

IN THE SUPREME COURT OF INDIA

ORDINARY CIVIL JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2017

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

(WITH A PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF:

Mr. AMOL PALEKAR ... PETITIONER

VERSUS

UNION OF INDIA AND ANR ... RESPONDENTS

. WITH

I. A. NO. OF 2017

An application for stay with Affidavit in support thereof

PAPER BOOK

VOLUME – I (A to 169)

(SYNOPSIS, LIST OF DATES, WRIT PETITION,  
ANNEXURE P-1 AND P-2)

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: GAUTAM NARAYAN

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### VOLUME – II (170-411)

## PROFORMA FOR FIRST LISTING

## SECTION X

The case pertains to (Please tick / check the correct box):

- Central Act: The Cinematograph Act, 1952
- Section: 2, 3(1), 4(1)(iii), 5(1) & (2) and 5-A(1) & 5-B
- Central Rule: (Title) \_\_\_\_\_ N.A. \_\_\_\_\_
- Rule No(s): \_\_\_\_\_ N.A. \_\_\_\_\_
- State Act: (Title): N.A.
- Section \_\_\_\_\_ N.A. \_\_\_\_\_
- State Rule: (Title) \_\_\_\_\_ N.A. \_\_\_\_\_
- Rule No (s)
- Impugned Interim Order: (Date) \_\_\_\_\_
- Impugned Final Order/Decree: \_\_\_\_\_ N. A. \_\_\_\_\_
- High Court: (Name) N. A.
- Names of Judges: \_\_\_\_\_ N. A. \_\_\_\_\_
- Tribunal/Authority: (Name) \_\_\_\_\_ N. A. \_\_\_\_\_

1. Nature of Matter:  Civil  Criminal

2. (a) Petitioner: Mr. Amol Palekar

(b) e-mail ID: \_\_\_\_\_ N.A. \_\_\_\_\_

(c) Mobile phone number \_\_\_\_\_ N.A. \_\_\_\_\_

3. (a) Respondent No. 1: Union of India

(b) e-mail ID : \_\_\_\_\_ N.A. \_\_\_\_\_

(c) Mobile phone number \_\_\_\_\_ N.A. \_\_\_\_\_

4. (a) Main/category classification : \_\_\_\_\_

(b) Sub Classification: \_\_\_\_\_

- 5. Not to be listed before  N.A
- 6. Similar / Pending Matter:  N.A
- 7. Criminal Matters: N.A
  - (a) Whether accused/convict has surrendered  Yes  No
  - (b) FIR No. N.A Date: N.A
  - (c) Police Station: N.A
  - (d) Sentence Awarded:  N.A
  - (e) Sentence Undergone:  N.A
- 8. Land Acquisition Matters:
  - (a) Date of Section 4 Notification  N.A
  - (b) Date of Section 6 Notification  N.A
  - (c) Date of Section 17 Notification  N.A
- 9. Tax Matters: State the tax effect:  N.A
- 10. Special Category (first Petitioner/appellant only) :
  - Senior Citizen >65 years  SC/ST  Woman/Child
  - Disabled  Legal Aid Case  In custody
- 11. Vehicle Number (in case of Motor Accident Claim matters):
- 12. Decided cases with citation  N.A

Date: 06.03 .2017

**Gautam Narayan**  
**Advocate for the Petitioner**  
**Code No. 1726**  
**E-mail: g.narayan01@gmail.com**  
**Ph: 9811 411 735**

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**SYNOPSIS**

The present Writ Petition is being filed by the Petitioner under Article 32 of the Constitution of India challenging the vires of The Cinematograph Act, 1952 and The Cinematograph Rules, 1983.

The Petitioner has faced several hurdles in obtaining certification for his films such as *Aakriet*, *Daayara* and *Thaang/Quest*.

It is submitted that in the present Petition the Petitioner raises substantial questions of law of public importance which would require this Hon'ble Court to interpret the provisions of the 1952, Act and the 1983 Rules hereinunder.

However, in *K.A. Abbas v Union of India & Anr 1970 SCC 780* the constitutional validity of the provisions of Part II of the Act, together with the Cinematograph (Censorship) Rules, 1958 was challenged only on the ground that they violated the provisions of Article 19(1)(a) of the Constitution.

It is further submitted that the Petitioner is challenging the constitutionality of Part II of the Act and certain provisions of the Rules on the ground that they violate the provisions of Article 14 of the COI. It is submitted that this Hon'ble Court did not consider the constitutional validity of the said Part in light of Article 14 while deciding the questions which arose before it in *(1970) 2 SCC 780*.

The Petitioner through the present Petition is challenging the certification of films by the Board constituted under the Act, as the same lacks provisions for essential qualification of the Members constituting the Board.

It is submitted afore said Act does not specify any qualifications for the members of the Board and or the Examining Committee, or a Revising Committee or even the Film Certification Appellate Tribunal (FACT), hence the subjective, erratic interpretation of overbroad, imprecise Guidelines in the hands of unqualified members is almost guaranteed which in itself is very unfair and unreasonable restriction on the filmmaker's freedom of speech. The absence of the prescribed qualification for the members to be appointed on board makes the decision making.

In the light of major developments in the society, which did not manifest themselves and were consequently not taken into account, when the judgment in *Abbas* (Supra) was delivered. Since *Abbas*, there have been introduction of new ideas, new technologies and developments in different fields of life.

