

REPORT ON "NATIONAL WEBINAR ON FILM CENSORSHIP"

National Webinar on **Film Censorship** was organized by Faculty of Law, The Maharaja Sayajirao University of Baroda, on Monday, **19th June, 2020** from 5.00 pm to 6:30 pm

Objective of Webinar

Films in India play an influential role over the minds of its viewers. Such influence prevails over a long span on period from childhood to old age. The impact is such that it leads people to imitate the actors and are considered as role models. Films also have the power to mould the mindset of society with its content and delivery. On the other hand, Censorship in films is developed to control the content of the films considering its ill effects. However, at times it comes in contrast with the freedom to speech and expression. The constitutional vires of censorship in films is often debated and discussed. In order to address this dichotomy, the Faculty of Law, The Maharaja Sayajirao University of Baroda has organized National Webinar on Film Censorship.

Webinar Proceedings

The Session began with the University song followed by the Welcome Address by Prof. (Dr.) Bhavna Mehta, Dean (OSD) Faculty of Law and Head, Department of Social Work, Faculty of Social Work. Prof. Mehta welcomed the esteemed dignitaries and participants and also introduced the Faculty of Law. After the welcome address, Dr. Archana Gadekar, Associate Professor, Faculty of Law gave Overview of the Webinar and Introduction of Guest Additional Solicitor General of India, Advocate Madhavi Goradia Divan , to address the participants.

About the Webinar

In the landmark judgement of *K. A. Abbas v. UOI*, the Hon'ble Supreme Court had upheld the constitutionality of film censorship, especially when such thing was inapplicable to the print media. The apex court had drawn a distinction between film and print media. The Court had held that the motion picture affects the impressionistic minds of children more than the print media. However, today the times have changed. Today print, electronic and social media are the newer medium of expression. And interestingly, each media is governed by a different type of bodies, some of which are even self-regulatory bodies. Now, the question that arises is, in the present era, how far is the film censorship constitutional?

The journey between Abbas verdict and to the present day has been too long. India of the 21st century is completely different from the India of 1970s. Today the medium of expression has widened and the contention that film is a powerful tool of expression ...can equally be true for the electronic media. Also, there has been a demographical shift and the younger generation is exposed to many things which the younger generation of the 1970s was unaware about.

So the fundamental question that need to be answered today, is should we continue to have film censorship in the internet age where all other content is not subjected to pre censorship.

Introduction of Guest

This distinguished legal scholar who holds a degree in law from Cambridge University has represented the Government of India in several landmark cases in the Supreme Court which include, the NJAC case on judges' appointments, challenges to the Insolvency and Bankruptcy Code, Triple Talaq case.; to name a few.

Apart from her practice in the Supreme Court of India, Adv. Divan has appeared and argued before several tribunals and forums. As Additional Solicitor General of India, she represents several public sector undertakings in the Supreme Court, in tribunals and in arbitration.

Apart from being one of the leading Advocates of the country, Adv. Divan is also a noted author who has penned several books which includes book on media law titled Facets of

Media Law now in its second edition. As we all know, this book is widely used by practitioners and media persons and is a recommended text book in several law schools across India including ours.

She is also the co-author of Halsburys Laws of India – Environment, 2003 (Butterworths).

She has contributed to the seminal publication Courts of India – Past to Present, published by the Supreme Court of India in 2016, which is a masterpiece on Indian Judicial History.;

Adv. Divan is the editor of The Indian Advocate, a journal published by the Bar Association of India.

She has been a guest lecturer at several law colleges across India and has participated in several law conferences as a speaker on media law and gender rights.

Madhavi Divan was awarded the Woman Lawyer of the Year Award 2017-18, conferred by Legal Era at Mumbai, March 2018 and “Woman Lawyer of the Year 2019” by Business Legal World.

Honouring Distinguished Service & Contribution to Media & Constitution Laws, Adv.Divan was also awarded Excellence Award 2018 by CXO & GC Leadership Summit, New Delhi.

