

REPORT OF  
THE COMMITTEE OF EXPERTS  
TO EXAMINE ISSUES OF CERTIFICATION  
UNDER  
THE CINEMATOGRAPH ACT 1952

28<sup>TH</sup> SEPTEMBER 2013

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CHAPTER I  
PRELIMINARY

1. Cinema is an artistic expression of ideas, stories and often opinions, sometimes inspired by reality occasionally set to music, designed to enthrall, enchant, or simply to entertain. There are few other mediums of communication that can claim rival levels of pervasive influence and presence in our daily lives. History shows that films have sparked off political debate and threatened governments, heralded social change causing society to deviate from age old dogma and also sent real life lovers to their death in their misplaced hope of emulating the classic romances. It is perhaps in salute to such impelling powers of persuasion that it is the only form of art, deemed fit to be regulated by an Act of Parliament.
2. The present Cinematograph Act was enacted in the year 1952. Cinema has undergone a radical change since. The medium of cinema, the tools and technology associated with it and even its cherished audience have metamorphosed through time. Upon this Committee falls the task of reviewing and recommending legislation which will regulate, certify and license facets of this every changing and precocious art form. We have endeavored to accomplish this task to the best of our ability.
3. This Committee was constituted by the Government of India, Ministry of Information and Broadcasting vide Office Memorandum No.2/12/2004-FCAT(Vol.IV) dated 04.02.2013 and comprising of the following members:

i)	Justice Mukul Mudgal, Retired Chief Justice, High Court of Punjab and Haryana	Chairperson
ii)	Sh. Lalit Bhasin, Chairperson, FCAT	Member
iii)	Ms. Sharmila Tagore, former Chairperson, CBFC	Member
iv)	Shri Javed Akhtar, renowned music composer, writer and lyricist	Member
v)	Ms. Leela Samson, Chairperson, CBFC	Member
vi)	Shri L Suresh, Secretary, South Indian Film Chamber of Commerce and former President, Film Federation of India	Member
vii)	Ms. Rameeza Hakeem, Advocate, Supreme Court of India	Member
viii)	Shri Raghvendra Singh, Joint Secretary (Films), Ministry of I& B.	Member – Convenor

4. By subsequent Office Memorandum dated 01.07.2013 No. 2/ 12/ 2004- FCAT (Vol'IV) Pt. I, Sh. Uday Kumar Verma was also appointed as a member to the present Committee. Office Memorandum No.2/12/2004-FCAT(Vol.IV) dated 04.02.2013 and Office Memorandum No. 2/ 12/ 2004- FCAT (Vol'IV)Pt. I dated 01.07.2013 are placed as **Appendix 2** and **Appendix 3** of this report.
5. The terms and reference of the Committee are as under:
  - I) Review the mandate and functionary of CBFC and recommended measures including statutory changes to enable CBFC to deal with contemporary requirements of

certification and increased transparency / efficiency. Such issues, inter alia, may include:

- a) The process of certification under the Act and Rules, including the mechanism followed by Examining and Revising Committees;
  - b) Categories of certification, existing and proposed, under the Cinematograph (Amendment) Bill, 2013.
  - c) Requirement of special categories of certification for the purposes of broadcasting on television channels and radio stations.
- II) To review the mandate and functioning of Film Certification Appellate Tribunal (FCAT) in order to make it a more efficacious appellate body;
- III) Examine the role of Central Government regarding sanctioning of cinematograph films for exhibition under Entry 60, List I of the Seventh Schedule to the Constitution of India vis-à-vis Entry 33, List II of the Seventh Schedule to the Constitution of India;
- IV) To suggest more effective legal remedies and penal provisions in the Act, particularly with reference to making unlawful copies, camcording in cinema halls, interpolation /insertion of clips after certification and such similar issues; and
- V) Any other issues that the Committee may deem fit to deliberate upon.

The Committee was to submit its report to the Central Government within two months from the date of constitution, which date was further extended to 30.09.2013 by Office Memorandum No. 2/12/2004-FCAT (Vol IV) Pt. I dated 09.09.2013 placed as **Appendix 4** to this report.

