

**CONTENT REGULATION OF FILMS AND THE INDIAN SOCIAL MATRIX: A  
PERSPECTIVE AGAINST THE LIGHT OF THE CINEMATOGRAPH (AMENDMENT)  
BILL, 2021**

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**ABSTRACT**

Motion pictures are amongst the most influential facet of expression in the contemporary, liberalist societies. A film is not merely an audio-visual piece of amusement, it has a consequential social, economic and/or political impact. It is in jeopardy of complex interpretations and experiences. The panoramic range of outlooks films are capable of disseminating taken into consideration with, the corollary power they exert, makes the content of films vulnerable to regulation. In India, having the largest film industry globally, the Cinematograph Act of 1952 is the statute germane for this purpose. Constantly under scanner for disrupting creative expression of film-makers, the Act is defended as imperative keeping in view the social dynamics. The Central Board of Film Certification ('CBFC') constituted under the Act for certifying films for public exhibition, is often under attack for breach of its statutory obligation. It is condemned as a censoring body than a certifying authority. It is further a bone of contention that the Act endows the Central Government with magnificent powers to invade artistic liberty of the movie-makers. The Cinematograph (Amendment) Bill of 2021 has further inflamed the existing fire. The Bill of 2021 combats a gush of criticism from the film fraternity, reigniting the fiery debate on the legitimate limit of censoring motion pictures. Furthermore, the Central Government's decision to abolish the Film Certificate Appellate Tribunal ('FCAT') *vide* The Tribunals Reforms Act, 2021, has come as a massive jolt to film-makers, intimidating their art and its expression. Against the backdrop of these developments, the paper outlines the Cinematograph Act, 1952. It presents an analysis of the Cinematograph (Amendment) Bill of 2021 and after its thorough critique, puts forward an assessment on its reasonability.

*Keywords: The Cinematograph Act, 1952, Pre-Censorship of Films, Certification, The Cinematograph (Amendment) Bill, 2021*

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## V. Conclusion: The Conflict and Way Forward

### I. Introduction

FILMS ARE a powerful and the most influential contemporary medium of creative expression. Crafted to enthrall, enchant and amuse, motion pictures offer a wide array of content ranging from facts to fiction, conformist to irradical ideas, scientific to mythical perspectives, *etc.* The narratives spotlight pertinent issues, depict realities and fantasies, present historical truths, indicate solutions to persisting societal complexities, thereby providing the viewer a wholesome audio-visual experience that is easily comprehended, absorbed and remembered. Films have the potential to trigger political debates, herald social renaissance causing society to deviate from long-established precepts. A bulk of present-day audience thus, envision cinema as an intrinsic part of their cultural lives, providing for a substantial source of both, information and entertainment, that is accessible and affordable. They are more impactful, mesmerizing and have an instant mass appeal.

Portrayals in films enjoy immense artistic liberty, well-preserved by Article 19(1)(a) of the Constitution of India. Dramatization may, however, distort facts, misconstrue notions, misapply cultures, be out of context, contradict, confirm or introduce ambiguity.<sup>1</sup> Camera may hence, be reflective and also, deceptive. Particularly, in a country like India, with a large set of heterogeneous and gullible audience, the societal character and behavioural pattern is shaped by cinema. It is in this light that the apex court in *K.A. Abbas v. Union of India*<sup>2</sup> whilst justifying pre-censorship of films owing to their instant appeal and ability to “stir up emotions more deeply than any other product of art”, affirmed that “the treatment of motion pictures must be different from that of other forms of art and expression”.<sup>3</sup> The Court set the seal on its stance in *S. Rangarajan v. P. Jagjivan Ram*.<sup>4</sup> It endorsed the view taken in *K.A. Abbas*<sup>5</sup> and stated that, “The movie cannot

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<sup>1</sup> Barbara Villez, “Caught in the Act of Picturing”, 31 *Cardozo L. Rev.* 1301 (2010) at 1303.

<sup>2</sup> AIR 1971 SC 481; The petitioner challenged the constitutional validity of pre-censoring films under the Cinematograph Act, 1952 and the rules made there-under.

<sup>3</sup> “A person reading a book or other writing or bearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore, the treatment of the latter on a different footing is also a valid classification.”

<sup>4</sup> (1989) 2 SCC 574; Censorship by prior restraint is, therefore, not only desirable but also necessary.

<sup>5</sup> *Supra* note 2.

function in a free market place like the newspaper, magazine or advertisement. Movie motivates thought and action and assures a high degree of attention and retention”.

The Cinematograph Act, 1952 was conceived against this backdrop. It regulates public exhibition of a cinematograph film. The intention was to arguably, shield the Indian audiences from the immoral and degrading effect of cinema. The ensuing segment conceptualizes ‘censorship’/‘pre-censorship’ and gives a glimpse into the cardinal provisions of the Cinematograph Act, 1952 explaining briefly, the content regulation mechanism of films, currently in place in India.