This Hon'ble Court also did not have occasion to address the issue of right of a viewer to access a documentary in the form as its creator had intended. The Act when enacted in 1952 and when interpreted in *Abbas* in 1970 could not have conceived of the present day scenario wherein modern technology makes

**D**

dissemination of information available in real time through a variety of media, many of which are either not regulated or if regulated, not subjected to pre-censorship. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. The aforesaid right can only be curtailed in accordance with Article 19(2) viz. by a law imposing reasonable restrictions in 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 in relation to contempt of court, defamation or incitement of offence. Therefore, it is now necessary to take into consideration whether the provisions relating to pre-censorship are constitutional in the contemporary times. Therefore the present Writ Petition.

#### **LIST OF DATES**

21<sup>st</sup> March, 1952

The Cinematograph Act, 1952 was brought into force to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs.

The Petitioner is challenging the provisions of the Cinematograph Act, 1952 and the Cinematograph

**E**

(Certification) Rules, 1983 which in turn imposes pre-censorship on the freedom of speech and expression of the artistes as well as the audience. The Petitioner is particularly aggrieved by the provisions of Sections 2, 3(1), 4(1)(iii), 5(1) & (2) and 5-A(1) and 5-B of the aforementioned Act.

The Petitioner is aggrieved by the aforementioned provisions granting the power of ordering cuts, deletions, alterations in a film along with the abuse of power while exercising the powers given by the said Act and Rules while certifying and/or denying certification to any applicant film.

11<sup>th</sup> October, 1958

The Cinematograph (Censorship) Rules, 1958 was notified.

24<sup>th</sup> September, 1970

K.A. Abbas v. Union of India And Anr (1970)2 SCC 780 ("Abbas") wherein this Hon'ble Court upheld

**F**

the constitutional validity of the provisions impugned in the present Petition. The said judgment did not notice an earlier six Judge Bench Ruling in *Brij Bhushan & Anr. v State of Delhi* (1950 SCR 605) where it was held that any kind of prior scrutiny of expression is unconstitutional under the Constitution of India.

1978

The Press Council Act 1978, was enacted for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India.

14<sup>th</sup> November, 1979

The Press Council of India vide powers conferred upon it under the Press Council of India Act, 1978 made regulations referred to as The Press Council(Procedure for Inquiry) (Amendment) Regulations, 2006.

9<sup>th</sup> May, 1983

The Respondent No.1 has made

## G

The Cinematograph (Certification) Rules, 1983 which replaced the 1958 Rules.

6<sup>th</sup> December 1991

Guidelines issued by the Respondent No. 1 vide S.O.836(E) published in the Gazette of India, Extra., Pt.II, Sec. 3(ii).

29<sup>th</sup> September, 1994

The Respondent No.1 made Rules under powers conferred by subsection (1) of section 22 of the Cable Television Cable Television Networks Rules, 1994

25<sup>th</sup> March, 1995

The Cable Television Networks (Regulation) Act, 1995 was enacted by the Parliament to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto.

2003

The Petitioner, as well as the audience at large, have been deprived of the opportunity of viewing hundreds of cinematograph

H

films in their original form. Some such films are *Kissa Kursi Ka* (1977), *Hawayein* (2003), the documentary *No Fire Zone: The Killing Fields of Sri Lanka* amongst many others. The aforesaid films and numerous others have not been allowed to be released for public consumption. Numerous films could not be seen in its original form as an artistic expression of the director on account of the alterations which are routinely demanded by the Board which amounts to an abuse of power by the Board.

29<sup>th</sup> May, 2008

A programme Code was prescribed under the Cable Television Network Rules, 1994.

23<sup>rd</sup> February, 2015

The 138<sup>th</sup> and 139<sup>th</sup> board meeting of the central board of film certification was held at hotel sun-sand, Mumbai.

26<sup>th</sup> April, 2016

The Committee Chaired by Shri Shyam Benegal submitted a report recommending broad guidelines/ procedure for certification of films by the Central Board of Film Certification.

2017

It is submitted that since the decision rendered by this Hon'ble Court in K.A. Abbas v. Union of India And Anr (1970)2 SCC 780 the power of certification as a means of pre-censorship has been subjected to large scale abuse owing to ambiguity and lack of clear guidelines of how the power is to be exercised.

The television industry has grown and with the greater access to internet, it cannot be said that cinematographic films are the most influential. Any discrimination between the regulation of TV, Internet and cinematographic films

**J**

must have a sound basis and there wasn't any constitutional challenge in *Abbas* on basis of an infringement of Article 14. Taking into consideration the development in the jurisprudence relating to pre-censorship and given the nationwide implication of the important issue of law affecting the rights of film-makers/producers as well as consumers/viewers of feature films and documentaries, it is submitted that this Hon'ble Court is the appropriate authority which alone can adjudicate the issues raised in the present Petition and redress the grievances of the Petitioner.

6<sup>th</sup> February, 2017

The High Court of Judicature at Bombay at Bench Aurangabad in a recent case for the certification of film titled Jolly LLb the High Court went on to direct certain cuts which were not considered necessary by

**K**

the Board.

06.03.2017

Hence the present Writ Petition.

