



**A COMPARATIVE ANALYSIS OF THE FILM
CENSORSHIP AND THE FILM CENSORSHIP BOARD
IN MALAYSIA AND BANGLADESH**

BY

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ABSTRACT

Since the 19th century film censorship has been being practiced by Malaysia and Bangladesh to protect society from any possible negative and immoral influences. In so doing, film censorship laws and guidelines were adopted by both countries. However, here exists some weaknesses in film censorship laws of both countries which are affecting the film industry to achieve a better position. Thus study adopts doctrinal and non-doctrinal methods of legal research to collect data. For the doctrinal method, the study uses a qualitative content analysis by analysing contents of library and online based literature, statutes, and case laws. For the non doctrinal method, the study uses semi-structured interview to collect data from the directors, actors, actresses and members of the film censorship board. It is found that film censorship laws are not the barrier to the freedom of speech and expression rather they are working as a mechanism to protect the entire society in various aspects. Moreover, the film censorship laws of both countries provide discretionary power to the Minister or the government which is a threat to the film industry. It is also found that film censorship laws of both countries did not mention any qualification for the member of the film censorship board. It is, therefore, suggested that there is a need for amendment of film censorship laws of both countries. The study concludes that if the reforms suggested herein are genuinely implemented, they will improve the film censorship laws of both countries.

ملخص البحث

منذ القرن التاسع عشر، تمارس ماليزيا وبنغلاديش الرقابة على الأفلام لحماية المجتمع من أي تأثيرات سلبية وغير أخلاقية محتملة. وبذلك، اعتمد كلا البلدين قوانين الرقابة على الأفلام والمبادئ التوجيهية. ومع ذلك، توجد هنا بعض نقاط الضعف في قوانين الرقابة على الأفلام في كلا البلدين والتي تؤثر على صناعة السينما لتحقيق وضع أفضل. وتعتمد هذه الدراسة على أساليب عقائدية وغير عقائدية للبحوث القانونية لجمع البيانات. وبالنسبة إلى الطريقة العقائدية، تستخدم الدراسة تحليلاً نوعياً للمحتوى من خلال تحليل محتويات المكتبة والأدب القائم على الإنترنت، والقوانين، وقوانين الحالة. أما الطريقة غير العقائدية، فتستخدم الدراسة مقابلة شبه منظمة لجمع البيانات من المديرين، والممثلين، والممثلات، وأعضاء مجلس الرقابة على الأفلام. وتبين أن قوانين الرقابة على الأفلام ليست عائقاً أمام حرية الكلام والتعبير بل إنها تعمل كآلية لحماية المجتمع بأسره في مختلف الجوانب. وعلاوة على ذلك، فإن قوانين الرقابة على الأفلام في كلا البلدين توفر السلطة التقديرية للوزير أو الحكومة التي تشكل تهديداً لصناعة السينما. ويوجد أيضاً أن قوانين الرقابة على الأفلام في كلا البلدين لم تذكر أي مؤهل للعضو في مجلس الرقابة على الأفلام. ولذلك، يقترح أن هناك حاجة لتعديل قوانين الرقابة على الأفلام في كلا البلدين. وخلصت الدراسة إلى أنه إذا تم تنفيذ الإصلاحات المقترحة هنا بشكل صحيح، فإنها ستحسن قوانين الرقابة على الأفلام في كلا البلدين.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*This work is dedicated to my lovely parents Alhaji Md. Amjad Hossain and
Hajia Most. Jahanara Hossain.*

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Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001

LIST OF ABBREVIATION

AIR	All India Report
BFDC	Bangladesh Film Development Corporation
CEF	Committee for Examination of Film
CLJ	Current Law Journal
DLR	Dhaka Law Report.
ECHR	The European Convention on Human Rights and Fundamental Freedoms.
GDP	Gross Domestic Product
ICCPR	The International Covenant on Civil and Political Rights
MLJ	The Malayan Law Journal
Ibid	In the same place

CHAPTER ONE

INTRODUCTION

1.1 RESEARCH BACKGROUND

Cameras and motion pictures were introduced around 1890's.¹ With the continuous development of technology and scientific inventions, the uses of cameras and motion pictures has become popular and began to benefit mankind in various forms. Television, cinema and films are the by-products which are developed from the technology of camera and motion picture. Nowadays, as a part of the entertainment industry locally or internationally, the existence of films and cinemas is treated as a part of modern lifestyle. Revenue generated from the entertainment industries, especially through films is lucrative. However, it is pertinent to ensure that the society benefits from this industry.

Each year the film industries produce thousands of actors and actresses around the globe with different genres of films. Thus, a sizeable amount of revenue comes from the sale and distribution of these films. It is inevitable that entertainment has been a part of modern life style and that films impacted the life style of the society including their thinking and communication. Nowadays the film market is no more limited to a specific culture because it is not built on the basis of a certain nationality only. Through globalisation, the market for the films industries crosses the country border and expands from country to country and spread throughout the world. Thus this industry leaves a notable impact worldwide. Based on the presentations of the

¹ The invention of the camera and motion picture are attributed to Thomas Edison, a scientist who invented a device which is called a Kinescope. This device was subsequently used as the basis in developing more sophisticated cameras in later years which brought about the modern camera.

films, people are being exposed to other country's cultures and traditions that is sometimes alien to their own culture, traditions and moral standards.