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Additional Solicitor General of India, Advocate Madhavi Goradia Divan

She began her talk by giving brief overview of medium of expression The Constitution of India protects freedom of Speech and Expression under Article 19(1)(a) Right of people to express themselves is the Fundamental Human Right precedes and transients the Constitution. The Fundamental Right under article 19(1)(a) is merely give freedom of expression pride place in the constitution it is not as if The Constitution confers on us this right merely recognises it and protects it against unreasonable interference now human expression can be come from various forms of speech, writing in the form books or any other print form today people are blogging, twitting all of that there is art, music, dance, theatre, stand-up comedy , photograph, films satire and so much more and the medium through which freedom of speech and expression made

available to us has been evolved with time and technology whether its print or broadcast or the internet there may be different laws that govern this different mediums in India for example when it comes to print it's the newspaper and for television media we have cable television act for theatre we have dramatic performances act and likewise for the internet we have IT act, 2000. These are the various examples of the manner in which this different form of expression can aired through different media regulated. It's interesting the content that expression may remain the same telecast or communicated through different and this are governed by different laws what is interesting is law in its sense can be technology specific it is not technology agnostic so the content remains the same the foundation of the content can be regulated merely the broad contours of that comes from article 19(1)(a) and the eight subjects of reasonable restrictions which you find under article 19(2) which are as we know in the interest of sovereignty and integrity of India, security of the state, public order, morality decency, contempt of court, defamation and incitement to an offence and so on so there eight exceptions under article 19(2) we want to understand what article 19(1)(a) we have to distilment from understanding 19(2) as well now very important medium of expression in India.

She further added that there is barely any aspects of life are untouched by the films while cinema drawn it themes from society as it exist cinema has also influence the society. It has impacted our opinion it has also impacted our life style so film stars are the most emulated class of our society. it's also impacts popular culture and for the positive and negative Indian films have unique quality and ability to penetrate all aspects of life and ability to transients the barrier of cast, religion and gender, language literacy and Indian cinema has been arguably has the greatest social glue cohesion that kind of needed in diverse plural society. Indian films very popular in the all part of the world Therefore they are great ambassador of our country with emergence of new media i.e. Social Media and Internet still popularity of films remains the same that florescence of new cinema that came from Internet that also throw very interesting legal challenges.

She refer that in India unlike the print medium newspapers and magazines films are subject to what is known as pre-censorship and this done through a certification process by the CBFC and the justification of pre-censorship films are found in famous judgment of KA Abbas v Union India and Justification in that landmark judgment by Justice Hidayatullah where constitutionality

of pre-censorship was challenged and He said that “The Inherent nature of motion picture is such and its ability to steered human mind, human emotions and passion is of its different nature from any print medium” that justify the pre-censorship to have much greater impact on vulnerable section of society and this has been reiterated in various other judgments like Ramesh v. Union of India S. Rangrajan v. P. Jagjivan Ram and the same justification has been given.

She also briefly discussed story of how censorship begun with first ever censorship law was passed in Britain to regulate licences of Cinema for public exhibition later on authorities has stated to regulate content of films also. British Board of Censorship was passed in 1912. The word censorship has Latin origin from the word “Census” which means to estimate. In India first legislation on censorship was introduced in 1917 by the imperial legislative council which is known as Cinematograph Act of 1918 and this was the start of film censorship in India. 1918 Act gave district magistrate power to issue license to exhibit film and power to appoint inspectors to certify the films suitable to public there was no certification at that time. In 1920 Censorship board was established other parts of country in beginning there was no rigid rules laid down for censorship 43 objectionable subjects were framed for release film for public exhibition. In 1927 Indian Cinematograph Committee was formed chaired by Former Judge of Madras High Court this was the first comprehensive inquiry into movie viewing and censorship in India. After Independent CBFC was established for film censors entry 60 of the Union list in the 7th Schedule to constitution under subject “sanctioning of Cinematograph films for public exhibition” Dr. BR Ambedkar explain during the constituent assembly debate purpose of putting this entry in the Union list to ensure certainty and constancy in standard across India and that is amendment in 1918 Act by this amendment for the first certification categories was crated i.e. U/A category The 1918 Act was repealed by act with no difference than earlier in scope and objective in 1952.