CHAPTER 2  
HEARINGS HELD AND MATERIAL RECEIVED

6. In order to gather material and establish the contours of the issue at hand, the Committee in its first meeting held on 27<sup>th</sup> February 2013 inter-alia decided to visit the centres of film making such as Mumbai, Chennai and Calcutta, hold public hearings and interact with members of the film industry, civil society as well as interested stake holders.
7. Accordingly public meetings were held on 4<sup>th</sup> and 5<sup>th</sup> April 2013 at Mumbai, followed by public meetings on 8<sup>th</sup> and 9<sup>th</sup> May 2013 at Calcutta and then on 19<sup>th</sup> & 20<sup>th</sup> June 2013 at Chennai.
8. Apart from the first meeting held at Delhi on 27<sup>th</sup> February 2013, the Committee also held hearings, internal meeting sessions and deliberative consultation meetings in Delhi on 22<sup>nd</sup> July, 23<sup>rd</sup> July, & 24<sup>th</sup> July 2013, followed by sessions held on 22<sup>nd</sup> August 2013, 30<sup>th</sup> August 2013, 10<sup>th</sup> September, 20<sup>th</sup> September 2013 with its final meeting held on 26<sup>th</sup> September 2013.
9. The minutes of the meetings held by the Committee in the above meetings are placed at **Appendix 5** to this report.
10. During the above process, the Committee also received material in writing and representations from various parties, associations of producer, directors etc., social organizations and other sections of the film industry which are cumulatively appended to this report as **Appendix 6**.

CHAPTER 3  
ISSUES AT HAND

11. From the material gathered during various public hearings, representations made and internal deliberations held, the Committee identified certain areas of concern which merited review and recommendation. These have been identified and set out below:
  - 11.1. Industry wide concern as regards the composition of and appointments to the advisory panel, which panel views the films and suggests /recommends certification and the paramount need to refine the qualifying criteria, composition of such panel and mode of appointment of such panel under Section 5 read with Rule 22 of the Cinematograph (Certification) Rules, 1983.
  - 11.2. The nature and scope of power exercisable by the State Governments as regards suspension of viewing and exhibition of a film after its certification by the CBFC under Section 13(1) of the present Cinematograph Act, 1952, the constitutionality validity of various State Legislations and whether this would offend the scheme of the Seventh Schedule of the Constitution of India and exercise of powers under Section 144, The Code of Criminal Procedure, 1973.
  - 11.3. A need for updating and revising Section 5A of the present Act and the guidelines on the basis of which a film is certified.
  - 11.4. Treatment of piracy, tampering with certified films and to study the possible elevation of such offences to the position of a substantial non- bailable offence with higher penalties, affixation of the chain of legal liability for contravention of the provisions of Cinematograph Act, 1952 i.e. producer, distributor, exhibitor etc.
  - 11.5. Review of certain definitions contained in the Cinematograph Act, 1952, more particularly, the definition of public exhibition, film, the inclusion of audio, lyrics and advertising material in the certification process and a review of the categories of classification afforded to films today.
  - 11.6. Widening of the jurisdiction of the Appellate Tribunal under Section 5C of the Cinematograph Act, 1952 to broaden the nature of disputes which may be heard by the Tribunal and also facilitating appeals by any person aggrieved [ not restricted to producers], by orders passed by the Central Board of Film Certification.
  - 11.7. Immunity from prosecution for offences as regards obscenity, provoking communal disharmony etc. post certification of the film.
  - 11.8. Other issues such as requirement of certification, smoking disclaimer and issues relating to the Animal Welfare Board and Treatment of cess and entertainment tax charged to the film industry.

CHAPTER 4  
FINDINGS AND RECOMMENDATIONS

12. This Chapter outlines in detail the recommendations put forth by the Committee and the rationale and material on which such recommendation is premised. While detailing out its recommendations below, the Committee has also placed, purely as a suggestive measure, a proposed draft Cinematograph Bill, incorporating most of the recommendations below which would require statutory inclusion. It would be beneficial if this Chapter is read along with such proposed Bill in order to obtain a full sense of the recommendations proposed by this Committee. The proposed Cinematograph Bill has been placed as **Appendix 1** to this report.

**13. Appointment of Members of the Advisory Panel-**

13.1. At almost every public hearing/ interaction held, the Committee was faced with grievances put forth by producers, directors, and Associations etc. that the present procedure for appointment of members of the Advisory panel, their eligibility criteria and the quality of such panel is far from satisfactory. At certain locations, members of such advisory panel lack any form of cinematic understanding, they perceive their role to be that of a Censor Board to cut and chop scenes and in some cases being affiliated to some political, religious or social group, impose without restraint, such political, religious or personal opinions upon content permissible in a film. As by way of a few examples, the Committee came across complaints where panel members had objected to use of words such as “boyfriend” or “kiss” used in a scene or even the uncharitably humorous representation of a political figure etc.

13.2. The Committee was of the view that the role of such a panel is extremely important as it is this panel of persons which views the film, makes its recommendations and on which basis the Board issues certification. Hence while great care is to be taken to appoint the members of the Board, equal care must be taken to introduce criteria to ensure that the process of selection and appointment of such panel members is autonomous and insulated as far as is possible from such errors. The objective sought to be to yields a panel of members both eligible as well as suitable to discharge the all-important function of deciding what films the citizens of this country can and will watch.