Based on the view of the proponents of the film industries,² it can be said that, the film industry has the right to be expanded boundlessly on the basis of freedom of speech and expression as referred to the constitution of Malaysia and Bangladesh. According to proponent of film industries, the presentation of the films should be boundless to carry out their identity. They also added that there should not be any restrictions or impediments to convey messages through films. They believe in a liberal approach to evaluate the freedom of speech and expression. Some of them put emphasis on creative presentation through films which can then be manifested, whilst in some scenarios, the ideas can be exchanged through some indirect presentation via films.³

However, there are also some violations found in the film industry which must not be ignored. Films containing messages of violence and obscenity can adversely affect members of the society, especially the younger generations who are incapable to differentiate between right and wrong. Due to such challenge and negative impacts of films to the society, censorship law has been established and is being developed gradually. The proponents of censorship law claim that the censorship law was developed to secure the freedom of speech and expression that is guaranteed by the established constitutions. Therefore, freedom of speech and expression is observed in

² John B. Sheerin, "Censorship in Contemporary Society" *Cath. Law* Vol. 3 (1956): 292.

³ John A. Lent, "Social Change and the Human Right of Freedom of Expression in Malaysia" *Universal Human Right* Vol. 1(3) (1979): 51.

such manner that must not be used to allow obscenity, nudity or any types of vulgarity which can cause destruction to the law and order situation of a country.⁴

The film censorship has become a crucial matter for the film industry as well as for the entire country. It can be said that, discussion on film censorship of Malaysia and Bangladesh is not a very common topic among academicians and researchers. However, with the rapid growing of film industries, specifically in Malaysia and Bangladesh, the exploration of law concerning film censorship is deemed necessary. Therefore, this research is an attempt to investigate and to provide a comparison of film censorship regulations between Malaysia and Bangladesh.

At this juncture, the proper meaning of 'film' is elaborated with some references. According to the Oxford Advanced Learner's Dictionary, film means "a series of moving pictures recorded with sound that tells a story, shown on television or at the cinema or movie theater".⁵ Section 3 of the Malaysian Film Censorship Act 2002 (Act 620), defines "film":

"... includes the original or duplicate of the whole or any part of – (a) a cinematograph film; and (b) a videotape, diskette, laser disc, compact disc, hard disc, and other record, of a sequence of a visual images, being a record capable of being used as a means of showing that sequence as a moving picture, whether or not accompanied by sound".⁶

Based on these definitions as given above, it is notable that section 3 of the Film Censorship Act 2002 of Malaysia provides a broader description while expressing the meaning of film. It is notable that section 3 gives extra emphasis on the existence of sound. In Section 3 it is mentioned that any cinematographic materials is called a film regardless of being original or duplicate (which includes pirated material) with or

⁴ Peter Hutchings, "Violence, Censorship and the Law" *Cardozo Stud. L. & Literature* Vol.6 (1994): 203; James Ferman, "Film Censorship and the Law" *Poly L. Rev.* Vol.3 (1977-1978): 5; Charles, S. Desmond, "Censoring the Movies" *Notre Dame Law* Vol. 29 (1953-1954): 27.

⁵ *Oxford Advanced Learner's Dictionary of current English*, Ed. Sallywehmeier, (6th edition. Oxford University Press, 2000).

⁶ Film Censorship Act 2002 (Act No.620 of 2002), s 3.

without sound. Therefore, the cinematograph film regardless of sound can be considered as “film” and can be classified under the censorship law. By virtue of this section, all those materials which carry such elements can be considered as film.

The film censorship Act of Bangladesh also has attempted to define ‘film’. The main reference is from the “the Censorship of Film Act 1963”. Based on section 2 (d) of the Censorship of Films Act, “film” means “a cinematograph film”. There is no further clarification that can be found for the term “a cinematograph film” in any part of that said Act. Another close reference is according to the Cinematograph Act of 1918; which defines “cinematograph” as: “a composite equipment including a video-cassette recorder used for production, projection and exhibition of motion picture film”.⁷ But sometimes the term “cinematograph” is defined separately from “film”. Specifically, under section 2 (c) of the Cinematograph Act 1918, the word “film” is identified as:

“... in relation to a motion picture, means a thin flexible ribbon of transparent material having perforations along one or both edges and bearing a sensitized layer or other coating capable of producing photographic images; and includes unexposed film, exposed but unprocessed film and exposed and processed film;”.

Different approaches have been mentioned by the censorship laws of Malaysia and Bangladesh for defining “film”. A proper inclusion of ‘moving pictures’ and types of equipment (such as a videotape, diskette, laser disc, compact disc, hard disc, and other record, of a sequence of a visual images, etc.) which are used to produce the film are included within one specific section. Apart from such style, there is no specific definition given to what can be considered as “film”, unless a reference is made to the Cinematograph Act 1918 of Bangladesh.

