

Dear Participants,

Welcome to the simulation of Stakeholders Meet on Film Censorship at Step By Step School's Model UN Conference 2017. Firstly, I'd like to commend you for selecting a simulation that is challenging and unique, but more importantly, contemporary and relevant to you as young citizens. Discussing complex political and international issues when you haven't first delved into issues that infringe your own fundamental rights makes little sense.

Do not be mistaken to think that film censorship is solely about you having the freedom to watch whatever the artist wants to portray; think of the larger socio-political ramifications. By influencing the kind of media you watch, the authorities can slowly but surely determine what you think and how you react, and can stir up or bog down emotions and reactions on certain issues. Simply put, by influencing the media, one is not only curtailing the rights of artists and of viewers, but also influencing how the society as a whole and as a collection of individual psyches perceives things, and that kind of power is dangerous, and inevitably leads to violations of human rights. But at the same time, it is an important policy consideration for the State, as the growing scale of mass media can promote harmful effects for the society if unrestricted exhibition is allowed. So censorship of any kind, especially pre-censorship, is a tightrope of trading off different considerations to arrive at a decision. However, such reasoned and deliberate decisions are seldom arrived at by authorities, which till date act on arbitrary notions.

The format of the committee is rather simplistic – stakeholders that are affected by or can affect the institutions and processes of censorship are called together to discuss the issue. Procedurally this means that the conventional Model UN procedure shall not be followed, and what we will have is an informal debate with the Executive Board as moderators. Substantively this indicates that the responsibility of the participants is two-fold – to analyze what their stake is and represent that zealously, and to cooperate with and oppose (when necessary) other stakeholders to reform the concept of censorship in India. This would require you to research heavily into the philosophy, law, and factum of film censorship in India, but much more importantly build a perspective and individual opinion about the issue. Simulations like these are not driven by factual research but by analytical arguments, and it's rather imperative that the participants understand the underlying themes and sub-themes of the issue at hand and come to original conclusions and solutions. Therefore, it is suggested that you read, as much as you can on the issue from books, journals, blogposts, activist videos, court judgments, artists impacted etc., as it is only when you know the different opinions on the contentious issue that you will be able to counter or bolster them as the case may be.

I hope that we witness not only a well researched but also a thoughtful committee. For any queries, please do not hesitate to get in touch with us.

Warm Regards,

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*Chairperson*

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## PROCEDURAL GUIDE

As stated previously, the procedure shall be very simple, free-flowing, and flexible to suit the needs of the simulation, so we shall, within the committee sessions, be allowed to change procedure with the consent of the stakeholders. However, a tentatively the procedure is as follows:

- *Opening Remarks:* 3 minute speeches given by all stakeholders to define the issue as they see fit and outline their arguments as well as the flow of debate as they see fit.
- *Debate and Deliberations:* For this, we shall be using two different procedures at the discretion of the Board. Either we have an open debate where the Board is selecting people constantly to give statements without time restrictions or we alternate with Round-Robin sessions in between where all stakeholders will have to present statements for a pre-decided time. In either case, 1-2 questions will be allowed for each statement made at the discretion of the Board.
- *Written Debate:* Chits can be passed freely to other participants and the Board at any time.
- *Documents:* The committee shall, while concluding the debate, prepare a press release or a report (or both) to summarize the proceedings over the three days, listing down the areas of concern, the solutions and reforms proposed, and the points of disassociation between stakeholders.

## CENSORSHIP IN FILMS: CONCEPT

Cinema or motion picture has been defined as the art of colorful moving images. A source of ideas and values, it has served as a carrier of transformation and revolution. Free cinema can be seen as a touchstone of freedom of expression. One can easily attribute to “free cinema” a reference to a platform where ideas can flow freely without restriction of any kind. Freedom of expression as understood in its entirety can encompass. Apart from these, cinema today serves as one of the most significant contrivance of the propaganda of free thought and reasoning.

India has a free press and the same freedom applies to cinema, which is free enterprise and outside the control of the Government. However, neither cinema nor press is separately listed in the Constitution, although freedom is a constitutional right. These rights fall under Art. 19(1)(a) that guarantees to all citizens the freedom of speech and expression. This right is expanded in International Law to also include the right to artistic expression. The framers of the Indian Constitution felt that it was essential to put certain restrictions on the freedoms in the larger interest of the community and country in order to strike a proper balance between the liberty of citizens and the interests of the society as whole. Hence, under Art. 19(2), it states that ‘reasonable restrictions’ can be placed on the freedom of expression and opinion 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. Additionally, Regulatory power over cinema is vested to the Union Parliament under Entry 60 of the Union List of the VII Schedule. The states enjoy limited jurisdiction with regards to the regulation of motion pictures under Entry 33 of the State List.