## II. Content Regulation of Films: An Insight into the Cinematograph Act, 1952

### Conceptualizing ‘censorship’ and ‘pre-censorship’

It is pertinent to primarily, comprehend the concept of ‘censorship’ and ‘pre-censorship’. Owen M. Fiss, in his article, ‘Censorship of Television’, defines ‘censorship’ as, “attempts by governmental actors to limit, directly or indirectly, the information and variety of opinions available to the public”.<sup>6</sup> It is described as, “the act of restricting the public expression of thoughts, feelings or volitions, which expression is considered by the censoring agency to be contrary to public or private good”.<sup>7</sup>

Broadly, two methods of censoring have been recognised *i.e.*, ‘legal censorship’ and ‘extra-legal censorship’.<sup>8</sup> ‘Legal censorship’ includes impositions strictly authorised by the law. It may further comprise of, ‘pre-censorship’ namely, prior restraints on expression or pre-dissemination restrictions; and ‘subsequent censorship’ that is, limitations imposed post-propagation of content. Any suppression of expression deploying “extremely vague” means not purely permitted by the law for instance, “bluff and bluster”, shall be classified as ‘extra-legal censorship’. Commonly perceived as an unwarranted suppression of autonomy, censorship may, at times be a ‘necessary

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<sup>6</sup> Owen M. Fiss, “Censorship of Television”, 93 *NW. U.L. REV.* 1215 (1998-1999), at 1218.

<sup>7</sup> Vernon J. Bourke, “Moral Problems Related to Censoring the Media of Mass Communications”, 40 *Marq. L. Rev.* 57 (1956), at 58.

<sup>8</sup> Arpan Banerjee, “Political Censorship and Indian Cinematographic Laws: A Functionalist Liberal Analysis”, 2 *Drexel L. Rev.* 557 (2010), at 560.

evil', inevitable to shelter certain outweighing interests and eschew, "undesirable social effects".<sup>9</sup> In relation to the content of films, pre-censorship is permissible in India and cannot be completely eliminated. Applying to a Certification Board prior to public exhibition of a film is therefore, an acceptable norm. Pre-censorship may be, 'political' or 'moral' *i.e.*, it may be resorted to when the artistic expression allegedly, has the potentiality to undermine government's authority or disturb the acceptable norms of social conduct.

### **Cinematograph Act, 1952: A Cursory Reflection**

Films made and exhibited in India, are subjected to 'pre-censorship' by way of the Cinematograph Act, 1952. It is the leading statute dealing with motion pictures in the country. The law repeals the Cinematograph Act, 1918,<sup>10</sup> a British debutante. Enacted during the colonial regime, it was the first legislation concocted to censor films. The erstwhile legislation of 1918 established 'Censor Boards'. Located in the cities of Bombay, Madras, Calcutta, Lahore and Rangoon, these were placed under the respective Police Chiefs. Post-independence,<sup>11</sup> autonomy of regional censors was abolished and amalgamated in the Bombay Board of Film Censors.<sup>12</sup>

The Constitution of India *vide* Entry 60 of the Union List, empowers the Union Government to legislate in matters relating to sanctioning or certification of cinematograph films, for exhibition in India. Makers of the Constitution intended to have a uniform framework for film certification and thus, it was included in List-1 of the Seventh Schedule. Subject to the same, 'cinema' has been dealt with by Entry 33 of the State List,<sup>13</sup> allowing the state governments to regulate the licensing and ancillary matters related to film exhibition. The 1952 Act therefore, broadly envelopes two key aspects namely, "certification of cinematograph films for exhibition" and "licensing and

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<sup>9</sup> Shameek Sen, "Right to Free Speech and Censorship: A Jurisprudential Analysis", 56(2) *Journal of the Indian Law Institute* 175 (April-June 2014).

<sup>10</sup> *See* Section 18.

<sup>11</sup> Cinematograph (Amendment) Act of 1949.

<sup>12</sup> Standing Committee on Information Technology (2019-2020), Seventeenth Lok Sabha, Ministry of Information and Broadcasting – The Cinematograph (Amendment) Bill, 2019 (Ninth Report) [March 2020]; *available at*: [http://164.100.47.193/lsscommittee/Communications%20and%20Information%20Technology/17\\_Information\\_Technology\\_9.pdf](http://164.100.47.193/lsscommittee/Communications%20and%20Information%20Technology/17_Information_Technology_9.pdf) (Last visited on August 19, 2022).

<sup>13</sup> List II – "33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements."

regulation of cinemas”.<sup>14</sup> It was promulgated to ensure that any film produced for public consumption is scanned by an objective authority to detect any impropriety in its content.

Under the statute is established, a centralized body namely, the Central Board of Film Certification (herein-after referred to as, “CBFC” or “the Board”)<sup>15</sup>, for sanctioning films before their exhibition amongst the public. Whilst undertaking the certification process, the Board functions in accordance with, the relevant provisions of the Cinematograph Act, 1952, Cinematograph (Certification) Rules, 1983 and the Central Government Guidelines of 1991. Headquartered in Mumbai,<sup>16</sup> CBFC is headed by a Chairman to be appointed by the Central Government. Besides, it consists of a minimum of twelve and maximum of twenty-five members.<sup>17</sup> Section 4 mandates the submission of all films to the CBFC for certification. After examining the film’s content, the Board may allow the film for an “unrestricted public exhibition”, thereby granting a “U” Certificate; or unrestricted public exhibition with the prescribed endorsement *i.e.*, “UA” Certificate;<sup>18</sup> “public exhibition restricted to adults” (“A” Certificate); or “public exhibition restricted to members of any profession or any class of persons” (“S” Certificate).<sup>19</sup> It is nevertheless, noteworthy at this juncture that *prima facie* the Act does not contain any provision prescribing the procedure of converting an “A” certified film to “U/UA”.<sup>20</sup> Prior to sanctioning a film for public exhibition, the CBFC may instruct the applicant to make suitable modifications or excisions in its content, as may be deemed necessary. The Board is also empowered to refuse granting a certificate. In essence, a film, uncertified by the CBFC, cannot legally be released in

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<sup>14</sup> A Socio-Legal Perspective of the Cinematograph Act, 1952 *available at*: <https://www.ijlmh.com/wp-content/uploads/2019/05/A-SOCIO-LEGAL-PERSPECTIVE-OF-THE-CINEMATOGRAPH-ACT-1952.pdf> (Last visited on August 20, 2022).

