CHAPTER 5

WORKING OF CENSORSHIP BODIES

5.1 INTRODUCTION:

Censorship is an act, a mechanism and a system of restricting the public expression of ideas, opinions, impulses and conceptions which have or are believed to have the capacity to undermine the social or moral order which the authority considers itself bound to protect. Censoring has been an important tool of control over various forms of media by the government. It is specially imposed on films because films have an extra power to influence the emotions of public.

The film censorship came in India from Colonialism. Britishers brought silent films from England for their private entertainment but with the passage of time cinema could not remain confined within the four walls of their bungalows and took the fancy of Indians becoming the mass equivalent of the literature and theatre. Due to this a need was felt to regulate the exhibition of films. While introducing the first Cinematograph bill in 1917, Sir William Vincent, the Home member in the Governor General’s Executive Council, pointed out that there has to be safety of audience by prevention of objectionable films being exhibited.\textsuperscript{312}

Despite the objections of Indian members of legislative Council on grounds of liberty, the colonial state passed the Cinematograph Act in 1918 to guard the morals of the natives and to prevent them from sinking into depravity, religious bigotry or ethnic strife. Coming into effect from 1 August 1920, the Act inaugurated the film censorship in India. This Act dealt with two major issues, the licensing of cinema houses and the certification of films as suitable for public exhibitions.

\textsuperscript{312} Aruna Vasudev, \textit{Liberty and Licence in the Indian Cinema} (Vikas New Delhi 1978).
The Act stipulated that no film could be exhibited unless the proper authority had deemed it suitable for public viewing.

After India’s independence in 1947, the national government viewed the medium of cinema in a different light and felt it necessary to retain film censorship. It adopted not only the institution of colonial censorship but also its concerns and anxieties. The Indian government amended the Cinematograph Act 1918 and the new Act of 1949 created two categories of film certificate, ‘A’ certificate for films restricted to adults and ‘U’ certificate for unrestricted exhibition. Thus this certification defined both films and the potential audience. This Act was amended in 1949 for setting up a central censorship board to replace the regional censor boards. In 1951 the Ministry of Information and broadcasting formed the Central Board of Film Censor by restricting the system in 1918 Act which had to operate through regional censor boards.313

In 1949, the Government of India (GOI) also appointed a Film Enquiry Committee under the able chairmanship of S.K.Patil, who was a member of the Constituent Assembly. The committee was asked to enquire into the growth and organization of film industry in India, to suggest the lines on which the future developments in the media should be directed and to recommend ways and means to improve the contents of Indian films. The Film Enquiry Committee in its report, justified censorship on the ground that it was necessary for public protection314.

Subsequently a consolidated statute called the Cinematograph Act 1952 was enacted which gave the central government authority to constitute a censorship board.

The said Act is the present law dealing with certification of films in India. Laying down the guidelines, it governs the constitution and functioning of the Central Board of Film Certification (CBFC), which is responsible for regulating the public exhibition of films in India.\(^{315}\)

### 5.2 CINEMATOGRAPHIC FILM:

A cinematographic film is not defined under the Cinematograph Act 1952. However, Section 2(f) of the Copyright Act, 1957 defines it “as any work of visual recording on any medium produced through a process from which a moving image may be produced by any means.” It includes a sound recording accompanying such visual recording. Feature films as well as documentaries fall within its scope. In *M/S Super Cassettes Industries v. Board of Film Certification & Ors.*\(^{316}\), the said definition has been accepted to be applied for the purposes of Cinematograph Act and Rules.

### 5.3 CENTRAL BOARD OF FILM CERTIFICATION (CBFC):

Central Board of Film Certification (known as the Central Board of Film Censors till June 1, 1983), is a branch of India’s Ministry of Information and Broadcasting. It regulates the public exhibition of films under the provisions of the Cinematograph Act 1952. The chairperson and members of this board are appointed by the Central Government.

No film can be exhibited in India without being certified by the said board. Section 5B(1) of the Cinematograph Act 1952, requires the CBFC to examine works against the principles of sovereignty and integrity of India, the security of the States, friendly relations with foreign State, public order, decency, morality, 

\(^{315}\) The Cinematograph Act 1952, s 5D.  
\(^{316}\) WP (C) No. 2543 of 2007(Delhi High Court, 24th November 2010).
defamation, contempt of court or likelihood of inciting the commission of any
offence.