**IN THE SUPREME COURT OF INDIA  
ORDINARY CIVIL JURISDICTION**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2017**

**(Under Article 32 of the Constitution of India)**

**IN THE MATTER OF:**

Mr. Amol Palekar

...Petitioner

Adult; 72 yrs

Occupation: FILM MAKER

Currently residing at: PRABHAT ROAD,

PUNE 411004

Versus

1. Union of India

... Respondent No. 1

Through Secretary,

Ministry of Information and Broadcasting

Having its office at Shastri Bhawan,

New Delhi – 110001.

2. The Central Board of Film Certification

... Respondent No. 2

A Board established under the provisions of  
the Cinematograph Act, 1952.

Through Chairperson,

Having its office at Bharat Bhavan,

91-E, Walkeshwar Road,

Mumbai 400 006.

TO

HON'BLE THE CHIEF JUSTICE OF INDIA

AND HIS HON'BLE COMPANION JUSTICES

OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
THE PETITIONER ABOVE NAMED

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING INTER ALIA, FOR A WRIT, ORDER, DIRECTION OR DECLARATION IN THE NATURE OF MANDAMUS DECLARING SECTIONS 2, 3(1), 4(1)(iii), 5(1) & (2), 5A(1), GUIDELINES 1 & 2 dated December 6<sup>th</sup>, 1991 ISSUED UNDER SECTION 5B(2), 5D(5) OF THE CINEMATOGRAPH ACT 1952, AND RULE 3, 7(3), 22(2) & (8), 24(2), 32, 33(2) and 43(6) OF THE CINEMATOGRAPH (CERTIFICATION) RULES, 1983 AS *ULTRA VIRES* THE CONSTITUTION OF INDIA.

**MOST RESPECTFULLY SHEWETH:**

1. The Petitioner above named is constrained to invoke the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India in order to safeguard and protect his fundamental rights under Articles 14, 19 and 21 of the Constitution of India. The Petitioner is challenging the provisions of the Cinematograph Act, 1952 (hereinafter referred to as "**Act**") and the Cinematograph (Certification) Rules, 1983 (hereinafter referred to as "**1983 Rules**") which in turn imposes pre-censorship on the freedom of speech and expression of the artistes as well as the audience. The Petitioner is particularly aggrieved by the provisions of Sections 2, 3(1), 4(1)(iii), 5(1) & (2) and 5-A(1) and 5-B of

the aforementioned Act. The Petitioner is aggrieved by the aforementioned provisions granting the power of ordering cuts, deletions, alterations in a film along with the abuse of power while exercising the powers given by the said Act and Rules while certifying and/or denying certification to any applicant film.

2. It is most respectfully submitted that the present Petition raises substantial questions of law of public importance, which require interpretation of provisions of the Act and the 1983 Rules. It is submitted that this Hon'ble Court in ***Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal Case*** (1995) 2 SCC 161 held that the citizens have a right to know and the right to receive information under Article 19(1)(a) and Article 21 of the Constitution of India as upheld by. It is this right to know and right to receive information under Articles 19 and 21 of the Constitution that the Petitioner seeks to enforce by way of the present Writ Petition. However, owing to the operation and application of the impugned provisions, the Petitioner, as well as the audience at large, have been deprived of the opportunity of viewing hundreds of cinematograph films in their original form. Some such films are *Kissa Kursi Ka* (1977), *Hawayein* (2003), the

documentary *No Fire Zone : The Killing Fields of Sri Lanka* amongst many others. The aforesaid films and numerous others have not been allowed to be released for public consumption.

3. It is submitted that a Five-Judges Bench of this Honourable Court in the matter of *K.A. Abbas v. Union of India*, (1970)2 SCC 780 (hereinafter referred to as "*Abbas*") has already considered the constitutional validity of certain provisions which are impugned herein. The Decision in *K.A. Abbas* has not noticed an earlier six Judge Bench Ruling in *Brij Bhushan & Anr. v State of Delhi* (1950 SCR 605) where it was held that any kind of prior scrutiny of expression is unconstitutional under the Constitution of India. The circumstances under which *K.A. Abbas* was decided were unlike the circumstances of today. The Cinematograph Act came into force in 1952. The *Abbas* decision was rendered in 1970. At this time, television was hardly present in India. UNESCO had funded the introduction of television in India in 1959 and up to 1972, there used to be one show of one hour aired twice weekly only in Delhi. Doordarshan was launched before the Asian Games in 1982. Private television broadcasters like Zee and Star started emerging only in the 90s. At the time the *Abbas* decision

was rendered, television was not an influential medium of mass communication at all. Only cinematographic films in theaters could be considered influential media of mass communication. Now that the television industry has grown and with the greater access to internet, it cannot be said that cinematographic films are the most influential. Any discrimination between the regulation of TV, Internet and cinematographic films must have a sound basis and there wasn't any constitutional challenge in *Abbas* on basis of an infringement of Article 14. Taking into consideration the development in the jurisprudence relating to pre-censorship and given the nation-wide implication of the important issue of law affecting the rights of film-makers/producers as well as consumers/viewers of feature films and documentaries, it is submitted that this Hon'ble Court is the appropriate authority which alone can adjudicate the issues raised in the present Petition and redress the grievances of the Petitioner.

