

Women in Films: Revisiting the Censorship Debate

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Received: 08.11.2019

Revised: 10.12.2019

Accepted: 19.12.2019

Abstract

The censorship in India is motivated towards ensuring the stereotypical flawless imagery of women in films. The gendered interpretation of obscenity laws led stereotyping women body as obscene. Films have a very complex relationship with society. It depicts what is happening in the society; also it impacts the society in various ways. In this paper we endeavour to question the censorship which in the era of over the top platforms is becoming redundant as they are not subjected to censorship. We revisit the censorship debate through several case laws and how gradually the judiciary is also liberally interpreting the censorship laws and the evolution of jurisprudence is aimed towards establishing censorship as a restriction on the freedom of speech of speech and expression.

Keywords: obscenity, media, films, women, censorship, OTT platforms

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Introduction

Media plays a pivotal role in constructing gender and also towards gender sensitization. The portrayal of women's character through media is a major concern in all societies world-wide, as misrepresentation and negative stereotyping of women reflect and also reinforce wider gender inequalities. Cinema is a medium which plays a very significant role in sociological studies. Cinema represents the gender practice in the society. In fact, films maintain, in the most useful way, the dissemination of traditional gender roles portrayed by women in common culture. Cinema is one of the most effective driving factors.

It is Indian society's single most powerful communication medium and as per the estimates approximately, 12 to 13 million people watch a movie in the duration of one week. [1]The causes which the movie-makers choose to create cinema and the manner in which it is executed; it intends to emphasize a certain set of values while damaging the other set. This entire process needs to be introspected. From the very inception of Indian Cinema, 'women' have been shown as a 'social-issue'.

The film industry is conservative and intransigent in the values that it upholds and also projects to the entire world. This is more apparent on the question of women. The major concern in Indian cinema is regarding misrepresentation and under-representation of women on screen. This generally takes a critical approach to gender bias. The second wave of feminism between 1960 and 1970 also focussed on the image of women where the role of women in film and their role in the film industry were criticized. [2] The focus needs to be shifted on the representation of women on screen, the positioning and the gravity of women's character against the male characters; how the feminist agenda is exhibited on screen. Focus must also be laid on the role of women film-makers and women writers in depicting women's issues through cinema.

The imagery of a heroine in mainstream cinema is majorly "flawless". The heroine looks a certain way and is always "morally correct", if there is anything like that. The stereotyping receives the mandate of a society like India,

which knowingly or unknowingly applauds the imagery and wants real women to ape the heroines. It is argued that the censorship is aimed towards preserving and reinforcing this false image and seeking to reinforce the patriarchal notion of femininity. It hides behind the garb of reasonable restrictions on the freedom of speech and expression. In this paper we shall discuss the gendered construction of obscenity and indecent representation of women and how it affects the censorship law in India with special reference to women in films. We aim to establish that with the advent of over the top (OTT) platforms like Netflix, Amazon Prime Videos, YouTube, Hotstaretc., censorship has become redundant since these platforms are not subjected to censorship.

Establishing the relationship between Obscenity and Indecent Representation of Women

The word 'obscene', in regular parlance, denotes to something which by its characteristics is offensive to decency or modesty, filthy, lewd and repulsive. Section 292 of Indian Penal Code entails that for anything to qualify as obscene it has to be lascivious or if it pleases the prurient interest. Judges follow the Hicklin test, which was devised in R V Hicklin (1868) in Britain. According to this test if the object in question has the capacity to deprave the subject of morality then it is obscene. Obscenity in India is seen as a crime because the definition that has been given in the Indian Penal Code is influenced by the Christian morals where the sex is equated with sin and it is considered to be inherently dirty. Since, the IPC was framed in 1860 by the British rulers, so it has very little to do with the Indian tradition and it is mostly inspired by Christianity morals.

In *Samresh Bose v. AmalMitra*[3], the Supreme Court drew distinguished between obscenity and vulgarity. The Supreme Court differentiated between vulgarity and obscenity. It opined that vulgarity disgusts and bores the reader or the viewer but obscenity has the potential to deprave and corrupt the minds of the consumer and affects the overall public morality. The Supreme Court held that a novel cannot be adjudged as obscene just because it describes female

body. The object of the novel to unravel the evils in the society should also be considered while deciding the impact of the novel on its readers. The court further clarified that certain portions of the book may appear to be vulgar to people of refined taste who may tend to feel shocked and disgusted, but that cannot be considered as the test of obscenity.

The Indecent Representation of Women Act, 1986 similarly prohibits indecent representation of woman defines it as the "representation of the figure of a female which indicates being indecent or is likely to deprave resulting into being indecent or may deprave or distort public morality." This act forbids the offensive representation of women through any means of communicating with the society, like publications, paintings, writings etc. and also has laid down punishment and fine when the provisions of the IRW(P)A are contravened.[4] Section 2(c) of the Act defines indecent representation of women as the depiction of female body in such a manner so as to adversely affect the public morality. The definition gives undue subjectivity to the judges shall be interpreting the indecent representation of women. Moreover, the title of the Act itself declares only female body as "indecent". The Act prohibits the production, selling, hiring, distributing, and circulating by way of several mediums like books, pamphlets, films etc. containing indecent representation of women.