<sup>15</sup> The Cinematograph (Amendment) Act of 1981 renamed the Central Censor Board as Central Board of Film Certification.

<sup>16</sup> “5. Advisory panels. — (1) For the purpose of enabling the Board to efficiently discharge its functions under this Act, the Central Government may establish at such regional centers as it thinks fit, advisory panels each of which shall consist of such number of persons, being persons qualified in the opinion of the Central Government to judge the effect of films on the public, as the Central Government may think fit to appoint thereto.”

<sup>17</sup> Section 3.

<sup>18</sup> Can be screened with parental guidance and supervision.

<sup>19</sup> Section 5A.

<sup>20</sup> It was however, noted in an Audit Report on the Working of CBFC that during 2012-2015, the CBFC had converted 172 “A” category certified films into “UA” category and 166 films of “UA” category to “U” category. It is allegedly done by the CBFC to facilitate exhibition of a particular film originally certified as ‘A’ to be screened on television – *See Working of Central Board of Film Certification (CBFC) and Academic Activities of Satyajit Ray Film and Television Institute, Kolkata for the Period from 2010-11 to 2014-15, Ministry of Information and Broadcasting – Public Accounts Committee (2017-2018), 94<sup>th</sup> Report.*

India. To enable efficient discharge of the Board's functions, the central government may set-up advisory panels at the regional centres, consisting of persons competent in its opinion, to adjudge a film's impact on the public.<sup>21</sup>

Whilst assessing a film for certification, the CBFC is guided by the principles prescribed in section 5B (1).<sup>22</sup> The grounds so provided, are a mirror-image of those embraced in the text of Article 19 (2). The Central Government may also, issue appropriate directions for the CBFC in this regard.<sup>23</sup> The guidelines have been designed to ensure that artistic emotion is not disproportionately curbed and the Board is duly responsive to societal dynamics.

Prior to the promulgation of Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 (now, 'The Tribunals Reforms Act, 2021'), all appeals against an order of the CBFC had to be filed before the Film Certification Appellate Tribunal (or "FCAT").<sup>24</sup> The Ordinance of 2021<sup>25</sup> nevertheless, abolished FCAT. Film-makers are at present, required to approach the relevant high court for redressal of any grievance.

The central government extensively dominates the Act. It is vested with revisional powers,<sup>26</sup> empowering it to "call for the record of any proceeding", pending before or decided by the Board in relation to a film, and make a suitable order thereon. While disposing off the matter, the Board is bound to conform to the order so made.<sup>27</sup> The impugned provision was challenged before the Karnataka High Court<sup>28</sup> as 'bad in law'. Upholding its unconstitutionality, the Court declared

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<sup>21</sup> Section 5

<sup>22</sup> "5B. Principles of guidance in certifying films. — (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against 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 involves defamation or contempt of court or is likely to incite the commission of any offence."

<sup>23</sup> Section 5B (2). The guidelines are *available at*: <https://www.cbfcindia.gov.in/main/guidelines.html> (last visited on August 10, 2022).

<sup>24</sup> *See* Section 5C, 5D & 5DD. The decision of the Board of Film Certification refusing to grant a certificate; or granting only an 'A' Certificate; or granting only a 'S' Certificate; or granting only a 'UA' Certificate; or directing the applicant to carry out any excisions or modifications, is appealable under Section 5C of the Act. The appeal lies to the Appellate Tribunal.

<sup>25</sup> Now, the Tribunals Reforms Act, 2021.

<sup>26</sup> Section 6.

<sup>27</sup> The power of revision could also be exercised by the central government against the decision of the Appellate Tribunal.

<sup>28</sup> *K.M. Shankarappa v. Union of India*; ILR 1990 KAR 4082.

Section 6(1) as ‘a travesty of the rule of law’. It was proclaimed as violative of the basic structure of the Constitution for being intrusive with the exercise of judicial functions discharged by a quasi-judicial body, subjecting the same to the executive’s disposition. The High Court’s decision was subsequently affirmed by the Supreme Court in *Union of India v. K.M. Shankarappa*.<sup>29</sup> The apex court additionally clarified that, once a quasi-judicial authority like the CBFC, established by the government, consisting of experts, has rendered its decision, the same shall be final and binding *vis-à-vis* the Executive. It cannot be reviewed or revised by the government. The contention expressing apprehension of a ‘law and order situation’ as a corollary of the film’s impact was also refuted by the Court countering that, maintenance of law and order is the state government’s responsibility. It “cannot plead its inability to handle hostile audience” and hence, the same cannot be taken as an excuse by the central government to wield its revisionary powers. A segment of the society shall always strive to inculcate atypical sentiments nonetheless, that does not empower the central government to reverse the Board’s decision. At the most, it may requisition the Tribunal<sup>30</sup> seeking a suitable alteration.