5.4 OBJECTIVES OF FILM CERTIFICATION:

In exercise of its power under sub-section (2) of section 5B of the Cinematograph
Act, 1952, the Central Government has laid down the principles which shall guide
the CBFC in sanctioning a film for public exhibition. The relevant part of those
guidelines is as follows:

“The objectives of film certification is to ensure that-

1. the medium of film remains responsible to values and standards of the
   society
2. artistic expression and creative freedom are not unduly curbed
3. the certification is responsive to social change
4. the medium of film provides clean and healthy entertainment and
5. the film is of aesthetic value and cinematically of a good standard.

The CBFC also needs to take care that the film is judged in its entirety from the
perspective of its overall impact and is examined in the light of the period
delineated in the film and the contemporary standards of the nation and the
general population to which the film relates, provided that the film does not
deprave the morality of the audience.”

317 Guidelines for certification of films for public exhibition. See “The principles for guidance in
certifying films”, Central Board of Film Certification, available online at
5.5 ORGANIZATIONAL SETUP OF CBFC:

The CBFC is a two level association with its headquarters at Mumbai and the nine Regional Offices. The said Regional Offices are assisted in the examination of films by Advisory Panels, the members of which are people from different walks of life nominated by the Central Government.

5.5.1 Board of CBFC

The statutory power to certify films for public exhibition in India is conferred on the Board of CBFC. The Board of the CBFC consists of a chairman and some other members numbering between 12 and 25 appointed by the Central Government. No specific qualifications have been prescribed in the Cinematograph Act for the chairman and other members appointed by the Government. Tenure of members is subject to the pleasure of the Central Government, whereas the chairman holds office for the period of three years and continues till his successor is appointed.

5.5.2 Regional Offices of CBFC

“The nine Regional Offices of CBFC are situated at Bangalore, Kolkata, Chennai, Cuttack, Guwahati, Hyderabad, Mumbai, New Delhi and Thiruvananthapuram, each of which is supervised by a regional officer.”

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318 The Cinematograph Act, 1952, s 3.
319 Rule 3 of the Cinematograph (Certification) Rules, 1983.
5.5.3 Jurisdiction of Regional Offices of CBFC

“Jurisdiction of various regional offices of CBFC is tabulated as under:

**TABLE**

<table>
<thead>
<tr>
<th>Sr.No.</th>
<th>Regional Office</th>
<th>Films imported into or produced in</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bangalore</td>
<td>State of Karnataka</td>
</tr>
<tr>
<td>2</td>
<td>Mumbai</td>
<td>States of Maharashtra, Goa, Gujrat, Madhya Pradesh and the Union Territories of Dadra Nagar Haveli and Daman &amp; Diu</td>
</tr>
<tr>
<td>3</td>
<td>Kolkata</td>
<td>West Bengal, Bihar, Jharkhand and the Union Territory of Andaman and Nicobar Islands</td>
</tr>
<tr>
<td>4</td>
<td>Cuttack</td>
<td>State of Orissa</td>
</tr>
<tr>
<td>5</td>
<td>Delhi</td>
<td>States of Jammu &amp; Kashmir, Himachal Pradesh, Punjab, Haryana, Rajasthan and Uttar Pradesh and the Union Territories of Chandigarh and Delhi</td>
</tr>
<tr>
<td>6</td>
<td>Hyderabad</td>
<td>State of Andhra Pradesh</td>
</tr>
<tr>
<td>7</td>
<td>Chennai</td>
<td>State of Tamil Nadu and Union Territory of Pondicherry</td>
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<tr>
<td>8</td>
<td>Thiruvanthapuram</td>
<td>State of Kerala and Union Territory of Lakshwadeep</td>
</tr>
<tr>
<td>9</td>
<td>Guwahati</td>
<td>States of Arunanchal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura</td>
</tr>
</tbody>
</table>

The location of the producer’s association /council/chamber etc., with whom the film title was registered before starting production of film concerned or the location of the Head Office /Regional Office/Production Office of the film producing company, shall be considered as the ‘place of production’ of films.”