Section 292 (2) relies upon the judge's point of view and is subjected to his jurisprudence and his idea of obscenity. Judges are not distinct from the society or immune to the social perception of obscenity. Thus, because of the language and subjectivity of the law the women's body become an easy and soft target to be labelled as obscene. The vague definition of obscenity has been used and interpreted in a way to establish as well as reinforce the existing socially constructed gender stereotypes which is a result of our patriarchal society.

Censorship and Patriarchy

The freedom of speech and expression is the cornerstone of every modern democracy. The right to have free speech and expression is not absolute in nature even in most liberal democracies such as USA, where in through 1st amendment[5] the powers of the state has been curtailed in so far as they cannot make any law prohibiting the free speech and expression and still they have legislations such as USA PATRIOT ACT, 2001. Whereas, in other jurisdictions the similar prohibitions and restrictions have been put under 'reasonable restrictions. When we deal with these reasonable restrictions with regards to free speech and expression in the realm of arts the reasonable restrictions come in form of censorship.

The word censorship is an English derivative of its Latin equivalent '*censere*' meaning "*to estimate or evaluate*".[6] The change in the accepted definition can easily be seen as the root of the word never meant to remove or to suppress however, in the contemporary scenario the acceptable definition contains the word '*remove*'. With this the question with respect of who is going to assess the work and decide whether the part of book, movie etc. is either immoral, offensive or any kind of political threat and what is the authority of the person to decide the same for a community given the terms used to define the act itself happen subjective to the interpretations.

Censorship, as argued by Cyril Barrett[7] is a special kind of treatment specially provided for works related to arts. He furthers the idea that the reasons of this treatment are something questionable. He cites the notable cases such as R v. Penguin Publications[8] which is also known as 'Trial of Lady Chatterly' wherein the overall literary merit of the literature was considered and therefore the book escaped the conviction under the English legislation, Obscene Publication Act, 1905. The bone of contention of Barrett seems to be the wholesome merit of the literature or work must be considered instead of just considering a few

offending segments of that work as it is not reasonable and justifiable to simply devoid people of the other benefits. Further he contends that "... 'obscenity' is a bore to uneducated and practically harmless for the literate". Similarly another perspective has been put by Shadmehr and Bernhardt[9] and according to them the government and the state tries to manage the information transmission and dissemination amongst the citizenry to mitigate the possibility of any kind of revolt or to avoid any law and order situation and the regulation by the state takes the form of censorship.

On other hand Sen[10] argues that censorship is a phenomenon installed in the machinery to impose checks, direct and indirect. He rightly points out that the broad reason in favor of censorship is to make sure that the ordinary section of the community is not presented with any content that a 'majority of rational adults' might find disagreeable so as to uphold decency and the possible social damage. Now it must be understood that Sen's argument is proving the need of the censorship whereas from another perception it can also be inferred that the censorship is used to curb something which is not acceptable by majority of reasonable people. Given the current socio-political dynamics, the usage of censorship is not to maintain the decency and public order and instead of it the censorship is being used to force people to accept the morality of the ruling class and people in power.

Central Board of Films Certification (hereinafter C.B.F.C), constituted under Cinematograph Act, 1952[11] is a statutory body which performs the function of censoring and certification of motion pictures which are to be publicly exhibited. However, with an increased importance of the body like never before, involvement of politics in the certification and censorship has increased manifolds and responsibility of interpretation of social morality has been mishandled by the watchdog itself. A beautiful example of the same can be seen while differentiating between the receptions, portrayal of women got in movie named Hunterwali in 1935 and how C.B.F.C. went on to suggest 100 odd cuts while approving Bandit Queen in 1995. Hunterwali's plot was women-centric wherein the lead character was seen, performing stunts in clothes like short skirt which might have had been inappropriate for the then audience but it wasn't objected to by the people, *per contra* Bandit Queen's fate wasn't so easy as it had to go all the way through C.B.F.C's examining committee to the apex court to get the required permissions as C.B.F.C was adamant on its stand on cutting the allegedly violent and gross scenes and the public was questioning the movie on grounds of indecency.[12] Justice Bharucha while giving his judgment cited that the scenes in question were in fact needed to tell the complete story and therefore must be allowed. C.B.F.C's tryst with its destiny has been full of such examples. Depiction of women in bollywood has taken quite a leap since then but still the national certification body doesn't seem to find a resolve for its narrow mindset while assessing the movies brought before them for certification.

