959, Section 1(3). It reads:
"1(3). For the purpose of this Act a person publishes an article who:
(a) distributes, circulates, sells, lets on hire, gives or lends it, or who offers it for sale or for letting on hire; or
(b) in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it:
Provided that paragraph (b) of this sub-section shall not apply to anything done in the course of cinematograph exhibition (within the meaning of the Cinematograph Act 1952) other than one excluded from the Cinematograph Act 1909 by sub-section (4) of Section 7 of the Act....or to anything done in the course of television or sound recording."

of licence issued by the Home Office and adopted by the Board as well as the licensing authorities embodied standards more strict than even the common law standards[65] by prohibiting the exhibition of films which would offend against 'good taste and decency'.[66] The test of obscenity contained in the

65. For a detailed discussion of these common law offences, see Geoffrey Robertson, op.cit., pp.210-243. See also Shaw v. Director of Public Prosecutions, [1962] A.C. 220; Knuller Ltd. v. Director of Public Prosecutions, [1973] A.C. 435. In Shaw, the court held that any publication wh might 'lead astray morally' could be made the subject matter of a prosecution for the common law offence of conspiracy to corrupt public morals. In Knuller Ltd., clarifying the dicta in Shaw, it was held that the term corrupt' implies a much more influence than merely 'leading astray morally.' It was further held that the term 'corrupt public morals' meant anything distructive of the very fabric of society. Per Lord Simon, at p.491. In this case the court further discussed the common law offence of 'outraging public decency.' According to Lord Reid indecency includes that which an ordinary decent man or woman would find to be shocking, disgusting and revolting. (Id. at p.458). The material in question must not only be indecent but it must outrage public decency i.e., it must go beyond offending the susceptibilities of, or even shocking, reasonable people. (Per Lord Simon, id. at p.495). Public decency refers to the feeling of that section of the general public likely to be exposed to the offending material. (Per Lord Simon, id. at pp.494, 495).

66. The relevant portions of the Home Office model licensing conditions (as revised in 1955) read:

"(5) Where the licensing authority have given notice in writing to the licensee of the premises prohibiting the exhibition of a film on the ground that it contains matter which, if exhibited, would offend against good taste or decency or would be likely to

(contd...)

1959 Act[67] being more liberal it was not necessary to bring films within the scope of the above Act.

However, the Board, especially during the term of John Trevelyon, began to pursue a liberal policy.[68] The permissiveness of the 1960s gave justification for adopting such a policy. No wonder some local authorities also adopted a liberal attitude. In 1965, the influential Greater London Council adopted a new set of licence conditions,[69]

(f.n.66 continued)
encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the consent in writing of the licensing authority."

67. The Obscene Publications Act 1959, S.1(1). It reads:
"Test of obscenity-
1(1) For the purpose of this Act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."

68. Trevelyan, "Film Censorship and the Law", _supra_, n.5 at p.101.

69. The relevant portion of licensing conditions reads:
"116. No film shall be exhibited at the premises-
(1) which is likely-
(a) to encourage or to incite to crime; or
(b) to lead to disorder; or
(c) to stir up hatred against any section of the public in Great Britain on grounds of colour, race or ethnic or national origins; or

(contd...)

incorporating the standards laid down by Section 1 of the Obscene Publications Act 1959.

The liberalism of the Board and some of the local authorities like the Greater London Council were not liked by all. Some wanted to retain the old traditions of morality. The judiciary, supporting this backlash, made an initial start in Shaw v. Director of Public Prosecutions,[70] to revive the common law offences.

In Attorney Generals Reference (No.2 of 1975),[71] the Court of Appeal held that cinematographic exhibition would

---

(f.n.69 continued)

(2) The effect of which is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely to see it." Quoted in Trevelyan, op.cit., p.237.

70. [1962] A.C. 220. The accused Shaw published a booklet - the Ladies Directory. It dealt with the name, address, and nude photographs of prostitutes. It was plainly intended to assist prostitutes in conducting their business. The accused was charged under the Obscene Publications Act 1959 together with the common law offence of conspiracy to corrupt morals. He was convicted and on appeal the Court of Criminal Appeal affirmed the conviction on both charges. But the Court of Criminal Appeal gave leave to file an appeal before the House of Lords on the second charge, viz., the common law offence of corrupting public morals. The House of Lords held that it was a crime to conspire to corrupt public morals.

71. [1976] 2 All E.R. 753. A prosecution was launched against the distributor of a film 'Last Tango in Paris' under the Obscene Publications Act. The Attorney General made the

(contd...)

not amount to a 'publication' within the meaning of the Obscene Publications Act 1959 and therefore the exhibition of a film could not be tried under that Act.

In the same year the exhibitors and managers of another film, were prosecuted under the common law on the ground that the film in question was grossly indecent, though permission for exhibition had been given by Greater London Council. The jury found the accused guilty.[72] A vigilant citizen and his wife then applied inter alia for an order of prohibition against the Greater London Council from exercising censorial powers on cinema in accordance with the statutory test of obscenity[73] embodied in Section 1 of the Obscene Publications Act 1959 instead of applying the common law test of obscenity.

The Court found that as per the licencing rules,[74] the Greater London Council had no power to stop a grossly indecent film passed by the British Board of Film Censors

(f.n.71 continued)

reference because there was some controversy among the lower courts regarding the scope of proviso to sub-section (3) of Section 1 of the Obscene Publication Act 1959. For a text of the section see supra n.64.

72. R v. Jacey (unreported) quoted in R v. Greater London Council Exparte Blackburn, [1976] 3 All E.R. 184 at 190.
73. The test of obscenity embodied in the Greater London Council's licencing conditions were based on the statutory test. For a text of the relevant portions of licence conditions see supra, n.69.
74. According to the rules no films shall be exhibited in a premises unless it is a current news or a 'flash' or it (contd...)

and they could use their power only when the Board rejected a film. Thus the rules permitted the exhibition of films contrary to law. The rules were too inadequate to prohibit the exhibition of grossly indecent films. The Rules, therefore, were declared ultra vires.[75] The court threatened the local authorities that they could also be tried for an offence of aiding and abetting the common law crime.[76] Lord Denning suggested that the government should think about the recommendations of the Law Commission that films be brought within the ambit of the Obscene Publications Act 1959 so that the common law offences of conspiracy to corrupt public morals and outraging public decency could be abolished.[77] The government accepted the recommendation by passing the Criminal Law Act of 1977 which omitted[78] all reference to

---

(f.n.74 continued)

has been passed by the Board or the Council has expressly consented to the exhibition of the film. Rule 109 of the Licencing Rules, as quoted in Trevelyan, op.cit. p.236.

75. The appellants contended that a film (More about the Language of Love) passed by the Board and exhibited in London and elsewhere were indecent as evidenced by the conviction of the exhibitor of the same film in R. v. Jacey (See supra, n.72). Since the Greater London Council could not prohibit the exhibition of the film under the licencing rules, the appellants requested the court to declare the rules ultra vires.
76. R v. Greater London Council Exparte, Blackburn, [1976] 3 All E.R. 184 at p.192.
77. Id. at p.189.
78. The Criminal Law Act 1977, S.53(1). For a text of S.1(3) of the Obscene Publication Act 1959, see supra n.64.

films from the proviso to Section 1(3) of the Obscene Publication Act 1959. It abolished common law offences in relation to cinema,[79] and further provided for stringent conditions for prosecution and seizure of films.[80] These procedural restrictions it appears, prevent hasty and cladestine private prosecutions and ensure uniformity in standards through out the country.

---

79. Id. S.53(3) which reads:

"(3) In Section 2 of that Act (the Obscene Publications Act 1959) after sub-section (4) there shall be inserted the following sub-section -
4A. Without prejudice to sub-section (4) above, a person shall not be proceeded against for an offence at common law -

(a) in respect of a cinematograph exhibition or anything said or done in the course of a cinematograph exhibition, where it is of the essence of the common law offence that the exhibition, or as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or

(b) in respect of an agreement to give a cinematograph exhibition or to cause anything to be said or done in the course of such an exhibition where the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency."

80. Id., sub-section (2) and (5) of S.53. Under sub-section (2) the consent of Director or Public Prosecution is necessary to launch an obscinity prosecution against a 'moving picture film of a width of not less than sixteen millimeters.' Section 53(5) provides that no order may be made to forfeit such a film unless it was seized pursuant to a warrant applied for by the Director of Public Prosecutions.

The new provisions confer ample freedom on the Board to assess the quality of films. The Board as well as the film industry support the change.[81]

Constitution and structure of the British Board of Film Censors.

The Board is the child of the industry. It consists of a President, Secretary and some examiners. Over the years the structure of the Board has stood the test of time with minor changes.[82] In the beginning the President was the nominee of all associations connected with film industry. His appointment is to be ratified by the Home Office. He had been given the discretion to select the Secretary. In time the Secretary was appointed by the Associations directly subject to the ratification of the Home Office.[83] The other members who are called the examiners are always selected by the President. A scrutiny of the appointments reveals that

---

81. It has been observed:

"Atleast, by shifting the emphasis from public outrage to the danger of moral corruption, the 1977 reform will permit limited screening of artistic films which use explicit sex or violence to make a moral statement, while deferring the public distribution of amoral works which glamourize vice and crime."

Geoffrey Robertson, op.cit., p.267.

82. For detailed discussion about the Board and its working, see Trevelyan, op.cit.,pp.47-92. Guy Phelps, op.cit., pp.90 to 143 Hunnings, op.cit., p.126 to 148.

83. The fierce criticism of the industry against the approach of John Nicholls, the Secretary who held office for a

(Contd...)

usually leading public figures are appointed as Presidents. Although at the early stages people were selected as examiners on a part-time basis, later this practice stopped and only full-timers with good educational background, but not having previous connection with the film industry, are appointed as examiners.

According to Trevelyan,[84] an examiner shall not only possess definite views but shall also be willing to come to compromise so that there can be a reconciliation between divergent views. There is only one definite disqualification for an examiner, viz. previous employment in the film industry. This aprohibition is imposed with the object of eliminating any possible favouritism by examiners.[85]

The Kinetograph Manufacturers Association, now known as Incorporated Association of Kinetograph Manufacturers (IAKM), is primarily responsible for the finance and general management of the Board. But it has no voice in the policies

---

(f.n.83 contd.)

limited period from 1957 to 1958, the resulting decline in the confidence of the industry in the Board and the resignation of Nicholls in 1958 persuaded the President not to appoint the Secretary of the Board by himself. See Guy Phelps, op.cit., p.42.

84. Trevelyan, op.cit., p.57.
85. Ibid.

of the Board. Since this is the only trade association which has no direct interest in films themselves, the system is highly helpful in maintaining independence by the Board. Again, the Board, being a very small unit, is in a position to meet all its expenses from the fees collected for inspection of films. Therefore, at present the control of the Association, over the Board is restricted to supervising the accounts of the Board.[86]

<u>Certification of film.</u>

A film submitted to the Board for censorship is examined by a team of examiners, usually consisting of two. If they are of the view that the film need not be rejected, altogether, they classify the film under a category[87] persumably corresponding with the audience which the film maker had in mind during the production of the film and then decide whether any cuts are necessary. The Board always would like more to cut a film accommodating it in the

---

86. Guy Phelps, *op.cit.*, p.99;
87. For discussion on the various categories of films, see *infra*. ch 9 nn 26-45

natural category than to award a restrictive certificate in the film's original form or to cut a film merely for granting a 'junior' certificate. In case of disagreement among the original examiners as to the natural category or as to the extent of cuts or as to acceptability of film, the film is examined by all the examiners together with the Secretary[88] and usually a general agreement is arrived at.[89]

If and when some cuts are tentatively proposed by the Board, that will be communicated to the applicant. If he is agreeable to the cuts suggested and resubmitted the film after complying with the orders of the Board, the film is again examined by one of the original examiners in order to verify whether all suggested cuts are carried out and there upon a certificate is issued by the Board. If, one the other hand, the initial decision of the Board is not acceptable to the producer or distributor, there will be a further discussion with the Secretary and wherever possible the decision will be reconsidered and in most cases a solution is found.[90] In exceptional cases,[91] when the Board finds

---

88. Till 1963, this kind of 'Court of Appeal' was presided over by the President. By this time the Secretary had replaced the President in this respect. Hunnings, op.cit., p.131.
89. The President is called in to view a film in exceptional cases, that is where the film in question presents policy problems or to which criticism or controversy are expected or when the Secretary and examiners find it difficult to come to a decision. The decision of the President "carries great weight, and is usually but not necessarily final." Guy Phelps, op.cit. p.104.
90. The Board usually takes a sympathetic attitude when (Contd...)

it difficult to make a decision it accepts advice of experts. In very rare cases, the Board also trys to assess public reaction directly.[92]

Local authority on appellate apparel.

The producer or distributor often may not be willing to effect cuts suggested by the Board but may opt to accept the Board putting the film in a different category to what they originally intended the film to be.

Any film rejected by the Board may be submitted before local authorities for certification. The local authorities

---

(f.n.90 continued)

the cuts suggested cannot be carried out without affecting the theme of the film or the continuity of the film and wherever possible the Board will come to a compromise in order to preserve the continuity of the film. Guy Phelps observes:

"It is distressing enough when cuts destroy the rhythm of a sequence, but considerably worse if they render the plot incomprehensible or result in characters apparently 'jumping' from one spot to another. The Board does its best to take account of these factors and it is by no means rare for cuts to be waived simply because they present insuperable technical problems."

Id. p.105.

91. As for example with regard to films involving medical and psychiatrical problems.

92. The main object of censorship being public acceptability, the Board is not shy in ascertaining public opinion by showing the film in question to a representative group but such actions are very rare. Trevelyan cites one instance in which he screened the film "Beneath the Planet of the Apes" to some children in order to ascertain their reactions when the examiners thought that the film was too freightening for little children. Trevelyan, op.cit., p.88.

may also be approached for a revision of category fixed by the Board. In such cases it is the usual practice of the local authorities to consult the Board and the Board is always prepared to explain its decision and to provide any other information. This procedure of appealing to local authorities is not generally economical, because even if the authority revised the decision of the Board, the revised decision has limited applicability, viz., within the territory of the local authority concerned. If a necessity for such a course arises, the producers or distributors usually look forward to the Greater London Council, the most powerful and influential local authority whose decisions carry great weight and are generally accepted by other local authorities. In recent years, the local authorities have been taking much enthusiasm in film censorship and on a number of occasions, they granted junior certificates to films to which the Board granted an "adults only" certificate, or granted permission to exhibit films rejected by the Board.[93]

It is a paradox that local authorities only concentrate on censorship for adults but leave the whole burden of protecting the children to the Board when the former have a

---

93. Guy Phelps, _op.cit._, pp.168 and 192.

statutory duty to look after the interests of children.[94] The local authorities follow a policy more liberal than the one adopted by the Board with the result that only very rarely the local Councils reject films passed by the Board.

Another function of the Board though relatively an unimportant one, is script reading. Any producer, who anticipate some censorial problems on the film to be produced, may submit the script to the Board in advance to get an early advice of the acceptability of the film. This practice of script reading started in 1931 where upon the Board appointed two readers for this purpose. Presently, this function is shared by the Secretary and examiners. The decision given at the script stage is purely advisory and will not afford any guarantee as to certification of the film when produced. In early days this procedure was freely resorted to by producers but gradually it declined.[95]

---

94. See Section 3(1) of the Cinematograph Act 1952 which reads as follows:

"S.3(1) It shall be the duty of the licensing authority, in granting a licence under the Act of 1909 as respects any premises-

(a) to impose conditions or restrictions prohibiting the admission of children to cinematograph exhibitions involving the showing of works designated, by the licensing authority or such other body as may be specified in the licence, as works unsuitable for children; and

(b) to consider what conditions or restrictions should be imposed as to the admission of children to other cinematograph exhibitions involving the showing of works designated by the authority or such other body as aforesaid as of such other description as may be specified in the licence..."

95. Guy Phelps, observes:

(Contd...)

<u>Standards of the Board in Certification</u>.

Even though the Board is expected to decide the acceptability of films and further to classify films submitted to it for certification, the functioning of the Board is not regulated by any Code. The examiners have to adjudge each film individually by using their "expertise and experience."[96]

The Board has sufficient discretion in censorship as well as in certification of films but the discretion is subject to various guidelines either self-imposed or imposed by the licensing authorities. The discretion, therefore, is not an unfettered or uncanalised one.

(f.n.95 continued)

"A major problem that possibly accounts for the decline in script-reading arises from the great speed with which public attitudes, and consequently, censorship decisions, have changed in recent times. It is often a number of years from first script stage to the finished picture, so that advice given early on can be meaningless by the time of final submission."

Guy Phelps, <u>op.cit</u>., p.107.

96. Trevelyan, <u>op.cit</u>., p.59. He further observes:

"This leads inevitably to a certain degree of inconsistency in decision, but I believe that this is a price worth paying for flexibility and intelligent censorship. If there were rules, they would either have to be applied rigidly to all films - whether artistic masterpiece or commercial trash - or they would have to be 'interpreted' according to the nature of the film. Either way is unsatisfactory. Furthermore the application of written rules may well lead to argument about the exact meaning of words and phrases." <u>Ibid</u>.

Presumably, Trevelyan only intends to point out that the Board is not controlled by any set rules as in the case of its counterpart in the United States - the Production Code Administration.

In early days the Board used to publish annual reports which contained the 'Dos and Don'ts' in films.[97] Though this practice of publishing annual reports was discontinued in 1933, the published reports provide some rules for the guidance of examiners.[98]

By 1950, some general principles were evolved for the guidance of censors.[99]

These principles were;

(i) Was the story, incident or dialogue likely to impair the moral standards of the public by extenuating vice or crime or depreciating moral standards?

(ii) Was it likely to give offense to reasonably minded cinema audiences?

(iii) What effect would it have on the minds of children?

Censorship rules framed by local authorities also provided some guidelines.[100]

---

97. For a detailed discussion of these reports, see Trevelyan, op.cit., pp.30-46.
98. Hunnings, op.cit., p.131. Special reference may be had to be "43 points" of T.P. O'Connor, drafted in 1917, which "were recorded permanently enough in black and white to give lie to the claim never to have had a code." Guy Phelps, op.cit., p.109. For a text of the Forty-three points of O'Connor, see Khosla Report, pp.30-31.
99. Ibid.
100. See, for example, the censorship rules of Greaer London Council, supra, n.69.

Thus, it is clear that there exist some general principles to guide the discretion of the censors. In recent years the Board became more and more liberal towards 'X' certificates especially in the area of sex.[101]

Relationship of the Board with other agencies.

Industry

There is a general impression among the public and even among some councillors that the Board, being a product of the industry, is primarily an instrument of the industry. But this is far from being true. The Board, on the other hand, is independent and makes decisions even against the interests of the industry.[102]

The relationship between the Board and the industry is generally cordial, probably because the industry very well knows that 'therein lay its best protection against a more official censorship.'[103]

---

101. See Trevelyan, op.cit., pp.105-120.
102. Guy Phelps observes:
"....the Board was unashamedly a creation of the industry, designed to prevent the spread of local intervention. Almost at once, however, the 'monster' had assumed a mind of its own, refusing to be a mere tool of its creators. In fact the Board rapidly developed an air of superiority, regarding the industry as a highly suspect body of enterpreneurs whose chief interest was in making money, an assessment that was not wholly in error." Guy Phelps, op.cit., p.109.
103. Hunnings, op.cit., p.137.

Government

The control exercised by the Government is in relation to the appointment of the President and the Secretary, which is subject to approval of Home Office.

The Board, being conscious of its peculiar position, is always prepared to act in conformity with the wishes of Government. In matters relating to relationship with foreign States and politics, the Board is always keen to consult with the Government and to act accordingly.[104] Thus it is clear that the Board is subject to the influence and control of the Government[105] even though such influence and control are apparent than real.

Local authorities

The local authorities are repositories of legal power to

---

104. For a discussion, see Guy Phelps, op.cit., pp.144-160; see also Hunnings, op.cit., pp.132, 133; Cf. Harry Street, Freedom, the Individual and the Law, pp.68, 69 (1972).
105. For specific instances of such influences of Government in recent years, see Guy Phelps, op.cit., pp.150-160. He observes:
"Once again it is evident that, on crucial issues, the independence of the Board was more theoretical than practical. A serious lack of confidence in its own powers and abilities, allied with a marked tendency to accede to, and even to encourage, political intervention, meant that accusations that the Board was a creature of the establishment could not convincingly be denied." Id. at p.150.

censor films. The Board is only an agent of local authorities who can at any time dispense with the services of the Board. It is by the acceptance of the decision of the Board by the local authorities in their licensing conditions that legal sanction is given to the decisions of the Board. The Board is also fully aware of its true position so that it is always eager to obtain the approval and confidence of local authorities. The Board, in recent times, had to adjust its policy in the face of liberal decisions of the local authorities.

The system of film censorship in the United Kingdom is not a true system of self-regulation. The Board which is primarily responsible for film censorship is not an organ of the industry but an independent authority appointed jointly by the trade and the Government. The trade has no control over the Board, probably except in the matter of appointment of the President and the Secretary and that too is subject to the control of Home Office.[106] A true self-regulation system should be one created and operated by

106. See _supra_, nn 82-86.

the industry without any external influence. This requirement is lacking in the case of the Board. The Board is not completely independent of the Government and it is always subject to control and influence by the Government. The Board has no power to enforce its decision on the film industry and it leans towards local authorities to get legal sanction for its decision. In sum, one may entirely agree with Lord Morrison, the Home Secretary, that the system of film censorship in Britain is a curious one.[107]

---

107. See supra n.5.

Chapter 6

FILM CENSORSHIP - U.S. EXPERIMENTS

Unlike in many other countries, film censorship has received serious consideration in the United States. Hunnings makes the following observation with respect to the process of film censorship in that country.

> "The phenomenon of film censorship in the United States is extra-ordinarily rich had complex, more so than in most other lands. Because it is a federal country with legislative power divided between Central and States; because it is a country which has developed judicial control over legislation and administration to great lengths of subtlety and sophistication; because it was for many years the home of the world's most powerful film industry; for these and for many other reasons, a study of film censorship in the United States of America reveals a multitude of issues which make it more than usually rewarding."[1]

These words seem to be applicable with equal force to India. The close analogy[2] between the Bill of Rights in

---

1. Neville March Hunnings, Film Censors and the Law, p.151 (1967).
2. In Abbas v. Union of India, A.I.R. 1971 S.C. 481, the Supreme Court of India referred to a number of cases decided by the U.S.Court in the area of film censorship. In Express News Paper Ltd. v. Union of India, A.I.R. 1958 S.C. 578 our Supreme Court observed:

   "It is trite to observe that the fundamental right to the freedom of speech and expression enshrined in Article 19(1)(a) of our Constitution is based on these provisions in Amendment I of the Constitution of the United States of America and it would be therefore legitimate and proper to refer to those decisions of the Supreme Court of the United States of America in
   (Contd...)

the United States and the fundamental rights in India also makes it necessary to inquire into the constitutionality of film censorship in the United States in order to assess the true impact of the process in India.

The Federal Government of the United States does not seem to have taken active interest in censorship of movies.[3] Consequently, the constitutionality of film censorship centres round the validity of censorship regulations made by states.[4] Cases arose challenging the validity of these regulations against the First[5] and the Fourteenth[6] Amendments of the Constitution of the United States.

First Amendment and the States.

Immediately after the incorporation of the Bill of Rights the question of applicability of these rights as

---

(f.n.2 contd.)

order to appreciate the true nature, scope and extent of this right...." Per Bhagwati, J. at p.615.

3. Hunnings, op.cit., p.151.
4. For a detailed discussion, about the various State regulation, See id. at pp.164-192.
5. Relevant portions of Amendment I reads:
   "Congress shall make no law .... abridgeing the freedom of speech, or of the press...."
6. Relevant portions of Amendment XIV reads:
   ".... No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

against states was raised before the Supreme Court. Chief Justice Marshall held that they are not applicable against states saying that the First Amendment is only a limitation against the Federal Government.[7] The decision has never been overruled formally.

Fourteenth Amendment[8] is "probably the most controversial and certainly the most litigated of all amendments adopted since the birth of the Republic."[9] Even after this incorporation, until 1925 the position did not change.[10]

---

7. Barron v. The Mayor and City Council of Baltimore, 7 Peters 243 (1833). Chief Justice Marshal said: "The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each State established a Constitution, a Constitution for itself, and in that Constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes." Id. at p.247.
8. Supra n.6. The Amendment was incorporated in 1868.
9. Henry J. Abraham, Freedom and the Court, p.31 (1972).
10. The argument in favour of incorporation of the Bill of Rights received a death blow in Slaughter House case, where it was held that the 'privilege and immunities clause' of the Fourteenth Amendment would apply to the citizens in their capacity as citizens of the United States

(contd...)

It was in Gitlow v. New York,[11] the Supreme Court recognised the applicability of the Bill of Rights, though partially, to states through the Fourteenth Amendment. In this epoch making decision Justice Sanford said:[12]

> "For present purpose we may and do assume that freedom of speech and of the press - which are protected by the 1st Amendment from abridgement by Congress - are among the fundamental personal rights and 'liberties' protected by the due process clause of the 14th Amendment from impairment by the states."

This dicta was accepted by other judges.[13] Two years later Justice Sanford, speaking for a unanimous court, upheld the

---

(f.n.10 continued)
and not in their capacity or role as 'state citizens.' This tendency was followed with respect to all rights including the First Amendment rights. See The Butchers Benevolent Association of New Orleans v. The Crescent City Live-Stock Landing and Slaughter House Co., 16 Wallace 36 (1872); Prudential Insurance Co. v. Cheek, 259 U.S. 530 (1922) per Pitney, J. at p.534. For contra see the dissenting opinions of Harlan, J., in Patterson v. Colorado, 205 U.S. 454 at p.465 (1907) and Brandeis, J. in Gilbert v. Minnesota, 254 U.S. 325 at p.343 (1920).

11. 268 U.S. 652 (1925). In this case the appellant was convicted under a New York Statute, the Criminal Anarchy Act 1902, for having advocated the overthrow of organised government by force, violence and unlawful means by certain writings. Although the Court upheld the statute, the Court accepted the premises that the provisions of the Bill of Rights were also secured against abridgement by State through the Fourteenth Amendment.
12. Id. at p.666.
13. Justice Holems and Brandeis dissented not on this ground but on the ground that the action of Gitlow, the appellant, did not present any clear and present danger to the state.

claim for personal liberty under the First and the Fourteenth Amendment in Fiske v. Kansas.[14]

Even in spite of the very broad terms in which the First Amendment is couched and even though this right has been characterised as 'the matrix, the indispensible condition of nearly every other form of freedom,'[15] the Supreme Court steadfastly refused to interpret the guarantee in absolute terms.[16] Freedom of speech, thus, does not comprehend the right to speak on any subject at any time in any manner.

---

14. 274 U.S. 380 (1927).
15. Justice Cardoso in Palko v. Connecticut, 302 U.S. 319 at p.327 (1937).
16. Schenck v. United States, 249 U.S. 47 (1919), Justice Holems, in an oft quoted passage, observed:

    "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effects of force." Id. at p.52.

    However the Absolutists, headed by Justice Black did not recognise any limitation on this right. See, for example, Smith v. California, 361 U.S. 147 (1959) at pp.158-159. But the absolutists never gained the support of the majority of the Supreme Court. Again, a literal construction of First Amendment poses some difficult question as to the application of the right to states because First Amendment starts with the words "the Congress shall make no law..." See also Herman Pritchett, The American Constitution, p.309 (1977).

Community interest which is equally important, has to be safeguarded. Hence the endeavour of the Court was to find out a viable standard. It has been said:[17]

> "Indeed, the application of First Amendment freedoms has never been atuomatic. Its boundaries have changed through the years, reflecting changes in public opinion, scientific and technological advances, changes in interpersonal relationships, the political realities of the country (and at times of the world) and turnover in Supreme Court personnel."

Motion pictures and the First Amendment.

In the beginning the Supreme Court was not prepared to acknowledge motion picture as a form of expression. In Mutual Film Corporation v. Industrial Commission of Ohio,[18] the Supreme Court held:

> "It cannot be put out of view that the exhibition of moving pictures is a business, pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio Constitution, we think, as part of the press of the country, or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known; vivid, useful, and entertaining, no doubt, but, as we have said, capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition."

---

17. Lucius, J. Barker and Twiley W. Barker, Civil Liberties and the Constitution: Cases and Commentaries, p.63 (1978).
18. 236 U.S. 230 (1915) per McKenna, J. at p.244.

An Ohio statute required prior approval of a Board of Censors before exhibition of any motion picture in the State. The statute was assailed _inter alia_ on grounds of violation of the First Amendment guarantee as well as a similar guarantee under the Constitution of Ohio.[19] On the basis of the then existing view of the Supreme Court to the effect that the Bill of Rights had no application to states, the lower court rejected the contention of violation of the First Amendment guarantee. The contention as to violation of the guarantee of free speech by Ohio Constitution was also rejected. Before the Supreme Court of the United States the appellant confined his contention to violation of freedom of speech guaranteed by the Ohio Constitution. The same was rejected by holding that motion pictures were not protected by this guarantee. The main attention of

19. Majority of states of the United States incorporated the provisions of the Bill of Rights, especially the right to free speech, in their own Constitutions. Section 6 of Article 1 of Ohio Constitution provides: "Every citizen has an indisputable right to speak, write or print upon any subject, as he thinks proper, being liable for the abuse of that liberty." Section 11 of the Bill of Rights of Kansas Constitution also provides for such a right.

the Court was directed to the issue whether State censorship imposed a burden on inter-state commerce. This contention was also rejected by the Court by holding that no question of inter-state commerce was involved in this case as the Ohio statute provided for a censorship of films intended to be exhibited in the State of Ohio alone.

Prior to this decision the state Courts had occasion to consider the validity of film censorship. In these cases state censorship regulations were held valid as falling within the 'police power.'[20] In Mutual Film Corporation's case the Supreme Court of the United States also adhered to the same view. Immediately after the decision in Mutual the Supreme Court decided Mutual Film Corporation of Missouri v. Hodges.[21] This can involved a challenge to the validity of Kansas Censorship laws. The Court followed its earlier judgment. Thus the two Mutual cases clearly endorsed the validit of state censorship regulations holding that motion pictures could not be considered as a form of expression.

---

20. Block v. City of Chicago, 239 Ill. 251 (1909), decided by the Supreme Court of Illinois and Buffalo Branch, Mutual Film Corporation v. Breitinger, 250 Pa. 225 (1915), decided by Philadelphia Court of Common Pleas. As quoted in Hunnings, op.cit., pp.192-194.
21. 236 U.S. 248 (1915).

These judgments reflect the then prevailing legal and social mores towards cinema as well as the judicial approach to the scope and ambit of the freedom of speech and expression. Courts other than the Supreme Court of the United States even characterised cinema as a 'form of circus', and identified the same with 'those pursuits which are liable to degenerate and menace the good order and morals of the people.'[22] Referring to these trends Hunnings observes:[23]

> "Although the question of freedom of speech under the U.S. Constitution was obscured by the fact that enforcement of the First Amendment on states by means of the Fourteenth Amendment had not at that time been developed, the constitutions of both Ohio and Kansas also protected freedom of speech; and it is clear that the court's attitude was dictated by its fundamental disdain for the cinema as a possible means of expression, a disdain which merely reflected the contemporary attitude of cultured people and derived from the early association of the cinema with vaudeville, fair-grounds and penny arcades, with crime serials and knockabout comedies, in a word, with amusement or pastime of the least demanding kind."

---

22. Quoted in Hunnings, op.cit., p.193.
23. Hunnings, op.cit., p.195. See also Herman Pritchett, op.cit., p.361. He says:
    "The motion picture of that era was of course only an entertaining novelty rather completely devoid of any ideational content, and it was readily assimilated to burlesque or other theatrical spectacles which were customarily subjected to control on moral grounds."

In later years the Supreme Court extended the protection of First Amendment rights even to mere entertainments, crime comics and detectives fictions.[24]

In course of time, attitude of the Court again changed considerably. The basis for the Mutual decision for denying the benefit of free speech guarantee to movies proved incorrect during this period of change.[25]

The first basis for Mutual decisions was that the movies could not claim the benefit of the guarantee of freedom of speech since it was 'business' pure and simple. A newspaper or a magazine to which the guarantee is available is also a business, pure and simple and conducted for profit.[26] Later decisions of the Supreme Court specifically rejected the sale aspect of publication as a criterion for determining whether the publication was entitled to the protection of First Amend ment guarantee and held that freedom of speech applies to business or economic activities such as soliciting union membership.[27]

---

24. Winters v. New York, 333 U.S. 507 (1949). For a discussion of the case, see infra, nn.32, 33.
25. Notes, "Motion Picture and the First Amendment", 60 Yale L.J. 696 at p.702 (1950)
26. Comment, "Censorship of Motion Pictures", 49 Yale L.J. 87 at p.89 (1939).
27. Schneider v. State, 308 U.S. 147 (1939); Thomas v. Collins, 327 U.S. 146 (1945).

The second basis, - the possibility for evil - shall apply equally to press and magazines. This possibility for evil has never been considered by the Court as a ground for rejecting the protection of freedom of speech even though that might be a relevant factor in determining the scope of control.[28]

The third basis was that films were only entertainments not entitled to the benefit of the guarantee of free speech. This was not based on sound considerations.[29] Even if assuming the dichotamy as correct, in later years movies began to give increasing attention to idea-content. A commentator observed:[30]

> "The significance of motion picture as an organ of public opinion is due not only to the nature of movie content but also to the technological features of the medium. The addition of speech to the screen since the date of the _Mutual_ decisions has contributed to the effectiveness of movies as a communicator of ideas. Dramatization through a unique combination of sight and sound makes the ideas presented by movies comprehensible to more of the audience than is the case in any other medium except television. Moreover, movies assume a high degree of attention and

---

28. Notes, see _supra_, n.25 at p.703. The position was accepted in _Burstyn_ v. _Wilson_, 343 U.S. 495 (1952). See also the concurring opinion of Justice Frankfurter in _Niemotko_ v. _Maryland_, 340 U.S. 268 (1951) at p.289; _American Communications Association_ v. _Douds_, 339 U.S. 382 (1950) at p.419.
29. _Id._ at pp.705, 706.
30. _Id._ at pp.707, 708.

> retention. The focussing of an intense light on the screen, the dramatizing of facts and opinion, the semi-darkness of the room where distracting ideas and suggestions are eliminated all contribute to the effectiveness of movies in shaping and changing attitudes."

The later period witnessed an expansion of the concept of freedom of speech from the earlier emphasis on the press. The protection of the right was extended to pamphlets or leaflets,[31] and even to mere entertainment magazines containing anything of any value to society.[32] Justice Reed observed:[33]

> "The line between the informing and the entertaining is too elusive for the protection of that basic right. Every one is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine. Though we can see

---

31. Lovell v. Griffin, 303 U.S. 444 (1938). A city ordinance in Georgia prohibited the distribution of circulars, hand books, advertising materials or literature of any kind without obtaining a written licence from the City manager A Jehowa's Witness was prosecuted for distributing religious tracts without obtaining a licence. The Court declared the ordinance invalid as violative of the First Amendment guarantee.
32. Winters v. New York, 333 U.S. 507 (1948). A New York law prohibited the distribution of magazines principally made up of criminal news or stories of deeds of bloodshed or lust as to become vehicles for inciting violence and depraved crimes. A book seller was convicted for distributing a crime magazine. The Supreme Court set aside the conviction holding that such magazines were also entitled tothe protection of First Amendment guarantee.
33. Id. at p.510.

> nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature .... They are equally subject to control if they are lewd, indecent, obscene or profane."

The stage was set to confer the protection of free speech to cinema as well. As already seen,[34] the grounds mentioned in Mutual decisions to exclude cinema from the protection of free speech guarantee became a thing of the past. With the introduction of talkie, cinema became a more useful and effective method of communication than any other medium of communication.[35] The protection of the right of free speech being conferred on mere entertainments without the quality of exposition of any idea,[36] the logical step was to extend the protection of this right to cinema also. A forcast of this conclusion was made in United States v. Paramount Pictures Inc.[37] where Justice Douglas observed casually:[38]

> "We have no doubt that moving pictures, like news papers and radio, are included in the press whose freedom is guaranteed by the First Amendment."

---

34. Supra, nn.25-30.
35. Notes, supra, n.25 at pp.707, 708; see also Comment, supra, n.26 at pp.90, 91.
36. Winters v. New York, 333 U.S. 507 (1948). See supra, n.32.
37. 334 U.S. 131 (1948).
38. Id. at p.166. However, this was an anti-trust suit and it did not directly relate to the First Amendment.

<u>The Burstyn case</u>.

The question of applicability of the First Amendment right to cinema was specifically raised before the Supreme Court in <u>Joseph Burstyn v. Wilson</u>.[39] The Supreme Court, overruling its earlier decisions in <u>Mutual</u> cases, promptly accepted cinema as a medium entitled to the protection of the First Amendment guarantee. This was the first case before the United State's Supreme Court dealing directly with the question as to applicability of the First Amendment right to motion pictures. The Court, rejecting its earlier view in <u>Mutual</u> cases, held:

---

39. 343 U.S. 495 (1952). Section 122 of the New York Education Law provided that the Motion Picture Division of the Education Department, after viewing the film submitted to them, had to issue a licence unless such film or a part thereof was obscene, indecent, immoral, inhuman, sacrilegious, or of such a character that its exhibition would tend to corrupt morals or incite to crime. Section 129 thereof made it unlawful to exhibit or to sell, lease or lend for exhibition at any place of amusement for pay or in connection with any business in the State of New York without obtaining a valid licence from the Education Department. The Department in 1950 gave a licence under the Act to an Italian film named, "The Miracle." During the period of exhibition of "The Miracle", the State Board of Regents received a number of complaints about it. The Board of Regents which by statute is made the Head of the Department of Education, acting on the recommendation of a 'three member Committee' appointed by it to see the film, decided to revoke the licence already granted on the ground that the film was sacrilegious. The New York Court of Appeal confirmed the revocation and hence the appeal to the Supreme Court of United States.

"It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behaviour in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterises all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform."[40]

The Court further held that motion pictures could not be denied the protection of First Amendment guarantee because their production, distribution and exhibition was a large scale business conducted for private profit. The Court observed:[41]

"That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment. We fail to see why operation for profit should have any different effect in the case of motion pictures."

The Court further maintained that capacity for evil could not be a ground for denying the protection of the right of free speech. It has been said:[42]

"If there be capacity for evil it may be relevant in determining the permissible scope of community control, but it does not authorize substantially unbridled censorship such as we have here."

---

40. Id. at p.501 per Clark, J. (Footnotes omitted).
41. Id. at pp.501, 502 per Clark, J.
42. Id. at p.502.

Rejecting the three basis[43] for Mutual decision, the court for the first time specifically recognised that "expression by means of motion picture is included within the free speech and free press guaranty of the First and Fourteenth Amendments."[44]

However, this finding was not the end of the problem. The Court had to consider the validity of the law imposing censorship of movie films. The central question was whether censorship of movies before its exhibition, ie., a prior restraint on exhibition of films, could be valid especially in view of the long abhorrence of courts on prior restraints on the right of freedom of speech and of the press.[45] Cinema being held as a form of expression entitled to the protection of the First Amendment right, prima facie a prior restraint would also be unconstitutional unless some special circumstances permitted such a course. This being an extremely

---

43. See supra, nn.25-30.
44. Burstyn v. Wilson, 343 U.S. 495 (1952) at p.502. The Court, on the basis of Near rule, held that the First Amendment was applicable to states through the Fourteenth.
45. See infra, nn.52-57.

complicated and difficult question, the court carefully abstained from answering the question. The issue was disposed of with the following observation.[46]

> "In the light of the First Amendment's history and of the Near decision,[47] the State has a heavy burden to demonstrate that the limitation challenged here presents such an exceptional case."

The Court disposed of the case on the short ground that by conferring power on the censor to refuse and to revoke a licence to a film by using the standard of 'sacrilegious'[48] the censor was "set adrift upon a boundless sea amid a myraid of conflicting currents of religious views with no charts but those provided by the most vocal and powerful orthodoxies."[49]

However, on the question of prior restraint on movies, the court specifically pointed out:[50]

---

46. Burstyn v. Wilson, 343 U.S. 495 (1952) at p.504 per Clark, J.
47. Near v. Minnesota, 283 U.S. 697 (1930).
48. The New York Court of Appeal defined the term 'sacrilegious' thus: "no religion, as that word is understood by the ordinary, reasonable person, shall be treated with contempt, mockery, scorn and redicule...." On another point the Court of Appeal defined 'sacrilegious' "as the act of violating or profaning anything sacred." The Court of Appeal also approved the Appellate Division's interpretation. "All it (the term sacrilegious) purports to do is to bar a visual caricature of religious beliefs held sacred by one sect or another...." Quoted in Burstyn v. Wilson, 343 U.S. 495 (1952) at p.504 and note 15 appended thereto.
49. Burstyn v. Wilson, 343 U.S. 495 (1952) at pp.504, 505 per Clark, J.
50. Id. at pp.505, 506.

"Since the term "sacrilegious" is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one now before us. We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is 'sacrilegious'".

Prior restraint.

A system providing for a permission from a government official prior to the publication of ideas constitutes a prior restraint on the right of freedom of speech and of the press.[51] However, prior restraint is not limited to prior licensing alone.[52] The term prior restraint is wide enough

---

51. Thomas J. Emerson, "The Doctrine of Prior Restraint", 20 Law and Contemporary Problems 646 (1955).
"Upon analysis certain broad categories seems to be discernable. The clearest form of prior restraint arises in those situations where the Government limitations, expressed in statute, regulations or otherwise undertakes to prevent future publications or other communications without advance approval of an executive official." at p.655.
See also William T. Moyton, "Towards a Theory of First Amendment Process: Injunctions of Speech, Subsequent Punishment and the Costs of Prior Restraint Doctrine", 67 Cornell L.Rev. 245 (1981).
52. Grosjean v. American Press Co., 297 U.S. 233 (1936) at p.248, Sutherland, J. observed:
"It is impossible to concede that by the words 'freedom of the press' the framers of the Amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom consisted only in immunity from previous censorship, for this abuse had then permanently disappeared from English practice."

to cover all types of actions which in effect prevent the exercise of the right.[53] According to Judge Cooley:[54]

> "The evils to be guarded against were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seem absolutely essential to prepare the people for an intelligent exercise of their rights as citizen."[55]

The scope of First Amendment guarantee vis-a-vis prior restraint often begins with Blackstone's assertion[56] that

> "The liberty of the press is indeed essential to the nature of a free State; but this consists in laying no previous restraints upon publications and not in freedom from censure for criminal matter when published."

However, accepting Blackstone's statement, it was held that the immunity would also extend to legislative restraints.[57]

---

53. In Grosjean, the imposition of a licence tax at the rate of two percent on the gross receipts from advertising in newspapers and periodicals having a circulation of over 20,000 a week was held to be a form of prior restraint because the imposition of the tax would curtail the amount of revenue realised from advertising and therefore operated as a restraint on publication.
54. Cooley, Constitutional Limitations (Reprint from the 1st edition published by DuCapo Press Inc., p.422 (1972).
55. In Southeastern Promotions Ltd. v. Steve Conrad, 420 U.S. 546 (1975), the Court held that refusal of a municipal authority to grant permission to use a municipal theatre for presenting a musical by the petitioner without seeing the musical but on an outside report that the musical was obscene, constituted prior restraint.
56. Blackstone, Commentaries on the Laws of England, Book IV (1809), pp.151, 152.
57. See Near v. Minnesota, 283 U.S. 697 (1930) at pp.714, 715.

In Burstyn v. Wilson,[58] the Court left open the question as to the constitutional validity of film censorship which provided for prior restraint in cinematographic exhibitions. However, Justice Clark gave a hint as to the possible future judicial attitude over film censorship. It has been observed:[59]

> "It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places.... Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems."

The question whether censorship of movies offend the First Amendment guarantee through the Fourteenth Amendment was directly presented before the Supreme Court in Times Film Corporation v. Chicago.[60]

The petitioner corporation challenged the constitutional validity of that portion of Section 155-4 of the Municipal Code of the City of Chicago which required the submission of all motion pictures for examination prior to their public

---

58. 343 U.S. 495 (1951).
59. Id. at pp.502, 503 per Clark, J.
60. 365 U.S. 43 (1961).

exhibition. The petitioner owned the exclusive right to publicly exhibit the film, "Don Juan" in Chicago. The Corporation applied for a permit but refused to submit the film for examination. The City official refused a permit. The sole question before the Supreme Court of United States was the scope of the basic authority of the censor to refuse permit without going into the sufficiency or otherwise of the standards laid down by the statute.

The majority, speaking through Justice Clark again, held that prior censorship of movies - a form of prior restraint - was not unconstitutional _per se_. After examining the earlier decisions beginning with _Near_,[61] the court reiterated that freedom of speech could not be absolute. Limitations were to be recognised but only in exceptional cases. Rejecting the broad contention of the petitioner Corporation, Justice Clark observed:[62]

> "Petitioner would have as hold that the public exhibition of motion, pictures must be allowed under any circumstances. The State's sole remedy, it says, is

---

61. _Near_ v. _Minnesota_, 283 U.S. 697 (1930).
62. _Times Film Corporation_ v. _Chicago_, 365 U.S. 43 (1961) at p.49.

> the invocation of criminal process under the Illinois pornography statute, ... But this position, as we have seen, is founded upon the claim of absolute privilege against prior restraint under the First Amendment - a claim without sanction in our cases."

Referring to the earlier decisions[63] recognising obscenity as one of the exceptions to the rule as to constitutional prohibition on prior restraint and rejecting constitutional protection to obscenity, the court went on:[64]

> "Certainly petitioner's broadside attack does not warrant, nor could it justify on the record here, our saying that - aside from any consideration of the other "exceptional cases" mentioned in our decisions - the State is stripped off all constitutional power to prevent, in the most effective fashion, the utterance of this class of speech. It is not for this Court to limit the State in its selection of the remedy it deems most effective to cope with such a problem, absent, of course, a showing of unreasonable strictures on individual liberty resulting from its application in particular circumstances."