Therefore, some consider censorship of film media necessary in general interest by a process of examination before it goes out for public consumption. While there is no censorship published material, need was felt to have censorship for films because of the effect that the audio-visual medium can have on the people which can be far stronger

than the influence of the printed word. Film censorship or certification is thus the end product of the process of previewing of film, including a decision whether not to allow a particular film for public viewing or to allow it but with certain deletions and/or modifications. Furthermore, it is to ensure that the people do not get exposed to psychologically damaging matter.

### *Arguments for Censorship*

Censorship of film is often denounced as undemocratic and a symptom of an ominous, Big Brother state. It's seen as the tool of the oppressor – a system of control designed to repress individual thought. But the censorship debate is a big topic that can't be neatly placed into categories of 'Right' or 'Wrong'. Films can inspire people, change attitudes and ignite something deep within. This is something that was recognized a long time ago and it has been controlled to some degree ever since.

Censorship is not a choice but necessary to insure the peaceful workings of the country. According to the Supreme Court of India, "Film censorship becomes necessary because a film motivates thought and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instil or cultivate violent or bad behaviour. It cannot be equated with other modes of communication. Censorship by prior restraint is, therefore, not only desirable but also necessary."

In addition, the Central Board of Film Certification acts as the driving force preserving Indian values and morals. It is imperative that a movie is complacent and responsible to the values of society and not insensitive to society. The power of art can result into a catastrophic product, censorship is necessary in order, to prevent mayhem and protect the more vulnerable groups.

### *Arguments against Censorship*

Censorship serves the same purpose in a democracy as in every system of government; it helps the people in power stay in power. The role that censorship of information plays in this is obvious - the role that censorship of the arts plays is less direct. However, if an elected government can persuade voters that the arts are somehow dangerous and that those in government will 'protect' them with censorship, it may gain them support. The fact is that no government really wants those who it governs to think for them.

By withholding not only information but imaginings, insights, and ideas from its citizens it hopes to prevent them asking awkward questions and, perhaps, coming up with awkward answers – such as voting for somebody else. Amartya Sen recently said that, "India has become tolerant of intolerance". This is epitomized in the very workings of the Central Board of Film Certification that has become a dystopian-esque moral force guiding the Republic on what is right and wrong. The case of censorship is nothing more than an anathema on the Constitution of India. Movies continue to be banned to maintain political power, promote patriarchal order, and dissuade an inclusive and more equal society. Forms of debauchery meant to educate the public are vehemently forced out. The freedom to express one's thoughts is monitored by an oversensitive Board that continues to deny an open portrayal of taboo topics.

The very powers of the Censor Board stand as a dichotomy to the very thought of democracy and general will. Censors and would-be censors use the concept of ‘influence’ to try to justify what they do, because if the arts did not influence people they would have no excuse for doing it. Have you ever wondered why all ‘influence’ is assumed to be bad influence? If influence really existed it would work both ways.

In fact, the arts do not influence people’s thoughts and feelings, let alone their actions, unless they connect with something already present in those people’s personalities or experience. People choose what art they will look at, what films they will watch, what games they will play or what sites they will visit, because of who they already are. In principle, governments have a responsibility to make the arts readily available to anyone who is interested in them. However, this is something a government will be unwilling to do if it might possibly weaken its hold on power. That is why dictatorial governments practice more censorship than democratic ones. They are more frightened of letting people think.

**To understand an artist’s perspective on censorship, it is suggested that you understand the following video snippet from an upcoming movie on Manto, which was exhibited at Cannes Film Festival this year:**

<https://www.youtube.com/watch?v=TFU281gOArk> (might contain socially unacceptable words and expressions, but again Manto’s argument was that when these words describe the situation the best, why shy away from using it)

**To view brief timelines of censorship in India and other nations, please follow these links:**

- <http://ncac.org/resource/a-brief-history-of-film-censorship> (World history of film censorship)
- <http://saveourcinema.in/history.html> (India-specific history)
- <http://www.hindustantimes.com/bollywood/nihalani-censored-here-s-a-timeline-of-all-cbfc-controversies/story-1BHKAE6W13WU40d24RpYSK.html> (Timeline of controversies regarding censorship in the recent past since Nihalani was appointed)

## **INSTITUTIONAL AND LEGAL FRAMEWORK OF FILM CENSORSHIP**

The Ministry of Information and Broadcasting (Ministry of I&B) is a branch of the Government of India which is apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India.