⁷ Cinematograph Act 1918 (Act No. II of 1918), s 2(b).

Prior to the discussion of film censorship, it is essential to understand the word “censor” or “censorship”. The term “censorship” is included in brief Oxford English Dictionary and it says that “the control of the information and ideas circulated within a society...”⁸ The extended Oxford English Dictionary defines the term ‘censor’ as “an official in some countries whose duties is to inspect all books, journals, dramatic pieces., before publication, to ensure that they shall contain nothing immoral, heretical, or offensive to the government” (1933).

The term censorship derives from official duties of the Roman censor. The term was originally meant the suppression of ideas or images by the government. Thus censorship deals with banning through filtering a number of plays, books, films, radio programs, news reports, television programs which are found offensive and harmful.⁹ The rationale for censorship varies accordens to the censor targeting materials. Those materials which are deemed to be indecent or obscene; heretical or blasphemous; or seditious or treasonous are not allowed by the censorship authority. Thus, some idea are made to be restrained for protecting three basic social institutions of society which are (a) the family, (b) the religion, and (c) the state. These are also found in the Malaysian censorship policy.

Malaysia’s censorship policy has gone through a long evolutionary process. The very first Malaysian film production was Laila Majnun which was directed by B.S. Rajhans in 1933.¹⁰ The first Act that was enacted specially to address the aspects of film censorship. Is was produced according to the Cinematograph Films Ordinance

⁸ *Shorter Oxford English Dictionary*. Ed. William R. Trumble and Angus Stevenson, (Vol-1, 5th edition, Oxford University Press, 2002).

⁹ *Ibid.*

¹⁰ Aaron Rao, “Film Censorship and Its Relevance in Modern Malaysia” *International Journal of Science Commerce and Humanities*, Vol.1 No. 3 (2013): 74-85.

of 1952¹¹. The Film Censorship Board (LPF) was established in 1954, by a committee in Singapore for the Straits Settlements, and a committee in Kuala Lumpur for Malaya (Federated Malaya states and Unfederated Malay states). The Cinematograph Films Ordinance of 1952 was then changed to the Cinematograph Films Act in 1966. Later, the Malaysian Film Censorship Board was established in 1966 to implement the policies and censorship system for the whole Malaysia including Sabah and Sarawak.

In 1971, there was another historic moment in film censorship and for the very first time classification of films were made. During that period, adults films including sex films were introduced in all cinemas.¹² This phenomenon has prompted protect by the society. It resulted in the discussion by the Parliamentary Committee members' and recommended all questionable films produced in 1972 including all X-rated films banned. At the turn of the 20th century, a new act was introduced named the Film Censorship Act 2002. That act was to elaborate more specifically on the film censorship and also in control of using increasingly sophisticated and challenging technological tools.¹³ This Act nevertheless, has some weaknesses. It does not mention any specific qualification for censors. Moreover, this Act provides discretionary power to the minister which is a threat to the film industry.

Similarly, Bangladesh's censorship policy has also gone through a complex evolutionary process. Dhaka (capital of Bangladesh) was the first city in Bangladesh to show a full length sound feature film entitled "Mukh O Mukhosh" (The Face and the Mask) which was made in 1956. Later, the Bangladesh Film Development Corporation (BFDC) was established in 1957. The Censorship of Film Act 1963 was

¹¹ Wan Amizah Wan Mahmud, Faridah Ibrahim, Normah Mustaffa, and Fuziah Kartini Hassan Basri. "Malaysian Film Censorship Board (LPF) in the Globalization Era: Towards Transformation and Innovation." *Innovation Journal*. vol.16, no. 3 (2011).

¹² Ibid.

¹³ Id.

amended by the President's Order No. 41 of 1972 and the Censorship of Films (Amendment) Act, 2006) was provided to the censorship board. However, Film Censorship Act has some weaknesses. For example, it does not mention any specific qualification for the member of the censorship board. Moreover, this Act provides discretionary power to the government which is a threat to the film industry.

Based on this long history of the establishment of the film industries in Malaysia and Bangladesh, there should be a proper exploration with some valid regulation. There should not be such regulations to suppress the film industry. Moreover, the regulations should be very specific so that the freedom of speech and expression as guaranteed by the constitution add not violated.

1.2 STATEMENT OF THE PROBLEM

Freedom of speech and expression is recognised by the Federal Constitution of Malaysia and Bangladesh's Constitutions.¹⁴ From the provisions under both constitutions, it is visible that the constitution guarantees the right in freedom of speech and expression of the mass. From the point of censorship laws on films, it seems that it restrains the freedom of speech and expression for the filmmakers but the film censorship law did not restrain the freedom for filmmakers. The legislations of both countries stated that film makers have and enjoy the freedom of speech and expression with some limitation because to protect the interest and security of the State, public order or morality which is recognized by the constitution of both countries. Section 26 of the Film censorship Act 2002 of Malaysia provides absolute discretionary power to the Minister. Under this section the Minister can ban any film if he thinks that the film is contrary to public interest. The film is *Lelaki Komunis*

¹⁴ The Federal Constitution of Malaysia, art. 10 and the Bangladesh's Constitution, art. 39.