#### **PARTIES**

4. The Petitioner is a citizen of India and an acclaimed actor, film-maker. The Petitioner has received several national and international awards in the fields of performing as well as visual arts in his creative journey of last five decades. While obtaining the certification for his films like *Aakriet*, *Daayara*

and *Thaang/Quest*, the Petitioner had to challenge the decisions of the Certification Board and had to struggle against its unreasonable restrictions. Great emphasis has been placed by the Petitioner on the violation of his fundamental rights, therefore, prejudice need not be proved in cases where breach of fundamental right is claimed. It is a settled position of law that if the provisions of a law which have been impugned in the petition, are constitutional, then the person affected need not show any further prejudice.

5. The Respondent No. 1, is the Union of India through the Ministry of Information and Broadcasting. The Respondent No. 2 is the Central Board of Film Certification [hereinafter referred to as the "**Board**"] which is a content certifying statutory body constituted under Section 3 of the 1952 Act for the purpose of certifying films for public exhibition. The Respondent No. 2 functions under the Respondent No. 1. All the aforementioned Respondents are 'State' within the meaning accorded to the term by Article 12 of the Constitution. Therefore, all the aforesaid Respondents are subject to the extraordinary writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution.

## FACTS

6. The Respondent No. 2 functions and discharges duties in accordance with the provisions of the aforesaid Act, the 1983 Rules, and the Guidelines issued under Section 5B of the aforesaid Act. The relevant facts and legal provisions which have led to the institution of the present Petition are as follows :

### The Cinematograph Act 1952

- 6.1 On 21.3.1952, the Cinematograph Act 1952 (Act 37 of 1952) was enacted and brought into force. The preamble of the 1952 Act describes it as '*[A]n Act to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematograph*'.
- 6.2 Section 2(c) of the aforesaid Act defines "cinematograph" to include '...any apparatus for the representation of moving pictures or series of pictures.' Further, Section 2 (dd) defines "film" to mean cinematograph film. The aforesaid Act does not provide for a distinct definition for 'documentaries'.
- 6.3 It is submitted that Part II of the aforesaid Act is entitled 'Certification of Films for Publication'. Section 3 of the aforesaid Act provides for establishment of the Respondent No. 2 Board. However it does not prescribe any qualifications that a person must obtain to be appointed as a

member or Chairman of the aforesaid Board. Section 3(1)

reads as under:

- (1) For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the Official Gazette, constitute a Board to be called the Board of Film Certification which shall consist of a Chairman and not less than twelve and not more than twenty-five other members appointed by the Central Government.

It is most pertinent to note that even the Rules made under the Act do not provide for any qualifications to become a member or Chairman of the Board.

6.4 Section 4 of the aforesaid Act provides for examination of films which reads as under:

4. Examination of Films.— (1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner, -

- (i) Sanction the film for unrestricted public exhibition:

[Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or]

- (ii) Sanction the film for public exhibition restricted to adults, or

- (ii-a) Sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or
- (iii) Direct the applicant to carry out such excisions or modifications in the film as it things necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or**
- (iv) Refuse to sanction the film for public exhibition.
- (2) No action under the proviso to clause (i), clause (ii), clause (ii-a), clause (iii) or clause (iv) of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter."

[Emphasis Supplied]

It is to be noted that the afore stated Section 4(1)(iii) as it reads today was substituted by Act 49 of 1981, S.4 (w.e.f. 1-6-1983). The original Act No. XXXVII of 1952 titled The Cinematograph Act, 1952 did not have this provision of empowering the Board to direct cuts/alterations. The Petitioner submits that sub-clause (iii) of Section 4(1) shall be quashed as it amounts to unreasonable restriction on the freedom of expression of the film-makers and for other reasons specified hereinbelow.

6.5 Section 5(1) of the aforesaid Act provides for establishment of Advisory Panels at regional centers for enabling the Respondent No. 2 to efficiently discharge its functions under the aforesaid Act, however it does not specify any qualifications or definitive criteria for its members' appointment other than 'qualified in the opinion of the Central Government to judge the effect of films on the public'. Similarly Section 5(2) which provides for appointment of regional officers, does not specify any qualifications or definitive criteria for its members' appointment.

6.6 Section 5-A provides for certification of films as is reproduced hereunder –

"5A. Certification of films – (1) If, after examining a film or having the film examined in the prescribed manner, the Board considers that – (a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the provision to clause (i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or (b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film a "A" certificate or, as the case may be, an "S" certificate,  
And cause the film to be so marked in the prescribed manner.

Thus the four categories under which the films can be certified as provided by the Section 5A(1) are U, UA, A, and S. The Petitioner submits that the present categories are inadequate to inform the audience about the viewing material and that more categories need to be extended to include diverse content possibly involving nudity, graphic violence, etc. Once the categories are extended, the film-makers will have clarity as to which category should they apply for, and thereby unwanted content will not find its way into films certified for U rating.

6.7 Section 5-B provides for principles for guidance in certifying films. The relevant part of Section 5-B is reproduced hereunder for the sake of brevity and convenience –

"5B. Principles for guidance in certifying films-

- (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.
- (2) Subject to the provisions contained in subsection (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act."

It is clear that Sub-clause (1) of Section 5-B which provides for guidance for certifying films, is reiteration of clause (2) of Article 19 of the Constitution. Sub-clause (2) of Section 5-B enables the Central Government to state the principles to guide the censoring authority, by issuing directions.