13.3. The Committee would firstly recommend a change in name of such panel from ‘advisory panel’ to ‘screening panel’. As regards the process of appointment, it is recommended that the Board sets up a Committee comprising of 9 of its members in such manner as to ensure language diverse representation with at least two lady members. Such Committee would then prepare a panel of members, which shall be twice the number of vacancies ,who in the opinion of such Committee , by reason of their profession, qualifications or experience in the field of art, cinema, drama, law, literature, history, sociology, psychology, media, education, performing arts, or public administration are deemed fit to judge the effect of film on the public. These qualifying criteria have been designed in relation to subjects which have a direct or indirect bearing on cinema and its content. This is to ensure that members of the screening panel have some cinematic, aesthetic and /or artistic background. The usual subject criteria of “social sciences” has been deliberately omitted by the Committee. Such pool of members drawn up by the Committee

will then be forwarded to the Central Government from which the Central Government shall finally appoint such members of the screening panel.

13.4. In order to operationalize the above, the provisions as regards constitution and appointment of such screening panel are recommended as under:

“ **Constitution of screening panels -**

- (1) The members of the screening panel shall be selected by a Committee comprising of 9 members constituted from the Board by the Chairperson with atleast two lady member and in such manner as to ensure due regional and language representation, to the extent possible.

Provided that it will be open to the Chairperson to invite any member of the Board as an ad hoc additional member of the screening panel to ensure regional representation.

- (2) Such Committee in consultation with the Chairperson shall draw up a panel of members to be appointed as members of the screening panel and shall consist of persons, who, in the opinion of the Committee are by reason of their profession, qualifications or experience in the field of art, cinema, drama, law, literature, history, sociology, psychology, media, education performing arts, or public administration are fit to judge the effect of films on the public.

Explanation- For the purpose of this Section, it is clarified that 'public administration' means the study, development and implementation of public policy and functions.

- (3) Such panel of members, which shall be at least thrice the number of vacancies, shall be forwarded by the Board to the Central Government who shall from such panel forwarded, appoint the members of the screening panel.

Provided that at least one third of the total number of members on a screening panel shall be women.

- (4) A member of a screening panel shall hold office during the pleasure of the Central Government
- (5) Subject to sub section (4) above, every such member shall hold office for such period not exceeding two years and shall be eligible for re-appointment for one period not exceeding one more term.
- (6) It shall be the duty of every member of such screening panel, whether acting as a body or in committees, as may be provided in the Rules made in this behalf, to examine, the film and to make such recommendations to the Board as it thinks fit.
- (7) The members of the screening panel shall receive such fees or allowances as may be prescribed”.

13.5. The Committee also notes the views put forth by officials of the Board as regards the appointment of Regional Officers. The Committee recommends that there is need for Government to review and amend the Recruitment Rules in connection with the appointment



to the post of Regional Officer (RO). Under the present system, apart from direct recruitment, there are also employees of a particular Regional Office who by virtue of lapse of time and years of services qualify to be appointed to the post of Regional Officer by promotion. Presently there is no educational criteria, language qualifications or interview process attached to such appointment. The Committee has been informed that, on many occasions, the persons appointed in such manner are found to lack the necessary education, language skills, expertise and therefore eligibility to perform the duties of a Regional Officer. While giving full impetus to the professional aspirations of such persons, it is recommended that the functioning of this post not be compromised and even for persons appointed through promotion, a certain level of language and education criteria be introduced. It would also be preferable that an interview process be included to ascertain the suitability of such candidate for the post of a Regional Officer.

#### **14. Guidelines on which basis a film is certified-**

14.1. This aspect was perhaps the most vexed issue which the Committee encountered. Across the country, the Committee was faced with views and opinions from both ends of the spectrum. While on the one hand, members of the film industry were aggrieved by the fact that films are viewed through a conservative and unnecessarily moralistic prism, on the other hand, women groups and social organizations were of the view that too far and great a latitude is being given to film makers. Such a contra distinctive spectrum of views is representative of nothing but the age old debate between tradition and change. The Committee is of the opinion that there can never be watertight and rigid guidelines for certification of films. Cinema is a form of art and by its inherent character, capable of varied forms of representation and consequently myriad forms of interpretation. The courts have over the years attempted to grapple, with little success one might add, to give precise meanings to terms such as morality, obscenity and excessive violence etc. These are concepts which are incapable of surgically precise definitions and interpretation of such terms will vary from person to person.

14.2. The Committee has been advised that presently the Central Government has enacted notification dated 6<sup>th</sup> December 1999 under Section 5 B(2) of the Cinematograph Act, 1952 purporting to set out guidelines of films certification which is placed in **Appendix 7** to this report. The Committee has seen the guidelines many of which are incapable of an objective application. The Committee must however appreciate Para 1 and 3 of the said notification which lays down the objectives of film certification and which merit statutory inclusion.