Furthermore, the Act authorizes the central government<sup>31</sup> or local authority,<sup>32</sup> as the case may be, to suspend the public exhibition of a film if it “is likely to cause breach of the peace”. During the suspension, the film shall be deemed uncertified. A copy of the order together with, a statement of reasons, must be forwarded to the central government which shall, in the eventuality, either confirm or discharge it.<sup>33</sup>

Notwithstanding the explicit judicial pronouncement in *K.M. Shankarappa*,<sup>34</sup> circumscribing the legit periphery of governmental intervention in the CBFC’s decision, governments across the various Indian states and at the centre, have been persistently exerting their authority under the Act, thereby meddling with creative content. The Government of Rajasthan, citing ‘public interest’ and ‘maintenance of law and order’ in the state, banned the exhibition of Hindi feature film

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<sup>29</sup> (2001) 1 SCC 582.

<sup>30</sup> Not functional as on today.

<sup>31</sup> Lieutenant Governor or, as the case may be, the Chief Commissioner for the whole or any part of a Union Territory.

<sup>32</sup> District Magistrate for a District under his jurisdiction.

<sup>33</sup> See section 13. Sub-section (3) stipulates that the suspension order so made shall remain in force for a period of two months unless the central government, if it so thinks fit, extend its duration.

<sup>34</sup> *Supra* note 28 & 29.

*Padmavat*.<sup>35</sup> In response, the Supreme Court in *Viacom 18 Media Private Limited v. Union of India*,<sup>36</sup> has reiterated its stance that, “it is the duty of the State to sustain the law and order situation whenever the film is exhibited, which would also include providing police protection to the persons who are involved in the film/in the exhibition of the film and the audience watching the film, whenever sought for or necessary”. Akin stance was previously taken by the apex court in *Prakash Jha Productions v. Union of India*.<sup>37</sup> Lately, in *Shri Babuji Rawji Shah v. S. Hussain Zaidi*,<sup>38</sup> the apex court has affirmed that, “The fact that the film has been certified by CBFC, which comprises of a body of experts prima facie shows compliance with the requirements of the guidelines.<sup>39</sup> An artistic expression, within the parameters of law must therefore, not be unleashed from the protection of article 19(1)(a).

Also notable is that, the rule-making power under the Act is vested with the Central Government.<sup>40</sup> Against the background of these foundational defects in the Act’s design, it is pointless to expect autonomy in either, the CBFC’s functioning or creative expression. It is primarily for these reasons that the Cinematograph Act, 1952 has been battling a storm of criticism. The statute is claimed to be “riddled with colonial and statist traces that encourage political censorship”,<sup>41</sup> inhibiting the artistic freedom of film-makers.

### III. Past attempts at contemporizing film certification

#### Report of the Enquiry Committee on Film Censorship (1969)<sup>42</sup>

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<sup>35</sup> Exercising the powers conferred by sub-section (1) of section 7 of the Rajasthan Cinemas (Regulation) Act, 1952.

<sup>36</sup> 2018 SCC OnLine SC 21.

<sup>37</sup> (2011) 8 SCC 372; State of Punjab, State of Andhra Pradesh and State of Uttar Pradesh suspended the screening of the film ‘Aarakshan’ in their respective territories for a specified period.

<sup>38</sup> 2022 LiveLaw (SC) 213; The Supreme Court was petitioned against an order passed by the Bombay High Court refusing to grant injunction restraining the release of the film *Gangubai Kathiawadi* for allegedly being defamatory. *available at*: <https://www.livelaw.in/top-stories/mere-hurting-sensibilities-not-defamation-cbfc-certificate-shows-film-defamatory-supreme-court-gangubai-kathiawadi-192843> (Last visited on September 20, 2022).

<sup>39</sup> *Id.* in para 13.

<sup>40</sup> Section 8 & 16.

<sup>41</sup> Arpan Banerjee, *supra* note 8, at 625.

<sup>42</sup> *available at*: <https://indianculture.gov.in/reports-proceedings/report-enquiry-committee-film-censorship> (Last visited on July 25, 2022).



Also known as the G.D. Khosla Committee, the Enquiry Committee on Film Censorship was set-up on March 28, 1968, by the Ministry of Information and Broadcasting, Government of India. It was entrusted with the responsibility of assessing the certification process in relation to public exhibition of motion pictures in India. Expressing concern over central government's supremacy perceptible in the design of the Cinematograph Act, 1952, the Committee recommended content regulation of films by an independent regulator, disassociated with the government, empowered to devise its own Code for this purpose. The regulator should be vested with sufficient authority. Its decision must be final and irrevocable. The underlying proposition of the Committee was thus, to scrap the dominion of the central government on film censorship. Its suggestions however, were never implemented.

### **Report of the Committee of Experts to Examine Issues of Certification under the Cinematograph Act, 1952 (2013)<sup>43</sup>**

On February 4, 2013, the Ministry of Information and Broadcasting, had set-up an Expert Committee, headed by Justice Mukul Mudgal,<sup>44</sup> to suggest massive overhauls in the Cinematograph Act.<sup>45</sup> In its Report submitted to the Government on September 28, 2013, to further statutory inclusion of its submissions, the Committee also proposed a Draft Bill, repealing the statute of 1952. The Bill dealt with the issue of piracy in the most stringent form. It made pertinent recommendations pertaining to the quality of appointment of members of the advisory panel, renaming of the advisory panel to 'screening panel' and the constitution thereof, certification guidelines, classification of films,<sup>46</sup> state and central government's power to suspend a film's

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<sup>43</sup> Report of the Committee of Experts to Examine Issues of Certification under the Cinematograph Act, 1952 available at: [https://mib.gov.in/sites/default/files/Report\\_of\\_Expert\\_committee\\_0.pdf](https://mib.gov.in/sites/default/files/Report_of_Expert_committee_0.pdf) (Visited on July 20, 2022).