Chief Justice Warran dissented. According to him, the question was not whether an applicant for permit had a constitutionally protected absolute right for exhibiting motion pictures but the crucial question was whether the licensing authority might require all motion pictures to be submitted for verification before their public exhibition.[65] The

---

63. Near v. Minnesota, 283 U.S. 697 (1931); Roth v. United States, 354 U.S. 476 (1957).
64. Times Film Corporation v. Chicago, 365 U.S. 43 (1961) per Clark, J. at pp.49, 50.
65. Id. at p.55.

Chief Justice further pointed out that even though Near decision recognised certain exceptions to the rule of prohibition of prior restraints on the First Amendment right, "licensing or censorship was not, at any point considered within the 'exceptional cases'" discussed inthe opinion in Near."[66] He further opined that at any rate Chicago had not sustained the 'heavy burden' in proving that censorship of films constituted an 'exceptional case.'[67]

Justice Douglas and Justice Black took an extreme view in other cases that any sort of prior restraint would be a violation of First Amendment guarantee without any exception,[68] and the same was adhered to in this case also.

The fight against censorship of movies was finally lost in Times case. However, the majority only approved censorship of movies in theory. It seems that this approval is

---

66. Id. at p.53.
67. Id. at p.64.
68. See for example, Superior Films Inc. v. Department of Education of Ohio and Commercial Picture Corporation v. Regents, 346 U.S. 587 (1954), Justice Douglas observed:
"The argument of Ohio and New York that the Government may establish censorship over moving pictures is one I cannot accept.... In this Nation every writer, actor, or producer, no matter what medium of expression he may use, should be freed from the censor." at pp.588, 589.

confined to certain limited area such as the lewd and obscene, the profane, the libelous and the insulting or fighting words. Probably, chances of misuse of this medium may have weighed with the court in reaching such a conclusion. However, the minority feared that if censorship was approved to one medium, the same could be extended to other areas including the press. Even if censorship was approved on "exceptional grounds" the same could be misused by the authorities and effective censorship could be imposed on the press in the guise of imposing censorship on 'obscenity.' These fears in the mind of judges have been clearly brought out by Chief Justice Warran in his dissent in Times.[69]

On analysis, the question is: how an effective community control can be exerted over misuse of the freedom of speech and expression by the motion pictures? It seems that the Court considers that the more effective method is prior censorship through well defined and properly canalised

---

69. "Moreover, the decision presents a real danger of eventual censorship for every form of communication, be it newspapers, journals, books, magazines, television, radio or public speeches." Times Film Corporation v. Chicago, 365 U.S. 43 (1961) at p.51.

procedure which itself allays the fear of misuse of power by censors.[70] Hunnings has observed:[71]

> "Censorship for adults, then, was not in itself invalid, but would only be admissible if it was applied to unprotected matter. This was the essence of Times Film Corp. v. City of Chicago, and was perhaps the subconscious reason why the U.S. Supreme Court had felt obliged to keep open the possibility of censorship."

However, when it came to the question of 'standards' the judiciary adopted stringent approach. Most of the statutory provisions authorising film censorship were held invalid on grounds of vagueness, or the meaning of 'standards' provided were indefinite or on grounds of procedural inadequacies.[72]

Times never dealt with the sufficiency of statutory provisions.[73] This question came up squarely before the court in Freedman v. Maryland.[74] The appellant contended

---

70. Cf. Freedman v. Maryland, 380 U.S. 51 (1965).
71. Hunnings, op.cit., p.220.
72. See for instance, Burstyn v. Wilson, 343 U.S. 495 (1951); Inter-State Circuit Inc. v. Dallas, 390 U.S. 676 (1968); Kingsley International Pictures Corpn. v. Regents, 360 U.S. 684 (1959).
73. The Court did not consider the specific provision of the Chicago Censorship Ordinance under which licence was refused to the petitioner corporation. The Court only considered the broadside attack regarding the constitutionality of film censorship in general. See supra nn. 62, 64.
74. 380 U.S. 51 (1965). Section 2 of the Maryland Motion Picture Censorship Statute, made it unlawful to exhibit a motion picture without having obtained a licence from

(contd...)

that the impugned statutory provision constituted an unconstitutional prior restraint because in the context of the other provisions of the statute,[75] censorship presented a real danger of unduly suppressing protected expression. Accepting the contention, the Court, by pointing the inherent defects of a system of censorship for motion pictures, maintained that such a system would present peculiar dangers to constitutionally protected speech.[76] To cure these defects,

---

(f.n.74 continued)
the State Board of Censors. The appellant was convicted for violating this provision by exhibiting the film "Revenge at Day Break" without first submitting the film to the State Board of Censors.

75. The effect of the statute has been summarised as follows: "(T)here is no statutory provision for judicial participation in the procedure which bars a film nor even an assurance of prompt judicial review. Risk of delay is built into the Maryland procedure, as is borne out by experience; in the only reported case indicating the length of time required to complete an appeal, the initial judicial determination has taken four months and the final vindication of the film on appellate review, six months. United Artists Corporation v. Maryland State Board of Censors, ..." Id. at p.55 per Brennan, J.

76. Id. at pp.57, 58. per Brannan, J. According to the learned judge the defects of a censorship system for motion pictures are; it casts the burden of proof on exhibitors or distributors and therefore the important safeguard in a prosecution is lacking; the censors are less responsive than courts to the constitutionally protected interests in free speech; and if the system is made unduly onerous, due to delay or otherwise, to seek judicial review the censorial determination may in practice be final.

the court laid down, certain standards[77] to be followed by statutes authorising for censorship.

(1) The burden of proving that the film is unprotected expression must rest on the censor.

(2) The power to ban a film shall not be left to the censors' absolute discretion. The censors' function must be restricted to either issuing a licence or to invoke the jurisdiction of the court to restrain exhibition of films. The censors power to prohibit the exhibition of a film shall be confined to maintaining status quo. The limited discretion of censors should be exercised in a judicious manner with sufficient built in safeguards.

(3) The procedure must also assure a prompt final judicial decision, to minimise the deterrent effect of an interim and possibly erroneous denial of licence.

This concept of fair procedure was reaffirmed in <u>Titel Film Corporation</u> v. <u>Cussak</u>,[78] where a Chicago Motion Picture Censorship Ordinance was held invalid because of the lengthy administrative licensing process before initiating judicial proceedings.

---

77. <u>Id</u>. at pp.58, 59 <u>per</u> Brennan, J.
78. 390 U.S. 139 (1968).

Apart from films, the Freedmann yardstick was adopted by the Court in cases involving prior restraint over obscene matters in other media as well.[79]

In Freedmann, the Court took the stand that prior restraint on movies would be permissible if it provided for a prompt, final, judicial decision with a view to "minimise the deterrent effect of an interim and possibly erroneous denial of licence." Two subconscious reasons may have weighed with the Court in formulating these standards. There are various statutes authorising film censorship with arbitrary powers on censorial authorities to grant or refuse licence without following any fair procedure and without any norms to canalise the discretion of censors. The second one is the existence of a system of censorship by the industry itself.

The Court further suggested that the legislature could adopt the New York injunctive system as a model for statutes authorising film censorship. The injunctive system approved

---

79. See Southeastern Promotions Ltd. v. Steve Conard, 420 U.S. 546 (1975).

by the Court in Kingsley Books Inc. v. Brown,[80] provided for invoking the jurisdiction of Courts to grant injunctions for restraining the sale or circulation of obscene books after a prompt determination of obscenity of the book in question.

The Maryland legislature took up the hint and remoulded its film censorship statute but the same was also rejected by the Maryland Court of Appeal in a per curiam decision in Transfux Distributing Corp. v. Maryland State Board of Censors.[81]

To sum up, even though the Supreme Court approved pre-censorship of films, it was restricted to unprotected films alone. The powers of local censors were to be clearly shown with well defined procedure ensuring a prompt judicial intervention. Thus in short, the powers of the censors were further circumscribed by the 'due process clause' of the Fourteenth Amendment. The negative attitude of the Supreme Court towards state laws providing for local censorship of movies coupled with the fact that films were subject to

---

80. 354 U.S. 436 (1957). For a discussion, see supra Ch.2, n.49.
81. (1965)240 Md. 98 as cited in Hunnings, op.cit., p.221.

classification by the industry, had virtually resulted in eliminating local censorship through state laws.

Self-regulation of cinema.

A more true system of self-regulation of cinema exists in the United States. The system is created and operated exclusively by the film industry itself. The American endeavour in self-regulation of movies reveals a long process of trial and error aimed at evolving a true substitute for legal sanction for enforcing censorial decisions.

Official censorship of films in the United States was introduced in the year 1907.[82] However, the industry looked at this move with suspicion. The proposal by a voluntary association concerned with social research and adult education, such as Peoples Institute, that they will do the censoring job found more favour with the industry.[83] This recognition of voluntary censorship rather than official state censorship encouraged the institution of an advisory committee[84] to reviewing and classifying films and an appellate authority.[85]

---

82. The first official censorship on movies was introduced in Chicago in 1907 by the Chicago City Ordinance 1907.
83. Hunnings, op.cit., p.132.
84. This examining Committee set up by the Peoples Institute was known as the National Board of Censorship.
85. An appeal could be preferred from the decisions of the National Board to the General Committee of the Institute.

Later history is the history of the fight of the industry against measures taken at the State level in introducing statutory censorship.[86] However, the inadequacy of the system of associational censorship led to difficulties and could not successfully prevent censorial move from States.[87] Ways and means were thought of by the industry

---

86. For an account of the early history of self-regulation see Note: "Entertainment: Public Pressures and the Law", 71 Harv. L. Rev. 326 (1957) at pp.354-357; Jane M. Friedman, The Motion Picture Rating System of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry, 73 Col. L. Rev. 185 (1973) at pp.186-191. Bruce Michael Boyd, Film Censorship in India: A Reasonable Restriction on Freedom of Speech and Expression, 14 J.I.L.I. 501 (1972) at pp.548-550.

87. During 1920 the scandal over some figures connected with film industry and the flood of films catering to lower tastes resulted in a nation wide demand for censorship by state authorities. About 36 states started preparations for introducing censorship regulations. See Note: Entertainment: Public Pressure and the Law, supra, n.86 at p.327. Hunnings observe:

"The pressure was at this time becoming acute. Already four states had enacted film censorship statutes: Pennsylvania (1911), Kansas and Ohio (1913) and Maryland (1916). In 1921 Florida passed a law requiring cinemas to conform to the rulings of the National Board of Review in New York, and the same year New York passed a film censorship Act against the combined opposition of the National Board of Review and the National Association of the Motion Picture Industry. In August 1921, just as the

(contd...)

to overcome this malady. The assumption of the Presidentship of the film industry's association[88] by Mr. Hays was an inspiring event in this connection.[89] Convinced by the weakness of the industry and the possible difficulties of official censorship he advocated for self-regulation.

(f.n.87 continued)
New York Censorship Board began its work, Senator Myers introduced into the US Senate a resolution requesting the Senate Judiciary Committee to investigate the political activities of the film industry arising out of the state legislatures by the National Board of Review and the National Association of the Motion Picture Industry in connection with censorship proposals. During the following winter, censorship Bills were discussed in thirtysix states." Hunnings, op.cit., p.153.

88. An association embrasing the whole industry - the Motion Pictures, Producers andDistributors Association of America - was formed in 1921. The main object of the Association was to safeguard the common interests of those engaged in the production of motion pictures in the United States, "by establishing and maintaining the highest possible moral and artistic standards in motion picture production, by developing the educational as well as the entertainment value and the general usefulness of the motion picture, by diffusing accurate and reliable information with reference to the industry, by reforming abuses relative to the industry, by securing freedom from unjust or unlawful exactions, and by other lawful and proper means." Hunnings, op.cit., p.154.

89. Mr. Hays was an Ex-post Master General and an experienced politician.

Obviously lack of co-ordination among those engaged in producing motion pictures and absence of sanctions were the main hurdles in implementing the self-regulation.[90] Even the efforts of a Studio Relations Committee established in 1926[91] and the formation by the Association of a Code of "dont's and be careful"[92] were not successful in removing these hurdles. An elaborate Code built on the 'dont's and be careful' was later on introduced with some machinery

---

90. The first move towards self-regulation was made in 1924. The Association passed a resolution known as the 'formulae' aimed at discouraging the use of objectionable stories for making films.
91. When the 'formulae' was found to be inadequate to control films Mr. Hays appointed a Committee known as the 'Studio Relations Committee' to establish close liaison with film studios in Hollywood so as to create an awareness among studios about the need for self-regulation.
92. In 1927, the Association of Motion Picture Producers Inc. which was considered as the Hollywood branch of the trade association adopted a resolution listing seven things as totally prohibidden in films and twenty six other items with respect to which the producers should be very careful so as to avoid vulgarity and suggestiveness. This was introduced to meet new problems resulting from the introduction of 'talkie cinemas'.

for enforcement. This Code, known as the Motion Picture Production Code,[93] continued to be in vogue for a long time thereafter.

The Legion of Decency.

The 1930 depression had its impact on cinema. Income from films fell-down considerably. Producers in their eagerness to collect back huge investment began to depict more and more violence and sex. This led to frequent violations of the Code. Public criticism against movies went high.[94] The church also responded. In 1934, Catholic Church set up the Legion of Decency.[95] It reviewed films and advised the people which are to be seen and which are not to be seen. Later history shows that the church had a great role to play in moulding standards on which censorship is to be held. It

93. The Code was framed in 1930. It followed the pattern of 'Dont's and be Careful' but it was more detailed and specific one. The enforcement of the Code depended solely on the consent of the members of the Association. For a detailed discussion about the Code see: Note, Entertainment: Public Pressure and the Law," supra, n.86 at pp.356, 357. Hunnings, op.cit., pp.156-160; John Trevelyan, What the Censor Saw, at pp.181-191 (1973).
94. The results of the Paynefund Studies (1933) contained a highly critical report about the influence of films on children. This accelerated public criticism. See infra Ch.9, n.13.
95. The Legion of Decency also received support from the Protestants and the Jews. For a discussion, see Note, Entertainment: Public Pressures and the Law," supra, n.86 at pp.359-361, Bruce Michael Boyd, supra, n.86 at p.549.

is interesting that instead of the church imposing a code of conduct relating to the quality of films, the skill and tactics of the shrewd politician Mr. Hays helped in bringing the church to the stand taken by the film industry's self-regulation through the Code.[96] Naturally the church everywhere in every country will be least interested in state regulation and regimentation of whatever type on the form of art and media and will always support free thinking and moral growth unrestricted by the state intervention. Perhaps this approach might have been the cause for supporting the self-regulation of films industry in the United States rather than advocating for state regulation of the medium.

The Code itself confirmed to the standards of the church. The main emphasis was on morality. The Code[97] contains three general principles followed by a detailed set of rules relating to many areas such as brutality, sex

---

96. The representatives of Hays Office met the Church authorities in 1934. They pointed out that the industry itself could control offensive films by implementing the Code. The Church authorities were satisfied that the Code provisions were really satisfactory.
97. For a text of the Code (as amended in 1956) see Trevelyan, op.cit., pp.246-259.

vulgarity, blasphemy and profanity, costumes, religion, natural feelings, titles of films and cruelty to animals. Item 1 of the General Principles deserves special mention.[98]

> "1. No picture shall be produced which will lower the moral standards of those who see it. Hence the sympathy of the audience shall never be thrown to the side of crime, wrong doing, evil or sin."

The Studio Relations Committee was replaced by the Production Code Administration which had the power to preview each film and to grant or withhold approval. Every print of every film should bear its seal. A member company would be liable to pay huge fine for violation.

The Working of the Code Administration.

The Production Code Administration supervise and control film production at all stages from the selection of the plot to the preview of the film.[99]

---

98. Id. at p.246.
99. The supervision and control starts with the selection of the plot which as a whole is considered with reference to the Code. If and when the basic story is approved, the script is carefully considered and if some changes are recommended, a further conference will be held to effect necessary changes in the script. Written approval of the script by Code Administration is necessary to start the production of film. Supervision continues at each and every stage of shooting of film. If the producers has some doubt regarding the suitability of a sequence, a preview of the sequence is conducted. After completion

(contd...)

The Production Code Administration carried on full fledged censorship of movie films. Although enforcement of censorial decisions solely depended on the voluntary agreement of the members of the industry to abide by such decisions the administration of the Production Code was fairly successful. Four factors contributed to such a success.[100] Firstly, till 1948, the whole net work of film industry was in the hands of a few companies. These monopoly companies were also the members of the Association and therefore there was no difficulty in implementing the decision of the Code Administration. Secondly, when the effect of the 1930 depression was over, family films were box office hits till the emergence of television. Thirdly, the influence of the Church and its child, the Legion of Decency, over the people was tremendous, and fourthly, the existence of the state official censorship agencies served as a constant reminder

(f.n.99 continued)
of shooting, the completed film is previewed by the Code Administration. It has the power to order for deletion of scenes or dialogue that violated the Code. Finally a certificate is issued by the Code Administration when deletions, if any, ordered by it are carried into effect.

100. Jane M. Friedman, "The Motion Picture Rating System of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry," supra n.86 at pp.189, 190. See also Bruce Michael Boyd, supra n.86 at p.549.

for cleanliness in films. At any rate the influence of the Legion of Decency was the major factor. This system also would have met with the fate of its predecessors but for the influence of the church. The fear of censorship by an outside agency - the Legion of Decency - had its deterrent effect. Therefore the industry was forced to accept the Code Administration as long as the Legion continued to exert its influence on the public. It is only natural that the system fell into disuse with the decline of the authority of the Church.

Ever since its inception upto the middle of 1960s, the Church exercised considerable influence over the public. The tendency of the Supreme Court, started in 1952, in condemning censorship regulations of states and cities,[101] the growth of 'porno houses',[102] the change in attitude of the church Legion and the general degradation in values contributed to the decline in the influence of the church. In course of time its attitude towards movies has become more

---

101. This tendency started with the decision in Burstyn v. Wilson, 343 U.S. 495 (1952). For a discussion, see supra nn.39-50.
102. Guy Phelps, Film Censorship, p.238 (1975).

sophisticated.[103] In 1965, the title 'Legion of Decency' was changed into 'National Catholic Office for Motion Pictures'[104] signifying a shift in its negative attitude. In stead of its old policy of black listing bad films it began to encourage good films by presenting awards.[105] The decision of the Supreme Court in the anti-trust case in 1948[106] virtually broke down the monopoly in the film industry. With the dwindlement of the four factors mentioned above,[107] the Code also fell into disuse.

---

103. For a discussion of the classification system by the Church Legion see, infra Ch.9, nn.46-70.
104. In 1971 this office merged with the National Catholic Office for Radio and Television under the title of 'The Division for Film and Broadcasting of the United States Catholic Conference'.
105. Hunnings, op.cit., p.159. Trevelyan observes:
"By the middle of 1960s the power of the Roman Catholic Church had declined, and by 1970 it had a minimal influence. Although the Legion of Decency continued its work under the new and more modern title of the National Catholic Office of Motion Pictures it could no longer affect the commercial prospects of a film. Even ten years earlier films that received a 'C' (condemned) rating from the Catholic Office were announced from pulpits as being unsuitable for good Catholics to see; in 1970 Father Sullivan told me that a film which his office has condemned was then being shown in forty cinemas in the City of Chicago." Op.cit., at p.187.
106. U.S. v. Paramount Pictures, Inc., 334 U.S. 131 (1948).
107. See supra, the text accompanying n.100.

Revision of the Code.

A major revision of the Code took place in 1966.[108] The attitude of the Supreme Court in insisting on strict procedural safeguards for prior restraints on cinematographic exhibitions[109] and the weakening of influence of church together with the experience gained in the working of the Code for more than three decades may have tempted the Motion Pictures Association of America to revise and abridge the Code. The revised Code gives more emphasis to overall impact of the film than to the individual sequence in the film. As a necessary corollary it further confers wide discretion on the Production Code Administration which implements the Code regulations. The objectives of the revised Code has been stated thus:[110]

1. To encourage artistic expression by expanding creative freedom; and
2. To assure that the freedom which encourages the artist remains responsible and sensitive to the standards of the larger society.

---

108. For a text of the revised Code, see Trevelyan, op.cit., pp.260-265.
109. Freedman v. Maryland, 380 U.S. 51 (1965). For a discussion see supra nn.74-79.
110. As quoted in Trevelyan, op.cit., p.260.

The enumeration of specific objectionable matters in the 1956 version were replaced by general statements intended for the guidance of the Code Administrator.[111] An important innovation of the revised Code was the introduction of an embryo classification system by authorising the Administrator to pass film with a warning to parents - 'Suggested for Mature Audience.' The advertisement of the film so passed must carry the warning "Suggested for Mature Audience." The S.M.A. warning, as it is called, was intended to enable the parents to fulfil their primary responsibility in guiding their children.

The revised Code also provided for an appellate authority.[112] Very soon it was found that the new system was also inadequate. The fear of official censorship being repelled by the decisions of the Supreme Court coupled with the weakening of the influence of church give rise to a new

---

111. These norms were laid down under the head "Standards For Production." For a text of the provision of the revised Code, see Trevelyan, op.cit., pp.260-265.

112- The appellate jurisdiction was conferred on the Motion Picture Code Board which consisted of the representatives from the various trade associations connected with film industry. The Code Board also acted as an advisory committee on Code matters. See supra, n.111.

freedom, the producers' freedom of doing anything he likes. Many producers refused to submit films for the approval of the Production Code Administration. Artistic expressions and creative freedoms were interpreted as a licence to introduce more explicit sex and more extensive depiction of violence.[113] The industry soon realised that the system was insufficient to maintain the good image of motion pictures among the public. This led to the introduction of a rating system described elsewhere in this thesis.[114]

The rating system is administered by the Classification and Rating Administration through a Rating Board.[115] The system operates under the joint auspices of three trade organisations.[116] Independent film makers are also invited to submit films for certification.

---

113. Report of National Church Film Offices, 1970 quoted in Trevelyan, op.cit., pp.195, 196.
114. For an examination of the grading of films under the system, see infra Ch.9, nn.60-70.
115. For a detailed examination of the structure and working of the Rating Administration see Jane M. Friedman, supra, n.86 at pp.191-205.
116. The Motion Picture Producers Association, representing the major motion picture distributors of the United States, International Film Importers and Distributors of America, representing approximately forty importers of foreign films and the National Association of Theatre Owners in the United States. Id. at p.191.

Films are previewed by the Rating Administration for the purpose of allotting a suitable grade to the film. The Rating Administration is associated with the film production from the very beginning. Film makers may seek its advice about the acceptability of the film. However, this procedure is only advisory.[117] The completed film is previewed by the entire staff of the Rating Administration. If the desired rating cannot be given, the Rating Administration usually advises the film maker to re-shape the film. If this advise is accepted and suggested modifications are carried out, the desired rating will be awarded. On the other hand, if the advice is not acceptable to the film maker, he may file an appeal before the Rating Appellate Board.[118] No definite criteria is adopted by the Rating Board for classification of films.

The American experiment in self-regulation of cinema reveals a gruelling search for a substitute to legal sanctions. The intrinsic reason for the failure of the various

---

117. About twentyfive per cent of film makers resort to this technique. Id. at p.193.
118. An Appeal Board is constituted on an adhoc basis by the member organisations of the Rating Board.

experiments is obvious - the lack of sanction. During the hegemony of church influence there was an effective sanction. The people are as godfearing as they are law abiding. The decline of the church influence, led to the loss of control of self-regulation system over the film producers. As one writer has put it:[119] "All that is certain is that America has not yet found the answer to the censorship riddle." The tradition of American people in resisting encroachment on their individual rights is long rooted. The attitude of the Supreme Court of United States towards prior restraint is hostile. Its eagerness to uphold the freedom of speech and expression at all costs is classical. Still one will not be surprised at the establishment of official censorship of movies as a practical measure of regulation.

---

119. Guy Phelps, op.cit., p.242. For a contrary opinion see Jane M. Friedman, supra n.86 at pp.202-204. The Commentator argues that the Rating Board exert considerable influence on film makers. The refusal of newspapers to accept advertisements of 'X' films, the refusal of major theatre network to exhibit films which are not submitted for certification, the practice of untouchability of 'X' films followed by Television Companies and the psychological effect of 'X' films on film viewers and the fear of obscenity prosecution are the important reasons for the existence of such an influence.

PART III

CONSTITUTIONAL LIMITATION IN INDIA

<u>Chapter 7</u>

FILM CENSORSHIP AND THE CONSTITUTIONAL GUARANTEE

<u>General</u>.

Freedom of speech and expression is the backbone of democracy. Society can develop only by free thinking and free exchange of ideas.[1] Progress generally begins in scepticism about accepted truths.[2]

Freedom of thought is meaningless unless an opportunity is given to express the ideas. Thus freedom of expression is a necessary concomitant of freedom of thought. Without freedom of expression the freedom of thought will be an empty shell. To quote Mill,

---

1. "Persons of genius it is true are, and are always likely to be a small minority; but in order to have them, it is necessary to preserve the soil in which they grow. Genius can only breathe freely in an atmosphere of freedom." John Stuart Mill, <u>On Liberty</u>, p.61 (1947).
2. Justice Jackson said in <u>American Communications Association</u> v. <u>Charles T. Douds</u>, 339 U.S. 382 at p.442 (1950), "A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all... Thought control is a copy right of totalitarianism, and we have no claim to it."

> "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power would be justified in silencing mankind."[3]

Freedom of speech ensures exchange of ideas. Freedom of speech and expression is a necessary for a full enjoyment of other rights.[4]

Article 19 of the Universal Declaration of Human Rights states: "Every one has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[5] The same right is also stressed by the European Convention on Human Rights in 1950.[6] Constitutions of various States confer this freedom on citizens and thereby place it beyond the reach of governmental fiat.

---

3. John Stuart Mill, Op.cit., p.16.
4. See the opinion of Justice Cardozo in Palko v. Connecticut, 302 U.S. 319 at p.327 (1937). Refer supra Ch.6, n.15.
5. Adopted by the General Assembly of the United Nations in 1948. For a text of the Declaration, see Nagendra Singh, Human Rights and International Co-operation, Appendix III-A(1), pp.148-153 (1969).
6. Article 10(1). However it is specifically provided by the Article itself that it shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. For a discussion of the Article see Francis G. Jacobs, The European Convention on Human Rights, pp.151-157 (1975).

No freedom is absolute. In a free society it is necessary to restrict the freedom of one individual so that it may not collide with the freedom of others. If liberty is a social conception, there can be no liberty without social control.[7] Limitations on the exercise of freedom is an accepted fact. The only controversy is the extent to which such restrictions is to be imposed.[8] On the one hand, the freedom is a must for human progress. On the other hand, it is equally important to restrict the freedom not only in the interest of society but also for the preservation of the freedom itself. What is required is to strike a balance between these two competing claims. The extent of limitations necessarily depends upon the changing conditions of society.

---

7. Jagadish Swarup, Human Rights and Fundamental Freedom, p.36 (1975); Bernard Schwartz, American Constitutional Law, p.240 (1955), Prof. Schwartz observes:
   "Security and liberty, in their pure form, are antagonistic poles. The one pole represents the interest of politically organised society in its own self-preservation. The other represents the interest of the individual in being afforded the maximum right of self-assertion free from governmental and other interference.... Absolute rules would inevitably lead to absolute exceptions and such exceptions eventually corrode the rules'"
8. Jagadish Swarup, ibid.

Motion pictures and freedom of expression.

Today, it is judicially recognised that cinema is a form of expression.[9] Justice Clark of the United State's Supreme Court said:

> "It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of thought which characterizes all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform."[10]

Like other mass media - newspaper, books and radio - cinema plays a creative role in dissemination of ideas.[11]

---

9. In Mutual Film Corporation v. Industrial Commission of Ohio, 236 U.S. 230 (1915). It had been maintained by the Supreme Court of the United States that exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles and not to be regarded as part of the press or as organs of public opinion. Rejecting the view, the Supreme Court, in Joseph Burstyn v. Wilson, 343 U.S. 495 (1952) recognised movies as a form of expression. This view has been accepted in subsequent cases. As early as 1953 it has been observed by the Madras High Court that 'movies are generally media of expression cannot be disputed.' (Per Govinda Menon, J., in Inre K.V.V. Sharma , Manager, Gemini Studio, Madras, A.I.R. 1953 Mad. 269 at p.272). In Abbas v. Union of India, A.I.R. 1971 S.C. 481, this preposition was recognised as an accepted principle.
10. Joseph Burstyn v. Wilson, 343 U.S. 495 at p.501 (1952).
11. Abbas v. Union of India, A.I.R. 1971 S.C. 481.

Probably, the influence of cinema is greater than that of any other medium. Its educative value, if utilised properly, is also greater. Cine-goers are unimaginably large in number which is increasing day by day.[12] The influence of this medium on life of the people is great. The influence it will have in moulding the morality and habits of the youth cannot be overlooked. Cinema is the most influential and popular form of art.[13] Although to a great extent its object is commercial, cinema is an effective agent in disseminating ideas. Therefore it should have the constitutional protection of freedom of speech and expression in any Constitution. Some nations guarantee specific constitutional protection to movie films against pre-censorship.[14] Some others do not specifically guarantee protection to cinema but consider exhibition of movie films as part of freedom of speech and expression.[15]

---

12. The Khosla Committee found that nearly twenty lakhs of people in India view cinema every day. See the Khosla Report, p.75. The figure has increased considerably during subsequent years. A study in 1980 shows that daily on an average 2.5 crores of Indians see cinema. "Who's Afraid of Censorship." India Today Vol.V, No.19, October 1-15, 1980.
13. See *infra*, n.37.
14. As for example, Constitution of Denmark (1953), Art.77.
15. For example U.S. Constitution and Indian Constitution.

Censorship of cinematographic exhibition is a world wide phenomenon. There may be difference in degree. Some sort of censorship, either self-censorship or statutory censorship, is adopted by almost all countries[16] even though in a few countries criminal prosecution is thought to be the only form of control. The question of constitutionality of film censorship will arise only in the case of official or statutory censorship.[17] It again depends on the phraseology of the provisions of the Constitution.

The Constitution of India guarantees to the citizen the fundamental right to freedom of speech and expression.[18] However unlike the Constitution of United States,[19] the Indian Constitution empowers the State to impose reasonable

---

16. Neville March Hunnings, Film Censors and the Law, p.387 (1967). See also infra, n.35.
17. Jane M. Friedman argues that even a self-regulation system like the Rating System introduced by the film industry in the United States shall also be subject to First and Fourteenth Amendments to the Constitution of the United States because film classification is essentially a State function. Jane M. Friedman, "The Motion Picture Rating System of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry", 73 Col. L.Rev. 185 at pp.224-225 (1973).
18. Sub-clause (a) to clause (1) of Article 19 which reads as follows:
    "19(1) All citizens shall have the right—
    (a) to freedom of speech and expression;"
19. The U.S. Constitution has no limiting clause. The First Amendment reads:
    "Congress shall make no law....abridging the freedom of speech, or of the press...."
    Restrictions were evolved by judicial interpretations.

restrictions on the exercise of this right.[20] In the Constituent Assembly there was severe criticism against the inclusion of restrictions in the Constitution itself.[21] This criticism was mainly based on the Constitution of the United States where the right is in absolute terms. These criticisms were repelled by Dr. Ambedkar, the Chairman of the Drafting Committee, in a letter to the Chairman of the Constituent Assembly in the following words:[22]

> "That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to atleast one judgment of the United State's Supreme Court....
>
> What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of "Police Power", it permits the State directly to impose limitations upon the Fundamental Rights."

---

20. Clause (2) of Article 19 reads:
    "(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."
21. For a discussion see B. Shiv Rao, <u>Framing of India's Constitution</u>, Vol.IV, pp.34-39 (1968).
22. Constituent Assembly Debates, Vol.VII, pp.40, 41

Restrictions - A general discussion.

The Constitution attempts to strike a balance between individual liberty and social control. Justice Mukherjea[23] rightly observed:

> "There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights....are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. The questions therefore, arises in each case of adjusting the conflicting interests of the individual and of the society."

A limitation on the exercise of the right shall satisfy the following requirements for its validity.[24]

(i) The restriction must be one imposed by a valid law. A restriction imposed by executive action will be invalid.

(ii) The restriction must be reasonable, and

(iii) The restriction must be proximately related to purposes mentioned in the respective sub-clauses of Article 19.

---

23. A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 at p.93.
24. Durga Das Basu, Shorter Constitution of India, p.77 (1981); M.P. Jain, Indian Constitutional Law, p.444 (1978).

The presence of the term 'reasonable' in sub-clause (2) of Article 19 empowers the judiciary to sit in judgment over legislative determination. The Supreme Court time and again pointed out that reasonableness will depend upon facts and circumstances of each case, the evil sought to be remedied and the condition present in society at a given time.[25] Justice Mahajan summed up the scope of the term in the following words:[26]

---

25. There are a plethora of cases in which the Supreme Court subscribed to this view. See for example, Chintaman Rao v. State of M.P., A.I.R. 1951 S.C. 118 (see infra, n.26); State of Madras v. V.G. Row, A.I.R. 1952 S.C. 196. In this case a society, known as the Peoples Education Society was declared by the Government as an unlawful association under the Indian Criminal Law Amendment Act 1908 as amended by the Indian Criminal Law Amendment (Madras) Act 1950. The High Court of Madras as well as the Supreme Court declared the impugned order and the impugned Act unconstitutional as they imposed an unreasonable restriction on the exercise of the right to form an association guaranteed by Article 19(1)(c) of the Constitution. See also Pathumma v. State of Kerala, A.I.R. 1978 S.C. 771. In this case, the constitutionality of Section 20 of the Kerala Agriculturist Debt Relief Act 1970 was in issue. The section empowers the debtors to recover the properties sold to purchasers in execution of the decree against the debtors. The Court upheld the provision. For a detailed discussion on the topic see, Basu, op.cit., pp.79-91; Jain, M.P., op.cit., pp.444-446; Seervai, Constitutional Law of India, Vol.I, pp.481-485 (1983).
26. Chintaman Rao v. State of M.P., A.I.R. 1951 S.C. 118 at p.119. A law enacted by the State provided that no person residing in villages could employ any person or engage himself in the manufacture of bidis during agricultural season. The object of the legislation was to make available workers for agriculture. The Court struck down the law, holding that in the circumstances, it imposed an unreasonable restriction on the exercise of fundamental rights.

> "The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed...and the social control... it must be held to be wanting in that quality."

As noted above,[27] film censorship was in vogue in India from 1918 onwards. Before the commencement of the Constitution of India, the question of constitutional validity of the law did not arise at all. The law continued even after the commencement of the Constitution until it was repealed and re-enacted by the Cinematograph Act 1952. It seems that the film world accepted the process of censorship of cinema as incorporated in the Act for about two decades thereafter. They did not care to challenge its constitutionality during this period. The constitutional validity of film censorship regulations was challenged before the Supreme Court for the first time in Abbas v. Union of India.[28] The challenger was the producer-cum-director of a documentary film. Before the hearing of the case started the Government decided to grant

27. See *supra*, Ch.4, nn.8-10.
28. A.I.R. 1971 S.C. 481.

certificate without cuts as previously ordered.[29] Thus the petition had became infructuous. However the Court showed an extra-ordinary enthusiasm[30] in expounding the constitutional issues raised in the case because it felt that the issues were important and a clear guidance would be of immense help to those who invest capital in producing films. This is the only case in which constitutionality of film censorship in India is considered by the judiciary. Hence a detailed perusal of the judgment is required.

The petitioner, K.A. Abbas, a veteran writer, producer and director, produced a documentary film, A Tale of Four Cities. There is an obvious contrast between luxury and squalor, and riches and poverty in our cities. In his film the petitioner attempted to depict this contrast in the lives of the people in four cities - Calcutta, Bombay, Madras and Delhi. He applied for a U Certificate,[31] i.e., for

29. Before the hearing the Attorney General submitted this fact to the Court.
30. The course adopted by the Court has been characterised as unfortunate by Mr. Seervai because the court did not decide any actual controversy but decided a controversy which might arise in future. Seervai, op.cit., p.531.
31. The Act (as it stood at that time) provided for classification of films into 'U' and 'A' categories. The former was meant for unrestricted public exhibition whereas the latter was intended for public exhibition restricted to adults only.

unrestricted public exhibition, under the provisions of the Cinematograph Act 1952. The Censor Board, which is now known as the Board of Film Certification after the amendment of the Act in 1981, decided provisionally to grant an 'A' Certificate, restricting the exhibition of the film to adults only. The Central Government was the appellate authority under the Act at that time. The petitioner appealed. The appellate authority decided to grant a U Certificate after ordering for certain cuts in the film. Dissatisfied with this decision, the petitioner approached the Supreme Court. He claimed that censorship itself offended his freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution. The petitioner raised four arguments—

(i) Censorship itself cannot be tolerated under the constitutional guarantee of the freedom of speech and expression;

(ii) even if it is a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action;

(iii) there must be a reasonable time limit fixed for the decision of the authorities censoring the film; and

(iv) the appeal shall lie to a court or an independent tribunal and not to the Central Government.

G 34 86

The respondent, Union of India, conceded the third and the fourth and assured the Court that early steps would be taken to cure these defects. The Court, therefore, considered only the other two arguments.

Pre-censorship.

Some judges of the United States' Supreme Court maintained that pre-censorship itself violated the freedom of speech.[32] But this was only a minority view. The petitioner in Abbas attempted to persuade the Supreme Court of India to accept this view. The Court rejected the argument pointing out that there is difference between the guarantees provided by the Constitution of United States and that of the Constitution of India. In the United States the freedom is guaranteed in absolute terms while in India it is specifically restricted. Justice Douglas, the strongest proponent of the freedom had made the following observation:

> "If we had a provision in our Constitution for 'reasonable' regulation of the press such as India has included in hers, there would be room for argument that censorship in the interests of morality would be permissible."[33]

---

32. For a discussion of these views see *supra*, Ch.6, n.68.
33. Kingsley International Pictures Corporation v. Regent of the University of New York, 360 U.S. 684 at p.698 (1959).

Chief Justice Hidayatullah cited this in Abbas and pointed out that in spite of the absolute nature of the terminology of the First Amendment, the majority of the Supreme Court of the United States tried to read the words "reasonable restrictions" into the First Amendment so as to make the right subject to reasonable regulations. After an analysis of case law, the Court found[34] that the majority view in the United States also supported a case for censorship of motion pictures.

In view of the express provision for imposing reasonable restriction in the Indian Constitution, the Court dismissed the contention that pre-censorship itself violated the constitutional guarantee of free speech and expression. Chief Justice Hidayatullah said,

> "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 stage at which the State interposes its regulations between the individual and his freedom. Beyond this

---

34. Abbas v. Union of India, A.I.R. 1971 S.C. 481 at p.494, per Hidayatullah, C.J. The correctness of this conclusion is questioned. It has been maintained that the Supreme Court of United States have always shown a bias against prior restraint. See Bruce Michael Boyd, "Film Censorship in India, A Reasonable Restriction on Freedom of Speech and Expression," 14 J.I.L.I. 501 at p.535 (1972).

> there is no vital difference. That censorship is prevalent all the world over in some form or other and pre-censorship also plays a part where motion pictures are involved, shows the desirability of censorship in this field.... The method changes, the rules are different and censorship is more strict in some places than in others, but censorship is universal."[35]

Reasonableness of discriminatory treatment of cinema.

Does not this position violate the equal protection clause in the Constitution?[36] Such a question was in fact raised in Abbas by the petitioner. But the plea was also rejected by the Court. Justice Hidayatullah pin-pointed

---

35. Id. at p.489.
36. Article 14 of the Constitution of India. The Article reads as follows:
    "14. Equality before law— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
    The scope of Article 14 is now well settled. It forbids a class legislation alone and not a reasonable classification. A classification, in order to be reasonable, shall satisfy two tests— (i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of it, and (ii) there must be a rational nexus between the classification envisaged and the object sought to be achieved by the statute in question."
    See for example, Ramakrishna Dalmia v. Justice Tendolkar, A.I.R. 1958 S.C. 538 where singling out Dalmia group of companies for an enquiry by a Commission of Enquiry appointed under the Commission of Enquiry Act 1953 was adjudged as a valid classification in view of the special circumstances present in the case. See also Budhan Choudhry v. State of Bihar, A.I.R. 1955 S.C. 191. For a complete discussion on the scope of Article 14, see Basu, op.cit., pp.26-47. Jain, op.cit., pp.410-428; Seervai, op.cit., pp.272-387.

the special features of cinema for a differential treatment in the following words:[37]

> "Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture, its versatility, realism (often surrealism) and its coordination of the visual and aural senses. The art of cameraman, with trick photography, vista vision and three diamensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art .... A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore, the treatment of the latter on a different footing is also a valid classification."

The higher potentiality of cinemas to influence people and the consequent possibility for misuse of the medium is suggested as a justification for film censorship.

This argument is essentially a moralist one.[38] There is no evidence to back the conclusion. At any rate, the learned judge has not furnished any evidence to support his

---

37. Abbas v. Union of India, A.I R. 1971 S.C. 481 at p.489. For the very same reason, the Court held that the then existing classification of films into 'U' and 'A' categories also was not violative of Article 14.
38. A moralist is a person who decides whether or not an activity should be banned by law on the basis of its intrinsic wickedness. See supra, Ch.2, n.7.

conclusion. Assuming that cinema is subject to a treatment different to other forms of expression, can it be said that greater chances of abuse affords a sufficient justification for such a differential treatment. Is there any rational basis for the conclusion of the court that cinema stir up emotions more deeply than other form of expression like paintings, sculpture, dramatic performances and books? Will not a painting or a sculpture of a nude woman in a suggestive manner or a nude dance stir up emotions more deeply than a cinematograph? These doubts may induce one to disagree with the reasons furnished by the Court as a justification for a differential treatment towards cinema.

However, the fact remains that there is no differential treatment to cinema. All forms of speech and expression are subject to censorship. There may be difference in the form of censorship. Thus newspapers and other printed matters are subject to censorship by a post publication penal model for publishing any prohibited matters. Similar is the case with paintings, sculpture, dance and speech. Dramatic performances are subject to pre-publication censorship[39] like films, though the effect of such a censorship is only

39. For example, the Kerala Dramatic Performance Act 1961.

marginal. In India, Radio and Television are under the direct control of Government and therefore work under strict and close watch and supervision of the governmental machinery. In the case of printed matters, pre-censorship is not practically feasible because much of the objectionable materials are published from underground press[40] and the only effective control possible is post publication control of penal action and confiscation.

Pre-publication control over the media, wherever such control is practicable, is the most effective remedy; the evil if any, is eliminated before its publication. Such a preventive measure is more effective than a subsequent punishment. The State may adopt a practicable system in accordance with the nature of the activity in question. It is comparatively easier to implement the mechanics of pre-censorship for films than to do so in other forms of expression. Since pre-censorship is only a particular form of control not materially different from other forms of censbrship,[41] the question of discrimination does not arise at all.

---

40. D.G.T. Williams, "The Control of Obscenity II" Criminal Law Review (1965) 522 at p.531. See also supra, Ch.2, n.48.
41. Abbas v. Union of India, A.I.R. 1971 S.C. 481. Chief Justice Hidayatullah, opines that the only difference between post publication and pre-publication censorship is the time at which the control is effected and both these forms are not materially different. Id. at p.489, see supra n.35.

But the justification given by the Court[42] for a classification of films into 'U' and 'A' category appears to be a sound one. A material, though innocuous to adults, may be harmful to children. The mental make up of children is not so stable as that of adults. The children are more prone to be influenced than adults. Thus it is perfectly reasonable to classify films into different cetegories for safeguarding the legitimate interests of children. Such a classifications also enables the state to discharge its constitutional duty to protect the interests of children.[43]

Reasonableness of censorship regulations.

Are the censorship regulations reasonable under Article 19(2) of the Constitution? The Court examined this question after finding that the State is competent to impose restrictions by way of censorship.

The guidelines provided by the Act for the censors are described in general terms.[44] The Act authorise the Central Government to issue 'directions' to censors.[45] In exercise of this power the Central Government issued

---

42. See *supra*, n.37.
43. Article 39(f).
44. S.5B(1) of the Act. For a text of the Act see *infra* Appendix I.
45. *Id.* S.5B(2).

'directions' to the Board of Film Censors.[46] The then existing 'directions' provided in detail the grounds on which films were to be censored.[47] In Abbas, the petitioner contended that the guidelines for censorship of cinematographic exhibition, especially those contained in the directions issued by the Central Government were very vague. He made an attempt to substantiate his plea basing the "void for vaggeness" doctrine evolved by the Supreme Court of the United States.[48] The Respondent, Union of India, argued that the American doctrine is not applicable in India.[49] It was contended that in the United States the doctrine was adopted as part of 'due process' and therefore, it could

---

46. The directions issued by the Central Government were amended from time to time. The present 'directions' is the one issued in 1979. For a text of the present 'directions', see infra, Appendix II.
47. The set of directions was a detailed one. It was divided into two parts;- The General Principles and the Rules. The Rules contained specific instructions as to the application of General Principles. For a discussion, see supra, Ch.4 nn.53 to 57.
48. The U.S.Supreme Court held in Claude C. Connally v. General Construction Company, 269 U.S. 385 (1926) that a vague law was void as it amounted to a violation of the 'due process clause'. Justice Sutherland formulated the principles in the following terms. "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." Id. at p.391.
49. This contention was based on certain observations of Shah, J. in Municipal Committee, Amritsar v. State of Punjab, (A.I.R. 1969 S.C. 1100), wherein it was held that in United States this doctrine was considered as part of due process clause and hence it had no effect under our Constitution.

not be imported into India.[50] However, the Court did not reject the 'void for vagueness' doctrine in toto. When the law is vague or is open to diverse interpretations, the language of the law should be construed in accordance with the intention of the Legislature. But when the language is quite uncertain and the law infringes fundamental rights, the law will be unconstitutional on that score. The court laid down the preposition in the following manner.