After briefly explaining all important provisions of Cinematograph Act She quoted few important paragraph from KA Abaas Judgment where court upheld the Pre Censorship of the films because this was regarded “Superior Vehicles of Infection” Justice Hidayatullah said It has been almost universally recognised that the treatment of motion, pictures must be different from that of other forms of art and expression and cinema picture more true to life than even the theatre or indeed any other form of representative art. It is also for this reason that motion picture must be regarded differently from other forms of speech and expression. 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.

She gave example of few films specifically focused on Bandit Queen where the issue was can you have scene with frontal nudity or it would violate laws on obscenity and guidelines under the Cinematograph Act. Supreme Court upheld that scene of frontal nudity it was very important to theme of the film. She also mentioned aversion defence which meant to revolt the audience and shake it a realisation anonymity what is happen to Phoolan Devi and why she tuned in to raged dacoit. The object of doing so was not to titillate the cinema-goer's lust but to arouse in him sympathy for the victim and disgust for the perpetrators.

There have been trends for many years of Extra-Constitutional Censorship where you have different section of people taking to the street and effective bullying film maker either in censoring or self censoring of scenes often times. It has been seen where state does not respond adequately for several years in many cases Supreme Court held that once film is cleared by censor board there after it is up to state to ensure there is no law order issue.

Apart extra-constitutional censorship court sometimes appoint its own committee of advocates to review film inspite of certificate issue from censor board that is unhappy trend it should be decided by expert of respective filed if there is specialist body appointed that body should decide.

She highlighted other challenge is films are streamed on the internet platforms which called OTT platforms for example Netflix, Amazon Prime, Hot star and So on so forth these are not subject to pre censorship under the cinematograph Act now the first question i.e. What is the relevance of Pre Censorship in cinema hall which are not applicable to film increasingly seen now on internet platforms is unjustified classification this films are exhibited in cinema hall and films which are consumed by us in privacy of our homes so content is the same carriage is different therefore should there be different standard question now arises that cinematograph Act is really applicable to films are that publically exhibited question is what is public exhibition means is it confine to exhibition in public i.e. public space cinema hall or does it extend to private space that is once home or bedroom or personal device and therefore so long as you are member of public it doesn't matter where and how you watch the film in case of Super Cassettes Delhi High court

took the view that public exhibition of film is not confine to making the film available in the public space alone means exhibition to public to the public according to reasoning it would apply to both but there is certain discomfort that State would have entering in private space and so far do not have pre censorship when comes to internet and statement was made on the floor of parliament in November 2019 that pre censorship regime would not apply to films shown OTT platforms.

She further added Karnataka High Court held that multimedia content transmitted through the internet cannot be regulated like cinematograph Act. The Delhi High Court dismissed a petition formulation of guidelines to regulate OTT platforms but an appeal on that is pending in Supreme Court it is not as if Cinematograph has not applied to films shown on the OTT platforms but at the same time it is not there is no regulation because ultimately these OTT platforms have their own internal guidelines which content creators would have to adhere to if they want their films to exhibited on that platforms

Soon after, Dr. Namrata Luhar, Assistant Professor, Faculty of Law moderated the question answer session when Mdahavi Goradia Diwan addressed the queries raised by participants. The questions reflected the various backgrounds the participants belonged too.

The session ended by vote of thanks delivered by Mr. Umang Modi, Assistant Professor, Faculty of Law who expressed his gratitude to the dignitaries, participants and members of the organizing committee.

Profile of Participants

There were 650 registrations, 220 participants on Google Meet and more than 800 Viewers on Facebook live for this Webinar. 327(51.3) participants are students from law colleges across the country. There were 241 (37.8) academicians and 25(3.9) practicing lawyers among the participants.

Webinar Team

The Webinar could be conducted successfully because of the hard work put in by the entire team led by Prof. (Dr) Bhavna Mehta.

Dr. Archana Gadekar, Associate Professor, Faculty of Law and Dr. Namrata Luhar, Assistant Professor, Faculty of Law were the Conveners of the Webinar.