- 6.8. An Appellate Tribunal is constituted under Section 5-D(1). The aforesaid Tribunal consisting of a Chairman and not more than four other members to be appointed by the Central Government is to be situated in Delhi as provided in the Sub-clause (3) and (2). Sub-clause (4) thereof provides that a person shall not be qualified for appointment as the Chairman of the Tribunal unless he is retired Judge of a High Court, or is a person who is qualified to be a Judge of a High Court. Thus, in so far as the chairman of the Tribunal is concerned, clear qualifications have been prescribed. However, in so far as the remaining members of the Tribunal are concerned, the sub-clause (5) provides that, "the Central Government may appoint such persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal." It is pertinent to note that other than this vaguely worded qualification, the aforesaid Act does not specify any qualifications of members either of the Appellate Tribunal or of the Board as

constituted respectively under Section 5D(5) or Section 3 thereof.

This is the general scheme of the Act which is relevant for the present discussion.

**Rules made in 1958 and amended in 1983 under  
the aforesaid Act**

7. The Respondent No. 1 *vide* its G.S.R. 945, dated 7<sup>th</sup> October 1958 has made the Cinematograph (Censorship) Rules, 1958.

7.1. The said 1958 Rules specify no guidelines while providing certification for the applicant film, and are also silent on the eligibility criteria or qualifications to be appointed as members of the Board or the Tribunal.

7.2. The said Rules distinguished a 'documentary' from a 'feature film' which is apparent from the two Rules i.e. Rule 22(4) which treated newsreel and documentary etc separately from a feature film, and Rule 23(2) which stipulated a separate examining committee for certifying documentaries, an educational film etc.

7.3. Rule 23(3)(c) provides for demanding alterations in a film however the wording of the same is moderate than the impugned provisions.

8. On 9.5.1983, the Respondent No. 1 *vide* its G.S.R. 381(E), dated May 9, 1983 has made the Cinematograph (Certification) Rules, 1983 which replaced the said 1958 Rules.

8.1. Rule 3 of the said 1983 Rules does not specify any qualification of the members of the Board to be formed there under.

8.2. Rule 7 of the said 1983 Rules specifies the formation of an advisory panel without specified any definitive criteria for its members' appointments. Sub-clause (3) of the said Rule states that "the Central Government may, after consultation with the Board, appoint any person whom it thinks fit to be a member of an advisory panel."

8.3. Rule 22(2) of the said 1983 Rules provides for formation of an Examining Committee to examine the applicant's film. However, no qualifications of members of the said Committee are specified.

8.4. Rule 24 of the said 1983 Rules provides for formation of a Revising Committee to re-examine the applicant's film which was earlier examined by the Examining Committee. Again, no qualifications of members of the said Committee are specified in its sub-clause (2).

8.5. It is to be noted that no principles of guidance while re-examining the film are specified for the Revising Committee in Rule 24 and also in Rule 32 while re-examining the certified films.

8.6 Rule 29 of the said 1983 Rules reiterates the period of validity of a certificate given for a film to be 10 years from the date on which the same is granted as is specified in Section 5A(3) of the afore stated Act. The application for renewal of the certificate after its expiration is supposed to be treated "as if it were an original application." It is pertinent to note that the flexibility and adaptability to the changing times in every decade was expressed through and provided for in this provision because of which the validity was not kept in perpetuity. Thus in case a film was given an "A" certificate on the first occasion, the possibility for the applicant to apply for and to receive a "U" certificate after 10 years commensurate with the changing social reality, was assured by the afore stated Act.

8.7 No qualifications of members of an Examining Committee to be formed as per Rule 33(2) of the said 1983 Rules are specified.

8.8 No qualifications of members of the Appellate Tribunal to be formed as per Rule 43(6) of the said 1983 Rules are specified.

**Guidelines for certification of films**

9. In accordance with the provisions of Section 5-B(2) of the aforesaid Act, the Central Government has issued guidelines which are available on the official website of the Respondent No. 2 CBFC at [http://cbfcindia.gov.in/html/uniquepage.aspx?unique\\_page\\_id=1](http://cbfcindia.gov.in/html/uniquepage.aspx?unique_page_id=1).

9.1 The objectives as laid down in the Clause A of the 1991 Guidelines read as under:

- a. The medium of film remains responsible and sensitive to the values and standards of society;
- b. Artistic expression and creative freedom are not unduly curbed;
- c. Certification is responsive to social change;
- d. The medium of film provides clean and healthy entertainment;
- e. As far as possible, the film is of aesthetic value and cinematically of a good standard.

The Petitioner submits that objectives 'a', 'd' and 'e' suffer from vagueness, overbroadness and cause ambiguity in

interpretation, and those ought to be quashed. It is the film makers' prerogative to make a film 'of aesthetic value' and of 'cinematically good standard'. When what constitutes 'values and standards of society' is in itself not definitive at given any time, empowering the Board to hold the moral compass leads to subjective, arbitrary and erroneous decisions during the certification process.