> "The real rule is that if a law is vague or appears to be so, the Court must try to construe it, as far as may be, and language permitting, the construction sought to be placed on it, must be in accordance with the intention of the legislature. Thus if the law is open to diverse construction, that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where however, the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law _prima facie_ takes away a guaranteed freedom, the law must be held to offend the Constitution...." 51

However, applying the principle to the film censorship regulations, the Court held that none of these regulation

---

50. However, Chief Justice Hidayatullah did not subscribe to the view that the doctrine was part of due process clause. He observed:

> "This is not application of the doctrine of due process. The invalidity arises from the probability of the misuse of the law to the detriment of the individual. If possible, the Court instead of striking down the law may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases."

Abbas v. _Union of India_, A.I.R. 1971 S.C. 481 at p.496.

51. _Ibid._ per Hidayatullah, C.J.

is uncertain and void. The directions embodied some general principles[52] namely maintenance of the moral standards of the viewers, the country and the people; discouraging the audience to sympathise with criminals, wrong doers or other sinners; and prevention of disrespect to the rule of law. The provisions of the Act relating to certification of films[53] also lay down similar principles which are justified under the permissible restrictions mentioned in clause (2) of Article 19 of the Constitution. Since the provisions of the Constitution cannot be said to be vague, these provisions are also not vague and therefore not void. After elaborately discussing the various provisions contained in the 'Directions', the court opined that the words used therein such as rape, seduction, immoral traffic in women, soliciting prostitution or procuration, indelicate sexual situation and scenes suggestive of immorality, traffic and use of drugs, class hatred, blackmail associated with immorality are within the understanding of the average man. Such words, therefore, cannot be said to be vague.[54]

---

52. The "General Principles" in the 'directions', see <u>supra</u>, Ch.4 n.65.
53. S.5B(1) of the Act. The wording of the section is analogous to that of clause (2) of Article 19 of the Constitution.
54. <u>Abbas</u> v. <u>Union of India</u>, A.I.R. 1971 S.C. 481 at p.497.

The directions thus afforded a clear guidance to the censors.[55] The Court further found that the principles set out in the directions to safeguard the interests of children and young persons[56] were quite specific and also salutory and hence no exception could be taken.

Realising the need for sufficient flexibility in approach by the censors, the Court found that direction is necessary to fence the discretion within proper limits. The Court observed:[57]

> "The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest."

However, the court pointed out that the 'directions' were defective in one sense, viz., they did not provide for a value judgment by the censors. The 'direction' only provided for cases in which the censors should either ban the

---

55. See infra, nn.65-72.
56. These special provisions were set out in S.4 of the "directions". The censors are enjoined not to grant a certificate for unrestricted public exhibition to films depicting incidents unsuitable to children such as anything tending to disrupt domestic harmony or the confidence of a child in its parents, and anything tending to make a child insensitive to cruelty to others or to animals.
57. Abbas v. Union of India, A.I.R. 1971 S.C. 481 per Hidayatullah, C.J. at p.498.

film for unrestricted public exhibition or order for cuts in films. While doing so the censors were not expected to take into account the artistic touch in the relevant sequences. The court held:[58]

> "But what appears to us to be the real flaw in the scheme of the directions is a total absence of any direction which would tend to preserve art and promote it. The artistic appeal or presentation of an episode robs it of its vulgarity and harm and this appears to be completely forgotten. Artistic as well as inartistic presentations are treated alike and also what may be socially good and useful and what may not."

The court went on to illustrate how an artistic touch can redeem a presentation otherwise prohibited under the directions and concluded thus:[59]

> "Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer. It must however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the Kamasutra but a documentary from them as a practical sexual guide would be abhorrent."

---

58. Id. at p.497. Per Hidayatullah C.J. Compare the attitude of British Board of Film Censors, which will, as claimed by Trevelyan, take into consideration the quality and integrity of films. See Trevelyan, What the Censor Saw, p.59 (1973).
59. Id. at p.499. Per Hidayatullah C.J.

The Court insisted that the censor has to adopt the standard of an average man. What is objectionable is not a naked portrayal of life or society but such a portrayal without the redeeming touch of art or genius or social value when the average man begins to feel embarrassed or disgusted in seeing it. In other words a redeeming touch of art, or genius or social value may robe away the otherwise vulgarity of a film. The censors must necessarily be armed with such a power to take into account the artistic quality of a film presented to them for certification. The learned judge opined:[60]

> "The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in toto and for ever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man or moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value."

---

60. Id. at p.498 per Hidayatullah, C.J.

In Ranjit D. Udeshi v. State of Maharashtra,[61] the Supreme Court took pains to evolve certain norms on the basis of which obscenity of a book was to be considered. These norms were formulated for deciding whether the book should be allowed to circulate or withdrawn. Surprisingly the Supreme Court in Abbas directed the film censors to adopt the norms laid down in Udeshi.[62] The correctness of such a direction to film censors is of doubtful authority.[63]

Emphasising the importance of art to a value judgment by censors, the court criticised Parliament and the executive for not providing for such a guidance in the 'directions.' The court observed:[64]

> "But Parliament has not legislated enough, nor has the Central Government filled in the gap. Neither has separated the artistic and the sociably valuable from that which is deliberately indecent, obscene, horrifying or corrupting. They have not indicated the need of society and the freedom of the individual. They have thought more of the depraved and less of the ordinary moral man. In their desire to keep films from the abnormal they have excluded the normal. They have attempted to bring down the public motion picture to the level of home movies."

---

61. A.I.R. 1965 S.C. 881. For a discussion of the case see infra, Ch.8, n.40.
62. Abbas v. Union of India, A.I.R. 1971 S.C. 481 at p.497. Earlier, the Khosla Committee summarised the ruling in Udeshi and recommended it for guidance of film censors. See the Khosla Report, pp.118, 119.
63. For a critical appraisal of this finding of the court see infra Ch.8, nn.47-51.
64. Abbas v. Union of India, A.I.R. 1971 S.C. 481 per Hidayatullah, C.J. at p.499.

Upholding the constitutionality of film censorship regulations the Court concluded:[65]

> "Although we are not inclined to hold that the directions are defective in so far as they go, we are of opinion that directions to emphasize the importance of art to a value judgment by the censors need to be included. Whether this is done by Parliament or by the Central Government it hardly matters. The whole of the law and the regulations under it will have always to be considered and if the further tests laid down here are followed, the system of censorship with the procedural safeguards accepted by the Solicitor General will make censorship accord with our fundamental law."

Abbas - an appreciation.

No possible objection can be taken to the final conclusion reached by the Court though the procedure adopted for it may not be entirely correct.[66] Is the fact that constitutional validity has been challenged only once, and no further attempt has been made to reopen the issue for more than a decade, an indication to show that the problem is settled? The great jurist Justice Hidayatullah is of the view that it is settled.[67] As is aptly remarked by Chief Justice Hidayatullah himself:[68]

65. *Ibid.*
66. See *supra*, n.30
67. *U.S.A. and India*, pp.25-26 (1977).
68. *Ranjit D. Udeshi* v. *State of Maharashtra*, A.I.R. 1965 S.C. 881 at p.885.

> "That cherished right |of freedom of speech and expression| on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of knowledge..."

The restrictions imposed by the Cinematograph Act 1952, the Rules and the 'directions' issued by the Central Government in pursuance of the powers conferred thereunder do not prohibit expression of ideas for political or social change. Besides, a restriction by way of censorship can be imposed only on the permissive grounds of restrictions provided for by clause (2) of Article 19. The Court is therefore justified in holding the censorship regulations reasonable.

The terms used in the directions have acquired a definite meaning under the provision of other statutes and under various judicial pronouncements. However, it may be asked whether these terms though not vague are incapable of any precise legal definition[69] and whether, atleast to some extent, it becomes a matter of opinion depending upon the subjective judgment of the censors. Perhaps it is at this level the need for appointing experts and artists to the

---

69. Ibid. See also Trevelyan, "Film Censorship and the Law" in Rajeev Dhavan and Christie Davies, (Ed.), Censorship and Obscenity (1978), p.103; Kobita Sarkar, Indian Cinema Today (1975), pp.48-49.

Censor Board becomes peremptory. When there is sufficient leeway for an authority to exercise discretion care should be taken to appoint experts. The judges also possess some discretion in deciding disputes.[70] The need for discretion in administrative agencies is all the more greater and no one will dispute the fact that the tasks assigned to administrative agencies in modern times obviously call for a much greater degree of discretion than the typical task of judges.[71] It cannot be said that the terms used in the Cinematograph regulations are vague simply because a limited discretion is conferred on the censoring authorities in applying them to individual cases.[72] Such an exercise of discretion is inherent in every judgment.

---

70. "The total exclusion of judicial discretion by legal principle is impossible in any system. However great is the encroachment of the law there must remain some residum of justice which is not according to law - some activities in respect of which the administration of justice cannot be defined or regarded as the enforcement of the law." Salmond on Jurisprudence, p.44 (1957).
71. Kenneth Culp Davis, Discretionary Justice: A Preliminary Inquiry (1969), p.18.
72. The attack based on vagueness of standards mainly centre round public morality. Even in this area, the censorial authorities have to come to a conclusion objectively, that is to say, on the basis of standards available in society. However, since there is no definite criteria available to measure such standards, the subjective satisfaction of censors play a vital role in determining the issue.

The main defect of the then existing 'directions' was that it provided a detailed list of 'don'ts' in films. It was so detailed that it completely took away the discretion of censors. The function of the censor was reduced to a mechanical application of the rules contained in the 'directions'. This naturally prevented individualisation of judgment which is a must in all administrative decisions. Prof. Davis' remarks:[73]

> "Discretion is a tool, indispensible for individualisation of justice. All governments in history have been governments of laws and of men. Rules alone, untempered by discretion, cannot cope with the complexities of modern government and of modern justice. Discretion is our principal source of creativeness in government and in law."

The recommendation of the Court requiring censors to give emphasize on the importance of art to a value judgment[74] becomes relevant in this context. A mechanical application of the provisions contained in the 'directions' results in injustice. Suppose a film contains a scene which is _prima facie_ objectionable according to the censorship regulations but at the same time, it is so artistically presented whereby sex and obscenity is pushed to the background. A censorial decision for excision of the scene will result in injustice

---

73. Davis, _op.cit._, p.25.
74. _Supra_, nn.58-60, See also _supra_ Ch.4, n.58.

and in such a case it is highly necessary to confer discretion on the censor to determine the legality or otherwise of such scenes in the light of its artistic merit. The illustrations[75] given by the learned judges himself explain the need for individualisation of judgment. It will result in injustice if no discretion is conferred on the censor to distinguish between presentation of sex for the sake of exhibition of sex alone and presentation of sex with an artistic appeal. This result is achieved by the judicial activities in Abbas. Discretion being the life-blood of modern administration, the conferment of discretion cannot be phoophooed on the ground that the censors have been given wider power to decide the acceptability of films. The plea will only be raising old outmodded laissez faire flag of Dicean dogma that discretion is the anti-thesis of rule of law. This is not a conferment of unlimited discretion. As Prof. Wade observes, the notion of unfettered discretion is a myth.[76]

---

75. For the illustrations see Abbas v. Union of India, A.I.R. 1971 S.C. 481 at pp.498, 499.
76. H.W.R. Wade, Administrative Law, p.340 (1977).

The discretion conferred on an authority, however absolute it may appear to be, is to be exercised properly for the purpose for which the power is granted.[77]

However, it appears that the court failed to go deep into the constitutional issues connected with the 'directions' except its reasonableness under clause (2) of Article 19 of the Constitution.

Prima facie Section 5B(2) of the Act[78] empowering the Central Government to issue directions to the censors embodying the principles to be followed in sanctioning films for public exhibition confers a very wide power on the Government. What is the real scope of this provision? Can it be treated as a power to issue directions so as to restrict the discretionary powers of the censor? Or does it confer only a power to issue some guidance by way of interpretation? Is there

---

77. Ibid. See also Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997. The milk producers of certain region complained about a decision of the Milk Marketing Board in fixing differential elements in the price of their milk. However, they could not persuade the Board to change it. The Minister, who has power under the Agricultural Marketing Act 1958 to appoint a Committee of investigation on any complaint if the Minister directs them to do so, refused to refer the complaint to the Committee. The Minister could also override the decision of the Board on the recommendation of the Committee. The Court issued a mandamus to the Minister directing him to act according to law.
78. For a text of the section, see infra Appendix I.

any built-in safeguard against misuse of power by the Government especially in the light of lack of any procedural norms regulating the exercise of such a power? Is it desirable or necessary to issue directions to censors? Although these are key questions affecting the root of the proble, these aspects were not touched by the Court.

It appears that no serious legal objection can be taken to the conferment of power on the Central Government to issue directions to censors even though it may be ideal to confer such a power on the Board itself.[79] The object of 'directions' is not to fetter the discretion, its aim is only to structure and limit the discretion of the Board. The opening words of Section 5B(2) conferring powers on the Central Government to issue directions, viz., "subject to the provisions contained in sub-section (1)" show that the Central Government is incompetent to issue directions against, or in excess of, the guidelines provided by sub-section (1) of Section 5B of the Act.[80] Even in the absence of such a provision, the Central

---

79. For a further discussion see <u>infra</u> Ch.13, nn.61-63.
80. For a discussion on the various grounds mentioned in the guidelines under S.5B(1) of the Act, see <u>infra</u>, Ch.8.

Government cannot issue any directions not contemplated by, or in excess of, the guidelines.[81] Thus what is contemplated by the directions are further guidelines in conformity with the statute so as to guide the censors in exercising its functions efficiently, satisfactorily and impartially. It is only intended to fill the gap in the area of wide discretionary powers of the censor.

The grounds as embodied in the guidelines under Section 5B(1) of the Act, especially the grounds, "in the interest of morality and decency" are elusive in nature. Whether a cinema is unsuitable or not depends on the standards available in a society at a given time and/or the effect of the film on a substantial section of the members of society. Plainly, the provisions confers very wide discretion on the censor. The film maker is in the dark as to the norms which shall weigh with the censors in determining the said issue. In the circumstances, it is not only desirable but a necessity to give in advance some guidance to the public as to the attitude of censors. The direction affords such a

---

81. See <u>infra</u>, nn.82 and 83.

guidance. It is also helpful in another context, viz., in limiting the wide discretion of censors. The statutory guidelines are too broad as to leave the censors with unguided discretion to determine the public acceptability or otherwise of cinema. A direction explaining, illustrating or interpreting the guidelines may effectively canalise the discretion. It, therefore, appears that the object of the 'direction' is only to interpret the statutory guidelines.

Can it be said that the specific instances mentioned in the 'directions' are valid? The rule is well established that 'directions' cannot be used to impose some additional considerations over and above those contained in the statute itself.[82] If the directing power is used to enlarge or restrict the grounds provided in the statute, it will practically result in effecting an amendment of the statute itself. Such usurpation of power has been condemned by the

---

82. Mannalal Jain v. State of Assam, A.I.R. 1962 S.C. 386; State of Haryana v. Shamsha Jang Sukha, A.I.R. 1972 S.C. 1546. The Punjab Civil Secretariat (State Service Class IV) Rules 1952, a rule under Article 309 of the Constitution, laid down some conditions for promotion. The Government added some additional conditions through administrative instructions. Declaring the instructions invalid, the Court maintained that the Government could not amend or supercede the statutory rules by administrative directions.

Supreme Court. The Court expressed its grave concern and disapproval over such attempts by the executive in the following words:[83]

> "We doubt the wisdom of issuing executive instructions in matters which are governed by provisions of law; even if it be considered necessary to issue instructions in such a matter, the instructions cannot be so framed or utilised as to override the provisions of law. Such a method will destroy the very basis of the rule of law and strike at the very root of the orderly administration of law."

It appears that some of the matters listed as taboo subjects in the then existing directions were of doubtful validity[84] whereas a few others were clearly beyond the

---

83. Mannalal Jain v. State of Assam, A.I.R. 1962 S.C. 386 per S.K. Das, J., at p.393. The Assam Food Grains (Licensing and Control) Order 1961 specified some considerations for the guidance of the licensing authority. One such condition was 'whether the applicant is a co-operative society.' The application of the petitioner was rejected in pursuance of a policy to confer a monopoly on a particular co-operative society. This policy was communicated to the Licensing Authority by the Director of Civil Supplies. The Court struck down the order. Although the case primarily concerned with administrative discrimination, the Court also disapproved the system of issuing directions containing extraneous consideration. For a comment of the case, see M.P. Jain, Mannalal Jain v. State of Assam - Administrative Discrimination and Article 14, 4 J.I.L.I. 458 (1962).
84. See for example, wounding the succeptibilities of any foreign nation.... (Application of General Principles Paragraph 1(F)(i)) and a few others in Paragraph II

(contd...)

guidelines contained in the Act. Thus, for instance, the unsuitability attached to details of surgical operation,[85] cruelty to animals,[86] drunkenness or drinking that is not essential to the theme of the story,[87] impersonation of women[88] and scenes which may strike terror in the minds of children[89] could not be justified under any of the grounds in section 5B(1) of the Act. Such an implementation of governmental policy, it is submitted, is clearly against the very scheme of the Act.

(f.n.84 continued)
such as confinement, unnecessary exhibition of femine underclothing, brutal fighting excessive bleeding or mutilation, cruelty to children, etc. For a text of the directions, see Khosla Report, pp.19-22.

85. Paragraph II(ii) of the Application of General Principles.
86. Id. Paragraph II(xiv).
87. Id. Paragraph II(xv).
88. Id. Paragraph II(viii).
89. Id. Paragraph IV(i).

Chapter 8

PRINCIPLES FOR CERTIFICATION OF FILMS

Indian Constitution, recognising the need for limiting the exercise of fundamental right in public interest, expressly authorises the State to impose reasonable restrictions on the exercise of the said right. The grounds on which these restrictions can be imposed are enumerated in Clause 2 of Article 19 of the Constitution.[1] It is significant to note that this clause does not impose any obligation on the State to impose restriction. The provision is only permissive. The concept of 'reasonableness' imports judicial review.[2]

Section 5B(1) of the Act[3] sets out the principles for guidance in certifying films. The Section is more or less a replica of Clause 2 of Article 19. The Supreme Court while upholding Section 5B(1) of the Act, opined that the absence

---

1. For a text of Article 19(2) see supra Ch.7, n.20.
2. Chintaman Rao v. State of Madhya Pradesh, A.I.R. 1951 S.C. 118. The principle laid down in this case has never been questioned. For a discussion on the principle see Shashi P. Misra, Fundamental Rights and the Supreme Court: Reasonableness of Restrictions, pp.43-46 (1984). For a discussion see supra Ch.7, nn.20-26.
3. See also supra Ch.7, n.53.

of the term 'reasonable' in the section would not make any difference at all and the Court could still look into the reasonableness of the action taken by the Board.[4] However, the Court did not go into the scope of the various terms used by the section. The scope and ambit of the grounds mentioned in Article 19(2) of the Constitution has been judicially expounded. Since Section 5B(1) uses the very same terms, the interpretation given to these terms in other cases can be used for expounding the scope of the section.

Sovereignty and integrity of India.

These words were added to Article 19(2) of the Constitution by the Constitution (Sixteenth) Amendment Act 1963 to provide for a legal frame work to arm the Government with sufficient powers to meet effectively with the demand for

---

4. Abbas v. Union of India, A.I.R. 1971 S.C. 481, Hidayatullah, C.J. held:

   "The word 'reasonable' is not to be found in Section 5B but it cannot mean that the restrictions can be unreasonable. Not only the sense of the matter but the existence of the constitutional provision in pari materia must have due share and reading the provisions of the Constitution we can approach the problem without having to adopt a too liberal construction of Section 5-B."

   Id. at p.494.

dismemberment of the country and cession. The amendment was incorporated at a time when the disintegrating tendencies in the country have assumed alarming propositions. Cinema should not encourage these tendencies. Perceiving the possibility of such a threat, Parliament amended Section 5B(1) of the Act in 1981 by adding the words: "sovereignty and integrity of India" on the ground of which censor can refuse to certify a film.

Security of State and Public Order.

The scope of the term 'public order' is wider than 'security of state' although more often than not the two overlap.[5] The original Clause (2) of Article 19 did not contain the word 'public order' for which restrictions could be imposed. Measures taken by the Government for maintaining public order or public safety were declared unconstitutional by the Supreme Court holding that the phrase originally contained in Clause (2) of Article 19 of the Constitution viz., 'Security of State' would apply only to aggravated

5. Romesh Thappar v. State of Madras, A.I.R. 1950 S.C. 124; Brij Bhushan v. State of Delhi, A.I.R. 1950 S.C. 129; Superintendent, Central Prison v. Dr. Lohia, A.I.R. 1960 S.C. 633.

forms of breaches of public order such as those endangering the foundations of State or threatening the over throw of the Government by force and, therefore, any restriction in the interest of public order not amounting to security of state would not be valid.[6] In order to overcome the difficulties caused by these decisions the Constitution (First Amendment) Act 1951 introduced 'public order' as an additional ground in Article 19(2) of the Constitution. It has been observed by Justice Subba Rao that the term public order in its most comprehensive sense is so wide enough as to include all the grounds mentioned in Article 19(2) but

---

6. Romesh Thappar v. State of Madras, A.I.R. 1950 S.C. 124; Brij Bhushan v. State of Delhi, A.I.R. 1950 S.C. 129. In Romesh Thappar, the Government of Madras, in pursuance of the powers conferred on it by Section 9(1-A) of the Madras Maintenance of Public Order Act 1949, banned the entry and circulation of the journal "Cross Roads" into the State. The said section authorised the Government to ban the entry or circulation of any document in the State for the purpose of securing the public safety or the maintenance of public order. The Court struck down the order holding that the grounds of restrictions mentioned in the Act would not amount to 'security of State' and therefore not saved by Article 19(2) of the Constitution. In Brij Bhushan, the Court, while invalidating Section 7(1) of the East Punjab Public Safety Act 1949 took a similar view. The section empowered the Government to order for submission of any article for pre-censorship if it satisfied that such an action was necessary for the purpose of preventing or combating any activity prejudicial to public safety or maintenance of public order.

as the Constitution details different species of public order in the same clause, the term public order as used in Article 19(2), shall be demarcated from the others and be given a specific meaning.[7] The learned judge, however, took the view that the term 'public order' as used in Article 19(2) is broad enough to include all activities against public tranquility and public safety short of those affecting 'security of State.' He said:[8]

> "Public order is synonimous with public safety and tranquility; it is the absence of disorder involving breaches of local significance in contradiction to national upheavals, such as revolutions, civil strife, war affecting the security of the State."

This broad interpretation of the term 'public order' was not accepted in toto in subsequent cases.[9] Although public order overlaps with public tranquility, it is only partial. Public order includes all acts which are a danger

---

7. Supdt., Central Jail, v. Dr. Lohia, A.I.R. 1960 S.C. 633 at p.639. The Court came to this conclusion on the basis of the observations in Ramesh Thappar and Brij Bhushan (see supra, n.6). In the present case the Court however held that the provisions of Section 3 of the U.P. Special Powers Act 1932 making any instigation not to pay tax to the Government an offence would not come within the expression 'Security of State' or public order' in Article 19(2) of the Constitution.
8. Id. at p.641 per Subba Rao, J.
9. See for instance, Madhu Limaye v. S.D.M. Monghyr, A.I.R. 1971 S.C. 2486; Ram Manohar Lohia v. State of Bihar, A.I.R. 1966 S.C. 740; Santokh Singh v. Delhi Administration, A.I.R. 1973 S.C. 10[illegible]

to the security of State as well as insurrection, riot, turbulance or crimes of violence but not acts which disturb only the serenity of others. For instance playing loud music in his own house causing annoyance and disturbance to others, though may affect public tranquility, cannot be deemed to be a violation of public order.[10] The scope and content of the expression public order and security of State has been stated by Justice Hidayatullah in these words:[11]

> "One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of India."

The gist of these pronouncements, it appears, is that a restriction can be imposed in the interest of public order

---

10. Madhu Limaye v. S.D.M. Monghyr, A.I.R. 1971 S.C. 2486 per Hidayatullah, C.J. at p.2495. In this case the constitutional validity of Section 144 and Chapter VIII of the Criminal Procedure Code 1898 were challenged. The Court upheld the constitutional validity of the impugned provisions.
11. Ram Manohar Lohia v. State of Bihar, A.I.R. 1966 S.C. 740 at pp.758, 759. In this case an order of detention was made against the petitioner under the Defence of India Rules 1962 for preventing him from acting in any manner prejudicial to the public safety and the maintenance of law and order. The order was held to be outside Art.19(2) of the Constitution as the term maintenance of law and order is wider than 'public order.'

only when there is some danger to the public at large posing a threat to public peace. A mere criticism of the Government and its policies or a criticism of the minister cannot in the absence of any proof regarding force be treated as a violation of public order. An aggravated form of public order which undermines the very existence of State either by preaching war or by internal rebellion constitutes a threat to security of State. Whether an activity endeangers security of State of public order or one merely affecting public tranquility depends on the degree of gravity of the act in question. In the first two categories it appears that the State may impose a valid restriction whereas in the third category no restrictions can be imposed under Article 19(2). However, there is no watertight division between these categories and therefore, much will depend upon the circumstances of the transaction. This, naturally, confers a wide discretion on the authorities concerned. They have to exercise the discretion properly; otherwise the restriction can be deemed to be unreasonable. While censoring films for certification, the censorial authorities can ban a film or can order for deletion of some scenes in films on this

ground only when the above mentioned conditions are satisfied. It may further be emphasized that such objectionable matters in the films should have real likelihood of affecting security of State or public order.

Friendly relations with foreign States.

Depiction in a film of anything which has the effect of malicious and persistent propaganda against a foreign State having friendly relations with India may cause embarassment to the Governments of both the countries. This may go to the extent of straining Indian's relationship with that State. Inevitably the practice has to be banned. The terms 'friendly relations with foreign States' if broadly interpreted may include even a criticism against the foreign policy of the Government of India.[12]

The Board as well as the Government appears to be hypersensitive in this area. Usually, they even object to scenes in films having a mere reference to the history,

---

12. Jain, M.P., Indian Constitutional Law, p.453 (1978).

culture or social life or mores of foreign countries.[13] Criticising this practice the Khosla Commission maintains that there is no need for such a super sensitiveness to all such objections from foreign countries. The Commission is of the view that "to extend this inhibition to the absurd limit of being afraid of the slightest objection from an over-sensitive foreigner is not consistent with our dignity and freedom."[14]

The film censor has to bear in mind this aspect of the problem. It appears that the censor can validly object to a film on this count only for a wilful attempt to tarnish a foreign State which has friendly relations with India or if

---

13. The Khosla Report, op.cit., p.113. The Commission cited some examples of excisions of scenes on these grounds in films "African Queen", "From Russia with Love", "Dr. Zhivago" and "Naked Prey". (Ibid). However, all these films were foreign films. Indian films deal with these subjects only sparingly. However, the directions issued in 1960 enjoined the Board to object to such scenes. The 'directions' enjoined the Board not to permit the depiction of a scene if it was intended or likely to wound the succeptibilities of any foreign nation or which was likely to arouse disrespect for a foreign country or likely to embarass the relations of the Government of India with any foreign Government or which contained a dispairing reference to the people of a country or the head of a foreign State. For a text of the 'directions' see, id. at pp.19-22. The present directions in force omit all these explanations and simply authorise the Board not to permit films containing anything likely to strain the friendly relations with foreign States. (For the text of the present directions see infra Appendix II).
14. Ibid.

the effect of the film is to strain the relationship of that State with India. At any rate, it may be conceded that the Board is not at all competent to judge films on this ground because the Government is the best judge to decide whether or not a film is against its friendly relations with foreign States.[15] Thus, practically the censor has to accept the claims of Government.[16] Still, as envisaged elsewhere,[17] an independent Board with dignity and high status consisting of eminent personalities will be in a position to determine impartially the claims of Government. In case of disagreement with the decision of the Board, the Government can approach the appellate tribunal, which with its qualified personnel can render an unbiased decision.[18]

Incitement to an offence.

For an effective suppression of crimes, it is necessary to punish those who instigate or aid or abet the commission of an offence over and above the actual wrongdoer. The

---

15. The working Group on National Film Policy is of this view and suggested that an appeal has to be heard by the Central Government against the decision of the Board on this question. See Report of the Working Group, p.77. However, the flaw in the argument is that in such a case, the appellant and the judge will be one and the same person. Here the Government of India, being the aggrieved party, has to prefer an appeal. See also supra, Ch.4 n.91.
16. This in turn may lead to a criticism that the Board is subject to the influence of the Government.
17. See infra, Ch.13.
18. For a discussion on Appellate Tribunal, see supra, Ch.4, nn. 142-152.

Constitution, therefore, permits the State to impose a reasonable restriction on the exercise of the right to speech and expression for the purpose of preventing incitement to an offence. Incitement to commit serious offences like murder or waging war against the Government of India can also be treated as an action against the security of State. Such incitement can be validly prohibited.[19]

According to the General Clauses Act,[20] an offence means any act or omission made punishable by any law for the time being in force. It may therefore be possible for the State to create any offence by a law and then the incitement to commit that offence can also be made punishable. Accordingly, one eminent commentator on the Indian

---

19. State of Bihar v. Shailabala, A.I.R. 1952 S.C. 329; Santokh Singh v. Delhi Administration, A.I.R. 1973 S.C. 1091. In the former case respondent, the keeper of a press was asked to furnish a security for publishing a pamphlet alleged to be against S.4(1) of the Press (Emergency Powers) Act 1931. The section dealt with words or signs or other visible representations providing an incitement to commit an offence of murder or other cognizable offences. The Court upheld the constitutionality of the Act. However, the Court found that the pamphlet was not violative of S.4(1). In the later case, the appellant prayed for quashing a charge framed against him by the First Class Magistrate, New Delhi under the Punjab Security of State Act 1953. The said section authorised the State authorities to punish any speech, dissemination of rumours etc. on such a speech infringed the grounds mentioned in the section, which in turn was similar to the grounds mentioned in Article 19(2) of the Constitution. The Court upheld the validity of the section as well as the action taken under it.

20. The General Clauses Act 1897, S.3(38).

Constitution,[21] argues that "the freedom of speech can be effectively circumscribed as any subject can be precluded from public discussion by making it an offence". However, it may be noted that the creation of the offence itself will be valid only if it is reasonable and that free speech can be regulated on the ground of incitement to commit an offence only if the offence relates to the other grounds mentioned in Article 19(2) of the Constitution. Obviously, incitement to commit an offence having no relation to any of the restrictive grounds mentioned in Article 19(2) cannot be invoked for the purpose of regulating freedom of speech and expression.

It has been suggested that since the phrase 'incitement to commit' is used along with the term security of State and public order, the incitement contemplated by Article 19(2) of the Constitution has reference only to an offence relating to security of State or public order. Accordingly, it has been held that a mere instigation not to pay tax will not amount to an incitement to commit an offence.[22] However, it may be noted that the phrase 'incitement to commit an offence' is used not only along with 'the security of State and public order' but also along with the other grounds mentioned in Article 19(2).

---

21. M.P.Jain, Indian Constitutional Law, p.453 (1978).
22. Kedarnath v. State of Bihar, A.I.R. 1962 S.C. 955.

Thus, as already discussed, it appears that incitement envisaged by this Article refers to an offence under all the grounds mentioned in Article 19(2).

It may not be possible for a film censor to object to a film on the ground that it contains an incitement to commit any offence. It can object only to those acts depicted in a film if such depiction constitutes an incitement to commit an offence directly related to the grounds mentioned in Article 19(2). Thus, in order to object to a film on the ground of incitement to commit an offence the Board has to decide two things. The first is whether there is an incitement to any offence at all and secondly, whether the particular offence has a rational relation with the grounds mentioned in Article 19(2).

Morality and Decency.

Another ground on which a reasonable restriction can be imposed on the exercise of freedom of speech and expression is 'in the interest of morality and decency'. These are terms of wide import having no fixed meaning. Society being dynamic, the norms of decency and morality have to change its colour in tune with the changing norms in society.

As these terms are indefinable, the judiciary in India have not attempted to define these terms.[23] Lord Simon opined that morality and decency are not synomimous. The former refers to standards accepted by the general public and upheld by all law abiding citizens. The latter refers to the feelings of that section of the general public likely to be exposed to the offending material. In short, public morality has to be ascertained in a generic way as the moral standards available in society at a particular time whereas indecency refers to ethose matters considered as repulsive or disgusting by a particular section of the public to whom it is exposed irrespective of whether it is immoral or not.

Indecency is not concerned with the morals of individuals but the object of prohibiting indecent publication is to protect the right of a significant section of the public against an affront to his sense of aesthetic propriety.[24] Thus, the concept of decency is wider than that of morality. Though the society does not consider a matter as morally taboo, a section of public may consider the same as indecent.

---

23. Knuller Ltd. v. Director of Public Prosecutions, [1973] A.C.435 at pp.494, 495. See also infra, Ch.5, n.65.
24. Geoffrey Robertson, Obscenity, p.174 (1979).

True, the concept of obscenity falls within the comprehension of indecency or immorality but the test of obscenity is more stringent than the latter.

In the United States, obscenity has never been considered as part of free speech.[25] The judiciary for the first time laid down a test of obscenity in Roth v. United States.[26] The test is "whether to an average person, applying contemporary community standards, the dominent theme of the material taken as a whole appeals to prurient interest."[27]

Later decisions sought to explain the Roth test.[28] Even then, these 'tests' were far from satisfactory and in their

---

25. See Roth v. United States, 354 U.S. 476 (1957); Near v. Minnosota, 283 U.S. 697 (1931); United States v. Reidel, 402 U.S. 351 (1971); Miller v. California, 413 U.S. 15 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973); Carol Vance v. Universal Amusements Inc., 445 U.S. 308 (1980). However Justice Black and Justice Douglas consistently maintained that First Amendment made no exception to obscenity.
26. 354 U.S. 476 (1957).
27. Id. at p.489 per Justice Brennan.
28. It has been maintained that in order to constitute obscenity, the material must not only be one appealing to prurient interest but shall also be patently offensive. Manual Enterprise v. Day, 370 U.S. 478 (1962). The term 'community standards' was interpreted to mean the standards of society at large. (Jacobellis v. Ohio, 378 U.S. 184 (1964). The pandering effect of the material in question was considered as a relevant criteria in determining obscenity. (Ginzburg v. United States, 383 U.S. 463 (1966). The Court further permitted the adoption of a variable standard in dealing with obscenity to minors. (Ginsberg v. New York, 390 U.S.629 (1968).

application to concrete facts, they raised a Pandoras' box of questions. The unsatisfactory nature of various tests together with the liberalism of the judiciary towards obscenity charges resulted in an unprecedented rise in dealing with sexual matters.[29] Not surprisingly, the Supreme Court adopted a new test in Miller v. California,[30] considerably modifying the earlier tests. Chief Justice Berger laid down the following test[31] of obscenity:

(a) Whether the average person, applying contemporary standards would find that the work, taken as a whole, appeals to the prunient interest.

---

29. ACommentator has observed:

"The indefiniteness resulting from these "several tests" had the effect of providing publishers, movie-makers, and others wide lattitude in the treatment of sexual matters in their works. Consequently, there was a major boom in so called smut and pornography in the late 1960s and the early 1970s. As never before, motion pictures with 'X' ratings for "Adults Only" depicted graphically a wide variety of sexual activities.... Alarmed at this trend, many Americans pointed an accusing finger at the Supreme Court as a major casual agent of this crisis in morals."

Lucius J. Barker and Twiley, W. Barker, Civil Liberties and the Constitution: Cases and Commentaries, p.101 (1978).

30. 413 U.S. 15 (1973). A California Statute provided for penalties for knowingly distributing obscene matters. After a jury trial the appellant was convicted under the Act for mailing unsolicited advertisement brochures containing pictures and drawings explicitly depicting sexual activities. On appeal, the United States Supreme Court remanded the case for trial according to new test laid down by the Court.

31. Id. at p.24.

(b) Whether the work depictes or describes, in a patently offensive way, sexual conduct specifically defined by the applicable State law; as written or authoritatively construed; and

(c) Whether the work, taken as a whole lacks serious literary, artistic, political or scientific value.

The new test thus substituted the old test of national standards by contemporary community standards. The prior requirement that the material must be shown to be "utterly without redeeming social value" was rejected. Now it is sufficient to show that the material "lacks serious literary, artistic, political or scientific value." Even in spite of the improvement, the new test also fails to provide a satisfactory definition to obscenity.[32] Because of the indefinable nature of obscenity the Court always insisted that a

---

32. As observed by Justice Brennan, the various tests were inadequate to reduce the vagueness. He rightly observed:

> "Although we have assumed that obscenity does exist and we 'know it when we see it', we are manifestly unable to describe it in advance, except by reference to concepts so elusive that they fail to distinguish clearly between protected and unppotected speech."

<u>Paris Adult Theatre I v. Slaton</u>, 413 U.S. 49 at p.84 (1973) (dissenting judgement).

penalty can be imposed for obscenity only after a prompt determination of obscenity in a proceedings which itself must ensure strict procedural safeguards.[33]

In Britain obscenity was considered as a common law offence[34] in early days. In 1858, the first Obscene Publications Act was enacted making it a statutory offence to publish obscene matters. However, the Statute did not contain a definition of 'obscenity.' The test to determine obscenity was laid down by Chief Justice Cokeburn in R. v. Kicklin[35] in the following words:

---

33. Thus for instance, in South Eastern Promotions v. Steve Conrad, 420 U.S. 546 (1975), a municipal committee refused to lend its theatre for presenting an article production, "The Hair", on the ground that it was obscene. The Supreme Court maintained that while deciding the question of obscenity, the authority had to follow a fair procedure as laid down in Freedman v. Maryland, 380 U.S. 51 (1965); (See supra, Ch.6 nn.74-78). The Court reiterated the same view in Carol Vance v. Universal Amendment Inc., 445 U.S. 308 (1980). In this case the Supreme Court rejected an injunctive procedure for prohibiting the exhibition of obscene films on the ground that it lacked procedural safeguards.
34. For a detailed discussion on the development of obscene laws in England, see Geoffrey Robertson, op.cit., pp.15-44; Harry Street, Freedom, the Individual and the Law, pp.119-126 (1972).
35. (1868) L.R. 3 Q.B. 360. A magistrate ordered for the dèstruction of a pamphlet 'The Confessional Unmasked" which contained obscene extracts from religious confessions. Upholding the verdict the court laid down a test for determining obscenity.

> "....whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

This test has been adopted as a basic premises by all common law countries. However, the gloss put on to the test[36] and the prosecution of works of high literary standards[37] necessitated some modification in the above test. Accordingly, the Obscene Publications Act 1959 adopted a new test. The test as modified by the Obscene Publication Act 1964 provided that obscenity has to be determined with reference to the matter taken as a whole.[38] The statute provided for some important defence to the accused including the defence of public good.[39]

---

36. The Hicklin test did not specifically provide that obscenity had to be determined with reference to stray words or relevant passages only. However, some subsequent cases, interpreted the test in such a narrow way. Cf. Paget Publication Ltd. v. Watson, [1952] 1 All E.R. 1256 per Lord Godhard, at p.1257.
37. For a brief discussion see Harry Street, op.cit., pp.122-123.
38. Id. S.1. See supra Ch.5, n.67.
39. Id. Ss.2 and 4.

The Supreme Court of India in Ranjit Udeshi v. State of Maharashtra[40] adopted the Hicklin test with some modifications. Without trying to define the indefinite, the Court explained the content of the term 'obscene.' According to the Court the test of obscenity is the tendency of the material to deprave and corrupt, judged according to the present day community standards.[41] At the same time the Court underlined the need for considering the artistic presentation of the material.[42] Where obscenity and art are mixed, art must be so preponderating as to throw obscenity into shadow or render obscenity so trivial and insignificant that it can be overlooked.[43] Even though an overall view of the matter in the setting of the whole work is essential, obscene matter must be considered separately to find out its effect.[44] The Court further observed that

---

40. A.I.R. 1965 S.C. 881. This was an appeal against conviction of the appellant under S.292 of the Indian Penal Code. The appellant was convicted for publishing the celebrated novel "Lady Chaterley's Lover", written by D.H. Lawrence. The Supreme Court laid down a test for obscenity. However, the Court, applying the standards laid down by it found that the publication in question was not obscene.
41. Id. at p.888.
42. Id. at p.889.
43. Ibid.
44. Id. at p.888.

obscenity is treating with sex in a manner appealing to the carnal side of human nature or having such a tendency.[45]

In Britain and in the United States an exhibitor of cinema can be tried for obscenity and therefore the test of obscenity has some relevance in the field of exhibition of films. As film censorship in these countries are carried on by the film industry itself there may be some justification for resorting to a trial for obscenity.[46] But in India, the position is entirely different. In theory[47] and in practice,[48] no person can be tried for an obscenity charge for exhibiting a certified film.

The duty of the censor is not confined to determination of obscenity alone; it includes something more. The censor is duty bound to determine whether the film in

45. Id. at p.889.
46. For a discussion, see supra Ch.2. However, in England the reasons for extending the provisions of the Obscene Publication Act 1959 to cinema were peculiar. For a discussion, see supra Ch.5, nn.68-79.
47. In India, an official authority is entrusted with the task of censorship of films and therefore there is no theoretical justification for applying the criminal law model over and above the official censorship system. For a discussion, see supra Ch.2.
48. Proviso to S.5A(1). See also Rajkapoor v. Laxman, (1980)2 S.C.C. 175. For a discussion of the point, see infra Ch.10, nn.29-38.

question is contrary to the accepted standards of society and further, whether or not it is morally objectionable, the film is shocking or disgusting to the film viewer. In Abbas v. Union of India[49] the Supreme Court instructed the censors to adopt and apply the test of obscenity laid down in Udeshi[50] case. Since the film censors are competent to adjudge the suitability of film on a much wider plane, the above instruction appears to be a misconceived one.[51]

Contempt of Court.

Lord Russel, C.J.,[52] defined contempt of court thus:

> "Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower the authority is a contempt of Court .... Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court is a Contempt of Court."

---

49. A.I.R. 1971 S.C.481 at p.497.
50. Ranjit D. Udeshi v. State of Maharashtra, A.I.R. 1965 S.C. 881. For a discussion of the case see supra, n.40.
51. See also supra Ch.7, nn.61,62.
52. R. v. Grey, |1900|2 Q.B. 36 at p.40. The condemner published an article containing personal scurrilous abuse of a judge for his observations in an earlier indecency proceedings. A contempt proceedings was initiated against the author of the article. The Court punished him for contempt.

The practice of committing for its own contempt started by the Star Chambers. Later, the practice was judicially approved in 1765.[53]

The object of contempt proceedings is two-fold. It ensures a fair trial in judicial proceedings. It prevents the bringing of the authority and administration of law into disrespect.

In India the principle has been followed for a long time. The present law on the subject is contained in the Contempt of Court Act 1971. The Constitution of India also empowers the Supreme Court and High Courts to punish for its contempt.[54]

Section 2 of the Contempt of Courts Act 1971 defines contempt of court as including civil contempt and criminal contempt. Civil contempt means wilful disobedience to any orders or other processes issued by the court or wilful disobedience of any undertaking given to the court.[55]

---

53. R v. Almon (1765) cited in Harry Street, op.cit., p.155; The law regarding contempt of court in England is now regulated by the Contempt of Court Act 1981, C.49.
54. Art.129.
55. The Contempt of Courts Act 1971, S.2(b).

Criminal contempt includes any act or statement scandalising or tending to scandalise or lowering or tending to lower the authority of any court or prejudicially interfering or tending to interfere with the due course of any judicial proceedings or obstructing or tending to obstruct the administration of justice in any manner.[56] However, an innocent publication cannot be characterised as contempt of court.[57] The Act further makes it clear that any publication with respect to a matter which is not pending will not amount to contempt of court.[58] The Act provides for some exceptions to the offence[59] including a fair criticism of judicial acts.[60]

A libellous reflection upon the conduct of a judge may not always amounts to contempt. Such a scurrilous attack on a judge will amount to contempt only when it is calculated to obstruct or interfere with the due course of

---

56. *Id.*, S.2(c).
57. *Id.*, S.3.
58. *Id.*, S.3(2). Explanation to S.3 illustrates when a judicial proceedings is said to be pending. Under this provision, a proceedings is deemed to continue to be pending until it is heard and finally decided. In *Ram Dayal* v. *State of M.P.* (A.I.R. 1978 S.C. 921) the Supreme Court maintained that a proceedings is pending till the disposal of an appeal or revision and in the absence of an appeal or revision till the expiry of the period of limitation provided for an appeal or revision
59. *Id.*, Ss.3 to 9.
60. *Id.*, S.5.

justice or proper administration of law.[61] However, the courts time and again made it clear that a fair criticism of the judgment in good faith would not amount to contempt of court. Lord Justice Salmon observes:[62]

> "The authority and reputation of our courts are not so frail that their judgments need to be shielded from criticism.... It is the inalienable right of everyone to comment fairly on any matter of public importance. This right is one of the pillars of individual liberty - freedom of speech, which our courts have always unfailingly upheld. It follows that no criticism of a judgment however vigorous can amount to contempt of court, providing it keeps within the limits of reasonable courtesy and good faith."

In England, the judicial awareness of the fact that a fair criticism is very essential for maintaining the high quality of judgments, has resulted in greater tolerence towards criticism.

The above legal exposition has been accepted by the judiciary in India. In E.M.S.Namboodiripad v. T. Narayanan Nambiar[63] the Supreme Court held that scandalising the

---

61. Bathina Ramakrishna Reddy v. State of Madras, A.I.R. 1952 S.C. 149. In this case the publisher and managing editor of a weekly was charged for contempt of court for publishing an article against a Sub-Magistrate describing him as a bribe taker and specifying various instances of his illegal activities.
62. R v. Commissioner of Police, ex-parte Blackburn(No.2), [1968|2 All E.R. 319 at p.320,321. In this case contempt proceedings were started against Quintin Hogg for publishing an article in the 'Punch' criticising, rather savagely, a judgment of the Court of Appeal.
63. A.I.R. 1970 S.C. 1013.

judiciary by charging it as an instrument of oppression, accusing judges as dominated by class hatred instinctively favouring the rich, and imputing that judges often acted against their conscience amounted to contempt of court. According to the Court, such an allegation was not a fair criticism because the allegation had the tendency to interfere with the course of justice by lowering the image and dignity of judges and courts in the eyes of general public and thereby to shake the confidence of people in judiciary. It appears that the Indian judiciary is not prepared to show a greater degree of tolerence towards criticism[64] as manifested by English Courts. However, recently the Kerala High Court[65] held that a criticism which prima facie appeared to be more vitriolic than the one involved in the E.M.S. Nambudiripad's case and made by a retired Supreme Court judge, did not constitute contempt of court because the object of such a statement was not to lower the reputation and good image of the judiciary but with the laudible object of improving the system of administration of justice.