<sup>44</sup> Former Judge, High Court of Delhi and Chief Justice (ret.) Punjab and Haryana High Court.

<sup>45</sup> Former I&B Minister, Manish Tewari, in the wake of the controversy over Tamil Nadu's ban of the film *Vishwaroopam* had stated in *The Hindu* with regard to the Committee's constitution that, "The trigger for the constitution of the Committee was the decision of a particular State to invoke the law and order remit to ban the release of a certain movie, notwithstanding that the Supreme Court in the *Aarakshan* case had said that once a film was certified for viewing, the fig leaf of law and order could not be allowed to stand in the way". – available at: <https://www.thehindu.com/news/national/mudgal-panel-submits-report-on-governing-cinema/article5218032.ece> (Visited on August 16, 2022).

<sup>46</sup> The Committee recommended a revised form of classification comprising of the following categories of public exhibition – a) unrestricted exhibition as 'U'; b) to persons who have completed twelve years of age as '12+'; c) to persons who have completed fifteen years of age as '15+'; d) restricted to adults as 'A'; e) restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film as 'S'.

exhibition, jurisdiction of the Appellate Tribunal, *etc.* Nonetheless, a consensus could not be arrived at amongst the significant stakeholders *vis-à-vis* repeal/amendment of the Act in accordance with the Committee's recommendations.

### **Shyam Benegal Committee**

On January 1, 2016, the Ministry of Information and Broadcasting, had constituted an Expert Committee, chaired by Mr. Shyam Benegal,<sup>47</sup> to recommend, taking note of the global best practices,<sup>48</sup> detailed guidelines for the CBFC whilst certifying a film for public exhibition. The purpose was to design a holistic, efficient and transparent framework for film certification.

After duly examining the existing certification procedure, the Committee in its Report<sup>49</sup> advocated for film-maker's autonomy. It opined that the Board must strictly function as a certification body for films and refrain from intruding in its content, by suggesting alterations. CBFC must alone (except in notable circumstances),<sup>50</sup> probe the film's suitability *vis-à-vis* the age and maturity of the target audience and categorize it. The Committee crafted a novel, more germane set of guidelines for the CBFC to follow at the time of certifying a film, reserving an enlarged space for creative freedom of the maker and ensuring that the Board is responsive to the ever-changing societal temperament.<sup>51</sup> It insisted that the audience is adept to make viewing decisions and thus, the Board's censoring role must be minimalistic. The Committee proposed for the sub-division of "UA" and "A" category ("UA" to be further categorized into "UA 12+"<sup>52</sup> and "UA 15+"<sup>53</sup> and "A" to include a sub-category "AC" – "films suitable for adults only, with caution"<sup>54</sup>), enabling

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<sup>47</sup> Eminent Indian film-maker.

<sup>48</sup> Available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=142288> (Last visited on August 16, 2022).

<sup>49</sup> Submitted in April 2016.

<sup>50</sup> When a film contains anything that contravenes the provisions of Section 5B (1) of the Cinematograph Act, 1952.

<sup>51</sup> The Committee has proposed guidelines for certification, that have been divided into three categories: (i) general, (ii) issue related, and (iii) category specific. The 'general guidelines' define the approach to be followed while certifying a film, with respect to general factors in a film, such as context, theme, *etc.* The 'issue related' guidelines list issues in a society that apply to all categories of certification. 'Category specific' guidelines lay down the approach that CBFC should take with respect to various categories of film certification.

<sup>52</sup> Will cater to young teenagers yet to be exposed to the adult world.

<sup>53</sup> Will cater to young adolescents at an age where they are being exposed to issues in the adult world, in a moderate manner.

<sup>54</sup> For films that may contain explicit material, such as nudity, violence, *etc.*

the viewers to make a definite choice.<sup>55</sup> The Committee's submissions are however, yet unimplemented.

### **The Cinematograph (Amendment) Bill, 2019**

The Bill of 2019, introduced in Rajya Sabha,<sup>56</sup> on February 12, 2019,<sup>57</sup> to amend the Act of 1954, proposed to insert therein, section 6AA, immediately after section 6A. The draft provision prohibited the usage of "any audio-visual recording device in a place", for the purpose of knowingly, making, transmitting, attempting or abetting the making or transmission, of a film's copy or its part, without the author's written authorization. It further added sub-section (1A) to section 7 of the Principal Act, prescribing punishment for violation of section 6AA.<sup>58</sup> The focal point of the Bill was hence, reduction of film piracy or the "unauthorized duplication of films", in particular, pirated version of films being released on internet and copyright infringements, causing massive losses to the industry and the government exchequer.<sup>59</sup> Aspects relating to certification, *etc.*, were however, not touched upon by the Draft Bill.

### **IV. The Cinematograph (Amendment) Bill, 2021: An Appraisal**

On June 18, 2021, the Ministry of Information and Broadcasting, Government of India, solicited public comments on the draft Cinematograph (Amendment) Bill, 2021. The Bill is allegedly, intended to make the process of certification of films for public exhibition more efficacious. It is contemporaneous and suggests measures to tackle the menace of piracy. Whilst on one hand, the Bill addresses consequential issues perturbing the film fraternity, at the other end of the spectrum,

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<sup>55</sup> Available at: [https://prsindia.org/files/policy/policy\\_committee\\_reports/1467347474\\_Report%20Summary%20-%20CBFC.pdf](https://prsindia.org/files/policy/policy_committee_reports/1467347474_Report%20Summary%20-%20CBFC.pdf) and [https://mib.gov.in/sites/default/files/Shyam\\_Benegal\\_committee\\_Report\\_compressed.pdf](https://mib.gov.in/sites/default/files/Shyam_Benegal_committee_Report_compressed.pdf); (Last visited on September 10, 2022).

other recommendations relating with the size and composition of the Board/Chairman's functions, *etc.* (unrelated to content regulation of films) are not dealt with.