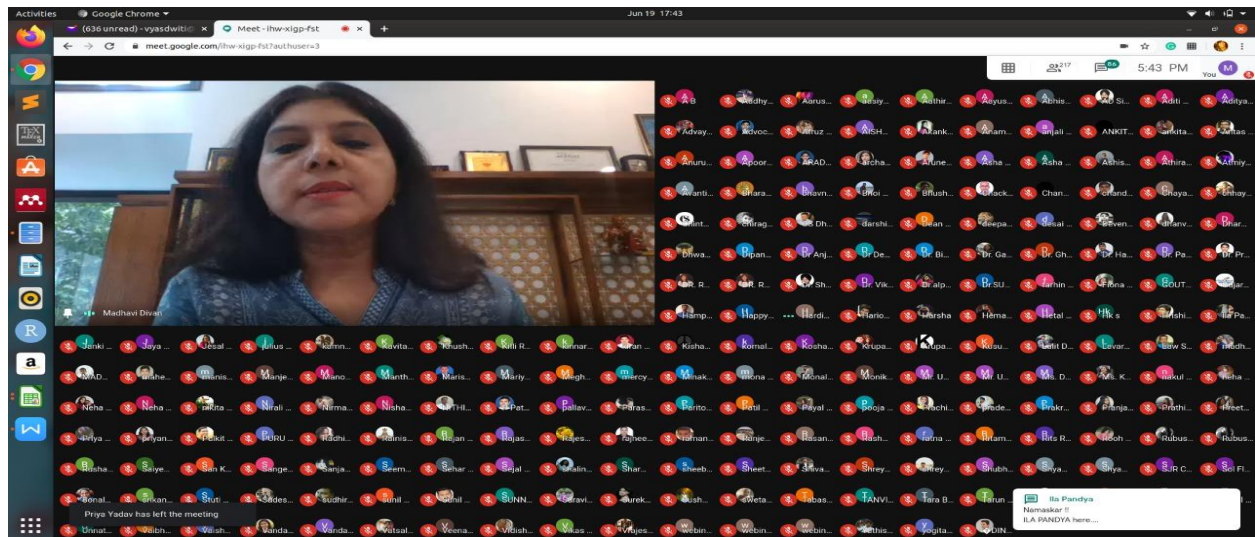
Mr. Umang Modi, Assistant Professor, Faculty of Law and Ms. Fiona Dias, Assistant Professor, Faculty of Law were the Coordinators of the Webinar.

While the technical assistance was provided by Ms. Jhankana Jani, the Webinar was conducted by Ms. Fiona Dias, Assistant Professor; Faculty of Law was the Master of the Ceremony (Webinar)

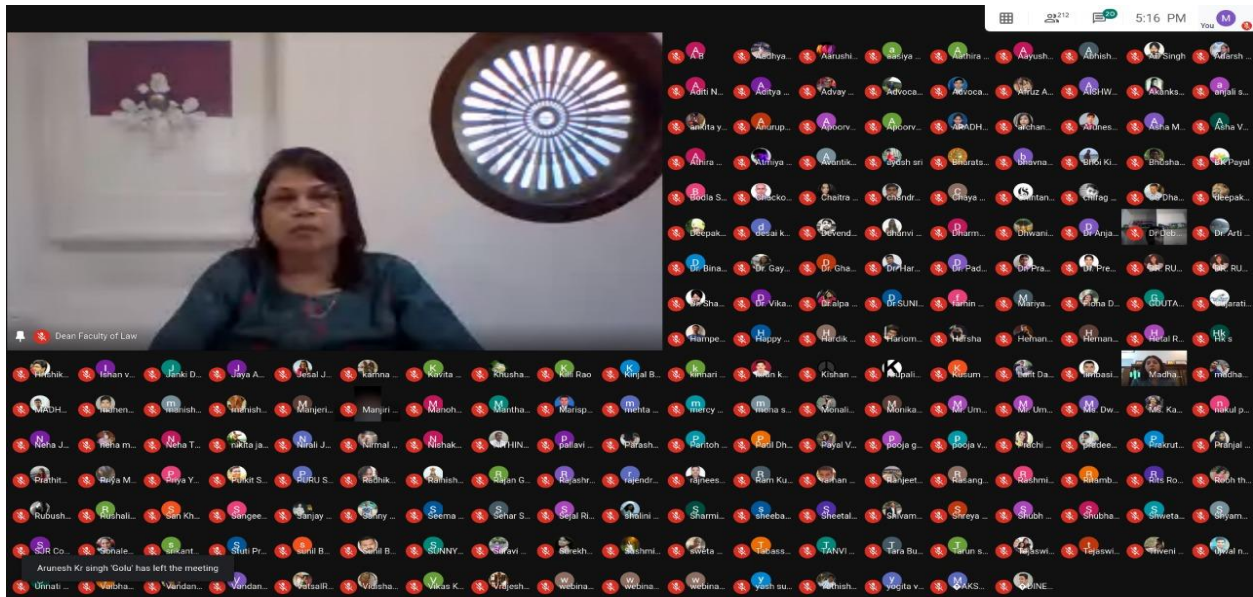
The Webinar Official Facebook Page live link