14.3. The Committee is therefore of the view that the provisions in the Act dealing with guidelines for certification must include provisions which protect artistic and creative expression on the one hand while on the other requiring the medium of cinema to remain socially responsible and sensitive to the values and standards of society. More importantly the Committee strongly regards as necessary, the introduction of a parameter which requires the members of the Screening panel/Board to view a film in its entirety from the point of view of overall impact, in the light of the theme, context and story of the film and the persons and the period of time to which the film relates. We have come across instances where members of the Advisory Panel (Screening Panel) have scrutinized a scene from the perspective of a stand-alone scene as opposed to its contextual and thematic value. Keeping the above in my mind the Committee proposes the following provisions in relation to guiding principles for certification of film.

### **“Principles for guidance in certifying films -**

- (1) While examining a film or causing a film to be examined for certification, the Board will be guided by the following principles:
  - a) The medium of the film remains responsible and sensitive to the values and standards of society and as far as possible the film is of aesthetic value and cinematically of a good standard;
  - b) Artistic expression and creative freedom are not unduly curbed and certification is responsive to social change;
  - c) The film is examined in the light of the period depicted in the film, context, content, theme and people to which the film relates and is judged from the point of view of its overall impact and the contemporary standards of the country.
- (2) Notwithstanding any contained in (1) above a film shall not be certified for exhibition if in the opinion of the Board, the film or any part of it is against the interest 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.
- (3) Subject to the provisions contained in sub-section (1), and (2) above the Central Government may issue such directions as it may think fit setting out the principles which shall guide the Board while granting a certificate under this Act for sanctioning films for public exhibition.

14.4. The Committee fervently hopes that such guidelines coupled with an integral change in the nature and character of the Screening panel, will lead to a more informed assessment of films during the process of certification.

### **15. Classification of films-**

15.1. The Committee has also come concerns that the present categories of classifications are insufficient given the myriad of subjects, complex themes and content of the movies being produced today. More particularly, the category of U/A has been found to be insufficient and there is considerable ambiguity as to the contents of the films which would classify as U/A. There is also uncertainty in the mind of a prospective viewer as to what to expect when a film is categorised as U/A. The Committee has found that internationally the practice prevalent is to accord age related classifications and certifications. Accordingly, the Committee recommends a revised form of classification which comprise of the following categories of public exhibition being that:

- 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

15.2. The Committee would also recommend strong pictorial representation and color coding of the certificates which would easily and clearly communicate the nature of such certification. For instance the U certificate could carry a green background, the A certificate

to carry a red background and so on. Samples of such pictorial certification are set out in **Appendix 8** to this report.

#### **16. Power of the State Government to suspend the exhibition of a film**

17. It has been noticed that after a film is produced, has received certification from the Board and is ready for exhibition in theatres, certain vested groups, fringe elements and at times simple publicity seekers create local disturbance on ground, file criminal proceedings and also approach respective High Courts in the country seeking suspension of exhibition of such film. In certain cases, the State Governments, have proceeded to suspend exhibition of such films suo motu or being influenced by such elements or on a perceived threat to law and order with /without invocation of powers under Section 144 of The Criminal Procedure Code, 1973 thereby prohibiting the assembly of four or more persons. Recent example of such films would be those of *Sadda Haq* based on the Khalistan movement in Punjab, *Aarakshan* which was based on the theme of reservation, Kamal Hasan's *Vishwaroopam* which ran into trouble in South India and closer to the time of this report, the movies *Madras Café* and *Ram Leela*.
18. The Committee strongly empathizes with the plight and predicament of a film maker who has after investment of considerable time, money and creative energies, having gone through the rigors of a certification process is then confronted by such last minute travails. Very often it leads to a situation where a film maker is standing against a Government despite having adhered to procedure established by law. We also note that the Government of India being conscious of this burning issue has duly framed as one of the terms of reference of this Committee the following issue:
- “Examine the role of Central Government regarding sanctioning of cinematograph films for exhibition under Entry 60, List I of the Seventh Schedule to the Constitution of India vis-à-vis Entry 33, List II of the Seventh Schedule to the Constitution of India”
19. In order to address this issue, the Committee was first required to analysis the legislative power of the Central Government vis-à-vis that of the State Government on the issue of cinemas. The Lists contained in the 7<sup>th</sup> Schedule to the Constitution of India provide for the subjects upon which the Central Government and State Government may legislate respectively. List I which is the Union List deals with the legislative power of the Central Government and contains Entry 60 which reads as under :-
- “...60. Sanctioning of cinematograph films for exhibition.
20. On the other hand, Entry 33 of List II which is the State list reads as under:-
- “...33. Theatres and dramatic performances, cinemas subject to the provisions of entry 60 of List I, sports, entertainments and amusements.
21. The Committee finds that not only does Entry 60 of List – I categorically provide that the legislation relating to sanctioning of film for exhibition is purely in the domain of the Central Government but this is further clarified by the specific language of Entry 33 of List – II which provides that Entry 33 in the State List is subject to the provisions of Entry 60 of List – I. The Committee therefore concludes that the constitutional and legislative framework as regards cinema is within the domain of Central Government and it ought to be the sole repository of legislative power and executive action as regards the exhibition of films in this country.
22. The Committee strongly recommends inclusion of a statutory provision in Cinematograph legislation to firstly provide that ordinarily the exhibition of a film which has been certified shall not be suspended. Assuming that there are certain circumstances which have arisen during the