---

64. See for example In re Syamlal, A.I.R. 1978 S.C. 489 and In re Mulgaokar, A.I.R. 1978 S.C. 727. For a comment see Seervai, Constitutional Law, Vol.I, pp.519-522(1982). See also Vincent v. Gopalakurup, 1982 K.L.T. 151.
65. Vincent Panikulangara v. Justice V.R.Krishna Iyer, 1983 K.L.T. 829. The proceedings were instituted against Justice Krishna Iyer for some of his observations in a conference of advocates.

As noted above, one of the cardinal objectives of punishing contempt of court is to ensure a fair administration of justice. Any act or statement likely to affect the prospects of a fair trial amounts to contempt of court. A comment about a pending issue or about a person involved in it may adversely affect the proceedings. In England, contempt of court proceedings are not uncommon for comments in the media about pending cases[66] or on incidents about which there is a real prospect for a subsequent judicial proceedings. Although, the intention of the person making the comment is immaterial, lack of knowledge about the pendency of the case, or about the real likelihood of future proceedings, have been accepted as valid defence.

As said above, in India, the Contempt of Court Act 1971 specifically provides that an act or statement relating to any matter which is not pending will not amount to contempt of court.[67]

---

66. For a description of various instances see Harry Street, op.cit., pp.155-169.
67. The Contempt of Court Act 1971, S.3(2). A civil case is deemed to be pending when it is initiated by filing a plaint or otherwise. A criminal case is deemed to be pending, when it relates to the commission of an offence when the charge sheet or chalan is filed or when the court issues summons or warrant against the accused and in any other case when the court take cognisance of the matter. Id. Explanation to S.3.

It is a usual practice of film makers to select events which have a public appeal for making films. Usually sensational criminal offences are selected for this purpose. At the time when it is ready for public exhibition, the criminal proceedings may have started and in such an event, the exhibition of the film may constitute a contempt of court. Such films dealing with sensational issues were freely allowed by the Board, without looking into the question whether proceedings have been already initiated or not. It therefore appears, that the Board is not aware of the ramifications of the offence.

However, is there a real necessity for initiating contempt proceedings in such cases? The very object of initiating a contempt proceedings is that such prior comments may prejudice the mind of the judge. Is our judiciary so weak as to be influenced by a prior comment? The judges are trained for appreciating evidence in an impartial manner. In the circumstances it appears that a prior comment on a pending issue may not, in any way, interfere with the free flow of justice. There is no rational basis for initiating contempt proceedings in such cases.

Defamation.

Defamation is both a crime and a civil wrong. It is the tarnishing of a person's image in the estimation of right thinking members of society.[68] As far as the films censors are concerned they are not in a position to know whether a film contains any defamatory matter. It is therefore impossible for them to decide the issue. As suggested elsewhere in this thesis[69] the only feasible method is to provide a post-decisional hearing to the aggrieved person or to confer on him the right to file an appeal before the Appellate Tribunal.

The forgoing discussion reveals that the guidelines provided in the Act for the guidance of censors are not

---

68. For a discussion on defamation see Winfield and Jolowiez on Torts, pp.245-305 (1971). Defamation is defined thus:
"Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person." at p.245.

69. See infra Ch.10,

within the easy comprehension of an average man. It is therefore necessary to give proper explanations to the various grounds discussed above. It appears that the mechanics of 'directions' can be resorted to for this purpose.[70]

---

70. See <u>supra</u> Ch.7,

PART IV

MECHANICS OF CENSORSHIP

Chapter 9

CLASSIFICATION OF FILMS

Certification of cinematograph for public exhibition mainly involve three processes.[1] The first process is determination of the suitability of the film for public exhibition. Immediately after the preview of each film, the members of the Examining Committee discuss the film in its general setting to determine whether the film as a whole and its theme in particular is acceptable. At this stage, the discussion will be held in the light of the guidelines contained in the Act[2] and the directions issued by the Central Government.[3] If the film is found to be unsuitable for public exhibition, it has to be rejected.[4] During this stage, the suitability or otherwise of the film is decided with reference to all classes of audiences. Since the adults being a common factor entitled to see all categories of film, naturally, the main consideration will be the

---

1. For an illuminating discussion about the procedure in certification of films see Richard H. Levin, "Hearing Procedures of Three Indian Administrative Agencies," 4 J.I.L.I. 205 (1962) at pp.206-214.
2. S.5B(1) of the Act. For a text of the section see Appendix I.
3. Id. S.5B(2) This section authorises the Central Government to issue directions to the Censors. The Central Government, in pursuance of the provisions, have issued directions from time to time. For a text of the current directions see infra Appendix II.
4. Id. S.4(1)(iv).

general acceptability of the film by adult audiences. However, a total rejection of film is very rare in India.

The second process in certification, practically the most important one, is the allocation of a suitable category. The classification is made on the basis of the suitability of the film to different classes of audiences.[5] The censors exercise wide discretion in this area. The initial determination of category, it appears, is not on the basis of any prefixed principles but on the basis of the theme and overall setting of the film in question. Of course, here also the censors are broadly guided by the norms contained in the Act and the 'directions'.

The third process, an equally important one, is the identification of objectionable scenes. Once the category is fixed, the censors have to determine whether cuts are necessary to accommodate the film in that category.[6]

---

5. Id. S.5A(1).
6. Id. S.4(1)(iii). Generally, the grouping of audiences is based on age. However, in the case of 'S' category, the classification is not on the basis of age. See supra Ch.4, n.109.

As discussed above[7] a scene or sequence in a film can be objected to by censors only if it falls within the scope of the matters enumerated in Section 5B(1) of the Act. The 'directions' issued by the Central Government affords more guidance in this respect. In relation to matters adversely affecting public order, security of State, friendly relations with foreign States, sovereignty and integrity of India or involving defamation or contempt of court, the question whether such scene/scenes can be tolerated by any particular class or group of the public do not arise at all. The objectionable scenes have to be removed irrespective of the category assigned to the film.[8] However, if on the other hand, the unsuitability is in relation to public decency or morality or in relation to incitment to an offence, the censors have to adopt a variable standard

7. See _supra_ ch.8.
8. It may be noted that in India films dealing with such matters are very few and therefore this part of the work of the Board is relatively unimportant. The competency of censors to censor films on these grounds is also a debatable issue. For instance, whether or not a film endangers friendly relations with foreign States can properly be determined by the Government alone and not by censors. See also _supra_ ch.8.

depending upon the age of cine-viewers. In otherwords, unsuitability of a material on these grounds will depend upon the category assigned to the film. A lion's share of the work of censorial authorities centre round censorship of sex and violence.

The need for classification.

The object of classification is protection of children. Even though there is some controversy regarding the need for censorship for adults, there is no serious opposition to the need for censorship to protect children from corrupting and depraving materials.[9]

---

9. The Khosla Commission remarks,
"Children and impressionable young boys and girls, however, form a special class which must be protected from evil and depraving influences, because unless so protected, they may disrupt the society and create disorder either by misguided action in their state of immaturity or because they may be deeply impregnated with the poison of evil that they grow up into depraved, anti-social, disorderly or criminal citizens, threatening peace and public order. The moulding of the child's character, his education and his moral and cultural development cannot be left entirely in parental hands and though the State may not find it practical to enact positive laws regarding what the child should read or see and how he must amuse himself, the State may well promulgate negative laws or regulations declaring certain noxious or baneful influences as undesirable and objectionable pabulum for young minds." Khosla Report, p.109. See also Guy Phelps, Film Censorship (1975), p.117.

The Constitution envisages India as a Welfare State. The State therefore, is bound to protect the interests of people including that of children. However, the State's duty in protecting the interests of children is further reinforced by the Constitution. The Directive Principles of State Policy impose a bounden duty on the State to protect children and youth against exploitation and against moral and material abandonment.[10] The classification system protects children and young persons from moral abandonment and thereby assists the State in implementing the directive.

The impact of film is more deep, persistent and lasting on children than on adults. Audio-visual aids have proved to be more efficient in the educational field than other methods.[11] Undoubtedly, film exerts considerable influence in the minds of children. It plays a significant role in shaping their attitudes. The Khosla Commission,[12] opines that the unholy film-trinity love, sex and violence - has greatly contributed in fermenting activities against the

---

10. Constitution of India, Art.39(f). See also supra ch.7 n.43.
11. Khosla Report, p.61.
12. Id., pp.61-68.

accepted norms of society among children.[13] They believe the distorted and artificial versions shown in films to be true. The exhibition of films dealing with gangesters, crimes, and new and easily made weapons may provide sufficient stimulation to deliquency.[14] Films dealing with horror or frightsome matters have the effect of adversely affecting soundness of sleep and they thereby injuriously affect the health of children.

All these factors point out to the need for different yardstick in guaging the suitability of films for children than the one used for adults.

Classification, as a regulatory technique, gathered momentum only during recent years. Even though in India, the classification system started in 1951,[15] for a long time

---

13. This opinion was based on the Payne Fund Studies, twelve studies - "of the influenze of motion pictures upon children and youth", published in 1933 by the Committee for Educational Research of the Payne Fund at the request of the National Committee for the study of the social values in Motion Pictures.
14. The role of cinema in moulding delinquent behaviour is still adebatable issue. Various sociological surveys in recent years produced divergent results. For a discussion on recent studies regarding the effect of mass media on children, see Guy Phelps, op.cit., pp.213-234.
15. The classification system was introduced by the Cinematograph (Second Amendment) Act 1949 which came into force on 15th January 1951. The same provision was incorporated in Section 4 the Cinematograph Act 1952.

the Board was empowered to classify film only into two categories - U and A categories. The 'U' category meant for unrestricted public exhibition of films whereas the 'A' category meant for public exhibition restricted to adults only.

The two category system was hopelessly insufficient to protect the interests of children. Finally, the Cinematograph (Amendment) Act of 1981 adopted a more viable system giving emphasize to the mechanics of classification.[16] The change in the name of the censorial authority from the 'Central Board of Film Censors' to the 'Central Board of Film Certification' itself shows the emphasis on classification.[17]

Constitutionality of classification.

A classification system imposes restriction on the exhibition and thereby on the circulation of cinema. In an 'A' certificate film persons below the age of eighteen is excluded. When some cuts are proposed as a condition precedent for the grant of a junior certificate, adults are precluded from materials to which they are entitled to access.

16. It introduced a new category viz. UA category. This new category is intended to give advice to the parents that the film in question may not be suitable for children below twelve years of age.
17. The change was effected by the Cinematograph (Amendment) Act 1981.

A system of classification therefore constitutes a restriction on the right to freedom of expression of the film maker/distributor.[18] As said above, the State has a special interest, and a responsibility to protect, the moral as well as the material well being of the children.[19] Since the subject of classification is to protect such interests of children, a system of classification of film, it appears, imposes only a reasonable restriction the exercise of the right to freedom of expression.[20]

---

18. Freedom of speech and expression includes the freedom to propagate ideas which is ensured by freedom of circulation. See Romesh Thappar v. State of Madras, A.I.R. 1950 S.C. 124; (See supra Ch.8 n.5); Sakal Papers (P) Ltd. v. Union of India, A.I.R. 1962 S.C. 305. Here a governmental order seeking to restrict the number of pages of a newspaper according to the price charged and further regulating the area of advertisements was held to be an unreasonable interference with the freedom of the press. In Abbas v. Union of India, A.I.R. 1971 S.C. 481, the Court proceeded on this assumption.
19. See supra, n.10.
20. In the United States, a system of age classification in the area of obscenity is approved. See Jacobellis v. Ohio, 378 U.S. 184 (1964), Ginzburg v. United States, 383 U.S. 463 (1966), Mishkin v. New York, 383 U.S. 502 (1966), Redrup v. New York, 334 U.S. 916 (1966). It has been claimed that no age classification can be adopted for constitutionally protected speech. See "Comment: Exclusion of Children from Violent Movies", 67 Col. L. Rev. 1149 at p.1157 (1967). Cf. "Notes and Comments: 'ForAdults only' the Constitutionality of Governmental Film Censorship by Age Classification", 69 Yale L.J. 141 at p.150 (1959), where the commentator argues that the

(contd...)

Scope of classification of films.

On the device of classification be used for protecting the children from anything which is not a good mental diet for them? Take, for instance, a horror film. It certainly will frighten him, disturb his sleep and will adversely affect his health. It may also create some adverse psychological effect on him. Exclusion of children from such a movie is not only just and reasonable but also necessary for his physical as well as mental wholeness. However, it appears that such classification will be invalid because a restriction on such a ground does not come within the scope of the matters enumerated in Clause (2) of Article 19. It is a well settled rule that a restriction, on the right to freedom of speech and expression though reasonable is valid only when it relates to any of the matter enumerated in sub-clause (2) of Article 19.[21] If the system of classification is adopted merely as an advising technique without

(f.n.20 continued)
general considerations for unconstitutionality may not weigh with censorship for children. A test different than the one for adult censorship can be used in age classification. See also, "Note: Entertainment: Public Pressures and the Law", 71 Harv. L.R. 326 at p.342 (1957).

21. For a discussion, see *supra*, Ch.8.

any coersive force behind there may not be any legal impedement because no restriction at all is involved in the process. As there is no legal sanction behind it, a self-regulatory system appears to be more plausible in this respect.[22]

As discussed above, in India decency and morality and incitement to commit offences are the only grounds on which a classification can be resorted to.[23] However, it appears that depiction of violence short of shocking or disgusting the children or providing an incitement to commit an offence other than those connected with the grounds mentioned in Clause (2) of Article 19 cannot be legally objected to by the censors.[24] However, any matter injurious to the interests of children but beyond the purview of the permissible grounds of restriction can be easily made innocuous by adopting a

---

22. One commentator argues that even a system of age classification adopted by the industry in the United States shall be subjected to First Amendment guarantee. A system of classification of movies is a governmental function and a private authority shall not be permitted to carry on such a function with the tacit approval of government without following the norms laid down by the court. Jane M. Friedman, "The Motion Picture Rating System of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry", 73 Col. L.R. 185 at pp.221-222 (1973).

23. See supra, text accompanying n.8.
24. For a discussion, see supra, pp. 235, 236

purely advisory category for such films.[25]

British system of classification.

A two tier system of classification was adopted by the British Board of Film Censors from the very beginning.[26] Films were classified into two categories - 'U' and 'A'. The 'U' category was intended for film 'especially suitable for children.' The 'A' category was assigned to films 'generally suitable' for public exhibition. The Board functioned only as an information service to public and no restriction on the basis of age was therefore imposed for admission to films.[27]

An important change occurred in 1921 when the licensing conditions of the London County Council provided that no child below sixteen years could be admitted to an 'A' film unless accompanied by parent or bona fide adult guardian. This rule, for the first time, imposed restrictions on admission to cinema on the basis of age of audience. Despite

---

25. See supra, n.22.
26. For a detailed discussion on the classification of film by the British Board of Film Censors see Trevelyan, What the Censor Saw, pp.81-92 (1973); Guy Phelps, Film Censorship, pp.112-143 (1975); Hunnings, Film Censors and the Law, pp.140-148 (1968).
27. However by 1916, a change occurred, the emphasis on children in the 'U' category was dispensed with. Thereafter the 'U' category certification meant that the film was "not actually harmful" to children. Hunnings, op.cit., p.140.

the objection of the industry most of the County Councils adopted the London County Council rule. By 1923 this requirement became a standard form of licensing condition and the Home Office recommended the adoption of the condition by all County Councils.

The main criticism against this rule was that it imposed a heavy burden on cinema managers, a burden practically impossible to carry out, to determine the age of the child, the age of the guardian and whether such guardian was a <u>bona fide</u> guardian or not. Serious objections were raised by welfare bodies who were worried about the practice of children waiting outside theatres showing 'A' films and requesting strangers to take them in. These criticisms persuaded the Wheare Committee[28] to recommend that the rule should be discontinued.[29] However the proposal was not given effect to until 1970.[30]

---

28. For a discussion about Wheare Committee see Hunnings, <u>op.cit.</u>, pp 118,119; Trevelyan, <u>op.cit.</u>, p 52.
29. The Wheare Committee observed:
    "The present a film rule (under which children may not see films in category 'A' unless accompanied by parent or adult guardian) is unworkable, largely disregarded and should also be discontinued."
    Report, Recommendation 18, <u>Cmd</u>. 1946, p.82 quoted in Trevelyan, <u>op.cit.</u>, p.52.
30. A minor modification to this rule was effected in 1953. The rule permitted children below sixteen years of age to see an 'A' certificate film if accompanied by any person above the age of sixteen. See Trevelyan, <u>ibid</u>.

The proliferation of horror films during the thirties and the grave concern of local authorities over the increasing number of such horror films, forced the Board to introduce a new category for such films. Accordingly an H category was introduced in 1932. This was also an advisory category and therefore, no restriction was imposed on admission to films with 'H' certificate.

The Wheare Committee further recommended for the introduction of an 'X' category restricted to adults alone.[31] Although the Home Office did not want to give effect to all the recommendations of the Wheare Committee, it decided to implement this recommendation to introduce an 'X' category. The Board introduced the new category in 1951 with the concurrence of local authorities.[32] The 'H' category was finall absorbed into the wider 'X' category.[33]

---

31. Recommendation 19(a) of the Committee, Report, p.82 as quoted in Trevelyan, op.cit., p.52.
32. The first step towards the introduction of this category was taken by the Board in 1949 when it passed the film "The Snake Pit" for adults only as an experiment by making a special endorsement to that effect in the 'A' certificate.
33. However, it appears that there is no reason to prohibit all categories of children from horror films.

Consequent on the introduction of the 'X' category and the report of the Wheare Committee emphasis was again given to the interest of children. All film not suitable for children were grouped under the 'X' category. This process naturally resulted in a steady increase in the number of 'X' films,[34] which reached an alarming proportion in 1969.[35]

Ways and means were thought of to reduce the number of 'X' films. After a detailed discussion with the Home Office, the industry and local authorities,[36] the British Board adopted the following revised category system:[37]

Category 'U' - Passed for general exhibition.

Category 'A' - Passed for general exhibition but parents/guardians are advised that the film contains materials they prefer children under fourteen years not to see.

---

34. The reasons for such an increase in 'X' films are clearly depicted in the following observation. "Furthermore of course the Board was compelled to put into the 'X' catego quite a number of films that were suitable for older children but not for younger children, and because films made in other countries, including the United States, wer becoming increasingly frank in sex-scenes and increasingl violent each year the number of 'X' films increased." Trevelyan, op.cit., p.60.
35. In that year, the Board granted 91 'U' certificates, 114 'A' certificates and 219 'X' certificates. See guy Phelps, op.cit., p.115, Table I.
36. For a detailed discussion see Trevelyan, op.cit., pp.60-6
37. The new category system came into force on July 1, 1970.

Category 'AA' - Passed as suitable only for exhibition to persons of fourteen years and over. When a programme includes an 'AA' film, no person under fourteen years can be admitted.

Category 'X' - Passed as suitable for exhibition to adults. When a programme includes an 'X' film no persons under eighteen years can be admitted.

The new category system confer wide powers on the Board in protecting the interests of children. The 'U' category became essentially restricted to children.[38] The extreme strictness of the Board over the junior categories is clearly

---

38. The attitude of the Board towards the junior 'U' and 'A' categories has been described thus:

"The 'U' certificate is issued to films to which no parent could possibly object and to which any one over the age of five may be admitted (except in London where the minimum age is seven). Control over this category has tightened since the reorganisation of the classification system in 1970. Before that date the 'A' certificate excluded all unaccompanied children. Now that it has reverted to an advisory status, many films that might have been accepted as 'U' are rated 'A' instead. The 'U' certificate is thus reserved for entirely unexceptionable films, sometimes to an almost absurd degree....

If there is any doubt at all, an 'A' is given warning parents that the film contains something that might worry them. Sex and violence are kept to an absolute minimum and will only be allowed if essential to the plot."

Guy Phelps, op.cit., pp.117-118.

illustrated by the gradual decrease in the number of films passed under 'U' and 'A' categories since 1970.[39]

The new grading system enables the Board to use different degree for determining the acceptability of objectionable matters in films ranging from 'nil' and 'U' category to the maximum in 'X' category. Every classification based on age group is always bound to be arbitrary. Even though the classification on the basis of different age group is not entirely satisfactory, it provides the matrix for classification of fiàms in the interest of children. At the time when this new classification was introduced, it was hoped that censorship in films for adults would virtually become unnecessary.[40] The Board started a policy of liberalism towards 'X' films.[41] The attitude of the Board towards 'adults only' cinema is clearly depicted in its support to commercial cinema clubs.[42] The Board adopted a passive attitude towards the mushroom growth of such clubs during 1960s[43] eventhough the sole object

---

39. Id. Table I at p.115.
40. Trevelyan, op.cit., p.64.
41. Id. at p.122. Even then in extreme cases the Board exercised its censorial powers to ban films.
42. Hunnings, op.cit., p.146.
43. Id. at p.145.

of such clubs was to exhibit uncensored films mostly sex films of extremely vulgar types.[44] It maintained that there was nothing wrong in showing such films to special audiences who were prepared to see it.[45] The Board only prohibited the exhibition of such films undiscriminatingly to the public.

The American System.

The American film industry always opposed a system of classification of films because such a system would reduce the number of audiences as well as profits. However, the industry was never prepared to accept this ostensible reason but it sought to oppose the system of classification on loftier grounds of violation of the freedom of communication and encroachment into parental responsibility.[46]

---

44. For a discussion about the underground cinema, see Trevelyan, op.cit., pp.121-132.
45. See Hunnings, op.cit., p.146.
46. In 1966 the film industry declared:

    "We oppose censorship and classification-bye-law (or whatever name or guise these restrictions go under) because they are alien to the American tradition of freedom....

    In our society the parents are the arbiters of family conduct.

    Parents have the primary responsibility to guide their children in the kind of lives they lead, the character they build, the books they read, and the movies and other entertainments to which they are exposed."

    The Motion Picture Production Code (Revised) 1966. Reproduced in Trevelyan, op.cit., p.260.

Inspite of its vehément opposition to classification, the industry was forced to implement such a system in 1968.[47]

Classification by the Legion of Decency.

From 1936 onwards Legion of Decency[48] introduced a classification system. Films were reviewed by experts in the field of morality and decency and classified into various categories for advising the members of the church about the suitability of films. The classification was on the following basis:

A classification system was introduced by the Legion of Decency from 1936 onwards. Films are reviewed by experts in the field of morality and classified into various categories[49]

---

47. For a critical analysis of the classification system, see Jane M. Friedman, supra, n.22.
48. The Legion of Decency was set up by the Catholic Church in 1934. The main concern of the Church Legion is to review films. For a detailed discussion see supra, Ch.6, nn.94-96.
49. The classification confined exclusively to moral aspects of films. The Legion classified films into various categories - A1 to A4 depending upon its moral acceptability to minors, adolescents and majors; B, morally objectionable in part for all and C, condemned. For a further discussion see "Note, Entertainments, Public Pressures and the Law", 71 Harv. L.R. 326 at pp.359-361 (1957); Guy Phelps, op.cit., p.238.

for the guidance of the members of the church.[50] Presently, the grading by the Legion has no much influence over the people as it possessed during its hey-days.[51] Still, it continues to exert some influence. A producer who has an eye on the general audience has to bear in mind the rating standards of the Legion.[52]

In addition to, some other organisations also eagerly evaluated the contents of films.[53] However, the industry, in collaboration with some social organisations, published a bulletin known as the 'Green Sheet'. Apart from a brief appreciation of current films, it also allocated different grading to such films.[54]

---

50. The Legion also received support from the Protestants and the Jews. See supra, Ch.6, n.95.
51. Till the 1960s the Legion exerted considerable influence over people. But the influence gradually declined. In 1970, Fr. Sullivan, the then head of the National Catholic Office was heard to say that a film condemned by his office was being successfully shown in forty cinemas in the city of Chicago. See supra, Ch.6, n.105. For a discussion about the reasons for the decline in the influence of Legion, see supra, Ch.6, nn.102-105.
52. Trevelyan, op.cit., pp.193, 194. For a discussion about the financial effect of Legion rating upon motion pictures see, "Notes, Entertainment: Public Pressures and the Law", supra, n.49 at pp.361, 362.
53. For a discussion see "Note, Entertainments: Public Pressures and the Law", supra, n.49 at pp.362, 363.
54. See Jane M. Friedman, supra, n.22 at pp.196, 197.

The Rating system

As noted above, the industry itself started a classification system in 1968,[55] administered by the classification and rating administration through the rating office.[56] The office was given the power to classify each film into one of the following categories.[57]

G- Suggested for General Audience.

M- Suggested for Mature Audience (Parental discretion advised).

R- Restricted - persons under sixteen not admitted unless accompanied by parent or adult guardian.

X- Persons under sixteen not admitted.

The classification system was modified soon as the age limit was found to be unsuitable. The modified grading now provides for the following categories:

G- General audience.

PG- Parental guidance suggested. Some material may not be suitable for pre-teenagers.

---

55. For a discussion see supra, Ch.6, nn.113, 114.
56. For a discussion regarding the structure and function of the Rating Authority, see Ch.6, nn.115-118.
57. For an examination of the procedure employed by the Rating Office, see Jane M. Friedman, supra, n.22 at pp.192, 193.

R- Restricted. Under seventeen requires accompanying parent or guardian.

X- No one under eighteen admitted.

The grading system was intended to protect children. The industry accepted the system presumably on the assumption that grading would relieve them of their social responsibility, so vehdmently advocated by the industry,[58] and thereby would provide them with more freedom in depicting sex and violence. There were serious doubts about the acceptability of grading system by the people because of its infringement of parental responsibility. But these doubts were soon proved to be baseless.[59]

The submission of films to Rating Board is purely voluntary. Anyhow the members of the association of the

---

58. In the 1966 revision of the Code, the Motion Picture Association of America stated:
"The men and women who make motion pictures under this Code value their social responsibility as they value their creative skill. The Code, and all that is written and implied in it, aims to strengthen both these values."
Reproduced in Trevelyan, op.cit., pp.261, 262.

59. Evidence show that by 1973, 63 percent of those surveyed found the system of classification to be very useful and only 27 percent found it to be unuseful. See 'Variety,' 12th September 1973, as quoted in Guy Phelps, op.cit., p.236. See also the results of surveys conducted at the instance of the industry as reproduced in Jane M. Friedman, supra, n.22 at p.196 and n.88 thereat.

industry are bound by agreement to submit films to and accept the classification of, the Rating Board. Lack of sanction to enforce this agreement is a major drawback of the system. Unlike the British Board, the Rating Board has no power to cut films[60] with the result that all films submitted for classification and found to be unsuitable for other categories have to be dumped into 'X' category. The members of the association could, without violating their agreement with the association, exhibit a film with 'X' certificate without even submitting it to the Rating Board. 'X' films have been characterised as a "garbage, pictures that shouldn't have been made for anybody,. films without any kind of artistic merit, poor taste, disgusting, repulsive".[61]

The classification system calls for grouping of films in order to suit the requirements of children within different age groups. The main criticism against this system,

---

60. However the Rating Board may advice the producers to reshape film by cutting scenes so as to enable them to get a junior rating. Under the English System 'X' category is intended for adults only whereas the American 'X' includes even films which are unsuitable for adults.
61. Stephen Farber, 'The Movie Rating Game', p.47 quoted in Guy Phelps, <u>op.cit.</u>, p.237.

a criticism applicable equally to all systems of age classification for films, is that the Rating Board is neither competent[62] nor serious about this primary function of safeguarding the interests of children.[63]

During the earlier period of the classification system the Rating Office concentrated on sex and disregarded violence.[64] The heritage of the Legion of Decency mainly accounts for the heavy emphasis on sex.[65]

The leniency on violence has been explained with reference to American society.[66]

---

62. The Rating Board lacks the necessary qualifications to censor films for children, the importance of which is the psychology of children.
63. The main concern of the self-regulation has been to protect the industry and the protection of children has only a secondary importance. See Trevelyan, op.cit., p.197.
64. Guy Phelps, op.cit., p.236. See also the Report of the National Church Film Offices (1970) quoted in Trevelyan, op.cit., pp.195, 196.
65. Another reason can also be attributed for the emphasis on sex. Since the major concern of the industry and its child - the Rating System - has been to protect the members of the industry, it is only natural that the system concentrated on sex so as to avoid a criminal prosecution for obscenity. The overemphasis on sex and disregard of violence by the Rating Office has been picturesquely stated by the American Trade Paper with reference to a film:

    "Parents who send their kiddies to this 'PG' rated pic will be happy to know that, though it contains a strangling, two suicides, a bloody knife duel, execution with an axe, the hanging of a dog, and the crushing of a man's head, the language is clean and no nipples are shown in the bedroom scenes."

    quoted from Variety in Guy Phelps, op.cit., p.236.
66. The American society being violent in nature, a true

(contd...)

In recent years, the attraction of sex in cinema declined. Existence of 'porno circuits', small 16 mm. cinemas where more explicit sex is displayed then in regular cinema, the gradual decline of interest of people in pornography because of its free availability, the change in attitude of the Supreme Court which took the view that local community standards shall be the decisive factor in determining obscenity[67] and the consequent threat of a number of prosecutions on grounds of obscenity all account for this phenomena.[68] Naturally, the industry, which was striving hard for existence due to serious threats from the Television, Video and porno circuits, had to resort to explicit violence with more brutality and more gore. The Rating Board was forced to take note of this development and presently the Rating Board has tightened its control over violence as well.[69]

(f.n.66 continued)
depiction of the society have to be permitted and such a depiction of society will not in any way adversely affect children who are otherwise familiar with such violence as depicted in films. Guy Phelps, id. at p.237; Trevelyan, op.cit., p.198.

67. Miller v. California, 413 U.S. 15 (1973). For a discussion see supra, Ch.6,

68. Guy Phelps, op.cit., p.241.

69. This policy was visible from 1974 onwards with the appointment of Richard Heffner as the head of the Rating System. See Guy Phelps, op.cit., p.236.

The grading system also suffers from the defect of lack of sanction. A number of producers do not care to submit films before the Rating Office. Some of them exhibit such films with an 'X' certificate whereas others exhibit films without any certificate at all. Some theatre owners and producers put their own ratings instead of the one sanctioned by the Rating Board.[70]

Certification in India.

As noted above, for a long time there were only two categories of classification under the Indian Law - the 'U' and 'A'.[71]

A two tier system of classification is least satisfactory. Such a system postulates the grouping of people into two classes, one consisting of persons above eighteen

---

70. Trevelyan, op.cit., pp.194, 195.
71. The 'U' category was assigned to films fit for unrestricted public exhibition, that is to all persons above the age of three whereas an 'A' certificate film could be exhibited for adults only i.e., for persons above the age of eighteen. This category system was introduced by the Cinematograph (Amendment) Act 1949. See supra, Ch.4, nn.24, 26, 27. The system continued for a long time and it was in 1981 that an additional 'UA' category was introduced. See supra, Ch.4, nn.107, 108.

and the other consisting of all persons below eighteen but above three years of age.[72] A grouping of children as a whole into one category irrespective of their age is arbitrary. Maturity is attained ~~to~~ stage by stage. What may be unsuitable at one stage may be quite suitable at another stage of mental development. A matter objectionable for a children of 5 years may be entirely acceptable and enjoyable for a child of fourteen. The age group of three to eighteen is unreasonably large. It is therefore quite clear, that in a two tier system of classification, the censors cannot really protect the interests of children coming within different age groups.

Such a system also suffers from another drawback. Undoubtedly protection of children is the very foundation of a system of classification.[73] If the censors strictly adhere to such a rationale, all films passed for unrestricted public exhibition have to be judged with reference to its

---

72. S.2(a) of the Act defines an adult as a person who has attained the age of eighteen. S.7(3) thereof says that children below three years accompanied by parents or guardian can be admitted to any category of films.
73. For a discussion, see supra, Ch.2, nn.9, 10 and 11.

suitability to a child aged three. The result is that all such films have to be reduced to 'childrens cinema.[74] In such circumstances, there will be only two categories, one exclusively for adults and another exclusively for small children and there is no general category suitable for children and adults alike or a category suitable for mature children. On the other hand if the censors adopt a different interpretation to 'U' category to the effect that it is intended not only for children but for general public exhibition to all categories of persons, they have to adopt an imaginary and arbitrary[75] standard of general acceptability of the film. In such a case one may be tempted to come to a conclusion that a two tier system does not afford any real protection to children especially those coming within the lower age groups. It appears that the censors in India from the very beginning adopted this latter interpretation. It further appears that this interpretation is more appropriate

74. A children's cinema is one which is specially suitable for children. Such films are mainly intended for aiding the overall development of children.
75. See infra, n.79.

than the former especially in view of the terminology used to describe a 'U' category film.[76] Viewed in the broader perspective of protection of children, both these interpretations are equally untenable. How can the system be improved with real emphasis on protection of the interests of children at various stages of their growth, but at the same time without reducing the junior category to the status of a child cinema? The only solution, it appears, is to broaden the category system.

As seen above, in Britain[77] and in the United States[78] reforms have been introduced in this direction. In both these countries, subject to some minor differences, children are divided into two age groups-teenagers and pre-teenagers. Normally, around the age of fourteen, the child attains some maturity. A physical as well as mental transformation takes place at this stage. Hence a classification system grouping

---

76. A 'U' category, as noted above, is meant for unrestricted public exhibition. So what is intended is that the film is suitable for all persons, minors and majors alike.
77. Supra, nn.37-39.
78. Supra, nn.55-63.

children into teenagers and pre-teenagers seems to be logical and reasonable. According to this system, if a film is found suitable generally for all, including children, a certificate for universal public exhibition can be granted. If the film contains some thing which may be harmful but not so grave enough as to affect the pre-teenager adversely a certificate for general exhibition can be granted with a warning to that effect to the parent. It is the duty of parents, in such a case, to determine whether or not the so called harmful matters in the film are really harmful to his child. When the film is found to contain some matters really harmful to pre-teenager but not to a matured child, i.e., a teenager, the film has to be passed as suitable for all except the pre-teenagers. Lastly if the film is found to be unsuitable for all categories of children, the film is passed for adults alone. Such a system is a more satisfactory method to protect the interests of children.

The Working group on National Film Policy found that the then existing system of classification in India into 'U' and 'A' categories was highly unsatisfactory.[79]

---

79. The Working Group observed:
"The present system of classifying the films between two extreme categories of 'U' and 'A' implies that a film is either completely suitable to be

(contd...)

Earlier, the Khosla Commission also expressed its dissatisfaction about a two tier classification system.[80] In order to improve the process of classification, the Commission suggested a three tier system,[81] which was, for all practical purpose, similar to the British system prior to 1951.[82]

(f.n.79 continued)
seen by the children or the film is completely unsuitable for children and therefore, they should not be allowed to see the same. This demarcation, makes censorship even more arbitrary than it needs to be. This system compels the Censor Board to adopt a stricter attitude in granting 'A' certificate.... On the other hand, sometimes in its anxiety to be liberal with 'U' certificates, censors have allowed depiction which may have adverse effect on juvenile minds.
The Report of the Working Group, p.77."

80. Khosla Report, pp.57, 58.

81. The Commission maintained.
"There will, therefore, be three categories:-
(i) 'U' Films, which can be seen by everyone including children under the age of sixteen years who may see the film alone or accompanied by adults.
(ii) 'G' films which may be seen by adults and also by children under the age of 16, but only if they are accompanied by their parents or guardian.
(iii) A film which may be seen only by adults above the age of 18. Children will not be allowed to view these films even if they are accompanied by their parents or guardians. Children between the age of 16 and 18 may see the film if accompanied by adults." Ibid.

82. For the British provision, see *supra*, nn.26-33.

The Commission further suggested[83] that a new category of certificate - "Outstanding Merit Certificate" - should be introduced for giving encouragement to the production of good films. However, no follow up action on these recommendations taken by the Government.[84]

The Working Group on National Film Policy, in order to fill the gap between 'U' and 'A' certificates, recommended[85] for the introduction of an intermediary certificate, viz., a 'UA' indicating that "the film is for universal exhibition but contains materials which the parents may not like children upto the age of 12 to see" and further to make it an advisory category. The Working Group also suggested that a 'Q' certificate may be granted to quality films.[86] Soon the recommendtion of the Working Group to introduce a new intermediary category was given effect to by the Cinematograph (Amendment) Act 1981. The introduction of the intermediary category -

83. Report, p.102.
84. See supra, Ch.4, n.76.
85. Report, p.77.
86. Id. p.78. This recommendation was identical to the recommendation of Khosla Commission to introduce an outstanding Merit Certificate.

'UA' category - is certainly helpful in bridging the wide gap between U and A categories. This system protects the genuine interests of children below twelve years. A 'U' category film is absolutely harmless for all categories of children. However, as far as a 'UA' category film is concerned, it is not so harmless to pre-teenagers but the parents may determine whether it is harmless or not in view of the mental growth of his child. As a corollary, a 'UA' film is absolutely harmless to a teenager. But some pre-teenagers, especially those nearing puberty, can tolerate some films which are generally unsuitable for teenagers. The degree of tolerance again depends on the circumstances in which a child is brought up. A three tier classification system, thus, does not aim at safeguarding the legitimate interests of teenagers. Thus the Act by introducing the 'UA' category aims at protecting the interests of pre-teenagers but it does not provide a mechanism for safeguarding the interests of teenagers.

As discussed early[87] a four tier system similar to the one prevalent in Britain and America will be more a

---

87. See <u>supra</u>, text accompanying n.78.

satisfactory system. Such a system will enable the Board to classify films in accordance with the needs of persons coming within the different age groups. When such four tier category system is adopted it may impose an additional burden on managers of cinema house to estimate the age of potential child customers. Since such a duty imposes an unreasonable burden on the managers of cinema houses, it is advisable to make the two intermediary categories for pre-teenagers and teenagers advisory only.[88]

There is wide spread criticism about Indian Cinema that it contains too much sex and violence.[89]

The above criticism may be viewed in the light of the fact that the majority of viewers consider film as a family entertainment medium. When there are only two categories,

---

88. For a discussion see *infra*, Ch.11,
89. See Kobita Sarkar, *Indian Cinema Today*, (1975), p. 'Who's Afraid of Censorship' a write up in *India Today*, Vol.V, No.19, October 1-15, 1980; Sathish Bahadur, "Place of Violence in Commercial Hindi Films", *Kerala Film Development Corporation Ltd. Souvenir, 1983*, p.5. In a Viewer's Reaction Study conducted by the Institute of Mass Communication in the southern States of India it has been found that about 60 percent of the respondents in Andhra Pradesh and Karnataka and 35 percent in Kerala took the view that Indian Films exhibit excessive violence. As quoted in the Report of the Working Group, p.78. For a contrary view, see the result of the public opinion poll conducted by the writer, see *infra*, Ch.12, nn.16, 17.

the 'U' films has to contain some sex and violence. When classification is made on a wider range as suggested above, there may not be much scope for such criticism.

Does the system of classification actually protect the interests of children? To answer this question one should have a fair idea of the degree of protection required by children. There is however, no consensus as to the degree of protection required for children. In England after the introduction of new category system, the junior most category,[90] has been reserved for entirely unexceptionable films.[91] This over protection of children by presenting an unreal version of the world has been criticised on the ground that such an action may be more harmful to them.[92] The Khosla Commission also strongly objected to such a puritanical approach to junior certificates.[93]

---

90. The 'U' category. See supra, n.38.
91. See supra, n.38. However in the United States, no much interest is attached to protection of children, see supra, n.63.
92. Guy Phelps, op.cit., p.119.
93. The Commission observed:
"....the children's welfare and development have always been the special concern of all civilised societies and there is no country in the world which has not made some provision for control or censorship of films with regard to children. But in this matter too, a circumspect, balanced and liberal view is essential, children brought up in an overprotected and sheltered atmosphere finds themselves enable to cope with the problems which confront them as grown ups and they are not able to meet the challenge of the free world and live

(contd...)

It is, therefore, not necessary for the Board to revert 'U' category films to the status of children's film. But what exactly are the standards to be adopted for judging the suitability of films for children? A satisfactory answer is yet to come. Necessarily one has to believe in the discretion of the censorial authority. An independent and competent Board of Censors as suggested elsewhere in this thesis,[94] it is hoped, may be in a position to carry out this function effectively.

A four tier system with the two intermediary advisory categories necessarily calls for the need to educate the public about the scope and content of these categories.[95] It is also necessary to give sufficient notice to parents about the advice. For this purpose it may be made obligatory for the film maker or distributor to advertise the category

---

(f.n.93 continued)
as happy and useful citizens."
Khosla Report, p.109.

94. See <u>infra</u>, Ch.13.

95. Under Rule 10 of the Cinematograph (Censorship) Rules 1983 the Board is enjoined to conduct symposia, etc. in order to ascertain the standards in society. Sumposia can also be used for educating the public as to the scope of category systems.

and its significance clearly so that it may not lose sight of by parents.[96]

At present 'A' films have acquired a bad reputation as one dealing with obscene matters alone. In the proposed revised category system, an 'Adults Only' certificate only denotes that the film is not suitable for children below eighteen years. Hence it may be beneficial to the industry and to the public at large to change the name of this senior 'A' category.

It is often said that an adult is competent enough to protect himself and therefore, there is no necessity for any sort of censorship for adults,[97] on grounds of morality and decency. This is a matter of policy to be decided by the Government. Even though it is constitutionally permissible to carry on censorship for adults, the State can without violating the Constitution, dispense with censorship for adults. It has been said that the best way to oust sex

---

96. The scheme for giving a statutory warning under the Cigarettes (Regulation of Production, Supply and Distribution) Act 1975 provides a good model and a similar scheme can be adopted here.
97. Trevelyan, op.cit., p.229.

and violence from films is to permit the exhibition of the same because very soon the people will get fed up with such matters.[98] At any rate, with the widening of the category system, there is an arguable case for a more liberal approach towards censorship of films for adults.

---

98. See "Gone Are the Days of Sex and Crime" an interview with S. Kumar in Inquest, 12th October 1984.

Chapter 10

CONCLUSIVENESS OF BOARDS DECISION

The Cinematograph Act 1952[1] makes obligatory a certificate from the Central Board of Film Certification[2] before public exhibition of films.[3] The Board is an expert body constituted for the sole purpose of sanctioning films for public exhibition. Afortiori, the certificate granted by the Board shall be conclusive. Its validity shall not therefore be open to challenge in any proceedings other than those provided in the Act.[4] Film makers and others connected with production and distribution of films welcome an official censorship system, mainly because of the belief that such a certificate may provide complete immunity from litigation with respect to matters decided by the Board,[5] and thus thwart

---

1. For a text of the relevant provisions of the Act, see <u>infra</u>, Appendix I.
2. S.3 of the Act.
3. <u>Id</u>. S.4(i).
4. The extra-ordinary constitutional jurisdiction conferred on the higher judiciary cannot, however, be taken away by an ordinary statute and hence such judicial review will be possible.
5. Geoffrey Robertson, <u>Obscenity</u>, pp.244-245 (1979).

the constant fear of a "new menace to public exhibition easily set in motion through the process of the Court by any busybody willing to blackmail or wanting to harass, prodded by rival producers."[6]

Litigation may adversely affect the financial prospects of a film. No producer can ignore this aspect. If decisions of the Board are subjected to further scrutiny in legal proceedings, the very purpose behind constituting an expert body like the Board is defeated. Immunity from legal proceedings is an imperative need if the findings of the censorial authorities under the Act are to be effective and authoritative. This does not, however, mean that the censorial decision must be completely beyond the reach of law,[7] but only that a decision taken by the authority in a just and proper manner shall not be open to challenge. A proper reconciliation between the need to

---

6. Justice Krishna Iyer in Raj Kapoor v. State (Delhi Administration), (1980)1 S.C.C. 43 at p.46.
7. When the censorial authority acts in excess/or beyond its jurisdiction or when it violates the principles of natural justice, the higher courts can exercise the extra-ordinary constitutional jurisdiction. See supra, n.4.

protect rights of citizens and give finality to the decisions of censorial authorities,[8] thus assumes paramount importance.[9]

Certificate - a bar to prosecution ?

In Britain, for a long time a certificate granted by the British Board of Films Censors was considered as a shield affording protection from criminal action for obscenity.[10] The subsequent judicial attitude to extend the common law offence of indecency to cinematograph exhibitions[11] resulted in the amendment of the Obscene Publications Act 1959 including cinema within its ambit so as to save the film industry from charges based on the said offence.[11]

In India, probably encouraged by the attitude of judiciary in England, attempts were made to prosecute film makers.[12] In the twin Raj Kapoor cases[13] actions were brought

---

8. The task of striking a proper balance between these two conflicting claims, is a perennial problem for the court.
9. Jain, M.P., "Judicial Response to Privative Clauses in India", 22 J.I.L.I. (1980)1 at p.3. See also Jain and Jain, Principles of Administrative Law (1979), pp.565-566.
10. See supra, ch.5, n.63-67.
11. R v. Greater London Council, ex-parte Blackburn, [1976] 3 All E.R. 184. See also supra, Ch.5, n.72-77.
12. Rajkapoor v. State (Delhi Administration), (1980)1 S.C.C. 43.; Rajkapoor v. Laxman, (1980)2 S.C.C. 175.
13. Ibid.

against the producer-cum-director and others associated with the film Satyam, Sivam, Sundaram. The ground of attack was that obscenity, indecency and vice were writ large in the film and therefore the accused persons had committed an offence punishable under Section 292 of the Indian Penal Code 1860.[14] Criminal complaints were launched at different places by different persons. The respective Magistrates after examining some witnesses took cognizance of the offence and issued summons to the accused. In both cases the accused

---

14. S.292 of Indian Penal Code reads:
"Sale, etc. of obscene books etc. - (1) For the purposes of sub section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, (or where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Wheever -
(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purpose of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(Contd...)

approached the concerned High Courts[15] invoking the inherent jurisdiction of the High Court under Section 482 of the

(f.n.14 continued)

(c) takes part in or receives profits from any business in the course of which he knows or has reasonto believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
(d) advertises, or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
(e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees and, in the event of second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception:- This section does not extend to -
(a) any book, pamphlet, paper, writing, drawing, representation or figure -
(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or
(ii) which is kept or used bonafide for religious purposes;
(b) any representation sculptured, engraved, painted or otherwise represented on or in -
(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological sites and Remains Act 1958, or
(ii) any temple, or on any car used for the conveyance of idols or kept or used for any religious purposes.