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5.5.4 Advisory Panel

Advisory Panels are attached to the regional offices. The Members of these panels represent cross cultural interests of the society. The Cinematograph Act does not prescribe any educational qualification for becoming an advisory panel member. Members are appointed by the Central Government after consultation with the Board. They are generally selected for two years or hold office till such time as directed by the Central Government. Members are eligible for re-appointment. Due representation of women in an advisory panel has to be ensured by the government in order to make such panels gender sensitive. Members of the Examining Committee, Revising Committee and Re-revising Committee are drawn from the same pool of these advisory panels.

Members of the advisory panels are required to attend the meetings of Examining Committees, Revising Committee (if nominated) workshops/seminars along with visiting cinema houses to detect violations of the certification norms in the films.

5.6 FUNCTIONS OF THE CBFC:

Under the Cinematograph Act 1952, it is determined by the CBFC through its certification process that whether a film is fit for exhibition in India or not. The CBFC may sanction the film under any one of the categories, or may not sanction the film at all.

i) U- for unrestricted public exhibition or Universal viewership

ii) A- for public exhibition restricted to adults (persons who have attained majority, completing their 18th year of age)

iii) UA- for unrestricted public exhibition with an endorsement of caution to the parents or guardians of children below the age of 12 years

iv) S -for public exhibition restricted to members of any profession or any class of persons

322 The Cinematograph Act, 1952, s 5.
Under the provisions of the Act, the Board is competent to order deletions in the films before certifying them.

In order to determine the principles to be observed in certifying films, the Board may from time to time take required steps to assess public reactions to films like:

- holding symposia or seminars of film critics, film writers, community leaders and persons engaged in the film industry.
- undertaking local or national surveys in order to study the impression of different genres of films on the public mind.

5.7 PROCESS OF CERTIFICATION:

The Cinematograph (Certification) Rules, 1983 prescribe elaborate procedure for preview of films for the purpose of certification of films in India. The CBFC has two panels, the Examining Committee (EC) and the Revising Committee (RC), both of which play a crucial role in the certification of films.

5.7.1 Examining Committee

On receipt of an application for examination of films, the Regional Officer refers the film to an Examining Committee (EC) to examine the same. The films are previewed and certified on the basis of the recommendations of the Examining Committee.

5.7.1.1 Composition

The Examining Committee (EC) consist of-

(a) In the case of a short film, a member of the advisory panel and an examining officer either of whom shall be a woman

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323 Rule 11of the Cinematograph (Certification) Rules, 1983.
324 Rule 22of the Cinematograph (Certification) Rules, 1983.
and

(b) In the case of a long film, four members of the advisory panel and an examining officer, out of which at least two members shall be women.”\footnote{325}{Ibid.}

“The said examination shall be made at the cost of the applicant on such date, at such place and at such time as the Regional Officer may determine. The film to be examined by the Examining Committee shall be in its final form with the background music and all sound effects duly recorded on the film itself.”\footnote{326}{Ibid.}

5.7.1.2 Maintenance of Confidentiality

“All previews of films for the purposes of examination for certification and the reports and records relating to thereto shall be treated as confidential. In order to maintain confidentiality, it is provided under the rules that the names of the members of the Examining Committee examining the film shall not be disclosed to any official or non-official not concerned with the preview of the particular film or to any other person including the applicant or his representative. The applicant or his representative is not allowed to be present inside the preview theatre. For assistance, if some members of the staff are required, the Chairman may by special or general order permit any member of the staff to be present at the preview for rendering such assistance.”\footnote{327}{Ibid.}

5.7.1.3 Principles of guidance in certification of films

The Rule 22(8) of the Cinematograph (Certification) Rules, 1983 provides that the main function of the Examining committee is to examine whether the film or any
part of it is not against the interests of the sovereignty and integrity of India, the security of the States, friendly relations with foreign State, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence.\(^{328}\)

Along with this, the Examining Committee examines the film in light of following guidelines:

"1-Anti –social activities such as violence are not glorified or justified
2-The modus operandi of criminals is not depicted
3-Scenes showing involvement of children in violence as victims, perpetrators or as forced witness, abuse or ridicule of physically and mentally handicapped persons, cruelty to or abuse of animals are not presented needlessly
4-Pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of desensitizing or dehumanizing people are not shown.
5-Scenes which have the effect of justifying or glorifying drinking are not shown
6-Scenes tending to encourage, justify or glamorize drug addiction or consumption of tobacco or smoking are not shown.
7-Human sensibilities are not offended by vulgarity, obscenity or depravity.
8-Such dual meaning words obviously cater to basic instincts are not allowed
9-Scenes degrading or denigrating women in any manner are not presented.
10-Scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown.
11-Scenes showing sexual perversions shall be avoided and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown.