The Central Board of Film Certification is an important functionary under this ministry being responsible for the regulation of motion pictures broadcast in India. The CBFC functions as the primary body certifying films for public exhibition in India, and the Cinematograph Act, 1952, and various rules and guidelines in determining the nature of certification to be granted to a film guide it. However, over the past few months, reports about the Central CBFC’s alleged overreach – moving from certification of films to moral policing, for instance, by denying certification to films which address LGBTQ issues – have made the news.

CBFC is also the sanctioning body that certifies films for public exhibition. The Act also allows for the setting up of regional centers or ‘advisory panels’ to assist the CBFC in its functions. Then there is a Film Certification Appellate Tribunal (FCAT) that has been

constituted under section 5D of the 1952 Act for hearing appeals against any order of the CBFC.

The Act provides that any person who wishes to exhibit a film should make an application to the CBFC for certification. The CBFC may (after examining the film, or having it examined):

- sanction the film for unrestricted public exhibition, subject to requiring a caution to be provided stating that parents / guardians may consider whether a film is suitable for viewing by a child if required (i.e. grant a U or UA certificate)
- sanction the film for public exhibition restricted to adult viewers (i.e. grant an A certificate)
- sanction the film for public exhibition restricted to members of a certain profession or class of persons based on the nature of the film (i.e. grant an S certificate)
- direct that certain modifications are made to the film before sanctioning the film for exhibition as described above, or
- refuse to sanction the film for public exhibition.

The Act, as well as the Cinematograph (Certification) Rules, 1983, also provides detailed procedures for the appointment of members of the CBFC and the advisory panels, and appellate bodies, applications for certification, and appeals to the decision of the CBFC. The Act also provides for revisionary powers of the Central government in relation to the decisions of the CBFC. In addition to the above, the Act provides principles on the basis of which the CBFC may refuse to certify a film – namely, “if a film or any part of it is against the interests of the sovereignty and integrity of India, 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 an offence”.

**For a more elaborate understanding of the working of the CBFC and the considerations it needs to take into account while deciding upon a particular case, visit the following link:**

[http://theatreworld.in/wp-content/uploads/2017/01/Film\\_censorship.pdf](http://theatreworld.in/wp-content/uploads/2017/01/Film_censorship.pdf) (Read from Page 3)

While almost every nation has a rating agency for movies, the Indian CBFC is the only one that takes it upon itself to ban movies. While most nations only censor out the worst scenes from movies, stuff that is so horrible that even hearing about it would make you die of horror, but mostly all movies pass with a rating, G or PG for the child-friendly and R and X ratings for the overtly sexual and pornographic material. Therefore, rating systems induce self-regulation. However, the system in India is mostly arbitrary with many movies being banned altogether after substantial time and money have been invested in them.

## **JUDICIAL APPROACH**

In the case of *K.A. Abbas v. Union of India* (1971), censorship under the Cinematograph Act and Rules framed thereafter in 1983 was challenged on the ground of it being violative of Article 19(1) (a) of the Constitution. The appellant claimed that such provision as articulated in various sections of the Act, i.e., section 5(1)(B), Section 4 and the CFBC's refusal to grant certificate to his film without several cuts, are in clear violation of the fundamental right of freedom of speech and expression. However in this case, the Supreme Court took a stand in favor of reasonable censorship and tested the said provisions of the challenged Act on the touchstone of reasonable restriction pro-

vided under Article 19(2) of the Constitution. The Supreme Court observed that censorship is a valid exercise of power in the interest of the public morality and decency.

However, in a later case of *Rangarajan v. P. Jagjivan Ram* (1989), the Supreme Court by overturning a judgment of Madras HC in fact protected the freedom of expression by re-granting the U certificate to a film which was revoked by the Madras HC. The Madras High Court saw this film that was based on the critical aspect of the government's reservation policy as portraying a theme, which could cause widespread unrest and law and order problem in the state of Tamil Nadu. Court demolished the argument of the state that the film ought to be refused a U certificate on the apprehension that it may create a public stir. The Court stated that: "*It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem*"

Another issue of censoring obscenity was dealt with in the cases of *Raj Kapoor v. State, Delhi Administration* (1980) and *Raj Kapoor v. Laxman* (1980), where the A film "Sathyam, Sivam, Sundaram" produced and directed by the appellant commenced public exhibition throughout India on the strength of a certificate permitting public exhibition restricted to adults, granted by the Board in accordance with the provisions of the Act. Two criminal complaints were instituted at different places against makers and actors on the ground that obscenity, indecency, and vice were writ large in the film and consequently the accused persons had committed an offence under Section 292 of the Indian Penal Code, 1860. The High Court had issued summons against the accused, but the SC on appeal, held that the accused were entitled to protection of Section 79 of the Indian Penal Code (that stated that nothing is an offence if justified by law) and so the exhibition of the film was justified by law or at any rate the accused bona fide believed by mistake of fact to be so justified. However, the question as to a film being denied certification on ground of obscenity was left open.