9.2 It is pertinent to note that all the 19 guidelines specified in Clause 2 thereof are vague and overbroad in nature having no objective parameter and leaving immense scope for individual discretion, subjective analysis, arbitrariness and nepotism. Phrases such as 'pointless or avoidable scenes of violence, cruelty, horror', 'scenes which have the effect of justifying or glorifying drinking', 'scenes involving ridicule of physically and mentally handicapped persons', 'human sensibilities are not offended by vulgarity, obscenity or depravity', among others, are abstract, unclear, imprecise and ambiguous. Ultimately the fate of the scene/film hangs on an individual member's interpretation and discretion. This amounts to an unreasonable restriction on the film-maker's (such as Petitioners') freedom of speech and expression under Art 19(1)(a). As a matter of illustration, it is submitted that if the purpose of a film is to create awareness about

child labour, unless the abusive practices against and cruelty to children are depicted, the film will be ineffective. In such a situation, the Board can demand cuts of various scenes from the said film pointing at the guideline stating 'showing children as being subjected to any form of child abuse' is disallowed. Such abstract guidelines ought to lead to rampant incoherent and erratic decisions.

- 9.3 Since the afore said Act does not specify any qualifications for the members of the Board and or the Examining Committee, or a Revising Committee or even the Film Certification Appellate Tribunal (FACT), the subjective, erratic interpretation of overbroad, imprecise Guidelines in the hands of unqualified members is almost guaranteed which in itself is very unfair and unreasonable restriction on the filmmakers' freedom of speech.

**Provisions of scrutiny/certification of**

**content other than the cinematograph films**

10. Similar provisions of certification and/or scrutiny of the content of the artistic material such as play script, music & dance performance etc and also constituting a Board were introduced in the State of Maharashtra *vide* Section 33(wa)(iii) of the Bombay Police Act, 1951. The aforesaid Board constituted under the provisions of the said Act *inter*

*alia* conducts pre-censorship of plays. In the aforesaid section under the said Act, qualifications are prescribed in relation to who can be appointed as a member of the Board there under. Such qualifications are absent from the provisions of the aforesaid Act which is the subject matter of this Petition.

11. As a matter of complete disclosure, it is submitted that the Petitioner along with another gentleman has challenged the constitutional validity of Section 33(wa)(iii) and the rules framed there under before the Honourable Bombay High Court.

12. The television programmes are covered by the provisions of the Cable Television Networks (Regulation) Act, 1995 with the Cable Television Network Rules, 1994 enacted by the Parliament on 25.3.1995 (hereinafter referred to as the "**Cable TV Act**").

12.1 Section 2(g) of the said Act defines the term programme as follows: '(g) programme means any television broadcast and includes –

- (i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;
- (ii) any audio or visual or audio-visual live performance or presentation, and the expression

'programming service' shall be construed accordingly.'

12.2 Further, Section 5 of the said Act provides that no person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code. The programme code has also been prescribed under the Cable Television Network Rules, 1994.

12.3 Chapter V of the said Act, specifically Section 19 and 20, embody provisions that empower the authorized officer to prohibit transmission of certain programmes "in public interest", and the Central Government to prohibit operation of cable television network "in public interest".

12.4 It is pertinent to note that no provision of the said Act requires the content of the artistic material in the form of either script, unedited footage shot, complete final program or any other format of the same to be subjected to scrutiny prior to the broadcast/telecast/airing or presentation of the said programme to the audience. Thus, the content created/produced for the television is without any pre-censorship.

13. The Respondent No. 1 has uploaded on its website (<http://mib.nic.in/WriteReadData/documents/sl1.pdf>)

Self -Regulation Guidelines for the Broadcasting Sector (Draft 2008).

These Guidelines were issued *"to introduce greater specificity and detail with a view to facilitate self regulation by the broadcasting industry and minimize scope for subjective decision by regulatory authorities or the broadcasting service providers. The basic underlying principles of these Guidelines is that the responsibility of complying with the provisions of the Certification Rules vests with the BSP."*

13.1 The Indian Broadcasting Foundation (IBF), which is a representative body of non-news and current affairs TV channels, has in June 2011 set up a Broadcasting Content Complaints Council (BCCC) to examine the complaints about television programmes. IBF also framed Self-Regulatory Content Certification Code which seeks to guide the Broadcasting Service Provider (BSP) to offer content that conform to the 'Programme Code' prescribed under the above mentioned Cable Television Networks (Regulation) Act, 1995 and Rules framed there under.

13.2 New Broadcasters Association (NBA) a representative body of news and current affairs channels has set up an independent body 'News Broadcasting Standards Authority

(NBSA)' to consider content related complaints against or in respect of news broadcasters. Their News Broadcasting Standards Regulations Code is in conformity with the said 1995 Act.

13.3 It is further added that such provisions whether statutory or self-regulatory directives, are devoid of any pre-censorship of content.

14. The Press Council Act, 1978, and the Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006 and norms of Journalistic Conduct were passed "*to establish a Press Council for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India.*"

14.1 It is to be noted that the said Regulations specify a grievance redressal mechanism by virtue of which a complainant may initiate a scrutiny against a specific news report etc which was already published. However, no provision of the said Act or Regulations prescribe pre-censorship of content in the form of news report or any other journalistic publication.

15. The Information Technology Act, 2000 was amended on 22<sup>nd</sup> December 2008 and The Information Technology Act, 2008

was passed to regulate transactions carried out by means of electronic data interchange and other means of electronic communication etc. Even under this Act, the content uploaded on for or used to communicate with the audience via internet is not required to be certified prior to its exhibition or presentation, thus is sans pre-censorship.