\(^{328}\) The Cinematograph Act 1952, s 5 B (1).
12-Visuals or words contemptuous of racial, religious or other groups are not presented.
13-Visuals or words which promote communal, obscurantists, anti-scientific and anti-national attitudes are not presented.
14-The sovereignty and integrity of India is not called in question.
15-The security of the state is not jeopardized or endangered.
16-Friendly relations with foreign states are not strained
17-Public order is not endangered.
18-Visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented.
19-National symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (prevention of Improper use act), 1950.\textsuperscript{329}

\textbf{5.7.1.4 Opinion of the Examining Committee}

After the examination of the film the Examining Committee either sanctions the film for restricted public exhibition or unrestricted public exhibition or directs to carry out necessary modifications or refuse to sanction the film for public exhibition.\textsuperscript{330}

Generally films are sent for certification a week or two prior to release. As huge amount of money is at stake, practically the approach of film makers is that they agree to the cuts recommended by the examining committee, in order to screen their film on the release date.

\textbf{5.7.2 Revising Committee}

In case, the applicant is not satisfied by the opinions recommended by the Examining Committee due to any reason, there is a provision for revision by the Board itself.

\textsuperscript{329} The Cinematograph Act 1952, s 5 B (2).
\textsuperscript{330} Rule 22 of the Cinematograph (Certification) Rules, 1983.
On the receipt of recommendations of the Examining Committee, the Chairman may, either suo moto or on the request of the applicant refer the film to a Revising Committee (RC). 331

5.7.2.1 Composition

Rule 24 of the Cinematograph (Certification) Rules, 1983 provides for Revising Committee. The said committee gets to work once the examining committee refuses certification for a film. It is composed of the Chairperson or in his or her absence a Board Member and not more than nine members of the Board/Advisory Panel, provided that none of them was on the original Examining Committee 332. The quorum of the Revising Committee shall be five members of whom at least two persons shall be women 333.

5.7.2.2 Examining by the Revising Committee

The Revising Committee shall examine the film de novo. The procedure prescribed for the examining for the Examining Committee shall mutatis mutandis, apply to the Revising Committee. 334

5.7.2.3 Opinion of the Revising Committee

After the examination of the film, like the Examining Committee, the Revising Committee too either sanctions the film for restricted public exhibition or unrestricted public exhibition or directs to carry out necessary modifications or refuse to sanction the film for public exhibition. 335 The decision of a Revising Committee is that of the majority of the members attending the examination of the film. 336

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331 Rule 24(1) of the Cinematograph (Certification) Rules, 1983.
332 sub-rule (2) read with sub-rule (5) of Rule 24 of the Cinematograph (Certification) Rules, 1983.
333 Rule 24(11) of the Cinematograph (Certification) Rules, 1983.
334 Rule 24(6) of the Cinematograph (Certification) Rules, 1983.
335 Ibid.
In the event of an equality of votes, the presiding officer has a second or casting vote\textsuperscript{337}. Where the Chairman disagrees with the decision of the majority of the committee, the board shall itself examine the film or cause the film to be examined again by another Revising Committee\textsuperscript{338}. The decision of the Board or the second Revising Committee, as the case may be shall be final.\textsuperscript{339} Most revising committee screenings usually lead to a satisfactory conclusion. But if there is still contention, the filmmaker is free to take his or her work to the Film Certification Appellate Tribunal (FCAT).\textsuperscript{340}

\textbf{5.7.3 Film Certification Appellate Tribunal (FCAT)}

Earlier appeal from a decision of the board lied to the Central government. This failed to generate confidence among film makers who were of view that such an appeal should lie to a court or tribunal. FCAT was established by the Cinematograph (Amendment) Act of 1981 on the basis of recommendation by the Supreme Court in the case of \textit{K.A Abbas v. UOI}\textsuperscript{341}.