public exhibition of such certified film leading to a breach of public order or likelihood of such breach, then the Central Government either *suo motu* or at the behest of the relevant State Government may proceed to pass an order of suspension of exhibition of such film. Such film of suspension ought not to be passed unless an opportunity has first be given to the producer / holder of the certificate, informing him of the grounds of the proposed suspension and to show cause or explain why the film ought not to be so suspended. Any order passed suspending the exhibition of a certified film must be appealable to the FCAT.

23. The provision of law which the Committee would recommend in this behalf is as under :-

**“Power of the Central Government to suspend the exhibition of films in certain cases-**

- (1) Where the Central Government *suo motu* or at the behest of a State Government or the administration of a Union Territory, is of the opinion, that a film which is being publicly exhibited has caused or is likely to cause an imminent breach of public order, it may by order, suspend the further exhibition of such film in such State, Union Territory or part of India and during such suspension the film shall be deemed to be an uncertified film in that State, Union Territory or part as the case may be, and the provisions of section 31 relating to uncertified film shall be applicable to such film.

Provided that no order under sub-Section (1) shall be passed by the Central Government unless the person in whose name the certificate has been issued has been given a Show cause Notice in writing setting out the grounds on which it is proposed to suspend the exhibition of the film and giving him a reasonable opportunity of making a representation in writing within such time as may be specified in the notice and if that person so desires of being heard.

- (2) Notwithstanding anything contained in sub Section (1) above, if the Central Government is of the opinion, based on material before it including material furnished by the State Government or the administration of the Union Territory, as the case may be, that in the interest of public order, it is necessary so to do, it may for the reasons to be recorded in writing, summarily suspend the exhibition of the film with a view to make a further inquiry as contemplated in sub Section (1).
- (3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Central Government may, if it is of the opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.
- (4) Any person aggrieved by any order passed by the Central Government under this Section may prefer an appeal to the Appellate Tribunal under Section 31.
- (5) No order of suspension of exhibition of any film shall be passed by any State Government or the administration of a Union Territory save and except an order passed by the Central Government as provided for in this Section.”

24. The Committee is of the view that a provision of law cast on the basis of the above language would adequately take care of several constitutional as well as legal requirements as below:

24.1. The power and jurisdiction to pass such order would vest with the Central Government keeping in mind its legislative dominance granted by Entry 60 of List – I read with Entry 33 of List – II of the 7<sup>th</sup> Schedule to the Constitution. It would also lead to uniformity throughout the country on the issue of public exhibition;

24.2. The State Government / Local Administration, being the best source and judge of local public order situation would be the appropriate authority to furnish to the Central Government in a given case, inputs as regards breach of public order or likelihood of such breach of public order. The Committee may mention here that present legislation only requires “a breach of peace”. This has been elevated to a requirement of “breach of public order” as it is only public order which is recognized as a reasonable restriction on freedom of speech and expression as contained in Article 19 of the Constitution and not a mere breach of peace or likelihood of such breach of peace. The State Government as the source of inputs on public order would further be in consonance with Entry 1 of List II which provides for public order as a state subject.

24.3. Given the outlay and investment of time, money and creative energy by the film maker it is imperative that the producer / the certificate holder be given a due opportunity of being heard before any reasoned order of suspension of exhibition is passed and a personal hearing if so requested for should be in consonance with the principles of natural justice. Such order would also be appealable before the FCAT.

24.4. The Committee strongly recommends that where required, such order or suspension of exhibition be passed not prior to the intended screening, but after and during public exhibition. This will satisfy two important criteria. Firstly, as notice by the Hon’ble Supreme Court in the case of *Aarakshan* i.e. Prakash Jha Productions & Anr. Vs. Union of India & Ors. now reported as (2011) 8 SCC 372, the very term “suspension of exhibition” presupposes that public exhibition has already taken place, is on-going and the need has arisen to ‘suspend’ such exhibition. Secondly, passing such an order in a given case after and during such public exhibition will also enable the authorities to arrive at an actual and proper assessment of breach of public order or its likelihood, since the film is in public domain, being publicly exhibited and actual public reaction can be garnered and assessed. An opinion formed on such material is likely to be more objective, based on reality and actual facts rather than a perceived and/or distant likelihood of breach of public order.

25. The Committee also note that various State Governments have passed legislation dealing with regulation of cinemas. The proposed suggested draft bill attached in **Appendix 1** will extend the operation of legislation to the entire country. Any such State legislation where inconsistent will have to be amended and brought in consonance with the draft bill provides for this in the following manner:

**“Repeal and Savings –**

(1) The Cinematograph Act 1952 and is hereby repealed.