**Facts distinguishing from those considered in**

**K.A. Abbas v. Union of India**

16. As mentioned hereinabove, it must be pointed out that the constitutional validity of Part II of the aforesaid Act has been upheld by a Five-Judge Bench of this Hon'ble Court in ***K.A. Abbas v. Union of India*** reported in (1970) 2 SCC 780. However, in *Abbas* (Supra) the constitutional validity of the provisions of Part II of the Act, together with the Cinematograph (Censorship) Rules, 1958 was challenged only on the ground that they violated the provisions of Article 19(1)(a) of the Constitution.

16.1 It is submitted that subsequent to the judgment of this Hon'ble Court in *Abbas*, the provisions of Chapter II of the Act have been substantially amended in two respects *inter alia*:

- (i) Section 4(1)(iii) of the Act has been introduced by Section 4 of Act 49 of 1981.

- (ii) Further, the Cinematograph (Censorship) Rules, 1958 have been substituted by the aforementioned Rules of 1983; AND
- (iii) In 1991, new guidelines were issued in order to guide the process of certification.

Therefore, it is most humbly submitted that the judgment in *Abbas* (Supra) will not bind this Hon'ble Court while testing the constitutional validity of the provisions impugned herein.

16.2 It is further submitted that the Petitioner is challenging the constitutionality of Part II of the Act and certain provisions of the Rules on the ground that they violate the provisions of Article 14 of the Constitution. It is submitted that this Hon'ble Court did not consider the constitutional validity of the aforesaid Part in light of Article 14 while deciding the questions which arose before it in *Abbas* (Supra). Therefore, to that extent as well the said judgment will have a very limited value as a precedent.

16.3 It is further submitted that post the decision of this Honourable Court in *Abbas*, there has been a substantial development of jurisprudence in relation to the scope and ambit of the fundamental right guaranteed under Article 19(1)(a) as well as the reasonable restrictions under Article 19(2). Therefore, the provisions of Chapter II are now

required to be tested against the fundamental rights as guaranteed in the Constitution and interpreted by this Honourable Court as well as Honourable High Courts.

16.4 It is submitted that, assuming without admitting in any manner whatsoever, the decision of this Hon'ble Court in *Abbas (Supra)* will be binding, this Hon'ble Court reconsider the law laid down in the said judgment, and take a contrary view in light of the enormously changed social reality and the compelling public interest mentioned herein below.

16.5 It is submitted that certain new aspects have now come to light, as elaborated herein below and it has now become essential to interpret and consider the provisions of the 1952 Act and the 1983 Rules in the light of these developments, which did not manifest themselves and were consequently not taken into account, when the judgment in *Abbas (Supra)* was delivered. Since *Abbas*, there have been introduction of new ideas, new technologies and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. Therefore, it is now necessary to take into consideration whether the provisions relating to pre-censorship are constitutional in the contemporary times.

16.6 It is submitted that with the development of the society, the expansion of literacy and the progress of technology, the assumptions or basis of *Abbas* (Supra) has been rendered inapplicable or fundamentally altered. This Hon'ble Court in *Abbas* (Supra) also did not have occasion to address the issue of right of a viewer to access a documentary in the form as its creator had intended. The Act when enacted in 1952 and when interpreted in *Abbas* in 1970 could not have conceived of the present day scenario wherein modern technology makes dissemination of information available in real time through a variety of media, many of which are either not regulated or if regulated, not subjected to pre-censorship.

16.7 It is submitted, further, that since the decision of this Hon'ble Court in *Abbas* (Supra), the power of certification as a means of pre-censorship has been subjected to large scale abuse owing to ambiguity and lack of clear guidelines of how the power is to be exercised. An indicative and non-exhaustive list of films that have been denied certification or had their certification withheld for long duration subject to modifications proposed by the Respondent No. 2 is annexed herewith and marked as **Annexure P-1 (Page 97 to 109)**. It is submitted that the examples stated therein clearly

demonstrate the extent to which the power has been misused, especially for safeguarding or furthering political interests. It is submitted that these aspects neither arose nor were addressed by this Hon'ble Court in *Abbas* (supra).

16.8 The Decision in *K.A. Abbas* has not noticed an earlier six Judge Bench Ruling in ***Brij Bhushan & Anr. v State of Delhi*** (1950 SCR 605) where it was held that any kind of prior scrutiny of expression is unconstitutional under the Constitution of India.