\textbf{5.7.3.1 Constitution of FCAT}

FCAT was constituted under section 5 D of the 1952 Act for hearing appeals against any order of the CBFC. This Tribunal is based in New Delhi. It is headed by a retired High Court judge or a person who is qualified to be judge of a High Court as Chairperson and not more than 4 other members appointed by the Central Government for a period of three years. Its other members have included bureaucrats, lawyers and politicians. The FACT is thus a quasi-judicial body.\textsuperscript{342}

\textsuperscript{337} \textit{Ibid.}
\textsuperscript{338} \textit{Ibid}
\textsuperscript{339} \textit{Ibid.}
\textsuperscript{341} (1971) 2 SCR. 446.
\textsuperscript{342} \textit{Union of India v. K.M Shankarappa}, (2001) 1 SCC 582.
The Chairman and other members of the Tribunal hold office during the pleasure of the Central Government. The affairs of FCAT are managed by a Secretary, who is a full time employee and holds the post on deputation basis.

5.7.3.2 When to approach FCAT

Any person aggrieved by an order of the Board based on the decision of Revising Committee may prefer an appeal to the Tribunal within thirty days from the date of such order.343

5.7.3.3 Categories of orders which can be appealed against

“The following orders of CBFC can be challenged in the Tribunal:

- Refusal to grant a Certificate
- Granting ‘A’ Certificate only
- Granting ‘S’ Certificate only
- Granting ‘UA’ Certificate only
- Directing the applicant to carry out any excisions or modifications.”344

So the present position is that appeals from an Examining Committee’s decision are decided by a Revising Committee. The Film Certification Appellate Tribunal (FCAT) hears appeals from the Revising Committee’s decisions. If any film maker is aggrieved with the FCAT’s decisions, he or she may file a writ in court.

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343 The Cinematograph Act, 1952, s 5C.
5.8 PENALTIES FOR VIOLATIONS:

Offences with regard to violations of certification provisions are cognizable. Furthermore, they are non-bailable. The Cinematography Act 1952 provides that “if there is any violation of certification provisions or if there are interpolations or tempering of certified films or if non-certified films are exhibited, or where films meant for adult audience are shown to non-adults or where an ‘S’ certificate film is shown to persons other than those for whom it is meant, than penalties specified therein can be imposed. Penalty can also be imposed for failure to comply with section 6A which requires that any person delivering a film to an exhibitor or distributor will also give the details of all cuts, certification, title, length and conditions of certification.”345

“A person guilty of violation is punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to one lakh rupees or with both, and with a further fine up to Rs. 20,000 for each day for continuing offence. Showing of video films which violate the rules in the manner prescribed in this section attracts imprisonment of not less than 3 months by which may extend to three years and fine of not less than Rs. 20,000 but which may extend to Rs. 1 lakh and a further up to 20,000 for each day for continuing offence.”346

Furthermore, the trial court can direct the offending film be fortified to the government. The Act provides that “any police officer can enter a hall where an offending film is being screened, search the premises and seize the prints.”347

345 The Cinematography Act 1952, s 7.
346 Ibid.
347 The Cinematography Act 1952, s 7A.
5.9 ROLE OF VIEWERS IN CHECKING VIOLATION OF CERTIFICATION:

Although the role of police is important in checking violation, but being overburdened with other tasks, the police cannot play its role fully without able cooperation of the general public. Viewers with societal commitment are useful in this regard. Under the rule 30(3) of the Cinematography (Certification) Rules, 1983 “every cinema has to display prominently the certificate issued to the film being shown as also the cuts or changes directed by CBFC.”

Here it is expected from viewers seeing a film that if they come across any scene which they feel should not bring the matter in the notice of police, which can register a First Information Report under Section 7 of the Cinematograph Act 1952.

5.10 ROLE OF GOVERNMENT IN CHECKING VIOLATION OF CERTIFICATION:

Although there is an official machinery to check any violation of certification, but on its own the Central government from time to time has been alerting the State Government and Union territory administration in this regard.