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(4) Any law enacted by the State Government in exercise of its powers under Entry 33 of List II shall continue to be in force, in so far as the provisions of such law are not inconsistent with the provisions of this Act.

**Power to make Rules -**

(1) The Central Government may, by notification in the Official Gazette, make rules for the purposes of carrying out the provisions of this Act.

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(4) The State Governments and the administration of the Union Territory shall have the power to make Rules for the matter specified in Chapter VII of this Act in so far as consistent with the provisions of this Act related to the States and the Union Territories respectively.”

**26. Jurisdiction of the Appellate Tribunal-**

26.1. Under the present scheme of legislation only an applicant for certification may prefer an appeal to the Film Certification Appellate Tribunal [FCAT]. This leads to a flood of litigation in various High Courts leading to different points of view by different High Courts in the matter. It also provides a handle to unscrupulous elements who either for vested interest or petty reasons, rush to the nearest High Court to seek suspension/ a ban on a film. This in turn leads to a body of law which is disparate in nature and often reflective of the individual predilection of the State or the judge in question. The Committee is of the view that since there is already a specialized Tribunal under the Act, the best remedy would be to expand the jurisdiction of the FCAT to permit any person who is aggrieved by an order of the Board be permitted to file an appeal before the FCAT. This will lead to a beneficial situation where a specialized Tribunal will address issues relating cinema, having to appear before such Tribunal and not have the ‘convenience’ as it were of rushing to the nearest High Court, this will also filter out busybody and unscrupulous elements to file petitions and litigation with the intention of rabble rousing or publicity. Such expansion of jurisdiction would be in consonance with legislation in other fields of quasi-regulation /licensing such as Securities Appellate Tribunal for the capital markets, the TDSAT as regards telecom, the AERA Appellate Tribunal as regards aviation and so on and so forth. Furthermore a genuinely aggrieved person would not be required to adopt the expensive process of High Court litigation. This in our view would constitute sufficient forum of an alternate remedy which has generally though not always held to be a bar to direct exercise of the Writ Jurisdiction of the High Court.

26.2. In view of the above recommendation, the Committee is of the view that:

- i. The jurisdiction of the FCAT be expanded to permit appeals by any person aggrieved by any order passed by the Board.
- ii. FCAT to be given the power to grant interim orders in addition to the present
- iii. The infrastructure of the FCAT be commensurately augmented in consultation with the Chairperson of the FCAT, including increasing the number of Members and or benches ;
- iv. A right of appeal to the Supreme Court be provided for from orders passed by the FCAT

**27. Treatment of piracy and other offences, Immunity etc.**

27.1. The Committee strongly feels that piracy, illegal and unauthorized duplication of certified film is to be treated in the strictest form possible and therefore recommends that such act be made sustentative non-bailable offences. Such actions are nothing sort of fraud and theft and ought to be treated by law as such. In the draft proposed bill the Committee has

suggested structuring of an entire chapter on Offences and Penalties recommending a fine which may extend from Rs.5 Lacs upto Rs.25 Lacs and an imprisonment which may extend upto 3 years.

27.2. Similarly the Committee recommends that once a film has been certified no person associated with the making of such film be liable for prosecution in a criminal court on charges such as obscenity, outraging the modesty of women through the film etc. Once the film and its content has met with the tests set out under cinematographic law, all persons associated with the making of such film ought to then be immune from prosecution based on such allegations.

## **28. Review of the provisions of The Cinematograph Act, 1952-**

28.1. While the Committee would recommend a holistic review of the present Cinematograph legislation there are certain aspects which merit particular attention. This Section is in addition to recommendations as regards other provisions contained in other Sections of this Chapter of recommendations.

28.2. The Cinematograph Act, 1952 was enacted in an era of fewer cinema halls, celluloid reels and limited forms of production. As already noticed by the Committee earlier, since then, the very medium of cinema has undergone radical transformation. There is now a whole gamut of producers and production houses, film making in a digital format, multiplex halls with multiple simultaneous screenings and a well-informed audience equipped with advance knowledge of the film through trailers, internet reviews, online posts and 'apps'. While in the past the successful screening of the film in the theatre was the sole endeavor; there is now an added and sometime parallel series of events associated with the film. Some such examples as what is popularly known as the 'audio release' of the film followed by the entire spectrum of promotional events which precede as a curtain raiser, for the grand show. There is therefore the need to revise present legislation to lend recognition to and take into account all such new phenomena now associated with the making and screening of films.