Faculty of Law on <https://www.facebook.com/faculty law msu/>

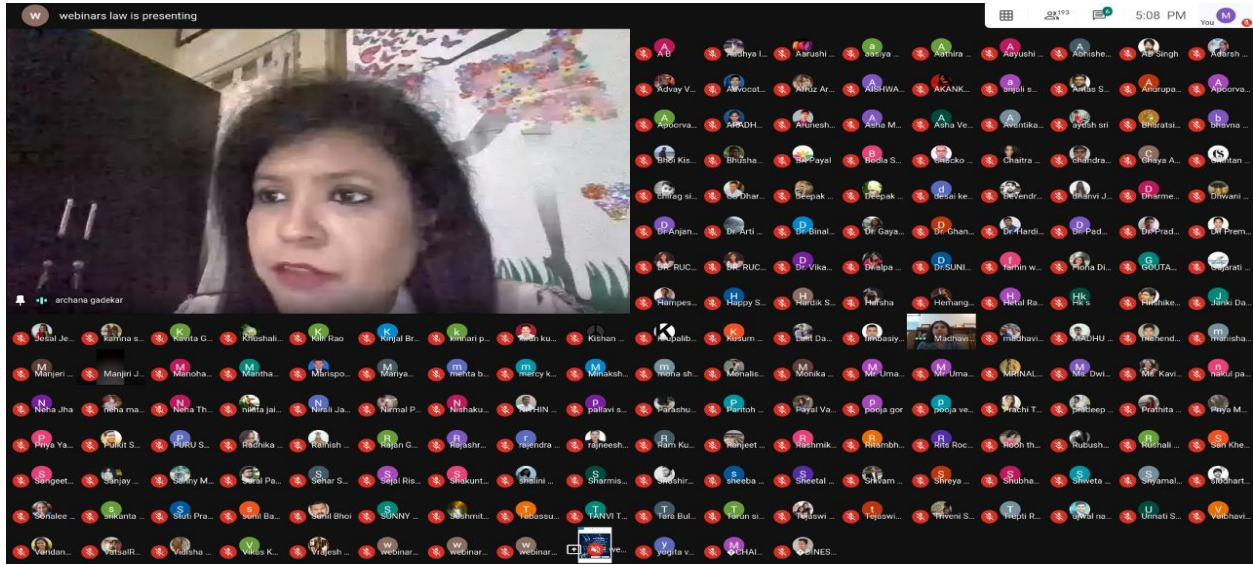
Number of Participants: 220



Adv. Madhavi Goradia Divan Additional Solicitor General of India Resource person, delivering an Enlightening Lecture on Film Censorship



Prof.(Dr) Bhavna Mehta, Dean (OSD), Faculty of Law and Webinar Director Welcoming Resource Person and Participants



Dr. Archana Gadekar, Associate Professor, Faculty of Law and Convener of the Webinar, Introducing Adv. Madhavi Goradia Divan