In case the film in respect of which the certificate was granted, is exhibited in a from other than the one in which it was certified or if there is exhibition of any film or any part thereof in contravention of the certification provisions under the Cinematography Act 1952 or rules made thereunder, the central government has the power under Sec 5E of the Cinematograph Act 1952 to suspend or revoke certificate of such film by notification in the Official Gazette.
5.11 EMERGING CHALLENGES:

During the nineties, new media became a problem for the state and the film industry. With the advent of liberalization, the government and the film industry faced a powerful challenge in the form of satellite television. Since satellite television was not subject to state censorship, it provided viewers easy access to films and programs prohibited by state. State censorship appeared to be totally pointless. The film industry compounded the state troubles by pressing for more liberal censorship guidelines with respect to sex and violence so that they could compete with satellite television.

The nineties saw vigorous debate about how to compete with new forms of entertainment and protect culture and traditions of India from the onslaught of Western culture and values represented in the new media.

All this compelled the government to revise and reissue its censorship guidelines. There was a lot of public outcry over explicit sexuality on Indian screen which started in the early nineties. Certification of these movies was encountered by protests by various cultural groups, leading to debates over censorship. The situation was, that the labels ‘banned’ and ‘censored’ became advertising gimmicks to entice global and local audience. The censorship fueled desire, resulting in an increase in revenue for filmmakers and film industries.

The sexuality continued to play a central role in debates on censorship during the twenty-first century’s first decade.

Heading towards globalization, film industry was feeling suffocated with half-century old legislation. To overcome this situation, Late Vijay Anand, a well-known filmmaker and the then chair of the CBFC, proposed a review of the 1952 Cinematograph Act in the year 2002. Seeking a possible liberalization of the film censorship, Vijay Anand made a number of suggestions that included granting the

CBFC fiscal autonomy and selecting members of its advisory panels on professional rather than political considerations. His most provocative plan was introduction of an ‘XA’ certificate that would legalize screening of ‘soft core’ pornographic films in select cinemas and advocated following the rating systems used in the US and Britain because he believed that unlike prohibition, certification would reduce desire in this regard.

Whereas Vijay Anand recommended more liberal reforms in his proposed comprehensive review, on the contrary, T. Subbarami Reddy submitted an amendment to the Rajya Sabha in 2002 that called for strengthening the restrictions against excess sex, vulgarity and violence which he said were ‘corroding the morals and values of the people and thereby creating negative impact on the minds of the people, especially the youth.’ This amendment sought to change not only the guidelines but also the structure of the boards. It noted that women had limited representation on the board and that their representation needed to be increased so that they could police films which depicted women in a derogatory manner.

All this led to a demand for restructuring of the CBFC. In order to keep pace with the changed times, biggest challenge before the government was to update itself with the global norms.

It was in this regard that the Ministry of Information and broadcasting prepared a Draft Cinematograph Bill of 2010 in order to replace decades old Cinematograph Act 1952.

**Draft Cinematograph Bill of 2010**

Some noteworthy changes proposed by the said draft bill were:

First the draft bill provided a more detailed explanation of the term ‘Cinematograph’. The bill defined ‘Cinematograph’ as any apparatus, product or
device, analogue or digital or any other technology, used for representation of moving pictures or series of pictures.

Its new definition for ‘exhibition’ was fairly broad. It was defined as display of a cinematograph film or making available a cinematograph film to persons not directly connected with the production, distribution, promotion or certification of the film.

Some changes were directed at the structure of the CBFC. The draft proposed that women should constitute ‘at least one-third ‘of its members and the advisory panels. Another related change proposed was introduction of professional credentials for the appointment of the Chairperson, members of the board and advisory panels.

Further, the draft bill suggested two new certification categories, twelve and older and fifteen and older to replace the UA certificate following the British Board of Film Certification (BBFC).

**The Mudgal Committee Report (2013)**

The Mudgal committee was set up earlier in 2013 after the government felt the need to update The Cinematograph Act, 1952 in the wake of the controversy over Tamil Nadu’s ban on Vishwaroopam.349

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The eight-member panel led by Justice Mudgal, retired chief justice of Punjab and Haryana High Court, was constituted with the mandate of suggesting statutory changes to enable the government to deal with "contemporary requirements of certification. The committee revised the Draft Cinematograph Bill of 2010.