28.3. To achieve the above, the Committee firstly recommends an expansive change in certain definitions contained in the Act. Taking up from the audio release mentioned above, the Committee would recommend that the definition of 'film' and for it not to be just limited to the video, moving picture content of the film but also to the songs and more particularly the lyrics of the song. If we were required to identify a singular factor which has propelled this recommendation, it would have to be what has now come to be known as 'the item song'. Sections of society have expressed umbrage at the lyrics of song used which are replete with sexual innuendo and banal titillating references. While the visual content and dialogues of a film, which precede and succeed such song is subject to certification, it would only then be logical to include the lyrics of the song within such ambit of scrutiny. This especially when coupled with the fact that while the viewing of a film is restricted to a age specific audience in a theatre, a song is promoted and broadcast in public domain to persons of all ages and sections of society without reservation on radio, at public functions, restaurants etc. This may also be seen from another perspective. If a song be reviewed by the Board and certified, this would also protect and immunize film makers both, from social criticism as well as legal liability. Like a film, once a song has been cleared by the Board, the producer, director or lyricist as the case may be, would be deemed to have discharged his duty to society as well as to the law. For similar reasons the Committee recommends the

inclusion of advertising material and a definition thereof to be included in the definition of film. Trailers and promotional clips of films are already undergoing a certification process and such amendment would give legislative recognition to this practice. The Committee must note that some Members of this Committee strongly propounded the inclusion of print material, posters etc. within the ambit of 'film' and hence requiring certification. The Member felt that there were instances where titillating / objectionable material though removed from the film then found its way into the posters and promotional material of the film, since it is not checked. This must also be viewed from the position that such posters and promotional material are pasted on public walls, outside the theatres and in newspapers and magazines which are easily accessible to every age group and section of society. If the actual content of the film which is being screened at precise cinema location is subject to certification, then as a natural corollary posters and film material which are displayed everywhere and in public domain must also be subject to some form of check, regulation and certification. The Committee has been informed that at the Association of Producers screens and monitors such print material and would suggest that some form of statutory recognition /enforceability be accorded to such process.

28.4. In view of the above, the Committee therefore recommends the following definitions:

“film” means a cinematograph film and includes its songs, lyrics thereof and advertising material related thereto;

“advertising material” is any material in a cinematograph medium that is intended primarily to promote a film to the public and shall include trailers, exclusive content, clips and footage, pre-show advertising and audio –visual displays.

28.5. In an attempt to keep step with the changing technologies associated with cinema, the Committee also recommends the amendment of the definition of 'cinematograph', 'exhibit' and the introduction of the definition of 'public exhibition' to take it beyond the conventional cinematographic medium and the Committee recommends as under:

“cinematograph” means any medium, apparatus, product or device, analogue or digital or any other technology, used for representation of moving pictures or series of pictures:

Provided that the Central Government may, by notification in the Official Gazette, include or exclude any such medium, apparatus, product or device or technology;

“exhibit” or “exhibition” shall include the audio or visual dissemination of a film or part thereof or making available a film or part thereof, through use of a public medium, to persons not directly connected with the production, distribution, promotion or certification of that film;

“public medium” includes a medium forum or place to which members of the general public have access to with or without the payment of a fee or charge ;

28.6. The Committee notes that film makers have now in some cases adopted a practice of a pre-screening of the film to a select Section/class of audience in order to elicit their views,



reactions and opinion on films. It is therefore necessary to take such exhibition outside of the purview of exhibition and hence the Committee would recommend the following proviso:

“Provided that exhibition caused by the producer of the film, by invitation, to a select class of members of the public for the purpose of ascertaining their opinions on or reactions to the film shall not be exhibition in terms of this Act, where prior permission has been taken from the Chairperson.”

## 29. Other Issues-

- 29.1. Film certification is a sensitive matter and appreciating the issues that are critical in deciding evaluation and certification of diverse categories of films call for a certain minimum amount of understanding, sensitivity, experience, even expertise. Under the extant Recruitment Rules, the key position of RO and ARO are filled through direct recruitment, deputation, and/or promotion. While the other modes of recruitment have provisions that in one way or the other ensure the above basic requirement, the promotion route does not provide for any specific provisions that makes sure that candidates being considered for promotion to the post of RO and ARO do possess the required sensitivity and appreciation of the letter and spirit of the certification process. The Committee will, therefore, recommend that the Recruitments Rules are reviewed particularly for the promotion stream and necessary safeguards are incorporated in them to ensure the promotion of adequately eligible candidates to the post of ARO and RO. For instance, a written test or a personal interaction may appropriately be introduced as part of selection process for departmental promotion to these posts.
- 29.2. The post of a Chief Executive Officer (CEO) was originally not envisaged by Cinematograph Act and does not find mention in the Cinematograph Act, 1952. While the inclusion of such post does greatly benefit administrative efficiency, there is need to specifically demarcate and identify the role, job description and duties of such CEO vis-à-vis the Chairperson. At present there is lack of clarity on this issue and the roles are found be overlapping on account of lack of such clarity. Needless to say we would recommend, that such identification of roles be carried out with due regard to the overall primacy of the position of the Chairperson which must be maintained in all matters. This may also be seen from the point of view that the Chairperson is non-Government person and hence brings along a certain degree of independence and autonomy which the CEO may not have on account of the trappings of a Government appointment.
- 29.3. Another grievance received by the Committee was that cess and entertainment tax charged to the Film Industry is not applied for the benefit of cine workers but rather the funds are deployed for the upliftment of workers and labour not associated with the film Industry, in certain cases, for bidi workers. Members of the film Industry were strongly of the view that cess which is collected from the films ought to be applied for the benefit of cine workers and workmen associated with the Film Industry. The Committee accepts without reservation that suggestion and feels that it is only logical that such cess be applied towards the benefit of cine workers and would urge to the Government to consider this issue either by suitable legislation or corrective executive directions as may be applicable.
- 29.4. That members of the Advisory Panel [and therefore in turn the Board] while viewing films have recommended unclear cuts for example “reduce the scene by 50%”. This form of