<sup>56</sup> By the then Minister of State for Information and Broadcasting, Mr. Rajyavardhan Rathore.

<sup>57</sup> Available at: <https://prsindia.org/billtrack/the-cinematograph-amendment-bill-2019> (Last visited on September 10, 2022).

<sup>58</sup> "(1A). If any person contravenes the provisions of section 6AA, he shall be punishable with an imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both."

<sup>59</sup> Read Standing Committee on Information Technology (2019-20), Ministry of Information and Broadcasting - The Cinematograph Amendment Bill 2019, 9<sup>th</sup> Report - available at: [http://164.100.47.193/lsscommittee/Communications%20and%20Information%20Technology/17\\_Information\\_Technology\\_9.pdf](http://164.100.47.193/lsscommittee/Communications%20and%20Information%20Technology/17_Information_Technology_9.pdf) (Last visited on September 10, 2022).

it has met with a massive turmoil from film-makers and actors. The current segment presents the salient features of the Bill and brings to light the dissent from the film industry.

The Bill amends section 5A (3) of the Cinematograph Act, 1952. The existing provision mandates that, a certificate granted by the CBFC shall be valid for a stipulated period of ten years throughout the territory of India. This prescribed limitation has been done away with by the Bill of 2021. Any certificate now granted, shall be valid in perpetuity. It is though pertinent to mention here that, the said qualification was already removed by way of an executive order however, the same has been given a statutory recognition under the Bill.

With the view to bring provisions relating to film certification in consonance with the newly enacted OTT Rules, 2021, the “UA” category has been further categorized into U/A 7+, U/A 13+ and U/A 16+, basis the viewer’s age.

The Bill aims at dealing with the hazard of piracy, plaguing the film industry and adversely impacting the revenue generated by it and the government’s treasury, since a considerable period of time. To restrain the film’s duplication in theatres and release of its pirated version online, the Bill proposes the insertion of section 6AA to forbid any unauthorized recording.<sup>60</sup> Accordingly, no person shall be permitted, without the author’s<sup>61</sup> written authorization, to make use of any audio-visual recording device, to knowingly, make or transmit a copy or part of a film. Making an attempt to do so or abetting the act, is also outlawed. A person in contravention with the stated requirement, shall be liable for a minimum punishment of three months, extendable to three years, along-with a minimal fine of rupees three lakh. It can be increased to “5 per cent of the audited gross production cost”.<sup>62</sup>

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<sup>60</sup> “6AA. Notwithstanding any law for the time being in force, no person shall, without the written authorization of the author, be permitted to use any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof. Explanation. - For the purposes of this sub-section, the expression ‘author’ shall have the same meaning as assigned to it in clause (d) of section 2 of the Copyright Act, 1957.”

<sup>61</sup> ‘Author’ in relation to a cinematograph film is the producer – *see* section 2(d)(v) of the Copyright Act, 1957.

<sup>62</sup> Insertion of new sub-section 1A in section 7 – “Penalties for contravention of this part 7(1A). If any person contravenes the provisions of section 6AA, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and with a fine which shall not be less than three lakh rupees but which may extend to 5% of the audited gross production cost or with both. Provided also that, any act mentioned in Section 52 of the Copyright Act, 1957 (Act 14 of 1957) is not an infringement of the provision of Section 6AA of this Act.”

The bone of contention in the Bill is the addition of a proviso to section 6 sub-section (1). The provision, as it stands in the 1952 Act, grants the Central Government revisional powers *i.e.*, it is empowered “to call for the record of any proceedings” having relation with film certification, pending before or decided by the Board and pass an order thereon. Alternatively stating, the Central Government, is authorized to reverse the Board’s decision, if deemed appropriate. The provision has earlier been contested and in *KM Shankarappa v. Union of India*,<sup>63</sup> the High Court of Karnataka had held against its validity. The same was subsequently upheld by the Supreme Court of India.<sup>64</sup> Declaring the impugned provision as unconstitutional, the court opined that once the government exercises its choice to establish a quasi-judicial body/board and the same, lawfully takes a decision, the executive cannot “sit in appeal over it”. Implying hereby, that once the CBFC has decided to certify a film for public exhibition, the Central Government must not be allowed to invade and challenge its legitimate exercise of authority. Overruling or nullifying a judicial or executive decision can alone be done by enacting an appropriate legislation. It furthermore, turned down the contention that impugned content could create a law and order disturbance and settled that, once a film has been approved for public exhibition by an expert body, it is the task entrusted upon the concerned state government to maintain it.

The Bill, whilst duly acknowledging the concerns raised by the Hon’ble Supreme Court of India, removes the provision so struck down in the principal legislation. Instead, it inserts a new proviso to section 6 (1) and grants revisionary powers to the Central Government under a scenario wherein, section 5B (1) of the Act is in violation. The power so vested in the Central Government shall be exercised on receipt of a reference made to it alleging the breach of section 5B (1).<sup>65</sup> In exercise of its prerogative, the Central Government, if it would so deem necessary, direct the Board’s Chairperson to re-examine the film for certification prior to permitting its exhibition amongst the public.