The committee made recommendations on issues such as “advisory panels; guidelines for certification and issues such as portrayal of women, obscenity, and communal disharmony; classification of films; treatment of piracy; and jurisdiction of the appellate tribunal.”

The major findings and recommendations of the Committee can be summarized as under:

- It was found by the Committee 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.” The Committee therefore, first, recommended a change in name of such panel from “advisory panel” to “screening panel”. It then 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

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350 Ibid.
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”.

- It was recommended by the Committee 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)”. The Committee was of the view that “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” and that “presently there is no educational criteria, language qualifications or interview process attached to such appointment”.

- The Committee was of the opinion that “the provisions in the [Cinematography] 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”. It underlined the necessity of introducing “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”.

- The Committee highlighted the concerns that “the present categories of classifications are insufficient given the myriad of subjects, complex themes and content of the movies being produced today”. Therefore, the Committee suggested a shift towards internationally prevalent practice of “age related classifications and certifications” and thereby proposed “a revised form of classification which comprise of the following categories of public exhibition being that: unrestricted exhibition as U; to persons who have completed twelve years of age as 12+; to persons who have completed fifteen years of age as 15+; restricted to adults as A; restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film as S.” The Committee also recommended “strong pictoral representation and color coding of the certificates which would easily and clearly communicate the nature of such certification”.

- The Committee, while empathizing “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 confronted by last minute travails, concluded 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”.

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352 Entry 60 of List - I (Seventh Schedule” provides that the legislation relating to sanctioning of film for exhibition is purely in the domain of the Central Government. It can be 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.
It was strongly recommended that a statutory provision be included in Cinematography Act “to firstly provide that ordinarily the exhibition of a film which has been certified shall not be suspended”. Further, if “certain circumstances” arise “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”, provided that “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”.

- The Committee stated that “under the present scheme of legislation only an applicant for certification may prefer an appeal to the Film Certification Appellate Tribunal (FCAT)”, which “leads to a flood of litigation in various High Courts leading to different points of view by different High Courts in the matter”, in turn, leading “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 therefore opined 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”.

- With the aim to propose “a holistic review” of the present Cinematograph Act 1952, the Committee recommended changes in few definitions. For instance, under the proposed change, “film” means “a cinematograph film and includes its songs, lyrics thereof and advertising material related thereto”. This has been done, in particular, to address the issue of “item songs”.

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Shyam Benegal Committee Report on CBFC (2016)

Latest development as to overhaul the current censorship process in the country is the Shyam Benegal Committee Report on CBFC.

On 1st January 2016, “a Committee was set up under the Chairmanship of Shri Shyam Benegal to lay down norms for film certification that take note of best practices in various parts of the world and give sufficient and adequate space for artistic and creative expression, lay down procedures and guidelines for the benefit of the CBFC Board to follow and examine staffing patterns with a view to recommending a framework that would provide efficient and transparent user friendly services.”\(^{(353)}\)

The objective of these guidelines would be to ensure that:

- “Children and adults are protected from potentially harmful or unsuitable content
- Audiences, particularly parents are empowered to make informed viewing decisions
- Artistic expression and creative freedom are not unduly curbed in the process of classification of films
- The process of certification by CBFC is responsive, at all times, to social change
- The certification by CBFC keeps within the rights and obligations as laid down in the Indian Constitution”\(^{(354)}\)

\(^{(353)}\)“Shyam Benegal Committee submits its report on Cinematograph Act/ Rules to Shri Jaitley” (26 April 2016), Press Information Bureau (Government of India), available online at http://pib.nic.in/newsite/PrintRelease.aspx?relid=142288 (last accessed on 8 March 2017).

\(^{(354)}\)Ibid.
In brief, terms of reference of the Committee were:

- “to study the procedures of certification being followed by CBFC,
- to recommend guiding principles with respect to certification of films, within the ambit of the Cinematograph Act, 1952 and
- suggest a suitable staffing structure for a more efficient service.”