15. The Delhi High Court and Madhya Pradesh High Court respectively.

Code of Criminal Procedure, 1973.[16] In the first case[17] the High Court of Delhi refused to exercise the inherent jurisdiction but decided to treat the petition as a revision petition. After hearing the parties the Court dismissed the revision petition on the technical ground that a copy of the summons issued by the Magistrate was not produced along with the petition. On appeal[18] the Supreme Court set aside the order and directed the High Court to reconsider the matter on merits.

---

16. Section 482 of the Code of Criminal Procedure 1973 reads: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."
17. Rajkapoor v. State (Delhi Administration), (1980) 1 S.C.C. 48.
18. The Appeal was filed by special leave, under Art.136 of the Constitution. Article 136 reads:
"136. Special leave to appeal by the Supreme Court -
(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

The central issue in the case was the scope of a certificate issued by the Board, on the strength of which the film was exhibited to the public. The key argument of the appellant was that when an expert and competent body like the Board decided that the film in question was not unfit for public exhibition on any of the grounds mentioned in the Act,[19] which includes obscenity[20] the decision of the Board should be final, and a criminal court could not re-open the question. The Supreme Court, however, was not ready to accept this argument. Justice Krishna Iyer observed,[21]

> "I am not persuaded that once a certificate under the Cinematograph Act is issued the Penal Code, protanto, will hang limp. The Court will examine the film and judge whether its public display, in the given time and clime, so breaches public morals or depraves basic decency as to offend the penal provisions."

What then is the effect of a certificate issued by the Board? According to the learned judge, "a rebuttable presumption arises in favour of the statutory certificate but

---

19. Section 5B(1) of the Act. For the text see <u>infra</u>, Appendix I.
20. However, it may be noted that the term used in Section 5B(1) of the Act is 'decency and morality' which includes something more than 'obscenity.' For a discussion see <u>infra</u>, Ch.8,
21. <u>Raj Kapoor</u> v. <u>State (Delhi Administration)</u>, (1980)1 S.C.C. 43 at p.49.

could be negatived by positive evidence."[22]

When an expert body like the Board decides the suitability of films for public exhibition after considering the relevant matters including obscenity, jurisdiction of the criminal court to decide the issue afresh amounts in effect to an appellate jurisdiction. As discussed earlier,[23] criminal court is not a suitable forum to decide an issue like violation of public morals. Conscious about the lack of expertise of criminal courts to deal with such an issue, Justice Krishna Iyer observed;[24]

---

22. Ibid. Justice Pathak, in a concurring opinion, in a more or less similar tone observed:

"Regard must be had by the court to the fact that the certificate represents the judgment of a body of persons particularly selected under the statute for the specific purpose of adjudging the suitability of films for public exhibition, and that judgment extends to a consideration of the principal ingredients which go to constitute the offences under Sections 292 and 293 of the Indian Penal Code. At the same time the Court must remind itself that the function of deciding whether the ingredients are established is primarily and essentially its own function, and it cannot abdicate that function in favour of another, no matter how august and qualified be the statutory authority."

Id. at pp.51, 52.

23. See supra, Ch.2, nn.41-48.

24. Raj Kapoor v. State (Delhi Administration), (1980)1 S.C.C. 43 at p.46.

"..... When a special statute (the Cinematograph Act) has set special standards for films for public consumption and created a special board to screen and censor from the angle of public morals and the like, with its verdict being subject to higher review, inexpert criminal courts must be cautious to 'rush in' and indeed, must 'fear to tread' lest the judicial process should become a public foot path for any high way man wearing a moral mask holding up a film maker who have travelled the expensive and perilous journey to exhibition of his certificated picture".

Criminal Courts may be reluctant to interfere, but the possibility still exists. Such interference would create difficulties because film makers and distributors have to face the ordeal of a criminal prosecution for exhibiting a certificated film.[25] Possibility for divergent decisions on the same matter also cannot be ruled out. The decision of one magistrate may have only a persuasive effect on another magistrate.[26]

---

25. In a prosecution under Section 292 of the Indian Penal Code 1860 the film itself is not put to trial but the 'film maker/distributor is tried for exhibiting an obscene film.
26. The principle of <u>autre fois acquit</u> or <u>autre fois convict</u> embodied in Article 20(2) of the Constitution of India will not arise because the accused (if the accused is a distributor) may be different in different cases.

Even the decisions of a civil court is not acceptable in a criminal court as conclusive proof of those matters decided therein.[27] In such a context, it is difficult for a criminal court to accept the decision of the Board as a conclusive proof of any matter decided by it. As noted earlier,[28] it is necessary to bar the jurisdiction of criminal court from taking cognisance of any matter decided by the Board in accordance with the provisions of the Act.

In the second Rajkapoor case,[29] the court found a way out by holding that in a criminal trial, a valid certificate issued by the Board constitutes a complete defence under

---

27. AdiPherozshah v. Seervai, A.I.R. 1971 S.C. 385. In this case an advocate who has been punished by a criminal court at London for a petty offence was found to be guilty of misconduct by the Disciplinary Committee of the Bar Council of India in an appeal filed by the Advocate General under S.37 of the Advocates Act 1961 against the decision of the State Bar Council. In a further appeal by the aggrieved advocate it has been held by the Supreme Court that in a civil proceedings the decision of a criminal court is not res judicata. The same principle, mutatis mutandis applies to the decision of civil courts in criminal proceedings.
28. See supra, n.21.
29. Rajkapoor v. Laxman, (1980)2 S.C.C. 175. In this case, the High Court entertained the petition filed by accused under Section 482 of the Code of Criminal Procedure, 1973 but declined to exercise the inherent jurisdiction. On appeal, the Supreme Court set aside the order of the High Court.

Section 79 of the Indian Penal Code, 1860.[30] Justice Krishna Iyer, rejecting the formalistic approach adopted by him in the first Rajkapoor case,[31] sought to oust the jurisdiction of criminal courts on the broader grounds that "once the special law polices the area it is pro tanto out of bounds for the general law".[32] Referring to the provisions in the Act the learned judge posed the question.[33]

> "After having elaborately enacted such a legislation can it be said that a certificate granted under it by expert authority can be stultified by a simple prosecution or a shower of prosecutions for an offence under Section 292, I P C, driving the producer to satisfy a 'lay' magistrate that the certificate of the Board of Censors notwithstanding, the film was offensive?"

Leaving the question as such, the case was disposed of on a narrow ground based on Section 79 of the Penal Code 1860.[34]

---

30. Section 79 of the Indian Penal Code reads:
    "Nothing is an offence which is done by any person who is justified by law or who by reason of mistake of law, in good faith believes himself to be justified by law, in doing it...."
31. Rajkapoor v. State (Delhi Administration), (1980)1 S.C.C. 43.
32. Rajkapoor v. Laxman, (1980)2 S.C.C. 175 at p.179.
33. Ibid.
34. The Court also made it clear that the judgment should apply to its early decision in the first Rajkapoor case, (1980)1 S.C.C. 43 (Ibid.)

The second Rajkapoor case[35] thus provides an immunity for all persons connected with the exhibition of certified films from any criminal prosecutions under the provisions of the Indian Penal Code with respect to any matter decided by the Board.[36] The Board is a competent and expert body to decide questions concerning public morality; but it has the least competence to decide any other matter provided in Section 5B of the Act. The State can interfere in such matters at any time exercising the Revisional powers.[37] Thus there is no harm in conferring a general immunity from criminal prosecutions with respect to any matter decided by the Board under the Act. But one problem remains. Difficulty may arise in the case of defamation. At the time of granting a certificate there may not be any piece of evidence before

---

35. Rajkapoor v. Laxman, (1980)2 S.C.C. 175.
36. Even though the case involved only the question of obscenity, Section 79 of Indian Penal Code 1860 being a provision in the Chapter on General Exception, it applies to all offences under the Code. For exhibiting any matter not considered by the Board under Section 5B(1) of the Act, a criminal prosecution is still possible.
37. Section 6 of the Act. For a text of the section see Appendix I. Even if the revisional power is taken away from the Government and conferred on the Appellate Tribunal, as argued elsewhere in this thesis, an effective remedy is available to the State to challenge the decision of the Board by taking the matter before the Appellate Tribunal.

the Board to decide whether the film or any part thereof is defamatory of any person. The Government also may not be directly interested in such cases and may not exercise the revisional powers. In such circumstances, it is unjust to deny an opportunity to the aggrieved individual to launch a prosecution against the film maker and distributor for the offence of defamation. The alternative remedy appears to be to confer on any aggrieved individual a right of representation before the Board and in case of an adverse decision a right of appeal before the appellate authority.[38]

The 1981 amendment to the Act[39] gives legislative recognition to the principle evolved in the second Rajkapoor case.[40]

---

38. This aspect is discussed below. See infra, n.83.
39. In 1981 a proviso was added to S.5A(1) of the Act to the effect that the applicant for a certificate or any distributor or exhibitor or any other person to whom the right in the film passed shall not be liable for punishment under any law relating to obscenity in respect of any certified film.
40. Rajkapoor v. Laxman, (1980)2 S.C.C. 175.

Certificate - a bar to civil action?

It is a usual practice of the legislature to include in statutes a clause ousting jurisdiction of civil courts. The Act contains such an ouster clause.[41] While interpreting such clauses the view taken is that[42] the object of the clause is to oust suits for damages or compensation for anything done by an authority in good faith[43] under the provisions of the Act. Thus if the act done by an authority is bona fide, a mere illegality or irregularity in the action will not take away the protection of the clause. But, if the action is mala fide, the protection will not be available.[44]

---

41. S.7F which reads:
"Bar of the legal proceedings:- No suit or other legal proceedings shall lie against the Central Government, the Tribunal, the Board, Advisory Panel or any officer or member of the Central Government, the Tribunal, the Board or Advisory Panel, as the case may be, in respect of anything which is in good faith done or intended to be done under this Act."
42. Provincial Government of Madras v. Basappa, A.I.R. 1964 S.C. 1873; S.I. Syndicate Ltd. v. Union of India, A.I.R. 1975 S.C. 460; Municipality of Bhiwandi and Nizampur v. K.S. Works, A.I.R. 1975 S.C. 529. However, it has been pointed out that such an ouster clause cannot bar a suit for breach of contract. Bombay Housing Board v. Karbhase Naik and Co., A.I.R. 1975 S.C. 763.
43. According to S.3(22) of the General Clause Act 1897, an action is deemed to be done in good faith if it is done honestly, whether it is done negligently or not.
44. S.I. Syndicate Ltd. v. Union of India, A.I.R. 1975 S.C. 460.

The tendency of the Court has been to interpret the term '*mala fide*' or 'bad faith' very broadly so as to restrict the scope of ouster clauses. In *Municipality of Bhiwandi and Nizampur* v. *K.S. Works*[45] it has been held that a reckless act will amount to an act done in bad faith and therefore the protection from tortious liability provided by the ouster clause in the Bombay District Municipal Act 1901 will not be available to the Municipality.[46]

The same principle will apply to the interpretation of the ouster clause in the Cinematograph Act 1952.[47]

---

45. A.I.R. 1975 S.C. 529. The property of the respondent suffered damage on account of the floods caused by the acts of gross negligence of the Municipal authorities. The respondent filed a suit against the Municipality for damages. The High Court passed a decree in favour of the respondent. The Municipality appealed to the Supreme Court.
46. The Court held:

 "An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries. Being aware of the possible harm to others, and acting in spite thereof, is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that, the consequences of which, the law presumes to be present in the mind of the negligent person, whether actually it was there or not... Reckless disregard of consequences and mala fides stand equal, where, the actual state of mind of the actor is relevant. This is so in the eye of law, even if there might be variations in the degree of moral reproach deserved by recklessness and mala fides."

 id. at p.531 *per* Ray, C.J.
47. See *supra*, n.41.

Civil Courts' review power.

It is not possible for a legislature to oust the extraordinary remedies provided for by the Constitution. The legislature, being a product of the Constitution, cannot take away the power of judicial review granted by the Constitution itself,[48] though it is possible for the legislature to oust the jurisdiction of the civil court conferred on it by the general law, viz., the Code of Civil Procedure 1908.

The ordinary civil remedies of injunctions and declarations are also forms of judicial control.[49] Now the question is whether it is possible for any person aggrieved by the decision of the Board to invoke the civil courts' jurisdiction? There is no direct judicial pronouncement on this issue. But an analogy can be drawn from decisions pertaining to an identical question under other statutes.

---

48. Raja Jagadambika Pratap Narain v. Central Board of Direct Taxes, A.I.R. 1975 S.C. 1816.
49. For a discussion of these statutory remedies, see Jain and Jain, op.cit., pp.554-565.

The jurisdiction of the civil court is regulated by Section 9 of the Code of Civil Procedure 1908[50] which says that a civil court can exercise jurisdiction to try all suits of a civil nature except suits of which their cognisance is either expressly or impliedly barred. The scope of enquiry as to the extent of jurisdiction of civil courts under this section usually starts with an oft-quoted passage of Willes, J., in Wolverhampton New Water Works Co. v. Hawkesford.[51] The learned judge observed:[52]

> "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law, there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is,

---

50. Relevant portion of S.9 of the Code of Civil Procedure, 1908 reads:
    "9. Courts to try all civil suits unless barred:- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."
51. (1851)141 E.R. 486.
52. Id., per Willes, J. at p.495. The same principle have been adopted for the interpretation of Section 9 of the Civil Procedure Code 1908. See Mullas' Code of Civil Procedure, Vol.I, p.41 (1965).

> where the statute gives the right to sue merely, but provides no particular form of remedy: there the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it .... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The above general propostion has been approved by the judiciary in India.[53] The scope of said Section 9 has been explained thus:[54]

> "The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil Courts. The statute may specifically provide for ousting the jurisdiction of civil Courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the Civil Court's jurisdiction is not completely ousted."

---

53. For example see Ponnu Swami v. Returning Officer, Namakkal, A.I.R. 1952 S.C. 64; Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana, A.I.R. 1963 S.C. 1547; Subramoniam v. Sreenivasan, 1971 K.L.T. 699; Premier Automobiles v. K.S. Wadke, A.I.R. 1975 S.C. 2238; Gujarat State Co-operative Land Development Bank Ltd. v. Mankad, (1979)3 S.C.C. 123.
54. Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana, A.I.R. 1963 S.C. 1547 per Subba Rao, J at p.1551. His Lordship considered all authorities on the point.

Even in cases where statutes contain a finality clause, the judiciary was not prepared to interpret the clause as excluding the jurisdiction of the civil courts in all circumstances. The general rule relating to exclusion of jurisdiction of civil court was summarised by Hidayatullah, C.J. in Dhulabhai v. State of Madhya Pradesh.[55] His Lordship laid down seven propositions of which the following two are relevant here:[56] (1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit, except in cases of violations of statutory provisions or disregard of the principles of fundamental principles of judicial procedure. (2) For the purpose of determining the adequacy or sufficiency of remedies, an examination of the statute in question is relevant. But such an examination may not be decisive when the statute provides for an express exclusion of jurisdiction

---

55. A.I.R. 1969 S.C. 78.
56. Id. at p.89.

of civil courts but decisive when there is no such express bar. Whether the Act creates a special right or liability, whether provision is made for determining all questions concerning the said right or liability by a tribunal constituted under the statute and whether remedies normally associated with actions in civil courts are prescribed by the statute are decisive in determining the implied bar of jurisdiction of civil courts."

The general principles laid down in this case have been followed in subsequent cases.[57] The principles are thus well settled. In order to determine whether there is an implied exclusion of jurisdiction of civil court it is necessary to look into the statute with the object of ascertaining whether it provides for a complete code in itself with sufficient procedural safeguards.

---

57. See for example, State of West Bengal v. Indian Iron & Steel Co. Ltd., A.I.R. 1970 S.C. 1298; Srinivasa v. State of Andhra Pradesh, A.I.R. 1971 S.C. 71; Premier Automobiles Ltd. v. K.S. Wadke, A.I.R. 1975 S.C. 2238; Bata Shoe Co. v. Jabalpur Municipality, A.I.R. 1977 S.C. 955; Gujarat State Co-operative Land Development Bank Ltd. v. Mankad, (1979)3 S.C.C. 123. For an illuminating discussion about the scope of finality clause see Jain, M.P., "Judicial Response to Privative Clauses in India", 22 J.I.L.I. 1 (1980).

The Cinematograph Act 1952 imposes a liability on film makers to obtain a certificate from the Board before public exhibition of the film.[58] The Act provides him an opportunity for presenting his case before a decision adverse to him is taken.[59] Any applicant aggrieved by the decision of the Board may apply for a viewing of the film by a Revising Committee.[60] The Act further provides for an appeal to the Appellate Tribunal.[61] The present provision for appeal is an adequate remedy.[62] Thus, with reference to an applicant the Act provides for a complete code in itself with sufficient procedural safeguards and, therefore, the jurisdiction of the Civil Court is impliedly ousted and the decision of the Board is final subject to other remedies provided by the Act itself.

---

58. S.4(1) of the Act.
59. Id. Sub-section (2) of S.4.
60. R.24 of the Rules.
61. Section 5C of the Act.
62. The provision for appeal before the amendment of the Act in 1981 (i.e., to the Central Government) was not an adequate one. After the amendment it is adequate because the appellate jurisdiction is now conferred on an independent Tribunal. See *infra*, nn.90-97.

Can it be said that the Act impliedly takes away the jurisdiction of civil court to entertain a suit presented by a member of the public or a representative body feeling aggrieved by the decision of the Board? The whole scheme of the Act is an applicant oriented one. It is intended to provide an adequate remedy to an aggrieved applicant. Nowhere in the Act a remedy is provided to the citizen against an illegal decision of the Board.[63] This may lead to the criticism that the Act and the Rules hardly care for the interest of general public for the benefit of whom the law has been enacted. Under the Act he can neither approach the Board nor the Appellate Tribunal. The Act does not provide for any remedy to redress his grievances. The right of the citizen to see that an exhibition of cinema shall not offend public decency or morality is not the one created by the Act. The Act cannot, therefore, be interpreted in such a way as to impliedly oust the jurisdiction of the civil court.

---

63. In Rajkapoor v. Laxman, (1980)2 S.C.C. 175 at p.179, Justice Krishna Iyer observed:

> "If the Board blunders, the Act provides remedies. We are sure the public spirited citizen may draw the attention of the agencies under the Act to protect public interest."

On a reading of the Act and the Rules one fails to note any provision that enables a public spirited citizen or a representative body of citizens to challenge effectively the decision taken by the Board.

The result is that any individual or a group aggrieved by the decision of the Board can approach the civil court in accordance with the general principles discussed above. The civil court can issue a declaration to the effect that a certified film is against public decency or morality and/or against the provisions of the Act. It can issue an injunction restraining the exhibitors from exhibiting such an objectionable film.

Locus standi.

For the maintainability of such a civil action at the instance of an aggrieved individual or a group, the individual or body shall have the locus standi to challenge the action of the Board. A citizen can approach the civil court when any of his civil right is infringed. The same principle applies to writ proceedings. In public law a person aggrieved by an action of the administration alone is competent to challenge it.[64] This appears to be a sound principle but controversy centered round the interpretation

---

64. Calcutta Gas Co. (Proprietory) Ltd. v. State of West Bengal, A.I.R. 1962 S.C. 1044. For a discussion see infra, n.69.

of the term "person aggrieved."

During the British regime in India, the judicial system was evolved with a view to imparting justice in disputes between private parties. The rules regarding standing to sue was based on the adversory trial type system where only a person whose rights are directly infringed could claim the standing to sue.[65] Such a strict interpretation of the term 'aggrieved person' is not condusive for the present set up.[66] Ours is a democratic system, as the Constitution of India so emphatically declares.[67] Every citizen is interested as well as entitled to see that the Government formed by them acts properly. Any citizen should have the right in our democratic system, to check the abuse of power by the administration even in the absence of any direct injury to him. There is added need for such a right in a welfare state, where the administration wields enormous powers and exercises vast discretionary powers.[68]

---

65. Justice Krishna Iyer, Some Half Hidden Aspects of Indian Social Justice, (Sulkhami Mahajan Memorial Lectures), p.105 (1979).
66. Ibid.
67. See the Preamble to the Constitution of India.
68. Jain, S.N., "Standing and Public Interest Litigation" in Leelakrishnan (Ed.), Consumer Protection and Legal Control, 89 (1981).

An average citizen may not have the awareness, the time, the financial resources to meet the huge expenses involved in litigation, the facilities to gather necessary data for the ease and the inclination to take every illegal or unjust decision of the administration to courts. Hence the task of safeguarding the interest of society against improper or illegal administrative action can best be achieved by class action. It is therefore an urgent need of the day to recognise the standing of representative groups to challenge the validity of actions taken by Government.

The development in this direction has been very slow. The judiciary even after independence adhered to a strict interpretation of the term "person aggrieved." It appears that the ghost of imperialism still governs our judiciary from its graveyard. In Calcutta Gas Co. (Proprietory) Ltd. v. State of West Bengal,[69] it has been held that only a

---

69. A.I.R. 1962 S.C. 1044. In this case the company, by an order of the Government, was deprived of the right to manage another Gas Company. The Supreme Court held that the appellant company's right to manage and receive remuneration had been infringed and therefore it had locus standi to challenge the impugned order.

person whose personal rights are directly infringed has locus standi to challenge an action.[70] This strict rule continued to govern the field for a long time.[71] During the middle of 1970s the Court began to show a liberal approach. In J.M. Desai v. Roshan Kumar[72] the court held that the rule laid down in Calcutta Gas Co. case[73] was not exhaustive. To Justice Sarkaria, the locus standi has to be determined with reference to three categories of persons - an aggrieved person, a stranger and a busybody or meddlesome interloper. The third category of person undoubtedly has no locus standi. Regarding the first category namely, 'persons aggrieved' there is a "solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outer most nebulous fringe of uncertainty."[74] Persons falling within the central

---

70. An exception to the above rule was recognised in writs of habeas corpus and quo warranto.
71. See for example, Charanjit Lal v. Union of India, A.I.R. 1951 S.C. 41; State of Orissa v. Madan Gopal, A.I.R. 1952 S.C. 12; State of Orissa v. Rajasaheb Chandanmull, A.I.R. 1972 S.C. 2112; Satyanarayana Sinha v. M/s. Lal and Co., A.I.R. 1973 S.C. 2720.
72. A.I.R. 1976 S.C. 578. In this case the cinema house owner challenged the decision to grant a new licence to another person. The Court held that he had no locus standi.
73. A.I.R. 1962 S.C. 1044.
74. J.M. Desai v. Roshan Kumar, A.I.R. 1976 S.C. 578 Sarkaria, J. at p.586.

zone have locus standi because they are really and personally aggrieved. Persons falling within the grey outer zone have also locus standi because it is difficult to distinguish between this zone and the central zone as 'they often 'inter mix' 'inter fuse' and overlap increasingly in a centrifugal direction'.[75] All persons in the outer zone cannot claim the standing to sue. Their position is similar to that of a stranger and the claim of these persons will depend upon the nature of the rights infringed. This classification, comes very near to the recent trend in accepting locus standi in class action.[76] Any how, the right of tax payers to challenge an illegal action by a local authority has always been recognised.[77]

The need for a jurisprudential change in outlook about locus standi has been emphasized by Justice Krishna Iyer when he observed:

---

75. Ibid.
76. See infra, nn.78, 79 and 80.
77. K.R. Shenoy v. Uddupi Municipality, A.I.R. 1974 S.C. 2177; Varadarajan v. Salem Municipality, A.I.R. 1973 Mad. 55; N.N. Chakravarthy v. Corporation of Calcutta, A.I.R. 1960 Cal. 102. See Jain and Jain, op.cit., pp.404-405.

"But the right to a remedy apart, a larger circle of persons can move the Court for the protection of defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. 'A person aggrieved' is an expression which has expanded with the larger urgencies and felt necessities of our times. Processual jurisprudence is not too jejune to respond to societal changes and challenges."[78]

The next development of accepting the locus standi in class action is only natural. During 1980s the Supreme Court through a series of decisions liberalised locus standi in class actions.[79] At the same time in order to guard against possible misuse of this new right, the Court was careful in laying down some conditions,[80] for maintaining a class action. If the Court is satisfied that the person who moves the Court is trying to 'indulge in the pasttime of meddling with the judicial process either by force of habit or from improper motives' the Court has to dismiss

---

78. Maharaj Singh v. State of U.P., (1977)1 S.C.C. 155 at pp.165.
79. Sadhanantham v. Arunachalam, A.I.R. 1980 S.C. 856; A.B.S.K. Sangh (Railway) v. Union of India, A.I.R. 1981 S.C. 298; Fertiliser Corporation Kamagar Union v. Union of India, A.I.R. 1981 S.C. 344; S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149.
80. For the conditions see, A.I.R. 1982 S.C. 149 at pp.185-189.

the action.

The Code of Civil Procedure 1908 also permits class action.[81] After its amendment in 1976, it now permits the institution of a suit for injunction or declaration or for other reliefs, against public nuisance or other wrongful act affecting public, by any group of persons with the permission of the court even though no specific injury has been caused to such persons by the said nuisance or wrongful act.[82] It thus recognise the _locus standi_ of public spirited citizens to challenge any act wrongful to the public. But the plaintiff has to take out notice to all interested parties at his expense. This provision hampers the development and efficacy of class action in suits.

---

81. _Id._ S.91 and Order 1 Rule 8.
82. S.91 of the Code of Civil Procedure reads:
"91. _Public nuisance and other wrongful acts affecting the public_-
(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-
(a) by the Advocate General, or
(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.
(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provision."

A public spirited citizen or a group of such citizens collectively, may challenge the decisions of the Board. If the court is satisfied as to the genuine intention of the plaintiff, the court can entertain the suit. In such a case it has to decide afresh the issues already decided by the Board. But the difficulty is that the civil court is not an expert body to decide the issues relating to certification of films. The exercise of such a power by civil courts may render the censorial machinery under the Act negatory and ineffective. It is therefore, necessary to divest the civil court of its jurisdiction over the matters coming within the scope of the authority of the Board. A simple solution appears to be to provide an opportunity for any individual to approach the Board for a review of its decision. In the very nature of things, no opportunity can be given to an individual at the time of preview to approach the Board against a film because the public have no means to know about the contents of a film before its public exhibition. The only possibility is to afford a post decisional

hearing.[83] An individual or a representative group may also be permitted to file an appeal before the Appellate Tribunal if aggrieved by such subsequent hearing. When such a provision is included in the Act for affording a fair post-decisional hearing to the public, the Act can be deemed to be 'a complete code' vis-a-vis general public and therefore the jurisdiction of the civil court can be ousted.

The Appellate Authority under the Act.

As seen above, one of the requirements to determine whether the jurisdiction of the civil court is ousted or not is the adequacy of alternative administrative remedy.[84] The Supreme Court consistently maintain that involvement of judicial element at some stage of the proceedings is necessary for excluding the jurisdiction of civil court.[85]

83. A post decisional hearing, if a hearing is not possible before the decision, is approved in Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597. For a comment on the doctrine of post-decisional hearing see Jain, S.N., "Administrative Law Aspects of Maneka Gandhi", 21 J.I.L.I. 382 (1979).
84. See supra, n.56.
85. Bharat Kala Bhandar v. Municipal Committee, Dhamangaon, A.I.R. 1966 S.C. 249. An appeal from the decision of the Municipality in imposing tax was provided to the Deputy Commissioner. The court found that even though the Act in question further provided for a reference by Deputy

(contd...)

Before the amendment in 1981, the Act provided for an appeal from the decision of the Board to the Central Government. The Central Government also retained a revisional power. But at no stage of the proceedings, a judicial element was involved in the decision making process. In Bharat Kala Bhandar case, the provision for filing an appeal before an authority which had "numerous functions under different laws, functions which are executive, as well as administrative and judicial."[86] was held to be inadequate. Thus the provision for appeal or revision under the Act was highly inadequate. The Khosla Committee[87] and the Working Group on National Film Policy[88] criticized the vesting of appellate jurisdiction with the Central Government. In K.A. Abbas v. Union of India[89] in the face of a specific contention about

(f.n.85 continued)
Commissioner to the High Court, the remedy could not be characterised as adequate because the Deputy Commissioner had to exercise numerous functions apart from deciding appeals and because a reference had to be made according to his discretion. See also Pabbojan Tea Co. v. Dy. Commissioner, A.I.R. 1968 S.C. 271; Firm Illuri Subbayya Chetty v. State of Andhra Pradesh, A.I.R. 1964 S.C. 322; Desika Charyalu v. State of Andhra Pradesh, A.I.R. 1964 S.C. 807.

86. Id. at p.261 per Mudholkar, J.
87. Khosla Report, p.99.
88. Report of the Working Group, p.77.
89. A.I.R. 1971 S.C. 481. See also supra, Ch.7.

the inadequacy of the provision, the Government agreed to change the provision by constituting an independent Appellate Tribunal.

The Cinematograph (Amendment) Act 1981 sought to implement the changes. The amended Act provides for the setting up of an independent tribunal,[90] consisting of a Chairman and not more than four members.[91] The Chairman shall be a retired High Court judge or a person qualified to be appointed as a judge of the High Court.[92] The members of the Tribunal must be qualified, in the opinion of the Government, to judge the effect of films on the public.[93] Thus the Act envisages an expert appellate authority with judicial elements. The Central Government constituted an Appellate Tribunal consisting of a retired High Court Judge as Chairman and two other members. Although the constitution of the Tribunal is not free from criticism, it provides for an effective alternative remedy.

---

90. S.5D(1) of the Act.
91. Id. S.5D(3).
92. Id. S.5D(4).
93. Id.S.5D(5).

The main draw back of the system deserves special mention. The Act enables the Central Government to constitute the Appellate Tribunal with its head office at New Delhi or at any other place, as the Central Government may, by notification in the Official Gazette, specify.[94] The Government constituted the Appellate Tribunal with its seat at Delhi. A person aggrieved by the decision of the Board has to travel all the way from his place of residence to Delhi to file an appeal. This involves a lot of expense for him, especially for a person from the southern region. Since the majority of films produced in India comes from southern states,[95] this may cause serious injury to film makers and other persons aggrieved by the decision of the Board. To the film makers it causes more difficulties. Usually the date of release of the film is fixed in advance and theatres booked accordingly. Due to practical difficulties involved in film production it may not be possible to submit the film for

---

94. *Id.*, S.5D(2).
95. It has been claimed by the President of South Indian Film Chambers that out of 850 films submitted for certification during 1983, about 650 was from South India. See "Gone Are the Days of Sex" and Crime " an interview with the South Indian Chamber of Commerce. See *Inquest*, October 12, 1984.

certification sufficiently in advance.[96] The delay involved in filing an appeal may, in these circumstances, be injurious to his financial interest. He will, in such circumstances, be forced to forgo his claim and to accept the decision of the Board in order to exhibit the film as scheduled. Secondly, there will be difficulty in getting release of film from the excise authorities for taking it outside.[97] From the point of view of an affected individual or a representative group, the expenses and time involved in filing an appeal by travelling a long distance will diminish the utility of the remedy.

In these circumstances, it will be a welcome step if provision is made for constituting Regional offices of the Appellate Tribunal, for hearing appeals from each regional office of the Board. Such Regional offices of the Tribunal should have its seat at the place of the regional office itself.

---

96. Ibid.
97. Ibid.

Chapter 11

S A N C T I O N S

A film censorship system casts an obligation on film makers, distributors and exhibitors. The film makers have to observe the conditions contained in the film censorship regulations. An exhibitor or distributor is also not free from certain obligations. Everyone of them have to obey the decisions of the censorial authority. Violation of the orders of the authority leads to sanctions.

It is true that there is no legal obligation in the case of a self censorship system. Where censorship of film is carried on by the film industry itself with the help of an authority constituted by it, the film makers are not legally bound either to submit the film for certification before the authority or to respect its decisions. There may be moral obligation as they are members of the association of the film industry. At best, the industry can terminate the membership of the film maker who disobeys the orders of the censorial authority or can boycot his films.

This is not at all an effective sanction. There is a proliferation of films and film makers in recent years. Boycot by the industry of films by a particular film maker will have no effect upon the film maker, the distributors or the public who would like to see the films. By the disintegration of the monopoly of film makers and other film distribution network, the old fear of adverse consequences of boycot will have no relevance at all today.[1] As discussed earlier, the lack of legal sanction really accounted for the failure of the Production Code Administration in the United States.[2]

In the case of a statutory censorship system, the story is different. Censorial powers are conferred on the authority by a statute enacted by a legislature. Legal sanctions for any violation of decisions of the authority will also be provided in this statute.

---

1. Bruce Michael Boyd, "Film Censorship in India, A Reasonable Restriction on Freedom of Speech and Expression", 14 J.I.L.I. 501 at p.550 (1972).
2. For a discussion see *supra*, Ch.6,

In India, as seen early, the power to censor films is bestowed on the Central Board of Film Certification,[3] an authority constituted by and exercising powers under, the Cinematograph Act 1952.[4] The Board is empowered to preview films,[5] sanction the film for public exhibition,[6] assign suitable categories to it,[7] order for excision of objectionable matters[8] and if necessary refuse to sanction the film for public exhibition.[9] The censorial decisions of the Board are subject to appeal to the Appellate Tribunal[10] or revision by the Central Government.[11] A corresponding obligation is cast on a person directly involved in the exhibition of films to obey the decisions of these authorities. Punishments are provided by the Act for a disregard of this obligation.[12]

---

3. For a text of the Act, see Appendix I. For a discussion of the procedures in certifying films, see <u>supra</u>, Ch.4, nn.124-139.
4. For a discussion about the evolution of the censorship regulations in India, see <u>supra</u>, Ch.4.
5. <u>Id</u>. S.4(1).
6. <u>Id</u>. S.4(1)(i), (ii) and (iia).
7. <u>Id</u>. S.5A(1).
8. <u>Id</u>. S.4(1)(iii).
9. <u>Id</u>. S.4(1)(iv).
10. <u>Id</u>. S.5C.
11. <u>Id</u>. S.6.
12. <u>Id</u>. Ss.5E and 7.

Administrative sanctions.

The Act authorises the Central Government to suspend or revoke a certificate granted by the Board, when the film is exhibited in a form other than the one in which it is certified or for any violation of the provisions of the Act or the Rules.[13] Such a suspension or revocation of licence has to be effected by a notification published in the Official Gazette.[14] On publication of the said notification, the Government may require the person in possession of the certificate to surrender it and its duplicate to the Board or any other specified authority.[15] Before taking such an action, the person concerned shall be given a reasonable opportunity to present his views.[16] A person aggrieved by the decision of the Central Government revoking or suspending a licence can also file a review petition before the Government within sixty days from the date of notification.[17] The

13. Id. S.5E(1).
14. Ibid.
15. Id. S.5E(2).
16. Id. S.5E(3).
17. Id. S.5F(1).

delay if any in presenting a review petition, subject to maximum of sixty days, can also be condoned by the Central Government.[18] The Government after due enquiry and after giving the aggrieved party a reasonable opportunity of being heard, can dispose of the application, confirming, modifying or reviewing its earlier decision.[19] The Board is bound to give effect to any such decision of the Central Government.[20]

It appears to be strange why such a power is conferred on the Central Government. The Central Government has no means to know whether the public exhibition of the film is in violation of the certificate granted or against other provisions of Part II of the Act. On the other hand, the Board will be in a position to know whether there is any unauthorised addition of objectionable matters to the film as certified or whether there is any tampering with, or alteration of, the certificate. According to the Rules, before the grant of the actual certificate, the applicant has to submit a copy of the film as finally certified,[21]

---

18. Ibid. Proviso.
19. Id. S.5F(2).
20. Ibid.
21. Rule 28(1) of the Rules.

which will be returned only after submission of full details about the film, viz., the script and the dialogue on which the film is shot.[22] When a film is being exhibited disregarding the category allotted by the certificate or it is being exhibited by adding excised scenes, it can be detected easily by referring to Part I and II of the certificate.[23] But in other cases, the Board alone can determine whether an exhibition of film is against the certificate or against the provision of the Act.[24] The Central Government have no special machinery to detect whether an exhibition of film is legal or not. Naturally, the Government can act only on the basis of a complaint and since no records about the certificate are available with the Central Government, it has to refer the matter to the Board. The Government can issue a suspension notification under Section 5E of the Act[25]

---

22. Id. R.28(4).
23. Part I of the certificate contains details about the film viz., the name of the film, its guage and length, certification number and date of issue and date of expiry of the certificate. Part II contains particulars of excisions and modifications subject to which the certificate has been granted. See id., R.35(1) and the various forms in the second schedule.
24. The Board is in possession of a duplicate copy of the film as certified or complete details about the certified film (see supra nn.22 and 23). Any violation can be detected by comparing the impugned copy of the film with the copy in possession of the Board or the details furnished as the case may be.
25. See supra n.14.

only on the basis of the recommendations of the Board. This is a cumbersome procedure which will dilute the efficacy of the sanctioning process. In the case of cinema a quick action is necessary because the effect of cinema is immediate and also because an exhibition of a film normally lasts only for a limited period. So, for an effective implementation of the sanction, the power to revoke or suspend a certificate has to be conferred on the Board itself.

Judicial sanctions.

The penal provision in the Act cast a wide net.[26] A person tampering or altering with the original certificate can be punished. An exhibitor or distributor of such a film can also be caught in the net. An exhibition of an uncertified film is also within the sweep of the penal provision. Exhibition of an 'A'[27] or 'S'[28] Certificate film in violation of the specific requirements of the certificate is an offence. Disregard of any order issued by the Board, the Appellate Tribunal or by the Central Government is also an offence.

---

26. The penal provisions are embodied in S.7 of the Act.
27. In an 'A' certificate, the film is passed for public exhibition restricted to adults alone. See id., S.5A(1)(b).
28. In an 'S' certificate, the film is passed for public exhibition restricted to the members of any profession or any class of persons. Ibid.

Section 7 of the Act provides for a uniform punishment to various offences by clubbing together different offences committed by different persons. The offence punishable under the Act can be grouped under four heads;

a) exhibiting an uncertified film or exhibiting a film with altered or tampered certificate,

b) exhibiting an 'A' certificate film to any person who is not an adult or an 'S' certificate film to any personwho is not a member of the profession or class of persons,

c) without lawful authority alters or tampers with, in any way, any film after it has been duly certified, and

d) fails to keep the records[29] of the film given by the Board or fails to comply with any orders issued by the Board or the Central Government under the Act or the Rules framed thereunder.

On an analysis of the above provision, the Act imposes a primary responsibility on the exhibitor by casting a strict liability on him except in offence (c) above. In offences

---

29. Part I and II of the Certificate. See *supra* n.23.

(a) and (b) the punishment can be imposed not only on the exhibitor but also on an abettor whereas in offences (c) and (d) the liability is cast on the wrongdoer alone and not on abettors.

In offence (a), as noted above, a punishment can be imposed on the theatre owner or distributors of films because the liability is on <u>any person exhibiting or permitting to be exhibited</u> such a film. Accordingly the exhibitor or the distributor is also liable even if he has no knowledge that the category mark of the certificate is altered or tampered with. There is no justification to punish such persons without <u>mens rea</u>. This is so especially in view of the fact that a punishment can easily be imposed on the actual wrong doer under offence (c) stated above. More over the punishment envisaged under the Act is also severe.

In offence (b) the theatre owner/manager is liable for admitting a person under the age of eighteen to see an 'A' Certificate film or for admitting a person who is not a member of the profession or class of persons to watch a film for which an 'S' certificate was given. If such entry of persons is made with the consent of distributor,

he is also liable. The Act imposes a duty on cinema owners and managers - a duty impossible to be performed. It will be very difficult and practically impossible for a manager of a cinema house to decide whether an audience seeking admission to watch an 'A' film is above eighteen years or not, especially in cases of persons coming within the teenage group who constitute the majority of cine goers.[30] It is not possible for cinema house owners and managers to keep a doctor to observe and examine doubtful cases of people below the age limit. In modern times due to technological developments, physical maturity is attained at an early age. The teen-agers with long hair, beard and wiskers may appear to be older than they actually are.

More difficult is the case of 'S' certificate films. By no means, an employee is a cinema house can ascertain whether a person seeking admission to a show where an 'S' certificate film is exhibited belongs to the profession or a member of the special class unless an identity certificate is produced. Since the Act and the Rules do not insist on the production of an identity certificate, the employees ought to be astrologers.

---

30. The Khosla Report, p.101

It is unjust and against the very fundamental foundation of criminal law to punish such a person where he has no means to know about the age of audience or about the particular profession or class he belongs. If, on the other hand, the manager of the cinema house is over cautious and denies admission to a person who incidentally happens to be one entitled to admission, there is always a scope for alleging illegal denial of the legal rights. The manager may become answerable before a court of law. Obviously the poor manager will be placed between the devil and the deep sea. The gravity of the situation is increased by the severity of the punishments prescribed under the law. Further, it seems curious that the actual wrong doer, i.e., the person who illegally gains admission to watch an 'A' or 'S' certificate film is not liable for any punishment.

It appears that the extreme harshness of the penal provision relating to entry of minors to an 'A' certificate film can be reduced by providing a free zone for the purpose of punishment. Retaining the present liability of cinema house owners and managers in tact, a new provision may be added for exonerating such persons from liability for permitting children below eighteen but over sixteen years of age provided they genuinely believed that such a person

was above eighteen years of age. Further, the entry of unauthorised persons to watch an 'A' or 'S' certificate film can be effectively checked if provision is made for punishing the actual wrongdoer, viz., the person getting illegal admission.

In offences of tampering or altering of certified films, the liability is on the actual wrongdoer. The exhibitor or distributor, if he is not directly associated with the offence, is not liable for punishment. It appears that even if the exhibitor or distributor has knowledge about the alteration, they cannot be punished because the liability is fixed only on the person who is responsible for such illegal alteration.

For offence of failure to comply with the orders of the Board or the Government, the film maker, any person who claims ownership rights in the film, distributor or an exhibitor is liable.[31]

---

31. It is the duty of any person who delivers any certified film to a distributor or exhibitor to hand over necessary information and documents relating to the film. For a compliance with this provision it is sufficient to hand over a copy of the certificate, both Part I and II to exhibitors and distributors along with each copy of the film and the exhibitor is duty bound to exhibit the same prominently in the theatre on all days on which the film is exhibited therein. S.6A of the Act and Rule 30(1)& (3) of the Rules. See also *supra* n.23.

The most objectionable feature of the penal provision in the Act is that it provides for same punishment[32] for all offences punishable under the Act.[33] Thus the law has not taken into account the difference in degree of the offences committed at different stages viz. making, distributing or exhibiting a film. Thus same punishment is provided for a minor and innocuous offence like admitting a non-adult for an 'Adults only' film and for a comparatively major and serious offence like unauthorisedly altering or tampering with a certified film. It is just and fair if different punishments are provided for different types of offences depending upon the gravity of the offence.

The offences under the Cinematograph law are strict liability offences. Mens rea is not required. The penalty can be imprisonment for a term extending upto two years.[34]

---

32. The punishment provided in the Act is imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees or with both and in the case of a continuing offence, with a further fine of five thousand rupees for each day during which the offence continues. Id. S.7.
33. Before the amendment in 1981 the punishment was not so severe. It provided for imprisonment upto a maximum of three months or with fine extending upto ten thousand rupees or with both and in the case of a continuing offence with a further fine extending to one thousand rupees for each day during which the offence continued. The Cinematograph (Amendment) Act 1981 enhanced the punishment probably with the object of securing a deterrent effect.
34. It may be noted that Indian Penal Code imposes only lesser punishments for similar offences. Thus for (Contd...)

The act or omission envisaged under the Act for constituting offences are too grave enough to attract imprisonment. It appears that a punishment by way of fine together with confiscation of film in question[35] will be sufficient to meet the ends of justice and to provide enough deterrent against commission of offences stipulated by the Act.

Enforcement machinery.

The rigour of the severity of punishment is perhaps reduced partly by lack of proper enforcement machinery and partly by the lethargic attitude of the authorities. Violations of the law are not uncommon. There is a widespread criticism that certified films are being exhibited with blue films tagged on to it or with a change in the title of the film, often new titles appealing to prurient interests with an evil eye to attract audience.[36] It has been further said that some exhibitors or distributors show

---

(f.n.34 continued)

exhibiting an obscene film, the punishment provided is 3 months imprisonment or fine or both (*Id.*, S.292) and for exhibiting an obscene film to a person below the age of twenty years, the punishment is only six months imprisonment or fine or both. (*Id.*, S.293). There is no rational basis for imposing such a long imprisonment under the cinematograph law.

