L.6. KESAVANKUTTY, V–Cinematographic licencing–1985–Dr. P. Leelakrishnan

A commonly adopted system of control over exhibition of film in many countries is the method of licensing based on the suitability of film. India is not an exception. Regulation on film is many sided. This study concentrates on censorship of film for public exhibition only. It brings to light the defects and shortcomings in the existing system and suggests means to rectify them. The history of film censorship, different types of censorship, the criteria for censorship and the legal framework are also areas of enquiry in this study.

Some countries like the United States, England, Japan and West Germany adopt a system of self-regulation. Censorship of film is carried on by an authority constituted by the film industry itself. Even in spite of its intrinsic weakness in enforcement and sanction, the system is adopted in those countries mainly for avoiding compulsory censorship by the State. In some other countries there is no censorship prior to the commencement of exhibition of films, but the film maker, exhibitor, or distributor can be punished if such exhibition constitutes a violation of criminal law. Another model is that the censorial powers may be conferred on civil court so that the court, on application, can determine whether the film is objectionable or not. Films are also subject to invisible and indirect censorship. The impact of all such censorship on films is discussed.

In India, film censorship originated with Cinematograph Act 1918 empowering the Provincial Governments to establish censorial authorities. In 1949, an amendment provided for a Central Board of Film Censors. In 1952, a new legislation gave the Central Government enormous powers, making the Board to function as a department of the Central Government. The Government had control over the Board with the mechanism of issuing 'directions' to the censors and laying down censorship rules. The legislation did not provide any objective criteria for censoring films. The 1959 amendment, aimed at curing this defect, only incorporated the grounds contained in Article 19(2) of the Constitution. Even after expert studies and a significant decision by the Supreme Court, pointing out the inadequacy of the existing system, and governmental attempts to bring reforms by way of fresh directions, appointment of appellate authority and framing of new rules, the system still warrants radical change. The thesis explores them.

The history of official censorship of films in the United States is one of long legal battles. The initial judicial attitude was not to grant the protection of First Amendment to movies. By 1960, the judiciary accepted in theory the validity of prior censorship of movies but demanded proper standards for censorship. Later, the judiciary stressed the need for strict procedural safeguards. Fearing compulsory state censorship, film industry set up its own censorial system and a production Code. Although this self-regulatory system slacked legal sanction, the industry secured the co-operation and support of the Church. In 1966 the industry willy nilly adopted the grading system. Under the grading system its duty was limited to classifying films for different age group. Lack of sanction against isolation and resultant difficulty in implementation are the draw-backs of the system.

In England a loose system of self-regulation is in force. The power of local authorities for censorship was the creature of judicial interpretation. Realising the difficulties of a city censorship system, the industry, in 1916, set up the British Board of Film censors and successfully pursuaded the local authorities and the

Home Office to accept the decisions of the Board. The obscene Publications Act, 1959 originally exempted cinemas from its purview. The judiciary took the view that prosecution could be initiated against a film maker or distributor under the common law offences of outraging public decency and corrupting public morals even if the film is passed by the Board. This created a new threat to the film industry. In order to save the industry from this the Criminal Law Act, 1977 brought films within the purview of the Obscene Publications Act.

Recent trend all over the world is to give more emphasis on protection of children than on censoring of films for adults. In England, originally a two tier system of classification prevailed. One was based on the suitability of the film for children and the other on the general suitability for public exhibition. In 1921 the London County Council adopted a rule which banned from the second category films, all children under sixteen years of age unless accompanied by a bonafide adult guardian. Soon this became a standard form of licencing condition. In 1951, another category namely films meant for adults only was evolved. Later, 1970, a fourth category namely films suited for Children above 14 was introduced. The second category films was made open to all but with a warning that the film may not be suitable for children below 14 years. Thus a four tier system of classification exists in England.

Eventhough, as seen in the United States legal sanction is wanting, classification system enables the censorial authority to classify films more reasonably and logically to suit the requirements of pre-teenagers and teenagers. However, India demonstrably lags behind the categorisation of films as adopted in England and in the United States. For a long time there were only two categories, one for unrestricted public exhibition and the other for public exhibition restricted to adults, ie., for persons above 18 years. Only after the commencement of the 1981 amendment, an intermediary category was recognised - an advisory category with the object of advising parents that the film may not be suitable for children upto twelve years. Even though any classification based on age is bound to be arbitrary, a classification between preteenagers and teenagers appears to be reasonable and logical and therefore it will be a welcome step, if provision is also made for introducing a category for teenagers. The 1981 amendment further introduced an 'S' category in which the film is passed for public exhibition restricted to the members of any profession or any class of persons having regard to the nature, content and theme of the film. A true significance of this category is yet to be determined.

The principles for censorship of film in India are contained in Section 5B of the Act, a verbatim reproduction of the grounds specified in articles 19(2) of the Constitution. Eventhough the constitutional validity of this section was upheld, the Supreme Court did not explain the real import of various terms therein. The competency of the Central Board of Film Certification to censor films is examined. The desirability of an Appellate Authority and the suitability of the Government as a reviewing or revising authority are also examined. The power vested with the Government to issue directions to the Board does little contribution in guiding censorship. A discussion on the "Directions" is made in the thesis.

A vital question is the "bar of jurisdiction of courts" over the decision made by the Board. The statute specifically excludes jurisdiction of a criminal court to deal with any matter decided by the Board. But there is no specific provision ousting either expressly or by necessary implication, the jurisdiction of civil court.

The essential for ouster of jurisdiction under the general law, ie., the availability of an effective remedy within the statute with a built in judicial procedure is absent. Without upsetting the balance of decisions made by expert bodies, the study explores how grievances of those affected by a decision could be redressed by providing mechanisms of appeal and review.

The Cinematograph Act 1952 provides for administrative sanctions and judicial sanctions. In the field of judicial sanctions there are problems. Provision for the same punishment for different category of offences without taking into consideration the gravity and seriousness of the offences is critically examined. The rigour of the penalty is to be reduced. The inadequacy of the enforcement machinery and lack of co-ordination between the Board and the State Police force are hurdles in the smooth working of the censorship process.

On the basis of legal analysis and an emperical study interviewing film producers, directors, critics, viewers, theatre owners etc. an attempt has been made to ascertain the suitable machinery for film censorship in India. However, an ideal system of censorship must strike a balance between the freedom of expression of the film maker and the larger interests of society, and shall be capable of commanding respect from the industry and the public. The present highly Government controlled system does not find favour either with the industry or with the general public. Establishment of an independent Board of Film Certification with regional agencies consisting of fulltime members having sufficient knowledge and expertise in cinema is the dessideratum. The secrecy surrounding the Board may be done away with. The Board may be required to justify its decision to the public for whom censorship is carried on. The mechanism of 'directions' will have to be reformed.