Compelled speech or compulsion on theatre owners to showcase certain educational or social videos (eg. Polio, anti-smoking ads etc) were held to be justified as long as they're under the reasonable restrictions of Art. 19(2) and therefore depends upon the nature of the speech to be compelled (*UOI v. Motion Pictures Association* 1999). The same case however held that if a person is compelled to carry out propaganda or project or partisan views, contrary to his wish, then it might amount to a restraint on freedom of expression. This judgment is awfully important and has been followed and rejected at will by the SC. The recent judgment on compulsory viewing of the National Anthem before the exhibition of a film is one such instance of inciting propaganda, but then again, some will claim that nationalist symbols are not in fact jingoist and should command unquestioned respect from the citizens. Recently as well, filmmakers have been claiming that anti-smoking advertisements in fact spoil the experience of the film and might be contrary or averse to the message or feeling of the film. All these are complex questions that need to be addressed.

### **Contemporary Cases**

*The Da Vinci Code* (2006) : The movie *The Da Vinci Code* was banned in five States in India as it hurt the sentiments of the Christian community. The movie, and the book by the same title, questions the Christian belief that Jesus never committed the original sin. According to the book and the movie, Jesus had married Mary Magdalene and had a daughter from her. Although the book is freely available in most of India except in Nagaland, the film ran into rough waters. In addition, the authorities in Nagaland urged the

Central Government to impose a nationwide ban on the film. The movie was highly censored in India, with statements saying the film was fictional running for 15 seconds at both the start and end of the film. Heavy censorship was also seen in the latest James Bond Movie – Spectre – without any religious reasons, but due to allegedly obscene scenes. The argument remains that why cannot such movies be given an A certificate that would limit viewership to persons with developed mental faculties so as to rationalize the material they view, rather than censoring or banning the material altogether.

*Gulabi Aaina (2003)* : Gulabi Aaina is an award-winning drama film produced by Sridhar Rangayan. The movie explores the subject of transsexuals and homosexuality that remain a taboo topic in India. In 2003, the Central Board of Film Certification banned Rangayan's movie, stating that the movie was "vulgar and offensive". It is widely believed that the movie was banned due to it touching the portrayal of marginalized community in India, that remain to be misunderstood and burlesqued. Would the movie have been banned if it depicted a heterosexual relationship? The movie remains to be banned in India.

*Udta Punjab (2015)* : The most recent case where in the judiciary stepped in and whipped the Central Board of Film Certification on its overreach is that of the controversy surrounding the film Udta Punjab. In this case the Board refused to certify the film Udta Punjab, which is based on the drug menace prevailing in the state of Punjab. In addition to its refusal to certify, the board suggested almost 13 cuts in the movie as a mandatory measure to seek certification. However on appeal by the filmmaker, the Bombay High Court criticised the Central Board of Film Certification for its conduct and poor way of handling the issue. The Court made a very important observation that the Board is not necessarily empowered to censor films. The word censor is not found in the Cinematograph Act. The board can make changes in the film but this power must be exercised in consonance with Constitutional Guarantee and Supreme Court orders. It can be rightly believed that the verdict of the Court in this case will definitely serve as a milestone, which can pave the way for the long pending reformation of the Certification Board. It can be seen that the Board has wrongly widened its power, which originally meant to be restricted to certification of films for exhibition only, to now include the power to censor also. Such an attitude of the Board, which many a time is politically motivated, can put the rights of the citizen in danger.

*Lipstick Under My Burkha (2017)* : Even after the clarification given in the Udta Punjab Case, the attitude of the CBFC hasn't changed. Lipstick Under My Burkha is a Hindi film directed by Alankrita Shrivastava. India's film censors have declined to certify Lipstick Under My Burkha for its sexual scenes and abusive words, among other things. Shrivastava says the decision is "an assault on women's rights". According to the Censor Board, "The story is lady oriented, their fantasy about life. There are continuous sexual scenes, abusive words, audio pornography and a bit sensitive touch about one particular section of society, hence film refused." Many feminists have cited, that movies exploring a similar plot with a male assemble would be passed without a second glance. The movie raises the question of the deeply embedded sexist and patriarchal tendencies in the working of the Central Board of Film Certification. After going to the Court, the movie got the go for the release, sometime in July 2017.