35. The Act provides that the court while convicting a person for an offence punishable under it in respect of any film, may also order for forfeiture of the film. *Id.* S.7(2).
36. "Who's Afraid of Censorship" a write up in *India Today*, Vol.V, No.19, Oct.1-15, 1980, p.76.

films entirely different from the copy of the films submitted for certification.[37] Eventhough such allegations of illegal practices are frequent no action seems to have been taken against such violations. At any rate there are no reported instances punishing such violations.[38]

The Act does not provide for any special machinery for enforcing the decisions of authorities. This task is left to the Police. Prior to the Amendment in 1981, the Police had no power to conduct a search without a warrant from a competent court.[39] This provision stood in the way of speedy action which was highly necessary for detecting offences under the Act. The amendment in 1981 confers sufficient power on the police.[40] However, lack of co-ordination between the Board and the Police makes it extremely difficult for the latter to conduct effective investigation.[41] True, the Police can now conduct a search and seize

37. A write up in a Malayalam Cine Weekly, Nana, Book 10, Vol.38, dated 25-7-1982.
38. The Police authorities of Cochin has informed the researcher that no case under S.7 of the Act has been registered so far.
39. S.7A of the Act as it stood prior to the Amendment in 1981.
40. After the amendment in 1981, S.7A of the Act authorises search and seizure without a warrant issued by a court. All offences under the Act are deemed to be cognizable offences. Id. S.6B.
41. For instance, in the case of an unauthorised exhibition of film by adding some objectionable matters to a certified film after removing an equal length from the film, it will be very difficult for the Police to detect the offence. Part I and II of the certificate is not at all (Contd...)

the film if the concerned officer has reason to believe that the film exhibited is not a certified one. But a mere suspicion alone may not be adequate to constitute sufficient grounds for such a belief. When there is no well founded complaint (the same can come from the Board alone) the Police will be very reluctant to take such a drastic measure like search and seizure. Generally the Police act on the basis of complaints formally presented to them. Though public criticism against violations of the Act and the Rules are frequent, complaints to the Police are rare.[42] This is also another reason for dearth of prosecutions for violation of the Act and the Rules.

Even though violation of the provisions of the Act cannot be excluded altogether it can be reduced to the minimum if the enforcement machinery is strengthened with proper co-ordination between the Board and the Police. The Board shall regularly supervise exhibition of films. In the present set up the Police cannot effectively check up all violations of the Act. Keeping the Police informed

---

(f.n.41 continued)

helpful. The Board alone will be in a position to decide whether the film exhibited is a certified one or not.

42. See *supra*, n.38.

about excised portions of films is a cumbersome and well neigh impossible process, especially so as English and Hindi films are screened in every part of the country. Besides, the police cannot be expected to keep abreast of all decisions of the Board due to their preoccupation with other more serious law and order duties.

Authorising some authority under the Board for ensuring effective checks would go a long way in better enforcement of the provisions of the Act, which is not being done at present. This is amply proved by the very fact that very few prosecutions are launched under this Act. Such an authority can prefer complaints to the police for initiating follow up action.

Search and seizure.

The Act empowers the police to search any place where a film is exhibited in violation of the provisions of the Act and the Rules, or in violation of any order issued by the Board, the Appellate Tribunal or by the Central Government.[43] However, such search shall be carried out in

---

43. S.7A(1) of the Act.

accordance with the provisions of the Code of Criminal Procedure 1973.[44] This provision which is in conformity with section 6B of the Act[45] enables the police to conduct search without a warrant.[46]

In search and seizure, especially in the absence of a warrant, chances of abuse of powers are greater. The provision as to application of the Code is inserted as a safeguard against probable misuse of power by the authority and to provide certain procedural safeguards in search and seizure.[47]

Though the Act enjoins the Police to conduct search in accordance with the provisions contained in the Code relating to search, it is silent as to which of the provisions of the Code shall apply to search under the Act. The Code contains a few provisions relating to search[48] but in the context of the provisions of the Act, it appears that sub-section (4)

---

44. Hereinafter referred to in this chapter as the Code.
45. *See* supra, n.40.
46. S.7A(2) of the Act.
47. Jain and Jain, *Principles of Administrative Law*, p.298 (1979).
48. Such as Ss.51, 95, 99, 100 and 165 of the Code.

to (6) of Section 100 and Section 165 of the Code alone are applicable to search under the Act.[49]

The object of Section 100 of the Code is to provide for some safeguard against misuse of power by the Police and to see that searches are conducted fairly. Sub-sections (4) to (6) deals with general provisions applicable to search and it also applies to a search without warrant. It provides the following safeguards. A search shall be conducted in the presence of two or more independent and respectable inhabitants of the locality and if no such persons are available or willing to act as witness to the search, in the presence of two or more respectable inhabitants from another locality.[50] The list of things seized during search has to be attested by the above witnesses.[51] The occupant of the place searched or some one in his behalf shall be permitted to attend the search.[52]

---

49. See <u>infra</u>, nn.50-52 and 54-57. The other provisions of the <u>Code</u> deals with the right to ingress by police in closed premises on production of warrant, search of persons and the obligation of citizens to act as witness for search.
50. <u>Id</u>., S.100, sub-sections (4) and (5).
51. <u>Id</u>. Sub-section (5).
52. <u>Id</u>. Sub-section (6).

Section 165 of the Code deals with the legal requirements in search by a Police Officer without warrant during the investigation of a cognizable offence. Since the Act makes all offences provided for by it to be cognizable offences,[53] in a search by a Police Officer under Section 7A of the Act, the Police Officer has to follow the requirements of Section 165 of the Code.

According to Section 165 of the Code, a Police Officer in charge of a Police Station can conduct a search without a warrant issued by the Magistrate only if he has reason to believe that anything necessary for the investigation of an offence may be found in the place where search is to be made and such thing cannot, in his opinion, be obtained otherwise without undue delay.[54] The Police Officer is bound to record in writing the grounds of his belief specifying in such writing, the thing for which search is made.[55] The officer-in-charge of the Police Station has to conduct the

---

53. See supra, n.40.
54. S.165(1) of the Code.
55. Ibid.

search personally.[56] However, if it is not possible for him to conduct the search by himself, he can depute a subordinate officer but in such a case the Officer in-charge of the Police Station has to state the reasons for doing so, and he shall deliver to the subordinate officer an order in writing specifying the place to be searched and things to be searched for.[57]

Thus the important requirement in a search without warrant is the stating of reasons that support the belief of the Police Officer. Even though such reasons need not be disclosed to the party, still, the requirement of stating reasons affords some guarantee against arbitrary action by the Police.[58] In the very nature of things, no right of representation can be given to the party before search because it will defeat the very purpose of the search itself. Practically, the only procedural safeguard which can be provided in the circumstance is the recording of reasons on which the belief of the Police Officer is founded. The Act

---

56. Id. S.165(2).
57. Id. S.165(3).
58. Jain and Jain, op.cit., p.304.

therefore contains a well entrenched provision relating to search and seizure. However, it appears that even if the search is invalid the articles seized during such a search can be introduced in evidence in a subsequent prosecution relating to the same subject matter.[59]

Can the Penal provision in the Act be attracted if one sees in the privacy of his home, an uncertified film or its video copy?[60] The question is interesting, but it is difficult to find an answer. In the United States, the right to privacy of one's own house has been recognised.[61] In India

59. Pooran Mal v. Director of Inspections, A.I.R. 1974 S.C. 348. In this case, the seizure conducted by the authorities was found to be violative of the provisions of the Indian Income Tax Act 1961. However the court opined that even inspite of the illegality of search, articles seized therein could be introduced in evidence in a subsequent proceedings against the assessee under the Act.
60. After the amendment in 1984, the procedure for certification embodied in the Rules shall also apply to video films.
61. Stanley v. Georgia, 394 U.S. 557 (1969). The law enforcement officers while raiding the house of Stanley in search of some gambling materials discovered three reels of obscene movies. Stanley was convicted for possessing obscene matters. Reversing the conviction, the Supreme Court maintained that under the First Amendment every citizen is entitled to a right of privacy of his own home without interruption by the State. However, the subsequent decisions refused to extend the scope of the right to distribute or sell an obscene matters for

(contd...)

the Supreme Court recognised privacy as a fundamental right subject to the 'compelling state interest.'[62] The State's interest is not in any way jeopardised by seeing a film or its video copy in violation of the Act and the Rules by a person in the privacy of his home. Further, it appears that in order to exhibit a film, there must be one or more persons other than the exhibitor himself.

(f.n.61 continued)
consumption in home. (United States v. Reidel), 402 U.S. 351 (1971), or to import obscene matters for the same purpose; (United States v. Thirtyseven Photographs, 402 U.S. 363 (1971). In United States v. 12,200 ft. Reels of Super 8 mm. Film, 413 U.S. 123 (1972). Rejecting the contention of importer of some obscene materials from Mexico that such materials are intended for private consumption alone and hence entitled to constitutional protection, Chief Justice Burger maintained that the constitutional right to possess obscene materials in the privacy of one's house did not afford a correlative right to acquire, sell or import such materials even for private use only.

62. Govind v. State of Madhya Pradesh, A.I.R. 1975 S.C. 1378. It has been held that a police surveillance will amount to invasion of privacy rights. However, the court accepted the need for regulating this right in the interest of society. Accordingly, it has been further pointed out that police surveillance on habitual offenders engaged in crimes against public peace and security would be permissible. For a discussion on right to privacy see Upendra Baxi in his introduction to, Upendra Baxi (Ed.), K.K. Mathew on Democracy, Equality and Freedom, pp.LXXIII-LXXV (1978). See also the dissenting opinion of Subba Rao and Shah, JJ. in Kharak Singh v. State of U.P., A.I.R. 1963 S.C. 1295.

Thus, the display of a film to himself is not an exhibition of a film within the meaning of the Act and the Rules. Thus, a logical answer appears to be that no action can be taken under the Act against a person showing a film, however objectionable it may be, to himself.

PART V

AN EMPIRICAL PROBE

Chapter 12

CINE MEN AND CINE VIEWERS : AN ANALYSIS OF EMPIRICAL DATA

Is impact on society and public image are relevant in evaluating the efficacy of a licensing process. It is often said that law and public opinion are complementary.[1] Obviously the question how the general public, including cine experts, view the censorship process assumes vital importance. True, it is an area where personal convictions and individual idiosyncracies may have some influence. Although a public poll may not therefore afford conclusive evidence[2] it provides reasonable guidelines which certainly help future reforms.[3]

---

1. Dicey, Law and Public Opinion in England During the Nineteenth Century (1962). He observed:
   "True indeed it is that the existence and the alteration of human institutions must, in a sense, always and every where depend upon the beliefs or feelings, or, in other words, upon the opinion of the society in which such institutions flourish." at p.1.
2. Guy Phelps, Film Censorship, p.226 (1975).
3. E.P. Ellinger and K.J. Keith, "Legal Research: Techniques and Ideas", 24 J.I.L.I. 213 at pp.232, 233 (1982).

In India no direct evidence from censors is available to assess the process of film censorship which is covered by a veil of secrecy.[4] Hence an evaluation of the system is possible only on the basis of an assessment of films passed for public exhibition by the censors. Such an assessment can be made by measuring public opinion about certified films and getting at the views of the experts who are involved in the direction and production of films and as well as of people who critically view the various aspects of film.

Which way the general public think?

An opinion poll was held with a view to assessing the public acceptability of film censorship. Views from about one hundred young men and women[5] from the city of Cochin in the State of Kerala were elicited. This group is a cross-section of the elite[6] middle class[7] who were competent to

---

4. See Rule 23(4) of the Cinematograph (Certification) Rules 1983.
5. The majority of those from whom the views were elicited come within the age group of twenty to thirty and the rest in the age group of thirty to forty.
6. All the respondents are graduates. About twentyfive per-cent were having post-graduation.
7. All of them are employed people. However, though presently resident in Cochin, most of them were having a rural back-ground.

appreciate art and to distinguish it from commercial trash and who with their educational background and social status, are in a better position to assess the prevailing standards in society.

The main object of the survey was to guage how the censors succeeded in determining public acceptability of films. Among the many grounds[8] on which censorial powers can be exercised, the crucial and the most controversial one is the ground to decide on violations of 'morality and decency.' The poll, therefore, in addition to the need for censorship, covered the question of sex and violence in Indian films. A questionnaire was prepared. It related to the desirability of, and underlining reasons for, film censorship, the range and magnitude of, and the measure of control over, depiction of violence in films and the extent of portrayal of, and adequacy of control over, sex in films.

---

8. The grounds of censorship are embodied in S.5B(1) of the Act. For a discussion of these grounds see <u>supra</u>, Ch.8.

(1) Desirability of film censorship.

Almost all those from whom the views were taken approve the need for censorship of films. Ninetysix per cent specifically vote for retention of the system. Only one out of the hundred people wants to scrap film censorship altogether. Three do not express any opinion. However, there is no such wide consensus on the rationale for film censorship. Table below depicts the opinions.

Justification for Film Censorship

Details	Per centage
(a) To safeguard the best interests of society.	46
(b) To protect our cultural heritage.	11
(c) To protect children.	9
(d) A combination of (a), (b) and (c).	30
(e) Any other reasons.	--

On an analysis of the data, it can be seen that seventy-six percent perceive film censorship as a measure of social control. In other words, the result of the poll indicates that public opinion favour subordination of individual rights to the wider interests of society. One significant outcome of the poll is that only a thin percentage, i.e., nine percent want to confine censorship to the protection of children. An overwhelming majority of eightyseven percent consider it necessary to retain film censorship for adults as well. This view does not approve the American practice wherein there is no censorship for adults and there exist a system of self-regulation confining to classification and rating alone.[9]

Public opinion polls conducted on a wider scale by other agencies on earlier occasions also reinforce the outcome of this poll on the desirability of film censorship. A study conducted by the Khosla Committee in 1968-69 discloses that eightyone percent wanted to retain State

---

9. For a discussion on the American system of rating, see <u>supra</u>, Ch.9, nn.55-70.

censorship[10] over films. In a still recent study on 'Viewers Reaction to Film Censorship' conducted by the Institute of Mass Communications in 1979 among the Southern States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala, about seventy to ninety percent of respondents favoured censorship of films.[11] It is interesting to note that public opinion for retention of film censorship is becoming stronger and stronger over the years. Does it suggest that people are becoming more skeptical about the cinema?

(2) Violence.

While introducing the questionnaire it was explained that the term 'violence' in the questionnaire has been used in a narrow sense denoting force, bloodshed and cruelty other than the aggravated forms of violence coming within the scope of public order, security of State or incitement

---

10. Khosla Report, p.85.
11. As quoted in the Report of the Working Group, p.76.

to offence or one which is disgusting, repulsive and shocking to an average adult person.[12] The word in its narrow sense may also include horror or any thing which may strike fear in the mind of viewers. Since it is doubtful whether censorship for adults on grounds of violence is constitutionally permissible[13] the questionnaire was confined to the desirability of censorship on this ground in the interest of the children alone.[14]

A large majority, seventyseven percent as against twentyone percent, of the respondents consider that depiction of violence in films will have an adverse impact on children. Thus the opinion stresses on the need for censorship of film on the ground of violence. However, as said above, the censors cannot legally impose any restriction on depiction of violence even to children; at best they can only adopt

---

12. Such aggravated forms of violence can always be censored because such instances of violence come within the prohibitive grounds mentioned in S.5B(1) of the Act, see _supra_, n.8.
13. _Supra_, Ch.9, n.24.
14. A system of classification of films for children making it advisory alone may not raise my constitutional issues.

a system of age classification giving parental warning.[15] Interestingly, a bulk of the respondents, seventy percent, feel that Indian films do not depict too much violence. Only twentytwo percent consider that it does.[16] Perhaps this finding goes to show that the allegation of violence in Indian films is without basis.[17] What then does the finding in the poll indicate? Are the film makers more self-restrained in depicting violence? Can it be said that such welcome conditions are there because of the functional excellence of the Board of censors? But sixty percent of those who participated in the poll are of the view that the censors should adopt more stringent standards towards depiction of violence in cinema. What does this mean? Is there an obvious contradiction? The only explanation that this writer can give is that even though

---

15. See *supra*, Ch.9, text accompanying n.25.
16. According to two percent there is no violence at all in Indian films whereas the remaining six percent have no opinion to offer.
17. There is a wide spread criticism that Indian films contain too much violence. See *supra*, Ch.9, n.89.

depiction of violence in modern Indian films is tolerable, it must be cut down still further. Perhaps, such an opinion springs from a misconception. On the one hand the censors cannot legally prohibit depiction of violence in the narrow sense as used in the questionnaire.[18] At best, what the censors can do is only to assign a senior juvenile category for films containing such scenes of violence. However, the object of classification is not confined to sanctioning of films for children alone. A 'U' category film is suitable for all classes of audience. In a 'UA' category, the film is passed for general exhibition with a warning to parents about the existence of objectionable matter. Thus film with a 'U' or 'UA' certificate cannot be equated to a children's film. In the very nature of things, some sort of a compromise between the interests of adults and children is necessary. It is, therefore, only natural that the film may

---

18. See supra, text of n.12.

contain some scenes of violence or other matters unsuitable to children. Besides, it is also not in the best interests of children to present an unreal and highly sophisticated version of life by eliminating all references to violence and sex thereby shutting them out from the realities of live. If the depiction of violence is not grave enough to be worried about, as is borne out by the results of the poll, there is no necessity for adopting more strict standards by censors. Violence normally seen in society can be permitted by censors.

(3) Sex.

It was explained to those who participated in the poll that the term 'sex' is used to denote portrayal of human form or relations in sex unfit for public display. The public opinion shows that the standards of morality and decency adopted by the censors are much ahead of the contemporary community standards. Fiftynine percent of the respondents believe that the present Indian cinema portrays more sex and obscenity. This may be compared with the opinion of the public about display of violence in films where only twentytwo percent

subscribe to the view that film violence is too much. The opinion of the public about sex in cinema has to be analysed in the light of the responses to another question: "Do you think that the censors are more lenient towards violence than they are towards sex and obscenity?" The samples are evenly divided with forty percent agreeing and the same number disagreeing. In other words the censors are not to blamed of adopting discriminatory stance between sex and violence. The logical conclusion is that there cannot be too much exhibition of sex in films. However, as said early, the majority, fiftynine percent as against thirtyfive percent, feel that portrayal of sex in Indian films is too much. In the circumstances, the only probable and logical conclusion is that the standards adopted by censors for permissive display of sex in cinema does not seem to be in conformity with the community standards even though the standards adopted by them towards violence tally with community standards.

The result of the poll about depiction of sex and violence in film may also lead to yet another conclusion.

The film makers are more interested in depicting sex than they are in violence.

What then is the nature of sex shown in films? Only twentythree percent consider it as pornographic. The cumilative effect of opinions regarding the extent and nature of sex shown in film is that the depiction of sex in films only offends against the good taste and decency of cine viewers. In fact no film maker in India dare portray explicit sex. There is no direct portrayal of intimate sexual relations or exhibition of naked human forms. Wherever a reference to explicit sex is necessary, the film makers usually resort to symbols, at times, vulgar symbols. The Indian film makers, it appears, is content with the exhibition of half-hidden parts of human body. This, in no way, can be characterised as obscene, eventhough it may amount to indecency. It is also doubtful whether such presentation amounts to violation of notions of morality. Anyhow, it is still legally possible for the censor to object to such indecent scenes. The survey shows that the censors had not given due attention to this part of the censorial functions. It further appears that a consistent explanation can be

given to the inactions of censors. The combined effect of directions issued by the Central Government[19] and the impact of the decision of the Supreme Court in Abbas,[20] gave emphasis on obscenity and relatively a marginal importance on 'indecency'. It is only natural for the censor to concentrate only an obscenity and gross indecency with less emphasis on vulgarity.

In conformity with their opinion that depiction of sex in films is too much, the majority of the participants in the poll, i.e., sixtyfour percent, favour adoption of more stringent standards for censoring sex in films.

The concern of the public over decency and morality can be seen from the response to the question 'Do you like to go to films in company of your parents (or children)?' At the very outset it was explained that the object of the

---

19. For a discussion about the 'directions' see supra, Ch.7 nn.82-90.
20. Abbas v. Union of India, A.I.R. 1971 S.C. 481. The Court directed that the censors, while censoring films had to take into consideration the principles laid down by it in respect of obscenity in an earlier decision, viz., Ranjit Udeshiv. State of Maharashtra, (A.I.R. 1965 S.C. 887) id. at p.497. For a discussion about the suggestion see supra, Ch.8, nn.48-52.

question was to ascertain whether the parents feel shy in viewing films in the company of their children due to the existence of vulgar, immodest and indecent scenes in films. In other words, the object of the question was to ascertain whether the modern Indian films, though not obscene or not against the accepted standards of society, contain scenes in bad taste like indecently dressed characters, use of indecent language and innuendos, excessive love scenes and sexy dances. Sixtyone percent consider that Indian films contain scenes in such bad taste that parents do not like to see films in the company of their children. Only twenty-eight percent express a different view. The response reinforce the conclusions that the censors are not at all serious about indecency in cinema.

However, the public opinion about indecency in films can be accepted only with reservation. It is beyond doubt that even a film, passed for unrestricted public exhibition, is not intended for children alone. As discussed earlier[21]

---

21. See supra, Ch.4.

till very recently there were only two categories, one for unrestricted public exhibition and the other for public exhibition restricted to adults only. In such circumstances the censors were bound to show some leniency in classifying films. Besides, it appears that the public are not aware of the ramifications of the category system, especially those of the recently introduced 'UA' category.[22]

In fine, the public opinion, as disclosed by the survey, shows that production and exhibition of films has to be regulated in order to subserve the wider interests of society. Though the portrayal of violence in films is tolerable, stricter control may be desirable. The public is alarmed at the portrayal of sex in films. This calls on censors to tighten the grip over vulgarity and indecency. Public opinion presents a satisfactory picture in matters relating to violence but in the case of sex, they are not willing to give a blank cheque.

---

22. All the respondents were enquired about the significance of the censorship certificates. Almost all admitted their ignorance.

WHAT DO THE EXPERTS SAY?

What is the opinion of experts who have specialist knowledge about cinema in general and film censorship in particular? Five such persons[23] were interviewed with the main object of eliciting informed opinion about matters connected with film censorship.[24]

(1) Desirability of censorship of films.

All the five agreed on the necessity for retaining censorship over films. According to them cinema possesses the unique capacity to influence not only the children but

---

23. They are (i) a famous director of the old generation and a gifted poet, (ii) a film director and one of the chief officials of a quasi-governmental concern dealing with films, (iii) a script writer who is a novelist, (iv) an official of the censoring authority, and (v) a renouned film critic. These five are widely known figures in the film field. In difference to the opinion of some of them, their names are not disclosed in this study.

24. Since the present thesis is confined to censorship alone, the interview was also confined to film censorship and allied matters. The interview mainly centered around the need for censorship, suitability or otherwise of a system of statutory official censorship as the one presently in existence, the infra-structure and the working of the present system including its defects, the desirability of giving advance advice on scripts and the basic reasons for the present maladies in films and film-censorship.

also the adults. It is necessary to shelter society from the vicious effects of bad cinema. All of them agreed on one significant matter: the main object of every film maker, barring a few, is to collect as much profit as possible and therefore, they may resort to any method, however heinous it may be, for achieving the goal. If uncontrolled and unbriddled right is given to film makers it is feared whether some of them may tend to use this powerful medium for exploitation. Will this very thing account for the need for censorship?

The considered opinion of the film director and the film critic, can be summed up as follows. They think that there are a few directors and producers, particularly in Kannada, Malayalam and Bengali, who approach cinema seriously. The established film makers and directors are not eager in depicting sex and violence. It is only a thin minority, especially the new entrants without any knowledge about cinema spoil its good image by depicting violence and vulgarity. However, in their view, this situation leads to contaminate the industry as a whole. In the absence of any

censorship, there is a real likelihood of depicting even hard core pornography. There is no gainsaying of the fact that retention of film censorship is necessary.

It is interesting to note what view is held by the censorship officer interviewed. The object of criminal law is to punish law breakers. A law abiding citizen need not worry about the police. Similarly, a faithful film maker with a social commitment need not worry about censors. Censorship is directed not against those films which truly represent art and existing social mores but is directed against commercial trash.

The official of the quasi-governmental film concern is of the firm view that a licensing system in which permission to produce film is given only to those with fair knowledge about the culture, traditions and customs of society may effectively cut down the number of unscrupulous film directors with no social commitment or responsibility. On the face of it, the suggestion may appear to be laudable. But the difficulty with the suggestion, as pointed by the film critic

interviewed is that such a system results in an undue restriction on the rights of individuals. The licensing power can be converted into a complete governmental control over films and film directors. The system may be used for denying licence on political considerations. However, it seems that a system of licensing of film makers and directors may work satisfactorily if the power is conferred on domestic authorities modelled on lines of the Bar Council, the Dental Council or the Medical Council.

The script writer who was formerly a top executive of a Public Corporation connected with cinema is of the view that the object of censorship is to avoid depiction of materials contrary to our culture and traditions.

(2) Who should constitute the censorship agency?

Although they agree that a system of official pre-censorship is the most suitable, all the five interviewed had divergent opinions on the structure of the Censor Board. The film director opines that the majority of the members of the advisory panel are not competent to adjudge a film. Being

given only a nominal sitting fee they may not be sincere in their work. Most of them are nominated as a measure of political patronage and not on the basis of any specialist knowledge about cinema. According to him, the members should be appointed on whole time basis. It is also his view that the censor should possess some basic qualities the most essential being his proficiency in understanding the various dimensions and aspects of cinema as a visual art. The interview with the one connected with censoring duties brings out an exactly opposite view. According to him the appointment to panels is not on political considerations. In his view the members are competent to assess the suitability of films. His view is that censors need not be specialist. It is not the duty of censor to adjudge the quality, what he has to decide is whether the film is acceptable to society or not. In other words, the censor should represent a cross section of society itself. According to him the panels attached to the Regional Boards really represent a cross section of

society and therefore are fully competent to adjudge the suitability of films in the light of the contemporary community standards.

The film critic agrees with the proposition that the censors have to determine whether the film is in accordance with community standards. But he does not believe that a cross-section of society may be in a position to adjudge the current community standards. In order to determine the same it is necessary to have a basic education with a fair knowledge of culture and social traditions. Besides, the censor must possess sound knowledge about cinema and its potentialities and he should be in a position to distinguish between what is art and what is not. Thus, according to the film critic, it is necessary that the censor should have certain qualifications and expertise. But the expertise need not be in the realm of film itself; it is enough if he is an expert in culture and traditions of given society. The allegation that the present members attached to various panels are wholly incompetent is not true. While admitting that some of them

are nominated on the basis of extraneous considerations, each panel contains atleast a few competent and enthusiastic members. Practically the censorship is carried on by such members.

(3) Examining Committee and external influence.

Among those who were interviewed, there is difference of opinion about the functional aspect of the censorship system. The film director interviewed disapproved the functioning of the present censorial system. Picturing the whole process as a horse trade he pointed out that usually cuts on films are made not after taking into consideration the interests of society. Very often certified films may contain offensive matters. In his view the present procedure of authorising the Regional Officer to select the members of the Examining Committee often results in the selection of panel members who are passive and ready to vote according to the whims and fancies of the Regional Officer. However, the censorship official himself paints an entirely different picture. He holds that the presents procedure is satisfactory

and is free from any external influence. Leniency shown towards the film makers does not mean that the censors yield to pressures. He further justifies the procedure enabling the Regional Officer to constitute the Examining Committee. Usually films are submitted for certification at the eleventh hour.[24] If censorship is not done immediately, the position will result in serious financial injury to the film maker. In such circumstances, he notes, the only course open is to get the presence of available members. Very often the members of the Examining Committee is constituted by telephonic appointments. However, the top brass of the quasi-governmental concern dealing with cinema maintains the view that eventhough all the members of the Examining Committee do not participate actively in censorship those who actively participate do their job correctly and satisfactorily. He adds that he never had any

---

24. The date of release of a film will be fixed prior to its submission for certification. The application for certication usually will be presented, just two or three days ahead of the proposed releasing date.

problem with the censors. But he further says that in most cases the film makers do not carry out the order of censors. Even if the censors knew about it, they keep quite and adopt a passive attitude.

(4) <u>Censorship of scripts</u>.

Is censorship on scripts a feasible idea? One view is that if the object is to give an advice on the acceptability of the theme, it is welcome. A striking experience was narrated by the film director interviewed. It was in 1960s. It was at a time when censors were very strict and very particular not to allow any reference to the political set up. A producer wanted to depict a political satire. Anticipating some censorial problems he decided to seek advance opinion of the Censor Board about the acceptability of the story. The Board informed that certificate will have to be refused if and when a film is made on the basis of the said story. The director interviewed feels that such advance advice may be very helpful to film makers. However, he adds that this procedure shall not be made compulsory. But the

opposite view is also expressed by another in the interview, the censorial official. According to him such a procedure for script censorship may not be workable. He perceives two practical difficulties. One is that the final film may not be in confirmity with the original script. A number of changes and adjustments may be necessary during the process of shooting the film. In such a case the advice on the original script may not have much relevance. Secondly, it will be very difficult to determine on the basis of the script whether or not a particular scene will be objectionable. Once permission is given by the censors to the script, it will be difficult for them to object to a scene at the time of preview if it turns out to be objectionable. This point can be further illustrated. Suppose the script contains a conversation between a man and a woman where the man asks, "What is this?" The woman gives an innocent reply. There is nothing wrong about the conversation and the censors have to okay it. In the film, the man may ask the very same question pointing his finger to the breast of the woman.

Obviously, it suggests vulgarity. The censor is helpless. He has okayed the scene previously.

It appears that there is a misconception on the scope of script censorship. In Britain and the United States, this practice is resorted to for giving advice on the _prima facie_ acceptability of a theme or a particular scene or scenes. This advice is not binding on censors. They may subsequently go behind the advice. At the time of preview, the film is examined independently and not with reference to the earlier advice on script. Thus the main object is to give an advice on the general suitability or otherwise of the script. If the same procedure is adopted in India, the censors may subsequently object to a scene if it turns out to be objectionable. If the earlier advice is made purely advisory and not binding on censors the question of estoppel does not arise at all.

A more convincing objection to the proposed procedure is raised by the film critic. According to him, once a script is rejected by the censor, the script writer will be virtually

thrown out of the film field. For example, in communist countries eminent film makers and script writers have been eliminated from the film field as the script adopted for film production were not recognised.

The script writer interviewed anticipates that the suggested procedure will make the censor a super-director. The censor may suggest some changes and alterations in the script to make it better. The producers and directors who have to approach censors again for censoring the final product will be forced to accept the proposed changes.

The official of the quasi-governmental film development corporation considers that at present there is no need to introduce such a system. The film makers in India generally do not select any controversial topic for film production. He maintains that the problem relating to script censorship is only a matter of academic interest. Further, the present censorial set up where the panel members are part-timers, cannot cope with the additional work load.

(5) Categorisation.

During the interview, a specific question on the procedure in determining the category was put to the person connected with the censorship process. In his view no specific standard is adopted by censor for assigning suitable categories. Everything depends upon the circumstances present in each case. The usual process is that the film is considered in its general setting and after assigning a suitable category the decision is made whether or not any cuts are necessary. Thus if the film is generally suitable for family audience, a 'U' certificate will be given, if not an 'A' is granted.

(6) Maladies of the Indian cinema.

All those interviewed concede that the present Indian cinema is infected with a lot of malignancies. According to them, the main reason for the present maladies is the undue role of finance. The officer of a quasi-governmental film concern suggests a system of licensing as an anti-dote.[25]

---

25. A system of licensing of film makers/directors and complete financial assistance to such licensed film makers/directors will improve the situation. However as noted above, such a process will bring cinema under complete governmental control.

All those interviewed further agree without exception that the maladies in the present Indian cinema can be wiped out completely only if the cine goers improve themselves. The people must reject bad films. It thus becomes highly essential to teach people how to appreciate cinema. Film societies can do wonders at this level.

WHAT ARE THE VIEWS OF THOSE ACTIVE IN THE FIELD?

It is already found what the public view is towards the various aspects of film censorship. How far are the views of producers, directors, actors, and distributors who are actively engaged in the field? Although the writer attempted to send questionnaire to fifty such people, only ten persons responded. Out of the ten, four are concerned with film production, two with film direction, two with acting and two with distribution. Even they did not answer all the questions but answered only those questions with which they are familiar. Thus the two distributors who are not in any way concerned with the process of certification of films did not answer questions relating to the aspects relating to censorship.

The aim of the survey is to elicit the opinion of the film industry relating to matters connected with film censorship.[26]

It appears that a majority of those connected with the film industry have no fair knowledge about cinematograph regulations and that they have not applied their mind to the issue.[27] It further appears that one of the reasons for

---

26. The questionnaire dealt with the following matters viz., desirability of film censorship a model for censorship of films suitable to Indian conditions, adequacy or otherwise of the existing system with suggestions, if any, for improving it, the need for providing appeals and the structure of the appellate authority, feasibility of script censorship, need for instituting different censorial authority for films produced in different languages, qualifications of censorial personnel, utility of permitting the producer or his representative to be present at the time of preview of the film as a technique to improve the procedure in certification of film, sufficiency or otherwise of the present enforcement machinery, the propriety in introducing adult theatres in India and the nature of activities, and the role, of film societies.
27. Some of the respondents directly approached by the writer admitted in person that they have no much knowledge about the law relating to film censorship. Some others said that they had no censorial problems so far and therefore they had no occasion to think seriously about film censorship regulations.

paucity of case law in this area is this ignorance and for passive attitude of members of film industry.

(1) Censorship - a must.

All the ten people who responded to the questionnaire favour censorship. Five among them consider censorship as a shield against misuse of the medium by unscrupulous film makers and for safeguarding the interests of society. According to them the fear of misuse is not a speculative one, there is a real danger of such a threat. They opine that certified films very often contain a lot of vulgar and objectionable scenes. The censors are not responsible for this malady. Very often the producers did not care to carry out the excision ordered by the Board. This happens because the producer's eye is on box office.

It is the view of three others that censorship is necessary to preserve the cultural traditions of society[28] while

---

28. In the public opinion poll, eleven percent subscribed to the above view.

another two consider censorship as a mechanism to protect the interests of children.[29] In other words, those whose opinion is elicited do not believe in conferring unfettered power on film makers to depict anything in cinema.

(2) <u>A model for film censorship</u>.

While all favour official censorship of films, five of them feel that this is the only method of censorship possible from a practical point of view. Three point out that a system of self-regulation of cinema is not possible in India. The proverbial rivalry and the mutual distrust among the different factions of the industry are the stumbling blocks in the way of adopting self-regulation as a model of censorship. The other two have no reasons to offer. Those who responded to the questionnaire considered only two models; the official pre-censorship and self-regulation.

---

29. Only nine percent of respondents in the public opinion poll adhered to this view.

(3) Working of the Board.

As far as the working of the censorial system is concerned, eight out of the ten respondents agree that it is satisfactory.[30] They are of the view that censors are neither too strict nor too liberal. They are of the view that the censors are always ready to help film-makers. Eventhough films are submitted for certification only in the last minute the censors are not at all legalistic in their approach.[31] Usually they disregard such a minor non-observance of rules. Four of the respondents, however, observe that when a number of films are submitted simultaneously for certification, some extra-legal considerations may weigh with the censors in conducting preview. They however hasten to add that such a course is adopted only to help them and to film maker may possibly

---

30. Two respondents did not attempt to answer the question on the ground that they are not familiar with the process.
31. According to R.41(2) of the Rules, the Board is bound to refer the film to the Examining Committee only within fifteen day of receipt of intimation from the film maker that a clear runnable print of the film is available for examination.

complain about it. Six out of the above eight observe that censors are generally strict over certification of films but usually they have some soft-corner for film makers. Interestingly none of them complain that the censors have illegally and unjustifiably ordered for removal of scenes from films. Thus the opinion of film makers show that there is nothing to worry about thepresent system. However, it appears that this opinion is based on the effect of censorial work on film makers. Even though the working is satisfactory from the point of view of those associated with the industry, it need not be so from the point of view of cine-goers.[32]

However, three of them also expressed some dissatisfaction about the working of the system. But they did not offer any suggestion to improve the system.

(4) Decentralisation of censorial functions.

Eighty percent of those volunteered to answer the questionnaire, i.e., eight out of ten, feel that Regional Boards

---

32. Cf., the opinion of cine-goers discussed above.

are necessary. If all films are to be censored by one centralised authority, it may cause grave difficulties to film makers. The film maker has to take the film for preview to the head quarters of the Board, take back the same to the laboratory to carry out the censorial decisions to excise the portion, if any, and then again to present it before censors for checking up. This is a hazardous procedure involving delay and huge expenditure.[33] Censorship by Regional Offices established at main production centres will be highly helpful for producers. The above eighty percent further agree that such a procedure for censorship by different Regional Boards often result in the adoption of different standards, not only by various Regional Boards but also by the different panels attached to the same Regional Office. Four out of these eight people, i.e., fifty percent are of the view that such a differential treatment is necessary because the standards available

---

33. Cf. the observation of the President of the South Indian Film Chamber of Commerce.
"Gone are the days of sex and crime", an interview with S. Kumar, President of the South Indian Film Chamber of Commerce reported in the '*Inquest*' p.15, October 12, 1984.

in one society may be different from that of another society. The censors have to decide the acceptability of the film in accordance with the standards of society to which it refers. The censors are bound to adopt different yardsticks for films in different languages. One respondent goes still further. He maintains that at times the censors have to adopt different yardstick to different films in the same language itself. He illustrates it by an example. It is common for tribal women not to cover their breasts. In a film dealing with tribal life, depiction of an adivasi woman in half naked costumes may be permissible, but definitely, it is not permissible to depict urban women in a similar manner.

However, the other fifty percent consider that adoption of different yardsticks by different Regional Boards do result in unequal treatment. They point out that much sex and violence is permitted in some regions while this is not so in another region. One of them suggests that when a forum is created for mutual exchange of ideas between the various panels, the inequality in treatment of film can be minimised.

(5) <u>A forum for appeal</u>.

All the ten people agree that it is necessary to provide for an appeal from the decisions of the censorial authority. They are again unanimous in holding that the appeal shall lie to a tribunal and not to the judiciary. According to four of them, the reasons why they do not prefer judiciary are the long delay and expenses involved in judicial proceedings. Another four prefer a tribunal because it can be constituted with experts. The other two have no explanations.

(6) <u>Desirability of separate Boards for each Indian language films</u>.

Sixty percent of the respondents do not want separate Regional Boards for each language. Although they broadly agree that a system of separate Censor Boards for each language may have some advantages, they maintain that in the present circumstances it is not practical and workable. It is necessary that the Regional Boards shall be housed in production centres. If no production facilities are available at the head quarters of the Regional Boards it may cause

serious difficulties to film makers. They cite the example of Regional Office at Trivandrum. According to these respondents the facilities available at Trivandrum are least satisfactory and that is why only very few pictures are presented for certification before it. On the other hand, if separate Regional Officers for separate languages are stationed at the same production centre, it leads to duplication. Even otherwise different language films are censored by the respective language panels and so in effect it amounts to a decision by different Regional Offices. Two respondents welcome the idea of separate Regional Offices for different Indian language films.[34] According to them, since the censors are expected to know about the contemporary standards, they must be persons familiar with the social life which the film depicts. In the case of a language panel attached to a Regional Office situated out side the State,

---

34. The remaining two respondents who are not directly concerned with censorship did not express any opinion.

the members are usually residents of the State where the Board is situated and therefore may not be in a position to know the changes taking place in the concerned society. For example, the members of Malayalam Panel attached to the Madras Regional Office are and ought to be ordinary residents of Madras. Eventhough they are Keralites, they may not have any acquaintence with the currents and cross-currents of social life in Kerala and so they are not competent to guage the community standards in Kerala.

(7) Qualification of censors.

The general view of those whose opinions are collected is that the censors need not possess any special qualification or skill. All of them agreed that the censor must be in a position to assess the standards in society and add that the censors must be competent to understand the problems of film makers. Four of them maintain that the censors should be good artists and be in a position to appreciate art and creative expression. Others have nothing to say about the special qualifications of censors.

(8) Script censorship.

Seven out of the ten who volunteered to answer the questionnaire referred to the feasibility of script censorship. All the seven were against the idea. Three among them see an apparent danger of censors becoming super directors proposing modifications and alterations in the script. Two of them along with other three consider it as a useless procedure because, in the process of shooting films, material changes have to be effected and therefore, the final product may be entirely different from what is envisaged by the original script. Three of the respondents including two mentioned above say that such a procedure may result in delay. The film world, it appears do not wish to have more restrictions on their rights.

(9) Adequacy of enforcement machinery.

All the ten are of the view that enforcement of film censorship is inefficient. Almost all violations of censorial decisions go unpunished. Two of them maintain that violations of censorial decisions can never be detected and punished.

According to them exhibitors are mainly responsible for adding objectionable matters to certified films. Detection of such a thing is very difficult. According to them, a strong public opinion can alone stop such violations. Three of the respondents consider that film makers and owners of film laboratories are to some extent responsible for flouting censorial decisions. According to law prints can be taken only after excising scenes objected to by the censors. But due to lack of time, prints will be taken sufficiently early, in some cases even before submission of the film for certification. The result is that the prints contain the scenes objected to by censors. Very few film makers take pains to delete from prints the portions objected by the censors. The censors also take a lenient view even if they detect such violations. But such a violation may be comparatively harmless when compared with the addition of scenes, often portions of blue films, by theatre authorities. In a great majority of cases the police also will be helpless. By the time they

get information, the newly added objectionable scenes would have been removed from the print. Even though the respondents are critical about the enforcement machinery they have no suggestions to offer to improve the system.

(10) Role of film societies.

All the ten who responded to the questionnaire consider that film societies are doing good work by providing opportunities to see good films from other languages. This is helpful in developing good aesthetic sense among cine-goers.

(11) Future of cinema.

Those whose opinions are elicited are pessimistic about the future of cinema. They are of the opinion that the popular patronage of cinema by the masses have been considerably shakened with the introduction of television and video. All of them are of the view that in the near future film industry itself will have to face a crisis unless some novel attractions are invented to save the cinema. They point out that in cities where television and video have become common

collections in theatre have fallen down considerably. The upper middle class in cities have practically abandoned the habit of going for viewing films in cinema houses. Only a minority of such people who want to appreciate the film with all its effects are attending film shows. Three of the respondents, however, express the hope that film industry will soon find a way out. They refer to the recent technological development of sound effect. Such an effect is not possible in television. The respondents are of the view that unless the film industry finds out additional attractions, the future of cinema is dim.

PART VI

CONCLUSION

Chapter 13

A MODEL FOR INDIA

Film censorship is prevalent in one form or other throughout the world. As found early the scope and extent of censorship as well as the suitability of a particular model will depend upon a number of factors.[1] This chapter examines what model can suit Indian conditions.

The guarantee of freedom of speech and expression and the concept of reasonable restrictions upon this freedom have a bearing upon censorship. Censorship of films becomes constitutionally valid if a proper balance is maintained between them.[2] Its immense possibilities to influence the minds of people, especially the young and adolescents, its capacity for social penetration and its peculiar position as an extra ordinary combination of art and business are all mainly responsible for more stringent censorship on cinema

---

1. See *supra*, Ch.2, p.17.
2. For a discussion about the interaction between freedom of expression and film censorship, see *supra*, Ch.7, nn.9-22.

than any other form of creative art.[3] The illiteracy and poverty of the masses,[4] hero worship of film starts and the resultant tendency to imitate the action of such 'heroes'[5] not only by children but also by some adults are added factors for retaining film censorship.[6]

Public opinion in India favours censorship of films. In a sample public opinion survey conducted by the present writer[7] among a select group of educated adults, both with rural and urban base, 95 percent favoured film censorship,

---

3. See *supra*, Ch.7, n.37.
4. The Khosla Report, p.74.
5. *Id*. at p.60.
6. The Working Group on National Film Policy observed: "Some form of social or legal censorship has always restricted freedom of expression in all societies. Restrictions on freedom arise from the very nature of society, from the compulsions of communal living, which restrict individual freedom, sensitivities and susceptibilities of various interest groups in a society, the need to protect national interest as interpreted from time to time etc.... Particularly in the context of a hyper-conservative society like India, which has rigid social and religious norms of behaviour, where the political consciousness has still not matured and where harsh economic conditions inhibit individual growth, they are bound to be serious limitations on the freedom of expression."
   Id. at p.74.
7. See *supra*, Ch.12.

4 percent did not express any opinion and only one percent specifically wanted to abolish censorship of films.

Another study of the opinions of persons intimately connected with the film industry, also showed that they favour retention of film censorship.[8]

A famous regional film magazine interviewed a few film stars and directors. They all unanimously stressed the need for censorship of films in India.[9] A wider survey on viewers reaction conducted by the Institute of Mass Communication in July-August 1979 in the Southern States of Kerala, Karnataka, Tamil Nadu and Andhra Pradesh shows that about 70 to 90 percent of those surveyed favour pre-censorship of films.[10] In a pilor survey conducted in 1957 sponsored by the Central Board of Film Censors and assisted by the Tata Institute of Social Sciences, it has been found that about 66.7 percent

---

8. Id., at pp 380, 381
9. 'Nana' (A Malayalam Film Weekly) 18 December 1983.
10. Results quoted in the Report of the Working Group at pp.74, 75.

of male adults and 40.5 percent of female adults are of opinion that film exert an unhealthy influence.[11] This data further illustrates the need for censorship of films.

The audience reaction in India approves censorship of films. Even admitting that the attitude of audiences is influenced by regional and environmental differences, the effect of such influence is only marginal. Even after granting due concession for such variance, a higher percentage of public opinion still favours film censorship. From 58 percent in 1957[12] it has increased to 95 percent in 1984.[13] Viewed from another angle, the rise in public opinion for censorship shows that Indian films have deteriorated during these years and the audience lost faith in film makers.[14]

Should interest of society be the basis of film censorship? Or should preservation of national heritage

---

11. Quoted in the Khosla Report, p.71.
12. Ibid. The figure 58 percent represent the average of male and female adults favouring censorship of movies.
13. See supra, text of n.7.
14. Similar public opinion surveys conducted in England also favour censorship of films. Guy Phelps, op.cit., p.230.

and protection of children equally be important? 77 percent of the people under study by the present writer[15] favour censorship for safeguarding the interest of society. Only a few, barely nine percent, consider that protection of children shall be the sole basis of censorship. Analysed from a different point of view it is clear that the public do not believe that cinema has, in the past, contributed to dissemination of ideas and therefore is not responsible for any social change.[16] This does not mean that cinema cannot act as a catalyst for socialchange but it only means that the present film makers have not yet fully explored the vast possibilities of cinema. The general public consider cinema only as a mere entertainment. The film makers are therefore spoiling the vast potentialities of cinema by making it as a mere tool for earning cheap money. The Khosla Commission[17] has rightly observed:

---

15. See supra, Ch.12,
16. One famous Malayalam filmstar, Sri.K.P. Ummer maintains that the world cinema, nay the Indian Cinema, has, in no way, contributed to social change. "Kumkumam" Onam Special (1984), p.118.
17. The Khosla Report, p.69.