Now, when we talk about the censorship regime, it becomes imperative to discuss the way women have been portrayed by Indian cinema. It will not be a new argument but it is safe to say that even the film industry has been affected by the patriarchal nature of Indian society¹. Sangeeta Datta, in her work recognizes that mainstream Indian cinema continues to look at female sexuality with a patriarchal standpoint wherein definition of masculinity involves physical built and aggression.[13] It is further noted that usage of frivolous and vulgar representation which objectifies women's sexuality has increased specially during sequences involving songs wherein the sexual gestures such as groping has been normalized by the industry and such trends happen to be disturbing in nature as they further trivialize the issues that

women are facing day to day in their real life. More importantly the trends tend to cater to the developing voyeuristic culture with help of sensual portrayal of female characters. In the aforementioned case the issue arises when the treatment of the feature films is not done as per the standards equally.

C.B.F.C has a chequered history when it comes to the interpretation of the word 'obscenity'. On one hand C.B.F.C puts cuts on the movies such as Lipstick Under My Burkha, where the whole story line was revolving around the four ladies in search of freedom from the shackles of the society, while citing that the movie derogates the place of women in our society. However, when the matter reached before the Film Certification Appellate Tribunal (Herein after FCAT), in the order dated 18th April, 2017 in matter of Sudhirbhai Mishra v. Central Board of Film Certification, Mumbai, the tribunal ordered that CBFC is grossly wrong in prohibiting the movie only in the ground of being women oriented and portraying the female sexual fantasies and desires. It needs to be analyzed with reference to the story and characters of the film and whether it is rooted in reality of the society.

Further, in the subsequent paragraph the Hon'ble judges also admitted to the script contains some epithets and depiction of sexual activities. However, they also accepted that these were vital to the character and the story while allowing it with 'A' certificate. And on other hand, movies having truly obscene content like Mastizaade, Great Grand Masti etc. get away with V/UA & U/UA certificates much easily when it comes to certification. In another FCAT order dated 9th March, 2017 in matter of AshokThakeria v. Central Board of Film Certification, Mumbai, wherein the makers of Great Grand Masti appealed against the order of CBFC granting them 'A' certificate, the appellate tribunal mentioned in the para 4 of the order that, "...all the songs of the movie submitted as promos of the film have earlier been granted certificate under U/UA categories...". The aforementioned observation becomes important to understand because the songs of the movie Great Grand Masti, portrayed the female lead in such a ludicrously obscene way which is totally undesirable and is in a way epitome of the objectification of a female body. Adding on to it the movie promos also contained the sexual innuendos. Whereas the main feature film depicts the lecherous nature of manly lust. All of which in itself is the violative of the CBFC's guideline numbered viii[14] and ix[15] amongst others.

Adding on to these examples one other facet that comes before us is the hypocrisy of the sCBFC. While on one hand we have the recent example of BurkhaUnder My Lipstick which involved the women trying to explore their sexuality on other hand we also have movies like Dostana which was centered about the homosexuality, a subject which was then considered to be an offence. Another such instance of the gender bias can be spotted in passing of the movies having sequences where the male characters are inappropriately dressed and scenes getting censored having women dressed similarly.

The board for so long has attracted the criticism of many people from different walks of life including the people from the industry too. The Pioneer in 2016 during the Udta Punjab controversy printed the article wherein they cited veteran actress ShabanaAzmi saying that CBFC should neither censor nor certify the feature films rather it should focus on classifying the movies for the convenience of the audience [16]. The idea of classification of films is certainly not new and has been already done by the developed jurisdictions such as USA where the ratings and the classification of the movies happen on certain parameters such as suitable age group, violence, nudity, language etc.

Online Streaming, Censorship and Economy

Due to the nature of foregoing discussion, it is also imperative to discuss the contemporary scenario vis a vis the access to the cinema given the rise of online platforms

such as Netflix, Amazon Prime, Voot, Zee5, Youtube Premium etc. to name a few. This discussion becomes imperative because due to the age old censorship laws and the patriarchal approach of CBFC in India, the makers are seemingly favor of releasing their content on online streaming platforms. Another reason is the void of law in regulation of such content in Indian context and the only practice in place is the self-censorship practiced by these platforms.

Since the emergence of the platforms they have seen a notable growth in the viewership[17]. Wherein on the other hand according to reports on an average almost 3 to 4 per cent of single screen theatres have pulled out of the business wherein other researches point out to the fact that every year almost 300 single screens are shutting down because of less viewership[18].

This can be attributed as an effect of having such rudimentary and orthodox principles of censorship which is turning the tide in favor of the online platforms which are proving themselves as spaces more open and inclusive to the ideas of the creators.

One such example is of Netflix original series named Sacred Games. The series is based on a novel written by Vikram Chandra under same title and the series is popular amongst the audience and has received good response even amongst international audience. Another such series are Ghoul starring RadhikaApte and a dystopian drama titled Leila. All of these shows contain usage of abusive language, nudity, violence and portrayal of characters which is not as per the C.B.F.C. norms. This in turn raises the question on the significance of the existing censorship laws in the world where such content is readily available through alternative sources.

The discussion moves to a point where we must be asking the question that whether in current global and Indian context do, we really need the censorship. And if considered the popular opinion, it must be done away with. Even ShyamBenegal while answering the same question when asked by GeetiSen stated "*Frankly, I think so, because in a democracy it has no place. What is more, film censorship is pre-censorship which is even worse.*"[19]

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