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<sup>63</sup> *supra* note 28.

<sup>64</sup> *supra* note 29.

<sup>65</sup> It is argued that since section 5B (1) draws inspiration from Article 19 (2) of the Constitution of India, it is non-negotiable.

## V. Conclusion: The Conflict and Way Forward

Since its very conception, the Cinematograph Act, 1952 has faced the wrath from film-makers for being an uncongenial legislation. It is often alleged that the regulatory mechanism circumscribing Indian cinema, is harsh and uncompromising. The current regime is under criticism for three primary reasons. Firstly, the CBFC, instituted as a film certifying body, is foundationally vested with the task of attaching age-based restrictions on viewership whereas, it transgresses its periphery to clog the film's exhibition, contending impropriety of content. It is further argued that the Board is composed of members lacking the cinematic understanding and expertise to assess a film. They have their own set of institutional affiliations, political, social or religious, and also, are deficient in autonomy from the central government. Lastly, the subjectivity in the content of films, coupled with insufficiency of elucidation and objectivity in guidelines, makes the Board's behaviour come across as undemocratic and unjustifiable.

With regard to the Bill of 2021, there are two contrasting point of views to be evaluated. On one hand, are the grievances put forth by the film-makers. It is argued that the Cinematograph Act, 1952 already vests in the Central Government, sweeping powers. Section 5E for instance, empowers the Central Government, to suspend and revoke a certificate already granted by the CBFC, basis fulfillment of certain terms and conditions prescribed therein. Furthermore, section 6 warranting revisional powers to the Central Government, despite being declared as unconstitutional by the Supreme Court,<sup>66</sup> has not yet been erased from the statute. Also, section 13 of the Act authorizes the Central Government or local authority to suspend a film's exhibition in certain cases. Under section 16, the Central Government has rule-making powers under specified circumstances. Additionally, in exercise of its power bestowed upon the Central Government by sub-section (2) of section 5B, the guidelines for film certification, have been crafted by it.

In addition, the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021,<sup>67</sup> which abolishes the FCAT or Film Certification Appellate Tribunal, came as a final blow to the film-makers' anxiety. The High Court has now been declared as the appellate

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<sup>66</sup> *supra* note 29.

<sup>67</sup> Tribunals Reforms Act, 2021.

authority against the CBFC's decision, snatching a cost-effective and relatively faster grievance-redressal mechanism from film-makers.

Against this backdrop, film-makers argue that the 2021 Bill further suppresses their creative expression by strengthening censorship. The Bill, not merely adversely impacts the autonomy of film-makers *vis-à-vis* the content of motion pictures, it also snaps the CBFC's role as an independent body.

In defense of the film fraternity's opposition, the government has taken the shield of Article 19(2) of the Constitution,<sup>68</sup> reasonably restricting free expression. Clarifying its stance, the government has countered that it can exercise its revisionary powers stipulated in the draft Bill only if it receives a complaint alleging violation of section 5B (1)<sup>69</sup> of the 1952 Act. Hence, a direct intrusion of the government in CBFC's domain to re-certify a film is not proposed.

The challenge therefore is, to harmonize the prevalent conflicting interests. It is well-accepted that the Cinematograph Act of 1952 though, is imperative and cannot be discarded, it is in need of a substantial overhauling. The legislation has to be refashioned yet, preserve societal moralities and order. Reforms must be radical, pragmatic, contemporaneous and constructively change the fabric of film regulation. Undeniably, a film-maker invests an array of resources in a motion picture and his creativity deserves protection from unwarranted bombardments from CBFC and/or the government nevertheless, expression has to be responsible. The solution, for that reason, is a flexible, non-rigorous and non-conservative remedy.

At the first place, CBFC must be detached from both, the film-makers and government. It has to be audience-centric. The interests of film-viewers should be the Board's paramount concern. It must function as a representative of 'film-consumers'. With regard to ensuring neutrality and independence in the Board's composition, plethora of recommendations have been mooted by

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<sup>68</sup> "(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause 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."

<sup>69</sup> *supra* note 22.

an array of committees mentioned herein-above however, none so far have been implemented. The same must be revisited and thoughtfully probed.

Concerning content regulation of motion pictures, whilst certifying a film, the CBFC must be guided by a clear, comprehensive and elaborate set of guidelines crafted by the Board itself, assigning a distinct meaning to vague terms such as, ‘vulgarity, obscenity or depravity’, ‘violence’, ‘public order’, *etc.* The existing guidelines, framed by the government, seem superficial and devoid of any objective application, thereby giving surplus space for discretionary exercise of powers. These must, instead be specific, self-explanatory and exhaustive.

The most appreciated form of art, film is an artistic work, capable of diverse representations and vulnerable to multifold interpretations. In order to mitigate the immense scope for subjectivity and prejudice from the certification process, guidelines must not be hermetically sealed, making them excessively rigid and non-responsive to societal progression. They should strike a balance between safeguarding a film-makers’ imaginativeness and his sensitivity towards societal principles and values. Any cinematographic work must be scrutinized *in toto* unless a portion thereof is grossly distasteful. The Board must assess the film’s overall impact, its theme, context, social relevance, merit and the contemporary moral standards,<sup>70</sup> de-linking its content with the hostile reaction from a minority segment. The High Court of Delhi, in this regard, has befittingly remarked that, “These days unfortunately some people seem to be perpetually on a short fuse, and are willing to protest often violently, about anything under the sun on the ground that a book or painting or film etc. has ‘hurt the sentiments’ of their community.”<sup>71</sup> Conflicting views must be expressed nonetheless, they may be overlooked by the Board if inconsequential and dispensable.