> "The modern film audience therefore craves for amusement and amusement alone. The film industry provides for this amusement. But it is clear that art which is aimed at or which produces pure amusement has a dangerous and disruptive character, because it tends to make the mind flabby, it arrests the thinking process, it dulls the creative impulse and makes people both physically and mentally lazy."

Conceding the need for censorship of films, the enquiry turns into the parameters of film censorship. Even in the absence of any express constitutional provision enabling the State to impose restrictions on the exercise of freedom of speech and expression, the State has, as maintained by the Supreme Court of the United State, an inherent authority to impose some restrictions in order to safeguard the wider interest of society.[18] However, it may be noted that this power whether express or implied, does not necessarily enjoin the State to impose restrictions on the exercise of the right; it only provides for the maximum limit to which

---

18. See *supra*, Ch.6, nn.16, 17.

the State can go. The extent of censorship will necessarily depend upon the standards of behaviour available in a society, in addition to the well recognised interest of a constitutional Government to survive.[19]

An ideal film censorship model.

Because of the defects described early the criminal law model seems to be unsuitable in India.[20] A voluntary censorship by the film industry itself has been considered as an

---

19. The Working Group on National Film Policy rightly observed:

    "....if the overall objective of censorship is to safeguard generally accepted standards of morality and decency, in addition to the well recognised interests of the State, the standards of censorship applicable to freedom of expression cannot be very much ahead of the standards of behaviour commonly accepted in the society. Censorship can become liberal only to the extent society itself becomes genuinely liberal."

    The Report of the Working Group, p.74.

20. See supra, Ch.2, nn.41-48. The unsuitability of the system for regulating films is described in better words by the Khosla Committee. The Committee observes:

    "....the film contains a complete and immediate appeal for everyone, men, women and children whether literate or illiterate, intelligent or unintelligent. It makes its impact by simultaneously arousing the visual and aural scenes.... And if post publication penal action is to be taken, the remedy may be too long delayed, for before the producer can be permitted and the film withdrawn, it will already have done a great deal of irreparable damage." The Khosla Report, p.108.

ideal system by some.[21] The main attraction of the system,[22] projected in loftier terms by the protagonists of the theory, is that the creative freedom of the film maker is not, in any way, curtailed by the State. On first principles the argument may be sound; the constitutional guarantee prohibits invasion of the freedom by the State. The system of self-regulation will be ideal if only the industry formulates a set of Codes dealing with objectionable matters leaving the individual film maker free to accept or not. In countries where a self-regulation of cinema is adopted, the industry sets up a Board to administer the system. Legally the submission of the film to the Board is purely voluntary. A strong association of industry will bring significant impact. Whether he likes it or not, the film maker will be forced to submit film for censorship. He will also be obliged to

---

21. The Report of the Working Group, p.74; Khandpur, K.L., "Film Censorship - Inevitable or Futile" The Souvenir, Kerala State Film Development Corporation (1983), p.28.
22. For a discussion on the merits and demerits of the system, see supra, Ch.2, nn.16-31.

accept the decision of the Board, for, the non-acceptance will result in several adverse consequences. From the point of individual film maker such an eventuality makes no difference from official censorship. Suppose the association of the industry is not strong. The United States of America is an illustration. The system is bound to collapse in the face of ineffective enforcement.[23]

Homogeneity of the industry is an essential pre-requisite for a proper functioning of the system of self-regulation. In India the heterogenous character of the industry will be an added factor of making this system ineffective. The interplay of regional exercises of film industry is conspicuous. There are Hindi films, Bengali films, Kannada films, Tamil films and Malayalam films. Perhaps one may not find a common factor that binds them together. The problems are entirely different. It is practically impossible in such circumstances to form an all India organisation of film industry embracing all sections and regions. Even among the

---

23. See supra, Ch.6, nn.100, 106, 107, 119.

various regional levels, the present conditions are not conducive for the formation of a strong association. The over-emphasis on commercial side of cinema[24] is the major obstacle. In a blind race for making profit in a highly competitive field like cinema, it is only natural that the film maker may use any method for achieving the goal. "They are ready and, at all times willing to produce films with erotic and crime themes and deal with their subject in a manner which, not only shows complete lack of taste but complete lack of integrity or conscience. These producers do not scruple to pander to the lowest taste, with the result that films are produced in which vulgar scenes bordering on obscenity are introduced. This type of entertainments appeals to the illiterate masses who constitute by far the largest majority of film patrons."[25] The mutual jealousies among the producers, studios and cine artists are other hurdles. Will it not be

---

24. For a discussion on the influence of money in Film Production see supra, Ch.3, nn.2-7. See Khosla Report, pp.96-98.
25. Khosla Report, p.96.

an utopian ideal to desire for a homogeneous organisation capable of enlisting the co-operation and trust of the whole industry in the face of this chaotic state of affairs?

This is clearly illustrated by the failure of two experiments of self-censorship adopted by the industry in Bombay during the fiftees and seventees.[26] The story of these experiments is worth noting. The panel for censorship set up by film industry in Bombay had active producers. The other film producers did not like this idea. They did not want their films to be scrutinised by other producers. There were accusations of jealousy among the members of the panels. It is also alleged that some sabotaged the efforts of other producers.[27] These charges and counter charges ultimately led to the abolition of the system. The fate of a decision taken by the South Indian Chamber of Commerce recently[28] also shows that no co-operation among the film makers is possible in the present circumstances. The Chamber is an association

---

26. Khanpur, K.L.,
27. Ibid.
28. Decision of the South Indian Chamber of Commerce in 1981.

of film makers. With the over all benefit of the members of the association in view, the Chamber decided to limit the number of films to be released during a week. If numerous films are released simultaneously, some films may not get theatre accommodation in important centres and the simultaneous release will also result in substantial decrease in box office collections. Not long after the decision was taken the members of the Chamber itself began to disregard it. They fixed their own dates for the release of their films without consultation with the Chamber. If the association of film makers cannot implement such a decision, which is aimed at the overall benefit of the industry itself, how can it be expected that it will be in a position to implement a self-regulation for censorship of films?

The Khosla Commission after considering the various weaknesses of the film industry, observes:[29]

---

29. Khosla Report, p.98. See also the Report of the Working Group, p.74.

> "It follows, therefore, that it is impossible to expect the industry to draw up any kind of voluntary code and to adhere to and see to its implementations. Indeed it is almost certain that the various units in the film industry will never be able to agree to anything which imposes any kind of curb on the ways in which profit can be earned. The glib talk of aesthetics, good taste, high standards is little more than hypocrisy."

Thus, even if assuming that this system of self-censorship is far superior to other censorship models, the present conditions of the industry in India is neither helpful nor conducive to the introduction of such a system.

The next is the civil law model[30] which is said to be superior to other models of film censorship. The demerits of the system, as described earlier, such as delay, lack of expertise in decision making and the ineffectiveness of the decisions after the exhibition has started, make it unsuitable as a potent film censorship model.

After excluding all the above mentioned models, the only one to be considered is the official pre-censorship model. The main objection against this model was that it

---

30. For a discussion on the pros and cons of this system, see *supra*, Ch.2, nn.49-57.

places a prior restraint on the freedom of expression. But even in the United States, where this freedom has been much stressed upon, it was held that the system of pre-censorship is justified if prompt judicial review is guaranteed.[31]

The merits of the statutory pre-censorship model are many - power to censor films before its publication, constitution of such authority with experts, adoption of uniform standards, flexibility in approach, viable administration of censorship and above all the preventive nature of the process.[32]

The criticisms against the system, such as abridgement of freedom of expression and political censorship, are more assumed than real. The exercise of the right of freedom of expression is always subject to the wider interests of society

---

31. Freedman v. Maryland, (1965) 380 U.S. 51. For a discussion see supra, Ch.6, nn.74-77. See also William T. Mayton, "Towards a Theory of First Amendment Process: Injunction of Speech, Subsequent Punishment and the Costs of Prior Restraint Doctrine", (1981-82)67 Cornell Law Review 245 at p.253.
32. For a discussion on the merits and demerits of the system see supra, Ch.2, nn.35-40. In effect the advantages of the system are the same as that of administrative adjudication. For a discussion of the merits of administrative adjudication see Jain and Jain, Principles of Administrative Law (4th Ed. 1977), pp.741-742; Wade and Philips, Constitutional Law, p.699 (1963).

and therefore, censorship, if used as a technique for safeguarding the interest of society, will not raise any constitutional problem regarding freedom of expression.[33] The term 'political censorship' has many connotations. If censorship of film intending to check activities undermining the very existence of Government, or against security of State or friendly relation with foreign States is pictured as political censorship, such censorship is implicit in all forms of censorship everywhere in the world.[34] A constitutional Government has a right to survive. Any activity undermining this right has to be suppressed. The lessons of British experience show that even an industry based censorship system is not free from political censorship.[35] But if

---

33. For a discussion see supra, Ch.7, n.17.
34. Guy Phelps observes:
    "The charge of political censorship is less easily discounted. All censorship has political implications, and while the Board is careful to avoid explicit political interference, it is inevitable that a point of view is taken. There is little doubt that films encouraging anarchy, for example, would be banned or heavily cut on one pretext or another.... All that can be said is that there is only way to banish political censorship and that is by abolishing censorship altogether." Guy Phelps, Film Censorship, p.271 (1975).
35. See supra, Ch.5, nn.104, 105.

political censorship is understood as one to give effect to the wishes of the Government in power, such an action is not legally permissible in the case of statutory censorship. The censorial authority constituted under a statute is bound to act within the frame work of the Act in question and if they act for purposes other than those permitted by the law, the action amounts to an abuse of discretion.[36] Judicial review affords a guarantee against explicit political interference. In India, even in spite of the fact that the present Certification Board functions like a department of Government, it has not been accused of preventing exhibition of films with political overtones embarrasing to the ruling power. During the initial days, the Board was very eager to please the Government and therefore was very strict towards films with political contents but gradually a liberal view was adopted and political satires were freely allowed. In an interview Mr.P. Bhaskaran, a veteran film director and talented poet,

---

36. For a discussion on 'abuse of discretion' in general law, see Jain and Jain, Administrative Law, pp.486-512 (1979); Schwartz, Administrative Law, pp.606-611 (1976).

narrated one of his own experience. During 1960s, he intended to produce a political satire film based on a short story by name 'Mukhia Mandri' (the Chief Minister). He had some doubts about the attitude of the Board. Hence he decided to have a preliminary discussion with the Board about the acceptability of the film. The Board expressed the view that the film if produced could not be certified. According to Mr. Bhaskaran himself this attitude is only a story of the past. At present the Board is not at all perturbed by exhibition of films with political issues unless it transgressed into the field of the security of the State. The accusation that a statutory censorship system alone permits political censorship is, therefore, baseless.

As seen earlier, the dislike for a statutory censorship system emanates from an adherence to the bygone political philosophy of _laissez faire_ and individualism and is based on the relics of the Dicean approach to administrative law.[37]

---

37. Dicey on the basis of his exposition of Rule of Law maintained that Administrative Law, as he understood the term, was not known to England. Dicey, _Law of the Constitution_ p.330 (1964).

Today the situation has entirely changed. The authority of the State to indulge in activities towards betterment of society is always endorsed. The focus of attention shifted from the individual to society. A social duty is imposed on the authorities of the State. But while carrying out this duty they have to act in a reasonable and fair manner without violating the basic rights of citizens.[38]

Once the need for censorship of film is recognised, the best and the most effective system is the statutory pre-censorship model. The system is not a full fledged one, as no system is. However, because of its intrinsic merits, the system has been adopted by a majority of the countries. The Khosla Commission has observed:[39]

> "...the only system of censorship which can rationally be imposed is censorship with the sanction and under the authority of the State. This indeed was the ratio which prompted an overwhelmingly large number of witnesses drawn from all spheres of life to support State control in the evidence they gave before the Commission."

---

38. See, Ch.7, n.26.
39. The Khosla Report, p.99.

A system of statutory censorship conferring censorial powers on the local bodies as is prevalent in Britain[40] is unsuitable for India. The incompetence of members of local bodies to censor films, the inconsistency in approach not only by different local bodies but also by the same local body at different times have prompted severe criticism against the system in Britain. No wonder if it is said that the power to censor film conferred on the authorities will result in chaos and confusion.

A statutory pre-censorship may either be exercised by a Government Department or by an authority which is independent of the Government. A censorship set up in the former category gives complete control of the system into the hands of the concerned minister. The system has to work according to the policy of the department and therefore it unduly restricts the discretion and undermines the freedom of the censor in determining the public acceptability of the film. When censorship is carried on by a department, the censorial

---

40. For a discussion see *supra*, Ch.5.

activities like other activities of Government are liable to be questioned in Parliament. In order to avoid such criticism, the censors shall play safe with the result that censorship will be very strict. Again, a system of censorship by a Government department is always viewed with suspicion and, is not capable of commanding respect by the film industry or the public. The constant supervision and control of the Government at all stages will adversely affect the impartial and prompt exercise of discretion by the censors. Such a system, completely under the control of Government, does not seem to be suitable for a democratic country like India. Unfortunately, the present system in force in India is a completely Government dominated one.[41] The actual reviewing of film for the purpose of censorship is carried on by the Examining Committee,[42] constituted on an adhoc basis

---

41. For a discussion on the present procedure in certification of films and the infra-structure of the authorities, see <u>supra</u>, Ch.4, nn.115-139.
42. R.23 of the Rules.

and consisting of the Examining Officers[43] and some members of advisory panels. The members of the Examining Committee are not members of the Central Board of Film Certification.

The Governmental patronage in appointing members of the advisory panel responsible for pre-view, the control of the regional officer over censorship and the sweeping powers of the Central Government in reviewing and revising the decisions of the Board and of the Appellate Tribunal show the weaknesses of the system as a prototype of a Governmental process rather than an independent unbiased expert censorship model.

The present image of the Board is far from satisfactory. The image is that of an unscrupulous man with a scissors in his hand bent upon cutting and mutilating films savagely. It does not have an image of a friend co-operating with film makers but at the same time safeguarding the interests of society. In order to ensure prompt and effective functioning

---

43. Examining Officer means a Regional Officer or an Additional Regional Officer or an Assistant Regional Officer or Secretary to Chairman or any person appointed as such in the absence of the above mentioned officers. S.2(viii) of the Act.

of statutory censorship system, it is highly necessary to make the censorial authority an independent one both structurally and functionally with full power and responsibility in the matter of certification of films for public exhibition.[44] Only a qualified, dedicated and independent Certification Board can command respect and authority from the public and from the film industry. The Khosla Commission also has substantiated the need for independent censorial agency in the following words:[45]

> "The present Board of Censors is not an independent body.... For work of such importance it is necessary that persons who are entrusted with it should feel a full sense of responsibility. The regidity of the Code drawn up by a Superior power,

---

44. "It is only the sense of complete responsibility which invests an individual with dignity, understanding and circumspection, and makes him examine each problem sanely, rationally and logically and then dispose it of....if the members of the Board are chosen with care and circumspection we can hope that every decision will be sensible and in the interest of the public. Perhaps the most important advantage of an independent Board is that it makes for consistency and uniformity of the censorship policy, because it is immune from changing political influences and the caprices of the Secretary or Minister in-charge of the relevant portfolio." Khosla Report, pp.99-100.
45. Id. p.99.

> the inhibition and lack of flexibility resulting from such rigidity, the constant fear of interference and a residual consolation that mistakes will be rectified by a higher authority are features which not only destroy the efficiency of the Board but arouses almost universal condemnation of its decision. It is important, therefore, that State censorship should be exercised not by a department of the State where decisions are subject to revision, appeal or interference by the Government but by an independent body which has been given sufficient authority and a sufficient sense of responsibility to deal with the matter finally and irrevocably."

The changes suggested in the following pages may go a long way in making the Board an independent one. An attempt in this direction was launched by the unimplemented 1974 Amendment[46] to the Act but unfortunately this amendment was repealed for reasons known only to the Government. The present system needs a thorough overhauling.

Censorship Agency.

India presents a unique example of a vast country consisting many component States with different cultural, social and economic background. The cultural and social set up in

---

46. See *supra*, Ch.4, nn.80-88.

Kerala may not be as those in the neighbouring States of Tamil Nadu or Karnataka. So is the situation between Uttar Pradesh and West Bengal. The cultural heritage of Jaipur and Goa will be entirely at variance. Punjab and Kashmir will also illustrate the diversity of Indian culture, habits and practice. This distinguishing feature in cultural background of the States in India have to be necessarily taken into account in devising a suitable mechanism of censorship and laying standards for censorship.

(a) Central Board of Film Certification.

Since certification of films for public exhibition comes under the Central List the Central Government alone is competent to constitute an authority for censorship of films for public exhibition. Thus the Constitution envisages a centralised authority for censorship. At present the power to censor film is conferred on the Central Board of Film Certification.[47] As noted above, even though censorial

---

47. S.3 of the Act.

activities are conducted in the name of the Central Board the Central Board have no actual involvement in preview of films for certification.[48] The members of the advisory panels are nominated by the Government. They work on a part-time basis and in an honorary capacity.[49] They are not members of the Board.[50] The power to censor film is conferred on the Board on the assumption that it is an expert and competent body. Manifestly, it is, therefore, necessary that the Board, itself shall exercise the censorial functions. The Khosla Commission has observed:[51]

> "We are firmly of the view that the present system of entrusting the preview of films to a panel of honorary examiners consisting of persons who have little sense of responsibility and who have been appointed in the exercise of Governmental patronage, should be done away with. It is the censors themselves who must see all films, evaluate them and assume full responsibility for certifying or rejecting them."

---

48. See <u>supra</u>, nn.42 and 43.
49. For a criticism of the practice see Khosla Report, p.100; a write up in a leading cine weekly in malayalam, <u>Nana</u> October, 31, November 7, November 14 and November 21, 1982.
50. The Central Board shall consist of a Chairman and not less than twelve and not more than twentyfive other members appointed by the Central Government. S.3 of the Act.
51. Khosla Report, p.100.

The Commission recommended that film censorship should be conducted by a centralised authority - the Central Board - consisting of "twenty members drawn from various regions and familiar with regional languages."[52] The Commission further made the following suggestions about the structure of the Board.[53] Out of the twenty members not less than six should be drawn from the northern States who should be familiar with English, Hindi and Urdu and one or two languages such as Oriya or Bengali; not less than four members should be drawn from the eastern States, all of whom should be familiar with Bengali, Oriya and Assamese; and not less than eight members should be drawn from the southern region and of these atleast two must know Gujarati and Marathi and four should know the four principal languages of the south, viz., Tamil, Telugu, Malayalam and Kannada. All the members should be full time members. In exceptional cases the censors can seek the help of advisors drawn from a panel to be prepared by the Board

---

52. Ibid.
53. Ibid.

itself. These advisors have to associate with censorship in an advisory capacity.

The principle behind this recommendation that the films from various languages depicting different culture and regions should be objectively assessed by censors familiar in those regions has to be accepted even though one may differ on the type of mechanism proposed by the Commission. Even the representatives from the Central Board in the Enquiry Commission on censorship opposed centralisation.[54] The plea was that a centralised system would result in delay in censoring films, bring inconvenience in taking films from the laboratory to the headquarters of the Board and cause much expenses which would adversely affect small films.

The main reason put forward by the Commission for setting up of a centralised system is that it would provide consistent and uniform decisions by the Board.[55] One of the

---

54. The then Chairman of the Board Mr.M.V. Desai objected to the suggestion. His objection were embodied in a note sent to the Chairman of the Commission and the same has been appended to the Report as Appendix IV, at pp.199-201.
55. The Khosla Report, p.101.

popular criticism levelled against the present Board by many, especially by the industry, is that the decision by the various regional offices are not uniform.[56] Such a criticism prompted the Commission to recommend a centralised, single Board for censoring films.

However, this argument overlooks one important aspect of cinema in the Indian context. One cannot say that there is an Indian cinema if it needs to be called so. The majority of films produced in India are in the regional languages.[57] They are primarily meant for people speaking that language. But for Hindi films, other films are produced with these regional audiences in view. The censorial authority must necessarily take into consideration the peculiar cultural and social standards of the people to whom the cinema is to be exhibited. It is therefore necessary that there must be variance in the decisions of the Board according to the norms

---

56. See the opinion of various persons connected with film industry embodied in a write up. "Who's Afraid of Censorship" in India Today, Vol.V, No.9, October 1-15, 1980, p.68.
57. Only Hindi film can expect an all India market. The term regional cinema is used to make a distinction between films made in regional languages and Hindi films.

available in society before which the film is intended to be exhibited. Thus, in the Indian context, what is needed is a censorial system reconciling unity with multiplicity, centralisation with decentralisation and nationalism with localism. A centralised independent Board as suggested by the Khosla Commission is therefore, not a suitable system for India.

Such a centralised censorship system has some other drawbacks as well. Now-a-days film production is scattered throughout the country and if the film makers are asked to produce the film before the centralised Board, it may cause difficulties and inconvenience to them.[58] The first is the expenses. The second is the difficulty in getting permission from the excise authorities attached to the laboratories in taking prints for censorship to a distant place. Thirdly, such a process may adversely affect the releasing of films. Usually the date of release of a feature film

---

58. Sri.M.V. Desai in a note to the Chairman of the Khosla Commission. See n.71, supra. Cf. Pallisery: "Keralathile Censor Bordum Cinema Nirmathakkalum (Censor Board in Kerala and the Film Makers), Kumkumam Weekly, Vol.V, Book 20, 7th October 1984, pp.8, 9; the very same reasons have been put forward by film makers in not producing films for certification before the newly constituted Trivandrum Regional Office.

will be fixed in advance and theatres booked accordingly. Because of various difficulties in keeping with the time schedule, in majority of cases, application to the Board for certification is made at the eleventh hour. If the Board orders for cuts, the film maker has to rush back to laboratory to effect the cut and then he has to approach the Board again for a certification. By the time a certificate is received, there will be a dislocation in the releasing date causing financial loss to the film maker.

It is hoping against hope that a centralised system as suggested by the Commission can cope with the heavy workload. It is said that about eight hundred and fifty feature films are produced annually in India.[59] How can the twenty members of the Board see all these films, in some cases twice or thrice? In addition to Indian films, the Board has to censor imported films, short films, documentaries and advertisement films. Will the proposed Board be in a position to carry out all these functions? It is difficult to give an affirmative answer.

---

59. "Gone are the days of Sex and Crime", an interview with Mr.S. Kumar, President, South Indian Film Chamber of Commerce reported in Inquest, October 12, 1984, p.15.

No doubt a Central Board with offices at regional levels will be the most suitable body. A Central Body can supervise and co-ordinate the activities of the regional offices and grant certificates valid throughout the territory of India. The Central Board shall consist of a Chairman and as many members as are attached to the different regional units. The Chairman in collaboration with the Advisory Committee shall also be responsible for issuing directions to its members regarding the exercise of censorial powers.

The important function of certifying imported films has been undertaken by the Central Board itself. A separate examining committee consisting of the Chairman and few members may be entrusted with this function.

(b) Regional Units.

The regional unit must work under the Central Board as part of the Board. As already stated an effective censorship of film is possible only when the members are familiar with the culture, tradition and custom of the people with reference to whom the film is made. Since the States in India

are constituted on a linguistic basis, it is not only desirable but also necessary to constitute a regional unit for every language recognised by the Constitution.[60] Actual preview of films for certification shall be conducted by the members themselves. Each film submitted for certification shall be seen by a team of three or five members. The regional units may be so constituted as to have sufficient work for each unit. Sufficient number of members may be allotted to each regional unit so as to carry out the censorship functions in an efficient and smooth manner. One of the members, preferably with legal qualifications may be designated as President heading the regional unit. Apart from viewing feature films for certification, the Regional Board have to see short films, advertisement films and documentaries for certification. It may be necessary to view a film for more than once. The Regional unit also has to watch

---

60. See Kesavankutty, "Film Censorship: Need for Radical Change", |1980| C.U.L.R. 377 at p.394.

whether their decision; for example excision of the part of a film, are carried out by the film-maker. Obviously this is possible only if a few inspectors are appointed to help the Board at this level.

Suppose the number of film produced in one language is very few, say five or six an year. The setting up of a regional board with all its paraphernalia for that language may not be economically feasible. In such cases an interim measure may be taken. The Central Board can constitute an adhoc certification board for such films.

(c) Advisors.

As discussed earlier,[61] direction to the censors are necessary especially in view of the very broad nature of the principles for censorship,[62] together with the indefinable nature of, atleast, some such grounds like public order,

---

61. See *supra*, Ch.7, pp.220, 221.
62. The principles for censorship of films are embodied in S.5B(1) of the Act. See *infra*, Appendix I.

decency and morality. However, the directions shall be given by an independent authority and not by the Government. The directions must not be static but be conducive to the changing norms and moves of society. For this purpose a small body consisting of experts may be nominated and it may be entrusted with the duty to formulating and modifying directions. The Chairman of the Central Board may act as the Chairman of this Committee as well. The Committee shall also be responsible for conducting seminars, symposia or workshops with the help of the Board in order to elicit public opinion and then to evolve guidance on future norms.[63]

(ii) Appointment of the Board.

The Chairman and the members of the Board shall be full time officials. In order to ensure its independence, it is necessary that the Chairman, the members of the Board and advisors shall be chosen from people who are not officers in

---

63. R.10 of the Rules enjoins the present Board to conduct such surveys in order to ascertain public opinion. This duty can be entrusted to the Advisory Committee.

Government service. The Khosla Commission[64] and the Working Group on National Film Policy[65] recommended that the Board shall consist of representatives of film industry. This suggestion emanates from the feeling that since the duty of the Board is to certify films for public exhibition, the industry, being an interested party should be given due representation. When the industry itself is represented in the Board it may afford an assurance to the film maker that atleast a few of the members of the Board can understand his interest and therefore such a system will be helpful in increasing the confidence of the industry in the working of the Board. Interest representation in such agencies gets approval in juristic circles. Prof. Wade observes that the principal purpose of a system of balanced Tribunal consisting of representatives of the interested parties and an

---

64. The Khosla Report, p.148.
65. Report, p.78.

independent Chairman "is to assure every party before the Tribunal that atleast one member will understand his interests."[66]

However, one should not close one's eyes against the dangers lurking behind such system. The representative of the industry shall not be a person actively involved in the film-making. Active involvement may result in adverse criticism about the decisions of the Board on the ground of partiality or jelousy.[67] It is a cardinal principle of justice that a person interested in the subject matter of the decision shall not act as a judge, for even if such a person acts impartially his mere presence itself arouse suspecision about the decision for justice should not only be done but should manifestly and undoubtedly be seen to be done.[68] Thus, even though it is desirable and necessary

---

66. Wade, op.cit., p.748.
67. It may be noted that the experiment of self-censorship tried in Bombay failed to this reason. See supra, n.26.
68. R. v. Sussex Justices, ex.p. McCarthy, (1924)1 K.B. 256 at p.259 per Lord Hewart, C.J. This is one of the principles of rule against bias. For a detailed discussion about the rule against bias see Wade, op.cit., pp.400-420; Jain and Jain, op.cit., pp.205-223; Schwartz, op.cit., pp.303-316. Jain and Jain observed:

(contd...)

that the Board should be appraised of the practical difficulties of the film industry it is better to eliminate persons actively involved with the film industry from the membership of the Board.[69] It is desirable that one member atleast of every regional office shall be from a panel furnished by the industry. The recognised film societies representing viewers should also be given a right to submit a panel. In the absence of any other stable organisation of interested parties, the other members of the Board may be appointed by the Government after consultation with the Chairman. The Khosla Commission has observed[70] that although the Rules provided for

---

(f.n.68 continued)

> "Bias as to subject matter may arise because the adjudicator has a general interest in the subject matter as indicated by his association as member or otherwise with a private body, or his attachment with the administration in his official capacity or his utterances, etc. Generally, speaking, these do not operate as disqualification, unless the adjudicator has intimately identified with the issue."

(Id. at p.209). In the case of a person actively involved in film making he is intimately identified with the issue involved in censorship and therefore a bias as to subject matter arises in his case.

69. Under the English system the only disqualification for a membership in the Censor Board is his relationship with the film industry. Guy Phelps, op.cit., p.101.
70. The Khosla Report, pp.16, 17.

consultation with the Board in the appointment of advisory panels,[71] more often than not this procedure was not followed. In the case of appointment of members of the Board, neither the Act nor the Rules provide for any consultation with the Chairman.[72] It is necessary that an appointment to the Board shall be made only with the approval of the Chairman and therefore the consultation shall be made obligatory. The Chairman of the Board may be appointed by the Government preferably after considering the names furnished by various interested organisations.

Since the advisory committee is not in any way directly concerned with the actual certification of films, the members of the panel need not be whole time members and even persons directly involved with film making may be nominated as members of the committee.

---

71. Rule 8 of the Cinematograph (Censorship) Rules 1958. The Government may dispense with such consultation in respect of such number of members not exceeding one third of the total number of members of the advisory panels. Id. R.8(3). The provision is retained in the Cinematograph (Certification) Rules 1983. See id. R.7(3)).
72. S.3 of the Act.

(a) Qualifications.

Eventhough censorial powers are conferred on the Board as an expert body and the members are deemed to be experts, in the very nature of things no special skill or qualification can be prescribed for the members of the Board. The real expertise of the Board is the expertise acquired subsequent to appointment, i.e., the expertise acquired by seeing and censoring a number of films. However, in acquiring such expertise, some basic qualities are necessary.

Since the duty of the Board is to see whether a film submitted before it for certification is acceptable to society, the members of the Board shall be conversant with the custom, traditions and cultural background of society and above all, the capacity to understand the cinema and shall also possess the competency to distinguish between what is art and what is not. Knowledge of more than one Indian language may be desirable. Even though the deliberations of the Board are not technically a 'hearing' while exercising the powers the Board may have to interpret the

guidelines contained in the Act as well as in the directions and they have to give a fair hearing to the applicant and to apply unbiased and impartial mind in censoring films. In the circumstances a legal experience is desirable for the Chairman of the Central Board and the President of the regional unit.[73] Since one of the important aims of certification is to protect children atleast one member in each

---

73. The usual practice is to prescribe "judicial experience" for the Chairman of an authority entrusted with the functions of determining questions affecting rights of parties. While censorship of films involves determination of questions affecting rights of film makers, it may be advisable to prescribe judicial experience at least for the Chairman of the Board or the President of the regional unit. However, it may be noted that 'judicial experience' need not necessarily be 'experience gained by actually working as a judge in a court of law' as opined by Ranawat, J., in Badridas v. Appellate Tribunal of State Transport Authority, (A.I.R. 1960 Raj. 105 at p.114). Commenting on this view, Dr.P. Leelakrishnan observes:

"The interpretation of the term 'judicial experience' may be correct in its literal sense. But it seems to be a mistaken assumption that an unbiased approach to the problems facing an administrative tribunal is possible if only persons having such strict judicial experience preside over it. The same safeguard may be achieved if

(contd...)

regional unit must have specialist knowledge in child psychology or must have sufficient experience in working with children and young persons.

Not much guidance is available in this respect from other countries, for, the qualification of censors vary considerably from country to country. For example in France, some of the members of the censorship body called the Control Commission are selected from sociologists, psychologists, educationalists, magistrates, doctors and members of teaching profession[74] whereas in United Kingdom, according to an official leaflet, the British Board of Film Censors does not seek to employ as examiners people with specialist qualification.[75]

(f.n.73 continued)
legal experience of the sort regarded as a desirable qualification for the appointment of judges to the Courts in the land, is made a condition for the appointment of a Chairman."
Leelakrishnan, Legal Aspects of Stage Carriage Licensing in India, p.171 (1979). The term legal experience is used to avoid further complications.

74. The Khosla Report, p.27.
75. Quoted in Guy Phelps, op.cit., p.101.

It is necessary that the members of the Board shall be sufficiently qualified with a good personality, high integrity and devotion.[76] Only such persons can infuse confidence in the minds of the people as well as of the film makers.

(b) Tenure.

A mention of tenure of office of the Chairman and members of various Boards seems appropriate and essential. Fixity of tenure will enable them to work free of apprehension of premature removal from service. A minimum period of service is necessary for familiarisation. Experience so gained should be fully utilized and members should

---

76. The Khosla Commission recommended the following qualifications:
"The censors must possess the suitable educational qualifications and cultural backgrounds. They should be persons commanding public respect, they should have a broad outlook on life. They should know something about the arts and cultural values of the country, they should have travelled widely and should be persons who can be expected to deal with the problem of censorship without the handicaps of unreasonable inhibitions or an obsession with every petrified moral values or with the glamour of so called advanced groups." The Khosla Report, p.100.

have sufficiently lengthy tenures so that their services could be properly utilized. But a very long tenure of service may cause the members to fall into a rut and give stereotyped decisions. Conditions under which a member could be removed from service setting out checks to present unjust removals also may be specified.

(c) Salary.

In order to attract able and devoted persons to the Board, the Chairman and members thereof shall be paid decently. The Khosla Commission[77] has suggested a salary of around Rs.4000/- per month for the Chairman and around Rs.3000/- per month for the members. This was suggested in 1969 and therefore, it needs thorough revision. At any rate, the salary and allowances of the Chairman and the members of the Board shall be on par with that of the judges

---

77. Ibid. The Working Group on National Film Policy recommended that the status of the Chairman and Regional Chairman should be equivalent to that of a Secretary to the Government and Joint Secretary to the Government respectively. Report of the Working Group, p.79.

of the High Court. The members of the Advisory Committee and the adhoc censors may be paid a decent honorarium for every day of sitting.

(iii) <u>Procedure in Certification</u>.

The present procedure in certification of film is cumbersome and unsatisfactory. A tight veil of secrecy surrounds the decisions of the Board. There is no justification for such a strict maintenance of secrecy. In some cases, as for example, a decision of the Board on a question of security of States or friendly relations with foreign States, there may be some justification for maintaining secrecy. Since the object of censorship of films is to safeguard wider interests of society, the Board has a social duty to justify its decision and to prove before the public that it is doing a social service. This does not mean that the Board shall regularly release public statements or press conferences justifying its decision as well as its policy. According to the present Rules the Board is bound by law to furnish

an annual statement to the Government.[78] When functional independence is granted to the Board, the report may be submitted to the Parliament and not to the Government. Apart from a mere statistics, the statement shall deal with the policy of the Board and the conclusions drawn from various decisions of the Board during the year. The annual statement must be published so that any interested person may know about the activities of the Board.

A provision recently introduced in the Rules,[79] enjoins the Board to conduct seminars or symposia of film critic, film writers, community leaders and persons engaged in film industry and to conduct local or national surveys to study the impact of films on the public. This provision can be utilized for the purpose of educating the public as to the true significance of the various certificates and to show

---

78. R.10 of the Rules.
79. Id. R.11.

before the public that they are conducting very useful service to them. This, to a great extent, will help to eliminate unnecessary and undue criticism about the Board and further help to project a good image of the Board and thereby indirectly the image of cinema itself.

When the viewing itself is conducted by a committee of the members of the Board attached to a regional office, a further scrutiny by a Revising Committee, is unnecessary. If the applicant agrees to the majority decision of the examining committee, the regional office itself can issue the certificate on behalf of the Central Board. In case the decision of the examining committee is not acceptable to the applicant, all the members attached to the regional unit together may constitute a revisional authority and the revision can be disposed of on the basis of majority view. This procedure in constituting a revisional authority by the regional office itself may be helpful for a quick disposal of the matter.

<u>**Finance.**</u>

The Central Board and the Regional Board may be made self-dependent. Apart from the members of the Board, the Inspectors and the Advisory Committee members of the small group of office staff will be necessary for the Central Board and its regional offices. The salary of the personnel including that of office staff and other expenses of the Board shall, as far as possible, be met from the fees collected for certification of films. The certification expenses forms only a negligible part of the total expenses of a film. An increase in the certification fees may not impose a heavy burden on feature film makers. In the case of deserving short films and documentaries, the Board may be given authority to reduce the fees or even totally exempt them from payment of fees. The Khosla Commission endorsing the need for self-dependency in financial matters, recommended for an increase in fees for certification of films.[80] However, the Working Group on National Film Policy strongly opposed the

---

80. The Khosla Report, p.103.

proposal to make the Board financially self-sufficient.[81] According to the Working Group that the function of the Board is basically one of policing and it is the responsibility of the Government to meet the expenditure of the Board. It further opined that an enhancement of fees on the consideration of making the Board financially self-sufficient would impose an unfair burden on film makers.

There is some force in the above argument. At the same time, it may be borne in mind that the Board is doing a function useful to the film maker by elevating the prestige of the film and therefore, he is bound to pay for the services rendered to him. But at the same time, it is necessary to see that what is charged is only a fee and not a tax.[82] Thus the rate of fee shall be fixed in such a way that the autonomous, independent Board shall function on a no-profit-no-loss basis.

---

81. Report of the Working Group, p.79.
82. In the case of fees there must be quid pro quo and must be proportionate to services rendered whereas in 'tax' no such requirement is necessary.

The structural changes suggested above in effect envisages a replacement of advisory panel and examining officer by full fledged members of an autonomous Central Board of Film Certification which shall be both structurally and functionally independent. But such a change, it seems, is highly necessary for an effective discharge by the Board of a crucial function involving the determination of important and complicated questions affecting fundamental rights. Along with these structural changes, a change in the procedure in certification of film ensuring a fair procedure is also necessary for improving the efficiency and image of the Board.[83]

---

83. For a discussion see supra, Ch.10.

Chapter 14

A SUMMING UP

A modern Welfare State resorts to the device of licensing to regulate the activities of its citizens. True that the thrust is on economic regulation. But the device is also used for controlling other activities. In the field of cinema this technique is widely used for safeguarding the wider interests of the State.

None likes the idea of being censored by anybody else. The odium attached to censorship is maximum in pre-censorship, thus placing prior restraints on one's rights.

In almost all countries cinematograph exhibition has been subjected to pre-censorship. Criticism against the process is vehement. Still it continues as a major mechanism of regulation obviously because it has some significant merits outweighing the defects. The process is effective and convenient. It is comparatively easier to be administered

over cinema than over other forms of expressions, especially the printed matters. For instance,books can be printed and circulated without much publicity and even secretly. But on the other hand one cannot imagine how feature films made for public exhibition can ever be concealed and an underground circulation rendered possible. Pre-censorship is successful in eliminating unsuitable matters in a film before it is presented to the public. The vivid and immediate effect of cinema on the public calls for a preventive action. In spite of feature film being a medium of expression entitled to the protection of freedom of speech, its production and circulation is commercial to a great extent. The plea for absolute freedom on film makers is not acceptable in modern times when the State is duty bound to protect the interests of society. Balancing of interests between individuals and society is a perennial problem. This can be better done by censorship.

There are various methods used for controlling the contents of cinema. Self-regulation is one. But this method

as seen early is not suitable in our land as there is no unity and undesstanding among the people involved in the industry.

The popular method is a system of pre-censorship in which the main emphasis is on the preservation of standards of morality and decency. In determining what is the standard of decency and morality in a given society, it becomes necessary for the censors to exercise wide discretionary powers. Presence of expertise in the Censor Board will go a long way in structuring discretion. The judiciary seems to be ill-suited in this respect. Openness, fairness and impartiality being the hall marks of a model administrative agency the censors on whom the onerous duty of deciding the public interest is conferred should follow built-in procedures that oblige them to act in an atmosphere free from any kind of bias and prejudices and with an air of social commitment.

Official censorship system is not without defects. But quickness and cheapness are its advantages. The system

can operate as a bar to a subsequent criminal proceedings with respect to anything contained in a certified film.

In India the Cinematograph Act 1952 with its various amendments, the Rules framed thereunder and the directions issued by the Central Government in pursuance of the powers conferred on it by the Act constitute the film censorship law. The working of the whole mechanism is subject to too much governmental control and is far from satisfactory. It does not stand to reason why the process of censorship is kept secret without the producer or his representative being allowed to be present at the time of preview and to explain the scenes to which the censors object. Although the applicant shall be given an opportunity of being heard before taking a final decision, in case a tentative decision adverse to the film maker is taken, the Act does not specifically provide that the censors have to give reasons for their decision. The compulsory need to state reasons makes the decision-making authority act in an

objective and rational manner, enlightens the aggrieved on the grounds on which the decision is taken and allows an opportunity of carrying the case further to an appellate authority. The present procedure is defective in another respect. While the law confers a right of representation to the applicant, a citizen who may be affected by a bad censorial decision does not have the right. If the system of film censorship is established for the benefit of the general public, it is only fit and proper that a member of the public should be given a right of representation before the Board and before the Appellate Authority. However, as it is difficult to give the public means of knowledge about the contents of a film before its publication, the ends of justice will be met effectively if the law provides at least a post-decisional hearing and right of appeal

The structure of the Censor Board needs revamping. The present state of affairs is that it has no voice in the actual previewing of films. This should change. The

members of the Board shall be required to see films for the purpose of censorship. Members may be appointed in each region for censoring films on a full time basis. The members attached to all the regional offices and the Chairman may constitute the Central Board of Film Certification.

Nomination to the Board shall be done on the basis of qualification and expertise of the persons nominated and not on the basis of a need to dole out benefits for political considerations. Perhaps, nominations from the panels furnished by the recognised associations of film industry, the organisations of film viewers and the film societies and from among reputed men of art and literature will help not only in raising the image of the Board but also in adding to its functional efficiency.

The guidelines contained in Section 5B(1) of the Act, which in turn embody the permissible grounds of restrictions contained in clause (2) of Article 19 of the

Constitution of India, are very broad. Only experts in law can evaluate the scope and extent of these grounds. Censors need not necessarily be experts in law. It becomes, therefore, necessary to give a proper explanation to these terms. The technique of directions interpreting the guide-lines in the law can well be resorted to for this purpose as the Supreme Court had held the power of Central Govern-ment to issue directions to the censors constitutionally valid. Although the object is to give further explanation to the guidelines in the Act, the directions should confine themselves to the grounds enumerated in the Act because if going beyond the statutory makes them invalid. The infirm-ities in the present directions issued in 1979 on matters having no nexus with the grounds indicated in the law are certainly to be removed. The elaborate and extensive nature of the earlier directions going to details queers the pitch for the censors to make a decision in an object-ive manner and pushes them down into the supine subordinate

position of mechanically accepting what their masters dictate. Directions should only guide, not govern. The fresh set of directions, existing at present, reproducing only the statutory guidelines does not have the defect of too much elaboration and is an improvement as it empowers the censors to take into consideration the artistic merit of the presentation while determining the unsuitability of a scene. In spite of these advantages the new directions which are only a replica of the statutory provisions fail to furnish any real guidance and explanation to the censors in discharging their duties.

As the possibility of direction on grounds unconnected with those under the law cannot be eliminated and as the mechanics of directing power is inconsistent with the spirit of independence, it becomes necessary that the power to issue directions be taken away from the hands of the Government and entrusted with an Advisory Board consisting of experts. Infringement of morality and decency is one of the important grounds on which censors can censor films.

Moral norms are never static. They change according to the changes in society. The censors are bound to readjust their policy in tune with the changing social mores. The directions can help laying down criteria in the context of the social changes.

Classification of films is the main mode of regulation of cinema in recent years. Adults need no protection, children need. Introduction of a new category of film classification for teenagers is only logical and reasonable. Films which are in no way harmful shall be grouped under the junior-most category, films containing some materials unsuitable to pre-teenagers shall be placed under the second category with a warning to the parents, films generally harmless but containing some materials unsuitable to teenagers shall be classed under the third category with an advice to parents, and films unsuitable to children shall be classified under the last category restricting their exhibition only to adults only.

A separate category of horror films with advance information shall also be introduced as the present practice of banning is done without any legal basis.

Details of classification should be notified to the public in the advertisement of films. The Statutes or Rules may be amended suitably to incorporate such an obligation.

Lack of co-ordination between the Board and the enforcement authority, namely, the police, is the main reason for the failure of enforcement. The defect can be cured by creating an inspectorate under the Board and helping the enforcement authority in prosecuting the violators.

Censors decide the moral standards of a film. Inevitably they must be familiar with the currents and cross currents of the existing social attitudes and behaviour. From this perspective setting up of different Regional Offices for each language with people having knowledge of the existing and changing social norms of a particular

region is welcome. For easy access to the appellate forum Regional Offices of Appellate Tribunals also are to be set up.