The Committee asked for amendment of several sections of the “archaic” Cinematograph Act of 1952. It recommended “amending section 5 of the act and stated the pool for both the examining committee and the revising committees should not be common” and “also stated that the revising committee should be drawn from a Central Advisory Panel, which has ‘different criteria for selection’ as against the Regional Advisory Panels”. It also recommended “amendment of sections 5A, 5C, 5E and 6 of the act which talks about film certification categories, appeals, suspension and revocation of films and the powers of the central government to revise a film respectively”.

Major Recommendations of the committee can be grouped as under:

“Restrictions on CBFC:

The Committee was of view that the rights owner of a film shall have complete rights over it. Any alteration or change in the film can only be made by the rights owner or with his consent. It recommended that the current power of excisions,

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357 Ibid.
Modifications and amendments to a film by the CBFC should be done away with in order to ensure that the Board functions as a film certification body only.

Modification to the objectives of 1991 guidelines:

Guidelines were issued in 1991 under section 5B of the Cinematograph Act, 1952. The Committee noted that some of the objectives under these guidelines, such as requiring the film to be sensitive to the values and standards of the society, providing clean and healthy entertainment, are not within the ambit of the CBFC.

New ratings for film certification:

The Committee also suggested that two categories of certification, that is UA (films that contain certain scenes not suitable for children below the age of 12) and A (films suitable for adults only), should be further sub-divided into sub-categories. The UA category should be divided into two sub-categories: UA 12+ and UA 15+. While UA 12+ will cater to young teenagers yet to be exposed to the adult world, UA 15+ will cater to young adolescents at an age where they are being exposed to issues in the adult world, in a moderate manner. The A category should include an A-C (films suitable for adults only, with caution) sub-category, for films that may contain explicit material, such as nudity, violence, etc. This categorisation will help audiences to make distinct choices.

Guidelines for certification:

The Committee has proposed guidelines for certification under 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, target audience etc.

The issue related guidelines list issues and concerns in a society that apply to all categories of certification like discrimination, language, nudity, sex, violence etc.

Category specific guidelines lay down the approach that CBFC should take with respect to various categories of film certification.

Functions of the CBFC Board:

The Committee recommended that the CBFC should confine itself to: (i) submission of an annual report to the central government, containing an analytical study of the trends in the film industry, to be laid in both houses of Parliament every year by the Central Government, (ii) prescribing the manner in which the records and accounts of the Board will be kept, (iii) periodically review guidelines laid down for certification of films in order to keep pace with time,(iv) holding seminars of film critics, film writers, community leaders and persons engaged in film industry in order to study the impact of various kinds of films on the public mind, etc.

Staffing pattern of CBFC:

In order to curb corruption and nepotism practiced by officials in the CBFC, the committee recommended to reduce the human interface between applicants and officials of the CBFC to the minimum practically possible levels, suggesting that process of application and selection of members for the Examining Committee and Revising Committee should be done through a computerised software.  

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Introduction of Tatkaal Scheme:

The committee recommended introduction of a Tatkaal scheme in order to permit out of turn certification which is sometimes necessary on account of business exigencies.

5.12 CONCLUSION:

So we see that Central Board of Film Certification (CBFC) is the statutory body responsible for regulating the public exhibition of films in India under the Cinematograph Act 1952. Although it is certification body but as it works like censorship body, it is still popularly known as “Censor Board”.

In the recent decades, Cinema has opened up to new themes, bold enough to spark off debates among social and political arenas. With the development of technology, audience has also changed. To cater their demands, film makers have opened up to almost every issue emerging in the society. But their imagination is tamed in the name of adherence to guidelines and rules enshrined under the Cinematograph act 1952.

The whole certification process is under the control of the Government, leaving very little space for the film industry. Film fraternity has time and again raised voice against the current working set up. They compare the working of CBFC with the standards set by BBFC and Motion Picture Association of America (MPAA).

From the Late Vijay Anand’s proposal for review of the Cinematograph Act to the recent Shyam Benegal Committee Report, there has been demand to tune the working of CBFC with the changed global circumstances doing away with
present corruption and nepotism bringing in openness and transparency in the system. It is in best the interest of the society that censorship guidelines are periodically reviewed in the wake of newly developed technologies. It is high time that CBFC is revamped. Giving up the role of moral policing is the most immediate change that is required as of now.