recommendation is ambiguous and may either create confusion in the mind of the producer/Director or alternatively in certain cases even be misused. It would be far more helpful and proper if the panel members/Board issue recommendations of an unambiguous nature on the cuts required. Even if quantum deletion/amendments are to be suggested, these may be stated in terms of minutes and seconds rather than a percentage. Cuts in terms of frames and time codes in the digital age is practically possible and feasible, hence should be recommended by the Panel members.

- 29.5. On the issue of licensing of theatres, the committee is of the view that licensing should be shifted from the police authorities to the District Collector/District Administration. Cinema is not per se a matter of law and order and hence not a matter of policing. Therefore its licensing ought not to be handled in such manner. It would be more appropriate that licensing being a matter of administrative regulation be conducted by Administrative/Executive Authorities of the State who would be more suited to implement and execute such licensing procedures.
- 29.6. Posters are not being brought within the description of films or filmic material. It is expected that industry will frame transparent and appropriate guidelines to ensure proper vetting and approval of poster and their contents including the display of the type of certificate given to the film. There should be certain rule or guideline made ensuring that all the posters, whether pre-release or post-release of a film should be certified by the Industry mandatorily. The posters as promotional material must conform to the standards and principles applicable to other forms of promotional material. Suitable provision may also be made in the rules that enable intervention of CBFC in cases where the guidelines are flagrantly violated.
- 29.7. The Committee was informed in a meeting with the Board members that lack of communication between the different bodies functioning under the umbrella of the Cinematograph Act, sometimes lead to disputes, which could have been avoided if there was proper communication. It is thus recommended that the FCAT and Board members meet twice a year. Also it is recommended that the Board members meet the Panel members twice a year to sensitize them and bringing awareness about the contemporary cinema.
- 29.8. The Animal Welfare Board of India currently has only one office in Chennai. The number of films produced in India is enormous and hence one centre issuing the certificate is definitely not well equipped to handle the burden of issuing certificate to so many films. In light of this it is recommended that AWBI should have centres in at least 4 major cities- Delhi, Mumbai, Kolkata and Chennai. In any event there must be a centre in Mumbai in view of the large number of films being produced in Mumbai. There should also be an annual meeting between the AWBI, CBFC and the Film Industry representatives, where the grievances and suggestions of all the three can be discussed and solutions can be arrived at.
- 29.9. On the issue pertaining to requirement of smoking disclaimer, the Committee was advised that the matter is pending adjudication before the Hon'ble Supreme Court as to the legality and requirement of such disclaimer. The Committee has also been informed that the requirement of such smoking disclaimer is not a requirement of the Ministry of Information and Broadcasting but rather has been required by notifications, circulars and amendment to legislation caused on the behest of the Ministry of Health. All of these issues are alive and

sub-judice before the Hon'ble Supreme Court and hence this Committee deemed it appropriate not to comment on this issue for such purpose.

29.10. The various suggestions and proposed amendments made by this Committee would also require certain corresponding amendments in various Acts related to the Cinematograph Act, 1952 and other media.

29.11. The Committee feels that if a Lawyer of eminence is on the Board of CBFC, it will be very beneficial for the smooth functioning of the Board as in-house advice on any legal issue spurring every now and then can be sought from that Member. It is also recommended that the Board chooses a panel of good Lawyers, and send the list to the Ministry for them to approve for representing the CBFC in increasing number of cases to avoid individual sanctions for each case.

29.12. The Committee has been apprised of the Category of "Approved Films". It has been found out that the Approved film though have to be screened compulsorily are seldom being screened. Therefore the Government should find avenues for screening of such films. There should also be a separate channel for screening the Documentary movies being made all over the Country or some fixed time slot should be provided on existing channels for showing such documentary movies. The Government should also consider defining Water Shed hours for television for screening of particular categories/certifications.

28.09.2013

  
(JUSTICE MUKUL MUDGAL)

CHAIRPERSON