TABLE OF CASES

Abbas v. Union of India
A.I.R. 1971 S.C. 481 - 4, 16, 76, 80, 81, 143, 190, 196, 197, 198, 200, 202, 204, 207, 208, 209, 210, 211, 212, 213, 217, 225, 245, 261, 322, 362

A.B.S.K. Sangh (Railway) v. Union of India, A.I.R. 1981 S.C. 298 - 318

Adipherozshah v. Seervai, A.I.R. 1971 S.C. 385 - 300

A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 - 194

American Communication Association v. Charles T. Douds, 339 U.S. 382 (1950) - 153, 187

Attorney General's Reference (No.2 of 1975) [1976]2 All E.R. 753 - 126

Barron v. The Mayor and City Council of Baltimore, 7 Peters 243 (1833) - 145

Bata Shoe Co. v. Jabalpur Municipality, A.I.R. 1977 S.C. 955 - 310

Bathina Ramakrishna Reddy v. State of Madras, A.I.R. 1953 S.C. 149 - 248

Bellis v. Beal, 170 E.R. 466 - 102

Bharat Kala Bhandar v. Municipal Committee, Dhamangaom, A.I.R. 1966 S.C. 249 - 321, 322

Block v. City of Chicago, 239 Ill. 251 (1969) - 150

Bombay Housing Board v. Kharbhase Naik and Co., A.I.R. 1975 S.C. 763 - 304

Brij Bhushan v. State of Delhi, A.I.R. 1950 S.C. 129 - 226, 227

Budhan Choudhary v. State of Bihar, A.I.R. 1955 S.C. 191 - 201

Buffalo Branch, Mutual Film Corporation v. Breitinger, 250 Pa. 225 (1915) - 150

Burstyn v. Wilson, 343 U.S. 495 (1952) - 16, 31, 153, 156, 157, 158, 159, 162, 167, 180, 190

Butchers Benevolent Association of New Orleans v. The Crescent City Live Stock Land and Slaughter House Co., 16 Wallace 36 (1872) - 146

Calcutta Gas Co. (Proprietory) Ltd. v. State of West Bengal, A.I.R. 1962 S.C. 1044 - 313, 315

Carolvance v. Universal Amusements Co. Inc., 445 U.S. 308 (1980) - 43, 238, 241

Charanjit Lal v. Union of India, A.I.R. 1951 S.C. 41 - 316

Chintaman Rao v. State of M.P., A.I.R. 1951 S.C. 48 - 195, 224

Claud C. Connally v. General Construction Company, 269 U.S. 385 ( ) - 206

Desika Charlyalu v. State of Andhra Pradesh, A.I.R. 1964 S.C. 807 - 322

Dhulabhai v. State of Madhya Pradesh, A.I.R. 1969 S.C. 78 - 309

Director of Public Prosecutions v. A and B.C. Chewing Gum, [1968]1 Q.B. 159 - 19

Ellis v. Bubowski, [1921]3 K.B. 621 - 112, 114, 117, 118 119

Ellis v. North Metropolitan Theatres, [1915]2 K.B. 61 - 121

E.M.S. Namboodiripad v. T.Narayanan Nambiar, A.I.R. 1970 S.C. 1013 - 248, 249

Ex-parte Stott, [1916]1 K.B. 7 - 116

Express Newspapers v. Union of India, A.I.R. 1958 S.C. 578 - 143

Fay v. Bignell, (1883)1 Cab and E.L. 112 - 102

Fertilizer Corporation Kamagar Union v. Union of India, A.I.R. 1981 S.C. 344 - 318

Firm Illuri Subbayyachetty v. State of Andhra Pradesh, A.I.R. 1964 S.C. 322 - 322

Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana, A.I.R. 1963 S.C. 1547 - 308

Fiske v. Kansas, 274 U.S. 380 (1927) - 147

Freedman v. Maryland, 380 U.S. 51 (1965) - 43,167, 168, 169, 170, 182, 241, 406

Gilbert v. Minnesota, 254 U.S. 325 (1920) - 146

Ginsberg v. New York, 390 U.S. 629 (1968) - 238

Ginzburg v. United States,
383 U.S. 463 (1966) - 238, 261

Gitlow v. New York, 268 U.S. 652 (1925)- 146

Govind v. State of Madhya Pradesh,
A.I.R. 1975 S.C. 1378 - 348

Grosjean v. American Press Co.,
297 U.S. 233 (1936) - 160, 161

Gujarat State Co-operative Land
Development Bank Ltd. v. Mankad,
(1979)3 S.C.C. 123 - 308, 310

Harman v. Butt, [1944]1 K.B. 491 - 116

In re K.V.V. Sarma, Manager, Gemini
Studio, Madras, A.I.R. 1953 Mad. 269 - 190

In re Mulgaokar, A.I.R. 1978 S.C. 727 - 249

In re Syamlal, A.I.R. 1978 S.C. 489 - 249

Inter-State Circuit Inc. v. Dallas,
390 U.S. 676 (1968) - 167

Jacobellis v. Ohio, 378 U.S. 184 (1964)- 238, 261

J.M. Desai v. Roshan Kumar,
A.I.R. 1976 S.C. 578 - 316, 317

Kedarnath v. State of Bihar,
A.I.R. 1962 S.C. 955 - 235

Kharak Singh v. State of U.P.,
A.I.R. 1963 S.C. 1295 - 348

Kingsley Books v. Brown, 354 U.S. 436
(1957) - 41, 171

Kingsley International Picture Corpn.
v. Regents, 360 U.S. 684 (1959) - 167, 199

K.R. Shenoy v. Uduppi Municipality, A.I.R. 1974 S.C. 2177 - 317

Knuller Ltd. v. Director of Public Prosecutions, [1973] A.C. 435 - 124, 237

London County Council v. Bermondsey Bioscope Co. Ltd., [1911]1 K.B. 445 - 106, 113

Lovell v. Griffin, 303 U.S. 444 (1938) - 154

Madhu Limaye v. S.D.M. Monghyr, A.I.R. 1971 S.C. 2486 - 228, 229

Maharaj Singh v. State of U.P., (1977)1 S.C.C. 155 - 318

Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 - 321

Mannalal Jain v. State of Assam A.I.R. 1962 S.C. 386 - 221, 222

Manual Enterprises v. Day, 370 U.S. 478 (1962) - 238

Miller v. California, 413 U.S. 15 (1973) - 87, 238, 239, 277

Mills v. London County Council, [1925]1 K.B. 213 - 111, 114, 119

Mishkin v. New York, 383 U.S. 502(1966)- 261

Municipal Committee, Amritsar v. State of Punjab, A.I.R. 1969 S.C. 1180 - 206

Municipality of Bhiwandi and Nizampur v. K.S. Works, A.I.R. 1975 S.C. 529 - 304, 305

Mutual Film Corporation of Missouri v. Hodges, 236 U.S. 248 (1915) - 150

Mutual Film Corporation v. Industrial Commission of Ohio, 236 U.S. 230 (1915)- 16, 31, 148, 190

Near v. Minnesota, 283 U.S. 697 (1930) - 159, 161, 163, 164, 238

Niemotko v. Maryland, 340 U.S. 268 (1951) - 153

N.M. Chakravarthy v. Corporation of Calcutta, A.I.R. 1960 Cal. 102 - 317

Paboojan Tea Co. v. Dy. Commissioner, A.I.R. 1968 S.C. 271 - 322

Padfield v. Minister of Agriculture, [1968] A.C. 997 - 218

Paget Publications Ltd. v. Watson, [1952]1 All E.R. 1256 - 242

Palko v. Connecticut, 302 U.S. 319( )- 147, 188

Paris Adult TheatreI. v. Staton, 413 U.S. 49 - 38, 238, 240

Pathumma v. Stateof Kerala, A.I.R. 1978 S.C. 771 - 195

Patterson v. Colorado, 205 U.S. 454 (1907) - 146

Ponnuswami v. Returning Officer, Namakkal, A.I.R. 1952 S.C. 64 - 308

Pooran Mal v. Director of Inspections, A.I.R. 1974 S.C. 348 - 347

Premier Automobiles v. K.S. Wadke, A.I.R. 1975 S.C. 2238 - 308, 310

Provincial Government of Madras v. Basappa, A.I.R. 1964 S.C. 1873 - 304

Prudential Insurance Co. v. Cheek, 259 U.S. 530 (1922) - 146

R v. Burnley Justices, ex-parte Longmore, [1916-17] All E.R.(Reprint) 346 - 115, 116

R v. Commissioner of Police ex-parte Blackburn, (No.2) [1968]2 A.. E.R. 319 - 248

R v. Greater London Council, ex-parte Blackburn, [1976]3 All E.R. 184 - 27, 119, 123, 127 128, 293

R v. Grey, [1900]2 Q.B. 36 - 245

R v. Hallinam, (1909)73 J.P.N. 458 - 102

R v. Hicklin, (1868) L.R. 3 Q.B. 360 - 241

R v. Jacey (Unreported) - 127, 128

R v. L.C.C. ex-parte London and Provincial Electric Theatres Ltd. [1915]2 K.B. 466 - 114, 115

Raja Jagadambika Pratap Narain v. Central Board of Direct Taxes, A.I.R. 1975 S.C. 1816 - 306

Rajkapoor v. Laxman, (1980)2 S.C.C. 175 - 27, 244, 293, 300, 301, 302, 303, 312

Rajkapoor v. State (Delhi Administration), (1980)1 S.C.C. 43 - 292, 293, 296, 297 298, 301

Ramakrishna Dalmia v. Justice Tendolkar, A.I.R. 1958 S.C. 538 - 201

Ramdayal v. State of M.P., A.I.R. 1978 S.C. 921 - 247

Ram Manohar Lohia v. State of Bihar, A.I.R. 1966 S.C. 740 - 228, 229

Ranjit D. Udeshi v. State of Maharastra, A.I.R. 1965 S.C. 881 - 86, 212, 213, 243, 245, 362

Redrup v. New York, 334 U.S. 916(1966) - 261

Romesh Thappar v. State of Madras, A.I.R. 1950 S.C. 124 - 226, 227, 261

Roth v. United States, 354 U.S. 476 (1957) - 164, 238

Sadhananthan v. Arunachalam, A.I.R. 1980 S.C. 856 - 313

Sakal Papers (P) Ltd. v. Union of India, A.I.R. 1962 S.C. 305 - 261

Santokh Singh v. Delhi Administration, A.I.R. 1973 S.C. 1091 - 228, 234

Satyanarayana Sinha v. M/s. Lal and Co. A.I.R. 1973 S.C. 2720 - 316

Schenik v. United States, 249 U.S. 47 (1919) - 147

Schneider v. State, 308 U.S. 147 (1939)- 152

Shaw v. Director of Public Prosecutions, [1962] A.C. 220 - 124, 126

S.I. Syndicate v. Union of India, A.I.R. 1975 S.C. 460 - 304

Smith v. California, 361 U.S. 147 (1959) - 147

South Eastern Promotions Ltd. v. Star Conard, 420 U.S. 546 (1975) - 161, 170, 241

S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149 - 318

Sreenivasa v. State of Andhra Pradesh, A.I.R. 1971 S.C. 71 - 310

Stanley v. Georgia, 394 U.S. 557 (1969) - 347

State of Bihar v. Shailabala, A.I.R. 1952 S.C. 329 - 234

State of Haryana v. Shamsha Jang Sukhia, A.I.R. 1972 S.C. 1546 - 221

State of Madras v. V.G. Row, A.I.R. 1952 S.C. 196 - 195

State of Orissa v. Madan Gopal, A.I.R. 1952 S.C. 12 - 316

State of Orissa v. Rajasahab Chandanmull, A.I.R. 1972 S.C. 2112 - 316

State of West Bengal v. Indian Iron and Steel Co. Ltd., A.I.R. 1970 S.C. 1298 - 310

Stott v. Gamble, [1916]2 K.B. 504 - 114, 116

Subramoniam v. Sreenivasan, 1971 K.L.T. 699 - 308

Superintendent, Central Prison v. Dr. Lohia, A.I.R. 1960 S.C. 633 - 226, 228

Superior Film Inc. v. Department of Education of Ohio, 346 U.S. 587 (1954) - 165

Theatre de Luxe (Halifax) Ltd. v. Gladhill, [1915]2 K.B. 49 - 114, 115

Thomas v. Collins, 327 U.S. 146 (1945) - 152

Times Film Corporation v. Chicago, 365 U.S. 43 (1961) - 162, 163, 164, 165, 166

Titel Film Corporation v. Cussak, 390 U.S. 139 (1968) - 169

Transfux Distributing Corporation v. Maryland Board of Censors, (1965)240 Md. 98 - 171

United States v. Paramount Pictures Inc. 334 U.S. 131 (1948) - 155, 181

United States v. Reidel, 402 U.S. 351 (1971) - 238, 348

United States v. Thirtyseven Photographs, 402 U.S. 363 (1971) - 348

United States v. 12,200 ft. Reels of Super 8 mm. films, 413 U.S. 123 (1972) - 348

Varadarajan v. Salem Municipality, A.I.R. 1973 Mad. 55 - 317

Vincent v. Gopalakurup, 1982 K.L.T. 151 - 249

Vincent Panikulangara v. Justice V.R. Krishna Iyer, 1983 K.L.T. 829 - 249

Winters v. New York, 333 U.S. 507 (1949) - 152, 154, 155

Wolverhampton New Water Works Co. v. Hawkesford, (1851)141 E.R. 486 - 307

Young v. American Mini Theatres Inc. 427 U.S. 50 (1976) - 55, 57

BIBLIOGRAPHY

Alburey Castell (Ed.) - John Stuart Mill on Liberty (1947). Meredith Corporation, New York.

Bernard Schwartz - American Constitutional Law (1955) Greenwood Press Publishers, New Yor

-do- - An Introduction to American Administrative Law (1976), Little Brown, Boston.

Blackstone - Commentaries on the Laws of England Book IV (1809), T. Cadell and W. Davies, London.

Dicey, A.V. - Law and Public Opinion in England (1962), MacMillan and Co. Ltd., London.

-do- - Introduction to the Study of the Law of the Constitution (1964), MacMillan and Co. Ltd., London.

Durga Das Basu - Shorter Constitution of India (1981 Prentice-Hall of India Pvt. Ltd., New Delhi.

Francis C. Jacob - The European Convention on Human Rights (1975), Claderdone Press, Oxford.

Friedman, W. - The State and the Rule of Law in a Mixed Economy (1971), Stevens and Sons Ltd., London.

Geoffrey Robertson - Obscenity (1979), Weidenfeld and Nicolson, London.

Glanville Williams - Criminal Law (The General Part) 1961, Stevens and Sons Ltd., London

Government of India - Constituent Assembly Debates, Vol.VII, Govt. of India Publications, New Delhi.

Guy Phelps - Film Censorship (1975), Victor Gollancz Ltd., London

Harry Street - Justice in a Welfare State (1975) Stevens and Sons Ltd., London.

-do- - Freedom, the Individual and the Law (1972), Penguine Books Ltd., Harmonds Worths.

Henry J. Abraham - Freedom and the Court (1972) Oxford University Press, London.

Herman Pritchett - The American Constitution (1977) McGraw-Hill Inc., New York.

Jagadish Swarup - Human Rights and Fundamental Freedoms (1975), N.M. Tripathi Pvt. Ltd., Bombay

Jain and Jain - Principles of Administrative Law (1979), N.M. Tripathi Pvt. Ltd., Bombay.

Jain, M.P. - Indian Constitutional Law (1978), N.M. Tripathi Pvt. Ltd., Bombay.

Jolowiez (Ed.) - Winfield on Torts (1971), Sweet and Maxwell, London.

John Trevelyan - What the Censor Saw (1973), Michael Joseph, London.

Justice Hidayatullah - U.S.A. and India (1977), All India Reporters, Nagpur.

Justice V.R.Krishna Iyer - Some Half-Hidden Aspects of Indian Social Justice (1979), Eastern Book Co. Lucknow.

Kenneth Culp Davis - Discretionary Justice: A Preliminary Enquiry (1979), Lousiana State University Press.

Kobita Sarkar - Indian Cinema Today (1975), Vikas Publishing House, New Delhi.

Leelakrishnan, P. - Legal Aspects of Stage Carriage Licensing in India (1979), Sterling Publications Pvt. Ltd., New Delhi.

-do- (Ed.) - Consumer Protection and Legal Control (1984), Eastern Book Company, Lucknow.

Lucius J. Barker and Turky W. Barker - Civil Liberties and the Constitution: Cases and Commentaries (1978), Prentice Hall Inc., New Jersy.

Mulla - Code of Civil Procedure, Vol.I(1965) N.M. Tripathi Pvt. Ltd., Bombay.

Nagendra Singh - Human Rights and International Co-operation (1966), S.Chand and Co., New Delhi.

Neville March Hunnings - Film Censorship and the Law (1967), George Allen and Unwin Ltd., London.

Rajeev Dhavan and Christie Davies (Ed.) - Censorship and Obscenity (1978), Martin Robertson, London.

Seervai, H.M. - Constitutional Law of India, Vol.I (1983), N.M.Tripathi Pvt. Ltd., Bombay.

Shashi P. Misra - Fundamental Rights and the Supreme Court: Reasonableness of Restriction (1984)

Shiv Rao, B. (Ed.) - Framing of India's Constitution (Select Documents) Vol.IV (1968), The Indian Institute of Public Administration, New Delhi.

Thomas M. Cooley - A Treatise on the Constitutional Limitations (1972), DaCapo Press, New York.

-do- - The General Principles of Constitutional Law in the United States of America (1981), Fred B. Rothman Co., Colorado.

Upendra Baxi (Ed.) - K.K. Mathew on Democracy, Equality and Freedom (1978), Eastern Book Co., Lucknow.

Virendrakumar - Committees and Commisions in India, Vol.I (1975), D.K. Publishing House, New Delhi.

Wade, H.W.R. - Administrative Law (1977), Clarendon Press, Oxford.

Wade and Hood Philips - Constitutional Law (1963).

William A. Robson - Justice and Administrative Law (1951)

ARTICLES

Annonymous - Comment: Censorship of Motion Pictures, 49 Yale L.J. 87 (1939)

-do- - Comment: Exclusion of Children from Violent Movies, 67 Col. L.Rev. 1149 (1967)

-do- - Future of Feature Films, Span, Vol.XXV, No.1, p.29 (1984).

-do- - 'Gone are the Days of Sex and Crime' Inquest, October 12, 1984.

-do- - Note: Entertainments: Public Pressures and the Law, 71 Harv. L.Rev. 326 (1957).

-do- - Notes: Motion Pictures and the First Amendment, 60 Yale L.J. 696 (1950)

-do- - Notes and Comments: For 'Adults Only': The Constitutionality of Governmental Film Censorship by Age Classification, 69 Yale L.J. 141 (1959).

-do- - Who's Afraid of Censorship! India Today, p.56, Vol.V, No.19 (1980).

Bruce Michael Boyel - Film Censorship in India: A Reasonable Restriction on the Freedom of Speech and Expression, 14 J.I.L.I. 501 (1972).

E.P.Ellinger and K.J. Keith - Legal Research: Techniques and Ideas, 24 J.I.L.I. 213 (1982).

Harry Jones - The Rule of Law and the Welfare State, 58 Col. L.R. 143 (1958).

Jain, M.P. - Judicial Response to Prevative Clauses in India, 22 J.I.L.I. 1 (1980).

-do- - Mannalal Jain v. State of Assam - Administrative Discrimination and Articles 14, 4 J.I.L.I. 458 (1962).

Jain S.N. - Administrative Law Aspects of Maneka Gandhi, 21 J.I.L.I. 382 (1979).

-do- - Standing and Public Interest Litigation, in Leelakrishnan (Ed.), Consumer Protection and Legal Control, 89 (1984).

Jane M. Friedman - The Motion Picture Rating of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry 73 Col. L.Rev. 185 (1973).

John Sankaramangalam -'World Cinema,'Souvenir, Kerala State Film Development Corporation Ltd., 13 (1983)

John Trevelyan - Film Censorship and the Law in Rajeev Dhavan and Christie Davies (Ed.) 'Censorship and Obscenity' 98 (1978).

Kesavankutty, V. - Film Censorship: Need for Radical Change, [1980] C.U.L.R. 377

Michael Tracey - American Theory and British Practice: The Case of Mrs. Mary White House and Listeners and Viewers Association in Rajeev Dhavan and Christie Davies, Censorship and Obscenity, 37 (1978).

Rajeev Dhavan - 'Existing and Alternative Models of Obscenity Law Enforcement' in Rajeev Dhavan and Christie Davies (Ed.) Censorship and Obscenity, 56 (1978).

Raju, D.V.S. - National Film Development Corporation, Souvenir, Kerala State Film Development Corporation Ltd., 7 (1983).

Richard M. Levin - Hearing Procedure of Three Indian Administrative Agencies, 4 J.I.L.I. 205 (1962).

Thomas J. Emerson - The Doctrine of Prior Restraints, 20 Law and Contemporary Problems 646 (1958).

Williams D.G.T. - The Control of Obscenity II. Col L.R. 522 (1965).

William T. Moyton - Towards A Theory of First Amendment Process: Injunction of Speech, Subsequent Punishment and the Costsof Prior Restraint Doctrine, 67 Cornel L. Rev. 245 (1981).

Zellick, G. - A New Approach to Control of Obscenity, 33 Mod. L.R. 289 (1970).

Reports

Government of India - Report of the Enquiry Committee on Film Censorship - The Khosla Report (1969).

-do- - Report of the Working Group on National Film Policy (1980).

Appendix I

CINEMATOGRAPH ACT, 1952
(Act No. XXXVII of 1952)

(21st March, 1952)

An Act to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs

Be it enacted by Parliament as follows:

Comments

This Act contains four parts. Parts I, II and IV apply to the whole of India. Part III applies to Union territories only. In so far as the territories of India except the Union territories are concerned, the old Cinematograph Act, 1918, is repealed only to the extent the latter Act relates to the sanctioning of cinematograph films of exhibition, see Sec.18 of this Act, Hence, the old Act is given in an Appendix.

Object of the Amendment Act 3 of 1959.-- As a result of the experience gained in the working of the Cinematograph Act, 1952, for the last six years, it is considered necessary to make certain changes in its provisions for clarification, without making any substantial change in the working of the present Act.

"Section 3 of the Cinematograph Act, 1952, empowers the Central Government to constitute a Board of Film Censors consisting of such number of persons asmay be prescribed for the purpose of examining and certifying films as suitable for public exhibition. The films are examined by the regional officers with the aid of the advisory panels consisting of non-officials. The composition of the Board, the constitution of the advisory panels and the procedure for examination of films by the regional officers with the aid of the advisory panels are at present laid down in the Rules. The Bill makes express provisions in this behalf in the principal Act. It also incorporates the principles for guidance in certifying films, based on the provisions of Art.19(2) of the Constitution. In addition, the Bill makes provision for certain matters of a procedural and routine character."

Object and Reasons of the Cinematograph (Amendment) Act, 1981 (4 of 1981) -- "A bill to amend the Cinematograph Act, 1952, with a view to streamline the machinery for examination of films and to transfer the appellate jurisdiction of the

Central Government under the Act to an independent tribunal in pursuance of the recommendations of the inquiry committee on Film Censorship set up under the Chairmanship of Shri G.D. Khosla, formerly, Chief Justice of Punjab and assurance given in the Supreme Court was introduced in Parliament passed by both the Houses of Parliament. It received the assent of the President on 23rd August 1974 as the Cinematograph (Amendment) Act, 1974 (27 of 1974) and was to be enforced with effect from such date as the Central Government may, by notification in the Official Gazette appoint, Menwhile, it was considered that in the changed circumstances, the approach incorporated in the Amendment Act of 1974 was wholly unsuitable and needed a thorough review. This review was undertaken in consultation with the various organisations concerned with the production, distribution and exhibition of films. The working group on National Film Policy submitted its report in May, 1980, and, inter alia, made recommendation regarding some aspects of certification of films. The report was laid on the Table of both the Houses of Parliament. Consequent upon

the review undertaken, it was felt that the amending Act of 1974 which was not brought into force but is still on the Statute Book may be repealed.

2. However, having regard to all the aspects of the matter, it is considered necessary to amend the Cinematograph Act, 1952, *inter alia*, for streamlining the machinery for the examining of films and for including two new classifications for certification of films. Subject to the power of revision to be exercised by the Central Government, it is considered necessary to transfer the appellate jurisdiction of the Central Government under the Act to an independent tribunal. It is also proposed to avail of this opportunity to amplify the principles for certification of films under the Act in the light of the amendment effected in Cl.(2) of Art.19 of the Constitution by the Constitution (Sixteenth Amendment) Act, 1963, which added in the said clause one more restriction, namely, "in the interests of the sovereignty and integrity of India" on the freedom of speech and expression."

Some of the Important Amendments as Introduced in the Cinematograph Act, 1952, by the Cinematograph (Amendment)

Act, 1981 (49 of 1981) are as follows:

(i) Under Sec.3, besides the whole-time Chairman, the Board of Film Censors is to consist of not more than nine members. It is now made to increase the membership of the Board from nine to not less than twelve and not more than twenty-five.

(ii) Section 4 sets out a two-fold classification of films, namely, "U" (for unrestricted public exhibition) and "A" (for public exhibition restricted to adults only). It is now made to expand the classification by including therein two more categories, namely, "UA" (for unrestricted public exhibition subject to the film being endorsed with the caution to the parents/guardians to satisfy themselves as to whether they would like their children or wards below the age of 12 years to see the said film) and "S" (for public exhibition restricted to members of any profession or any class of persons having regard to the nature, content and theme of the film).

(iii) Section 5-B, which incorporates the principles for guidance in certifying films, is amended so as to include therein, one more principle, namely, in the interests of sovereignty and integrity of India."

(iv) Section 5-C provides for appeals to the Central Government by a person aggrieved by any order of the Board of Film Censors. It is now made to set up an independent tribunal having jurisdiction to hear appeals from the decisions of the Board of Film Censors. The amendment makes provisions for the composition of the said

tribunal, It is also made to confer upon the Central Government revisional jurisdiction even in respect of orders passed by the Tribunal in appeals, such revisional jurisdiction being of a limited character.

(v) Provision has been made to suspend or revoke the certificate granted by the Board of Film Censors in cases of public exhibition of any film in contravention of the provisions of Part II of the Act or the rules made thereunder. Power has also been conferred on the Central Government to review such orders.

(vi) The offences punishable under Part II of the Act relating to certification of films for public exhibition have been made cognizable. Further, the punishment provided under Sec.7 of the Act has been enhanced--the term of imprisonment has been enhanced from the maximum of three months to two years and the maximum limit of fine of Rs.1000 is enhanced to Rs.20,000. In addition, the limit of the fine of Rs.1,000 per day in case of a continuing offence, has been raised to Rs.5000 per day.

(vii) The existing provision regarding delegation of powers of the Board of Film Censors to the Chairman and/or other members of the Boards has been amended to restrict the same in relation to certification of films.

(viii) Provision has been made to ensure that the producer or the exhibitor of a film in respect of which a certificate was granted under the Act shall not be liable for prosecution under any law provided for punishment for obscenity in respect of any matter contained in the films as so certified.

PART I

Preliminary

1. Short title, extent and commencement.-- (1) This Act may be called the Cinematograph Act, 1952.

(2) Parts I, II and IV extended to the whole of India and Part III extends to (Union Territories).

Comment

The grant of the licences to exhibit cinema shows--Old Act of 1918 applies only in Part A and Part B States--Censorship of films are governed by the provisions of the Act of 1952.

(3) This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

(Provided that Parts I and II shall come into force in the State of Jammu and Kashmir only on such date, after the commencement of the Cinematograph (Amendment) Act, 1973, as the Central Government may, by notification in the Official Gazette, appoint.)

2. <u>Definitions</u>.-- In this Act, unless the context otherwise requires,--

(a) "adult" means a person who has completed his eighteenth year;

(aa) "Appellate Tribunal" means an appellate tribunal constituted under sub-section (2) of Sec.5-D;

(b) "Board" means the Board of Film Certification constituted by the Central Government under Sec.3;

(bb) "Certificate" means the certificate granted by the Board under Sec.5-A;

(c) "Cinematograph" includes any any apparatus for the representation of moving pictures or series of pictures;

(d) "District Magistrate" in relation to a Presidency town, means the Commission of Police;

(dd) "films" means a cinematograph film;

(e) "place" includes a house, building, tent and any description of transport, whether by sea, land or air;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "regional officer" means a regional officer appointed by the Central Government under Sec.5 and includes an additional regional officer and an assistant regional officer;

(h) "Tribunal" means the Appellate Tribunal constituted under Sec.5-D".

2-A. Constitution of references to any law not in force or any functionary not in existence in the State of Jammu and Kashmir.-- Any reference in this Act to any law which is not in force, or any functionary not in existence, in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State.

PART II

Certification of Films for Public Exhibition

3. Board of Film Censors.-- (1) For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the Official Gazette, constitute a Board to be called the Board of Film Certification which shall consist of a Chairman and not less than twelve and not more than twentyfive other members appointed by the Central Government.

(2) The Chairman of the Board shall receive such salary and allowances as may be determined by the Central Government,

and the other members shall receive such allowances or fees for attending the meetings of the Board as may be prescribed.

(3) The other terms and conditions of service of the members of the Board shall be such as may be prescribed.

(4) Examination of films.-- (1) Any person desiring to exhibit any film shall in the prescribed manner makes an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner,--

(i) sanction the film for unrestricted public exhibition;

Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or,

(ii) sanction the film for public exhibition restricted to adults; or,

(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or,

(iii) directs the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or

(iv) refuse to sanction the film for public exhibition.

(2) No action under the proviso to Cl.(i), (ii), Cl.(iia), Cl.(iii), or Cl.(iv) of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.

5. Advisory panels.-- (1) For the purpose of enabling the Board to efficiently discharge its functions under this Act, the Central Government may establish at such regional centres as it thinks fit advisory panels each of which shall consist of such number of persons, being persons qualified in the opinion of the Central Government to judge the effect of films on the public, as the Central Government may think fit to appoint thereto.

(2) At each regional centre there shall be as many regional officers as the Central Government may think fit to appoint and rules made in this behalf may provide for the association of regional officers in the examination of films.

(3) The Board may consult in suchmanner as may be prescribed any advisory panel in respect of any film for which an application for a certificate has been made.

(4) It shall bethe duty of every such advisory panel, whether acting as a body or in committees as may be provided in the rules made in this behalf, to examine the film and to make such recommendations to the Board as it thinks fit.

(5) The members of the advisory panel shall not be entitled to any salary but shall receive such fees or allowances as may be prescribed.

5-A. Certification of films.— (1) If, after examining a film or having it examined in the prescribed manner, the Board considers that—

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unresctricted public exhibition with an endorsement of the nature mentioned in the proviso to Cl.(i) of sub-section (1) of Sec.4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession

or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate; and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under Cl.(a) or Cl.(b).

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years.

Comments

Scope of the section.— It is clear that the Film Censor Board, acting under Sec.5-A of the Cinematograph Act, 1952, is specially entrusted to screen off the silver screen pictures which offensively invade or deprave public morals through over-sex. There is no doubt that a certificate by a high powered

Board of Censors with specialised composition and statutory mandate is not a piece of utter inconsequence. It is relevant material, important in its impact, though not infallible in its verdict. But the Court is not barred from trying the case because the certificate is not conclusive. Nevertheless, the Magistrate shall not brush aside what another tribunal has, for similar purpose, found. May be, even a rebuttable presumption arises in favour of the statutory certificate but could be negatived by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed.

Combined operation of Sec.5-A of the Act and Sec.79 of the Penal Code.-- The Board of Censors, in the instant case acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition, the producer and connected agencies do enter the statutory harbour and are protected because Sec.79 exonerates them at least in view of their bona fide belief that the certificate is justificatory. Thus the Trial Court when it hears the case may be

appropriately apprised of the certificate under the Act and in the light of our observations, it fills the bill under Sec.7, I.P.C., it is right for the Court to discharge the accused as the charge is groundless. In the present case, the prosecution is unsustainable because Sec.79, I.P.C. exculpatory when read with Sec.5-A of the Act and the certificate issued thereunder.

5-B. Principles for guidance in certifying films.-- (1) 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 socereignty 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.

(2) Subject to the provisions contained in sub-section (1) the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

5-C. <u>Appeals</u>.-- (1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board

(a) refusing to grant a certificate; or

(b) granting only an "A" certificate; or

(c) granting only a "S" certificate; or

(d) granting only a "UA" certificate; or

(e) directing the applicant to carry out any excisions or modifications, may, within thirty days from the date of such order, prefer an appeal to the Tribunal:

Provided that the Tribunal, may if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fees, and exceeding rupees one thousand, as may be prescribed.

5-D. <u>Constitution of Appellate Tribunal</u>.-- (1) For the purpose of hearing appeals against any order of the Board under Sec.5-C, the Central Government shall, by notification in the official Gazette, constitute an Appellate Tribunal.

(2) The head office of the Tribunal shall be at New Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(3) Such Tribunal shall consist of a Chairman and not more than four other members appointed by the Central Government.

(4) A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is a retired Judge of a High Court, or is a person who is qualified to be a Judge of a High Court.

(5) The Central Government may appoint such persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal.

(6) The Chairman of theTribunal shall recaive such salary and allowances as may be determined by the Central Government and the members shall receive such allowances or fees as may be prescribed.

(7) Subject to such rules as may be made in this behalf, the Central Government may appoint a Secretary and such other employees as it may think necessary for the efficient performance of the functions of the Tribunal under this Act.

(8) The Secretary to, and other employees of, the Tribunal shall exercise such powers and perform such duties as may be prescribed after consultation with the Chairman of the Tribunal.

(9) The other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, theTribunal shall be such as may be prescribed.

(10) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.

(11) The Tribunal may, after making such inquiry into the matter as it considers necessary, and after giving the appellan and the Board an opportunity of being heard in the matter, make such order in relation to a film as it thinks fit and the Board shall dispose of the matter in conformity with such order.

5-E. Suspension and revocation of certificate.-- (1) Notwithstanding anything contained in sub-section (2) of Sec.6, the Central Government may, by notification in the official Gazette, suspend a certificate granted under this Part, for such period as it thinks fit or may revoke such certificate if it is satisfied that--

(i) the film in respect of which the certificate was granted, was being exhibited in a form other than the one in which it was certified; or

(ii) the film or any part thereof is being exhibited in contravention of the provisions of this Part or the rules made thereunder.

(2) Where a notification under sub-section (1) has been published, the Central Government may require the applicant for certificate or any other person to whom the rights in the film have passed, or both, to deliver up the certificate and all duplicate certificates, if any, granted in respect of the film to the Board or to any person or authority specified in the said notification.

(3) No action under this section shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a certificate remains suspended under this section, the film shall be deemed to be an uncertified film.

5-F. Review of orders by Central Government.—— (1) Where an applicant for a certificate or any other person to whom the rights in the film have passed, is aggrieved by any order of the Central Government under Sec.5E, he may, within sixty days

of the date of publication of the notification in the official Gazette, make an application to the Central Government for review or the order, setting out in such application the grounds on which he considers such review to be necessary:

Provided that the Central Government may, if it is satisfied that the applicant for a certificate or that other person was prevented by sufficient cause from filing an application for review within the aforesaid period of sixty days, allow such application to be filed within a further period of sixty days.

(2) On receipt of the application under sub-section (1), the Central Government may, after giving the aggrieved person a reasonable opportunity of being heard, and after making such further inquiry, as it may consider necessary, pass such order as it thinks fit, confirming, modifying or reversing its decision and the Board shall dispose of the matter in conformity with such order.

6. Revisional powers of the Central Government.-- (1) Notwithstanding anything contained in this Part, the Central Government may, of its own motion, at any stage call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board or, as the case

may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal) and after such inquiry into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose of the matter in conformity with such order:

Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter.

Provided further that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose.

(2) Without prejudice to the powers conferred on it under sub-section (1), the Central Government may, by notification in the official Gazette, direct that—

(a) a film which has been granted a certificate shall be deemed to be an uncertified film in the whole or any part of India;

(b) a film which has been granted a "U" certificate or a "UA" certificate or a "S" certificate shall be deemed to be a film in respect of which an "A" certificate has been granted; or

(c) the exhibition of any film be suspended for such period as may be specified in the direction:

Provided that no direction issued under Cl.(c) shall remain in force for more than two months from the date of the notification.

(3) No action shall be taken under Cl.(a) or Cl.(b) of sub-section (2) except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a film remains suspended under Cl.(c) of sub-section (2), the film shall be deemed to be an uncertified film.

Comment

Scope of the section.-- There is no difficulty in laying down that in a trial for the offences under Secs.292 and 293 of the Indian Penal Code a certificate granted under Sec.6 of the Cinematograph Act by the Board of Censors does not provide an irrebuttable defence to accused who have been granted such a certificate, but it is certainly a relevant fact of some weight to be taken into consideration by the Criminal Court in deciding whether the offence charged is established. Regard must be had by the Court to the fact that the certificate represents the judgment of a body of persons particularly

selected under the statute for the specific purpose of adjudging the suitability of films, for public exhibition, and that judgment extends to a consideration of the principal ingredients which go to constitute the offences under Sec.292 and 293 of the Indian Penal Code. At the same time, the Court must remind itself that the function of deciding whether the ingredients are established is primarily and essentially its own function, and it cannot abdicate that function in favour of another, no matter how august and qualified be the statutory authority.

6-A. Information and documents to be given to distributors and exhibitors with respect to certified films.— Any person who delivers any certified film to any distributor or exhibitor shall, in such manner as may be prescribed, notify to the distributor or exhibitor, as the case may be, the title, length of the film, the number and the nature of the certificate granted in respect thereof, the conditions, if any, subject to which it has been so granted, and any other particulars respecting the film which may be prescribed.

6-B. Offences to be cognizable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Part shall be cognizable.

7. Penalties for contravention of this part.-- (1) If any person--

(a) exhibits or permits to be exhibited in any place--

(i) any film other than a film which has been certified by the Board as suitable for unrestricted public exhibition or for public exhibition restricted to adults or to members of any profession or any class or persons and which, when exhibited, displays the prescribed mark of the Board and has been altered or tampered with in any way since such mark was affixed thereto;

(ii) anyfilm, which has been certified by the Board as suitable for public exhibition restricted to adults, to any person who is not an adult.

(iia) anyfilm which has been certified by the Board as suitable for public exhibition restricted to any professio or class of persons, to a person who is not a member of such profession or who is not a member of such class, or

(b) without lawful authority (the burden of proving which shall be on him), alters or tampers with in any way any film after it has been certified, or

(c) fails to comply with the provisions contained in Sec.6-A or with any order made by the Central Government or by the Board in the exercise of any of the powers or functions conferred on it by this Act or the rules made thereunder.

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty

thousand rupees, or with both, and in the case of a continuing offence with a further fine which may extend to five thousand rupees for each day during which the offence continues:

Provided that notwithstanding anything contained in Sec.29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of any offence punishable under this part:

Provided further that no distributor or exhibitor or owner or employee of a cinema-house shall be liable to punishment for contravention of any condition of endorsement of caution on a film certified as "UA" under this Part."

(2) If any person is convicted of an offence punishable under this section committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to Government.

(3) The exhibition of a film, in respect of which an "A" certificate or a "S" certificate or "UA" certificate has been granted, to children below the age of three years accompanying their parents or guardians shall not be deemed to be an offence within the meaning of this section.

7-A. Power of seizure.-- (1) Where a film in respect of no certificate has been granted under this Act is exhibited, or a film certified as suitable for public exhibition restricted to adults is exhibited to any person who is not an adult or a film is exhibited in contravention of any of the other provisions contained in this Act or of any order made by the Central Government, the Tribunal or the Board in the exercise of any of the powers conferred on it, any police officer may enter any place in which he has reason to believe that the film has been or is being or is likely to be exhibited, search it and seize the film.

(2) All searches under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches.

7-B. Delegation of powers by the Board.-- (1) The Central Government may, by general or special order, direct that any power, authority or jurisdiction exercisable by the Board under this Act shall, in relation to the certification of the films under this Part and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Chairman or any other member of the Board, and anything done or action taken by the Chairman or other member specified in the order shall be deemed to be a thing done or action taken by the Board.

(2) The Central Government may, by order and subject to such conditions and restrictions as may be prescribed, authorize the regional officers to issue provisional certificates.

7-C. Powers to direct exhibition of films for examination.-- For the purpose of exercising any of the powers conferred on it by this Act, the Central Government, the Tribunal or the Board may require any film to be exhibited before it or before any person or authority specified by it in this behalf.

7-D. Vacancies, etc., not to invalidate proceeding.-- No act or proceeding of the Tribunal the Board or of any advisory panel shall be deemed to be invalid by reason only of a vacancy in, or any defect in, the constitution of the Tribunal the Board or panel, as the case may be.

7-E. Members of theTribunal, the Board and Advisory Panels to be public servants.-- All members of the Tribunal the Board and of any advisory panel shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of Sec.21 of the Indian Penal Code (45 of 1860).

7-F. Bar of the Legal proceedings.-- No suit or other legal proceeding shall lie against the Central Government, the Tribuna

the Board, advisory panel or any officer or member of the, the Central Government the Tribunal, the Board or advisory panel, as the case may be in respect of anything which is in the faith done or intended to be done under this Act.

8. Power to make rules.— (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this part.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(a) the allowances or fees payable to the members of the Board;

(b) the terms and conditions of service of the members of the Board;

(c) the manner of making an application to the Board for a certificate and the manner in which a film has to be examined by the Board and the fees to be levied therefor;

(d) the association of regional officers in the examination of film, the conditions and restrictions subject to which regional officers may be authorized under Sec.7-B to issue provisional certificates and the period of validity of such certificates;

(e) the manner in which the Board may consult any advisory panel in respect of any film;

(f) the allowances or fees payable to the members of advisory panel;

(g) the marking of the films;

(h) the allowances or fees payable to the members of the Tribunal;

(i) the powers and duties of the Secretary to, and other employees of, the Tribunal;

(j) the other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal;

(k) the fees payable by the appellant to the Tribunal in respect of an appeal;

(l) the conditions (including conditions relating to the length of films in general or any class of films, in particular) subject to which any certificate may be granted or the circumstances in which any certificate shall be refused;

(m) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under this Part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule

should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

9. Power to exempt.-- The Central Government may, by order in writing, exempt, subject to such conditions and restrictions, if any, as it may impose, the (exhibition of any film) or class of films from any of the provisions of this Part or of any rules made thereunder.

Appendix II

(PUBLISHED IN THE EXTRAORDINARY GAZETTE OF INDIA)
PART II SECTION 3 SUB-SECTION (ii) DATED 7.1.'78.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 7th January, 1978.

NOTIFICATION

S.O. 9(E) - In exercise of the powers conferred by sub-section (2) of Section 5B of the Cinematograph Act, 1952 (37 of 1952), the Central Government hereby directs that, in sanctioning films for public exhibition, the Board of Film Censors shall be guided by the following principles:-

1. The objectives of film censorship will be to ensure that—

   (a) the medium of film remains responsible and sensitive to the values and standards of society;

   (b) artistic expression and creative freedom are not unduly curbed; and

   (c) censorship is responsive to social change.

2. In pursuance of the above objectives, the Board of Film Censors shall ensure that—

   (i) anti-social activities such as violence are not glorified or justified;

(ii) the modus operandi of criminals or other visuals or words likely to incite the commission of any offence, are not depicted;

(iii) pointless or avoidable scenes of violence, cruelty and horror are not shown;

*(iii-a) scenes which have the effect of justifying or glorifying drinking are not shown;

(iv) human sensibilities are not offended by vulgarity, obscenity and depravity;

**(iv-a) visuals or words depicting women in ignoble servility to man or glorifying such servility as a praiseworthy quality in women are not presented;

(v) visuals or words contemptuous of racial, religious or other groups are not presented;

(vi) the sovereignty and integrity of India is not called in question;

(vii) the security of the State is not jeopardised or endangered;

(viii) friendly relations with foreign States are not strained;

(ix) public order is not endangered;

(x) visuals or words involving defamation or contempt of court are not presented.

3. The Board of Film Censors shall also ensure that the film—

(i) is judged in its entirety from the point of view of its overall impact; and

(ii) is examined in the light of contemporary standards of the country and the people to which the film relates.

4. Films that meet the above-mentioned criteria but are considered unsuitable for exhibition to non-adults shall be certified for exhibition to adults audiences only.

5. The notification of the Government of India in the Ministry of Information and Broadcasting No.G.S.R.168, dated the 6th February 1960 is hereby superseded. (F.No.5/5/77-FC).

(sd)
(R.K. Shastri)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Appendix III

PUBLIC OPINION SURVEY

1. Do you think that censorship of film is necessary? If your answer is 'Yes', the underlying reasons:
   - (a) to safeguard the best interest of society,
   - (b) to pressure our cultural heritage,
   - (c) to protect children,
   - (d) a combination of (a), (b) and (c),
   - (e) any other reason -(specify).

2. Do you think that there is too much violence in the Indian film?
   - (1) too much,
   - (2) not so enough to worry about,
   - (3) nil,
   - (4) no comments.

3. Do you think that the censors are more lenient towards violence than towards sex and obscenity?
   - (1) yes,
   - (2) no,
   - (3) no comment.

4. Do you think that scenes depicting violence blood shed and cruelty in present Indian films have an adverse impact on children?
   - (1) yes,
   - (2) no,
   - (3) no comment.

5. Do you think that censorship rules must be more strict towards violence?
   (1) yes,
   (2) no,
   (3) no comment.

6. Which do you think more harmful?
   (1) violence,
   (2) obscenity,
   (3) both,
   (4) any other thing,
   (5) no comment.

7. Do you think that the present Indian cinema portraits more sex and obscenity?
   (1) yes,
   (2) no,
   (3) no comment.

8. Do you like to go to films in company of your parents (or children)?
   (1) yes,
   (2) no,
   (3) no comment.

9. Which do you think more pornographic?
   (1) sex in films,
   (2) sex in theatre performance,
   (3) description of sex acts in literatures,

(4) caberrette in hotels and other places of public entertainments,

(5) portrail of sex in paintings or other picture shows,

(6) portrail of sex in advertisements including the posters of films,

(7) display of sex in T.V.

10. Do you favour more strict standards for censoring sex and obscenity in films?

(1) yes,

(2) no,

(3) no comment.

Appendix IV

THE CINEMATOGRAPH (AMENDMENT) ACT, 1984

INDIAN PARLIAMENT ACT, NO. 56 OF 1984

(27th August, 1984)

An Act further to amend the Cinematograph Act, 1952

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:-

1. Short title.-- This Act may be called the Cinematograph (Amendment) Act, 1984.

2. Omission of section 6B.-- In the Cinematograph Act, 1952 (37 of 1952) (hereinafter referred to as the principal Act), section 6B shall be omitted.

3. Amendment of section 7.-- In section 7 of the principal Act, in subsection (1),--

(a) for the words "he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees, or with both and in the case of a continuing offence with a further fine which may extend to five thousand rupees for each day during which

the offence continues", the following shall be substituted, namely:-

"he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided that a person who exhibits or permits to be exhibited in any place a video film in contravention of the provisions of sub-clause (i) of clause (a) shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees, but which may extend to one lakh rupees, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided further that a court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months, or a fine of less than twenty thousand rupees:"

(b) in the existing first proviso, for the words "Provided that", the words 'Provided further that' shall be substituted;

(c) in the existing second proviso, for the words "Provided further", the words "Provided also" shall be substituted.