Furthermore, an autonomous, non-partisan authority must be constituted by the central government to provide film-makers and audience the ease of redressing their grievance against

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<sup>70</sup> See *Bobby Art International v. Om Pal Singh Hoon* (1996) 2 S.C.R. 136 – Writ petition challenging the ‘A’ certificate granted to the film ‘Bandit Queen’ by the CBFC was challenged. It was further pleaded to restrain its public exhibition.

<sup>71</sup> *Maqbool Fida Husain v. Raj Kumar Pandey* (2008) Cri. L.J. 4107 (Del.) 117. The Court quashed criminal proceedings instituted against late painter Maqbool Fida Hussain, for allegedly hurting Hindu sentiments by making ‘obscene’ paintings of Indian goddesses.



the certification issued by the CBFC *vis-à-vis* a film's content. The authority so set-up may alone be vested with the right of re-certification. Artistic expression must not be jeopardized unless the anticipated danger is remote, pressing and endangers community interest. Politics has to be necessarily kept away from the rights of a creative mind.

In the present regulatory regime, the audience's perspective has been predominantly ignored. Access to an appellate body shall give film-consumers an opportunity to convey their point of view in relation to the propriety of a film's content. The idea is to involve all stakeholders and minimize intervention of the central government. This would warrant transparency and non-arbitrariness in the functioning of the Board and shall also eliminate the peril of super censorship by the central government.

Furthermore, in the wake of films being subsequently telecasted on television and OTT platforms, it must be ensured that the changes envisaged *vis-à-vis* content regulation of motion pictures, is tuned with the Cable Television Networks (Regulation) Act, 1995 and OTT Rules of 2021.<sup>72</sup>

So far as film piracy is concerned, it is noteworthy that the 1952 legislation does not contain any provision to tackle it. Ordinarily, cinema hall is the originating point of duplication of a film and hence, the Amendment of 2021 is a welcome move in the direction of combating piracy. Notwithstanding the same, it is contended that the proposed punishment is not well-aligned with section 63 of the Copyright Act, 1957 which prescribes punishment for the "offence of infringement of copyright".<sup>73</sup> Also, unlike the Copyright Act,<sup>74</sup> there is no differentiation in the stipulated penalty *vis-à-vis* first and subsequent conviction. It is countered that the stated provisions of the Copyright law are general in nature, dealing with all genres of a copyright infringement whereas, the draft section 7 (1A) of the 2021 Amendment is specific to film piracy and thus, has to be more stringent. It essentially penalizes unauthorized 'camcording' and replication of a film. Moreover, the Copyright Act alone has been manifestly inefficacious in

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<sup>72</sup> Nonetheless, OTT Rules, 2021 are already battling a rebellion from intermediaries and lobbyist groups.

<sup>73</sup> "63. Offence of infringement of copyright or other rights conferred by this Act. — Any person who knowingly infringes or abets the infringement of — (a) the copyright in a work, or (b) any other right conferred by this Act [except the right conferred by section 53A], [shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees]".

<sup>74</sup> See section 63 A.

battling against film piracy and therefore, insertion of a definite and harsh provision in the 2021 Amendment Act was a pressing priority. It is hereby suggested that intrinsically, the primary objective of the Cinematograph Act is “certification of cinematograph films”. Undeniably, there must be a severe punishment for film piracy nevertheless, it shouldn’t preferably be dealt with in this Act as doing so, would not be in consonance with the legislative intent.

It is overdue that holistic and progressive modifications are brought forth in the Cinematograph Act, 1952. Justice Potter Stewart had remarked, “Censorship reflects a society’s lack of confidence in itself. It is a hallmark of an authoritarian regime”.<sup>75</sup> A democratic society embracing free expression, must not espouse unwarranted governmental intercession in the exercise of artistic expression. the Supreme Court’s remarks in *Nachiketa Walhekar v. Central Board of Film Certification*<sup>76</sup> may be reiterated:

Be it noted, a film or a drama or a novel or a book is a creation of art. An artist has his own freedom to express himself in a manner which is not prohibited in law and such prohibitions are not read by implication to crucify the rights of expressive mind. The human history records that there are many authors who express their thoughts according to the choice of their words, phrases, expressions and also create characters who may look absolutely different than an ordinary man would conceive of. A thought provoking film should never mean that it has to be didactic or in any way puritanical. It can be expressive and provoking the conscious or the sub-conscious thoughts of the viewer. If there has to be any limitation, that has to be as per the prescription in law.

Film-making being a creative expression, must not be excessively stifled. India is admired for its diversity and heterogeneity. A film-maker must exercise sensitivity and sensibility towards the societal virtues and prevailing norms of propriety. He should, at the first place, self-regulate his craft and practice self-restraint particularly in matters pertaining to religion, caste, tradition, culture, *etc.* This shall diminish extravagant and whimsical indulgence of the CBFC and central

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<sup>75</sup> *Ginzberg v. United States*; 383 U.S. 463 (1966).

<sup>76</sup> (2018) 1 SCC 778 - The petitioner prayed for staying of the nation wide release of the film “An Insignificant Man” as it allegedly contained a video clip pertaining to the petitioner.

government in the film-maker's artistry thereby, setting in motion a balanced approach in regulating content of motion pictures.