#### **Dissimilar treatment given to Documentaries**

17. It is submitted, further, that documentaries, which necessarily depict real life events or narrate details of any event etc based on facts that are inherently incapable of being pre-censored, are nonetheless subject to a greater arbitrariness and refusal / withholding of certification mostly to propagate the State sanctioned narrative of the said event, or to suppress public knowledge of facts uncomfortable to the State, or for other ulterior motives. Though an Indian Citizen has a fundamental right to know among other things, the socio-economic-political and cultural reality as the prevailing truth and also differing views on any issue, and the documentary-maker as an artist has her artistic freedom, the right to free speech and

expression by means of documentaries has been and is being subjected to censorial intervention leading to curtailment of those rights. An indicative but non-exhaustive list of the same is set out below:

- a. Waves of Revolution (1975) was refused certification during the Emergency, but was issued a 'U' certificate immediately after the Emergency ended.
- b. Prisoners of Conscience (1978) had its certification withheld pending deletions demanded. Was eventually granted a 'U' certificate without any cuts after a letter from filmmaker Satyajit Ray requesting for the same.
- c. A Time to Rise (1981) had its certification withheld for maintaining friendly relations with other nations (Canada). Was eventually granted 'U' certificate without cuts since National Film Board of Canada itself was freely distributing the film.
- d. In Memory of Friends (1990) had its certification withheld for issues of law and order. The Reviewing committee eventually granted a 'U' certificate without any cuts.
- e. In the Name of God (1992) had its certification withheld for issues of law and order. The Reviewing committee eventually granted a 'U' certificate without any cuts.

- f. Father, Son and Holy War (1995) had its certification withheld for issues of law and order. The Reviewing committee eventually granted a 'A' certificate without any cuts for the second part. The Appellate Committee eventually granted a 'U' certificate for the first part as well without any cuts.
- g. War and Peace (2002) had its certificate withheld pending 21 cuts. The Bombay High Court eventually permitted release of the film without any cuts.

17.1 It is pertinent to note that when the broadcast of news, editorial or investigative reports are presented on the television and/or internet, the said content is free of pre-censorship in that the same is not required to be submitted before any authority for certification and/or scrutiny. The said content freely reaches the audience without any editing/alterations or omissions demanded by any authority whatsoever. However, documentaries whether full length or short length, which are also factual depictions as authentic as the news reports, are required to be submitted under the aforesaid Act for certification whereby its content is subjected to pre-censorship. This amounts to distinct treatment of similarly situated

entities. It therefore violates Article 14 of the Constitution.

17.2 It is pertinent to note that the intention of the drafters of the Act of treating documentaries differently was evident from the fact that the 1958 Rules stipulated separate examining board and procedure in case of documentaries as is mentioned hereinabove.

17.3 The Petitioner submits that a documentary maker may submit her/his documentary to the Respondent 2 with an appropriate disclaimer which will alarm, warn or give notice to the audience about its theme/treatment and issues raised thereon along with information whether it involves violent or sexual content etc that may be inappropriate for potentially vulnerable audience (including children). The Respondent No. 2 shall verify the text of the disclaimer submitted by the documentary maker and shall suggest changes if the content of the documentary warrants the same. The Respondent No. 2 shall specify the duration from 30 seconds to 90 seconds for the said disclaimer to appear on the screen before the beginning of the actual documentary.

17.4 The Petitioner further submits that the fees presently required to be paid for certification of documentaries are

the same as that for the feature films which have budgets running in crores of rupees. Whereas the economic hardships suffered by the documentary makers while completing their work are daunting. Considering this disparity and the limited avenues for revenue generation, the said fee be completely waived or be fixed at a token value for the documentaries.

- 17.5 That the vagueness in guidelines has caused lack of uniformity, cohesion while deciding certification and primarily lack of understanding of the actual policy on part of the Board. In order to illustrate the confusion and differences amongst the Board members regarding the policy on cuss words, the final minutes of the 138<sup>th</sup> and 139<sup>th</sup> Board meeting of the Central Board of Film Certification is annexed herewith as **Annexure P-2 (Page 110 to 169)**

#### **Film as artistic expression**

18. Cinema has evolved over the years as an art in its own respect. The evolution of Cinema as an art has culminated today into a critical form of expression in society. The freedom of this expression must be protected and cannot be treated differently from other forms of artistic expression. There is a vast trove of literature on this subject. Robert

Stecker, a renowned scholar of the philosophy of art, in his article 'Film as Art' published in *The Routledge Companion to Philosophy and Film*, 2009 wrote on 'the cinematic artwork' as well as 'the cinematic art form'. On 'the cinematic artwork', he states:

*"When is a film an artwork? The answer will depend on the conception of art one brings to the table. What is now known as classical film theory was concerned with this question and approached it in a way characteristic of the period in which it developed. It looked for established artistic functions that the film medium fulfills in virtue of resources peculiar to the medium – special ways of realizing standard functions. Two functions received the bulk of attention: expression and realistic representation. In part, the expressionist view is motivated by a desire to refute an objection to film art, much like Scruton's. Film cannot create artworks, because it is a mechanical recording device that only reproduces the reality in front of camera. "Expressionists" (Eisenstein 1988; Arnheim 1957; Münsterberg 1970) attempt to refute this picture by emphasizing the ability of film to manipulate and rearrange reality to manifest an attitude about its subject."*

*"André Bazin (1967, 1997) is the most distinguished proponents of film as the art of realistic representation. However, it's worth noting that he is perfectly aware of the expressive and antirealist potential of film and is lucid in analyzing the two chief ways of realizing this potential: "the plastics of the image . . . and the resources of montage, which . . . is . . . the ordering of the image in time" by means of editing (1997: 60)."*

*"...we should recognize multiple functions that films can realize and be artworks in virtue of these. This includes evocative, expressive, and representational functions realized in both narrative fictional movies and documentaries. It also includes functions specific to the visual and pictorial nature of most films. Further it includes the function fulfilled by films that explore the nature of the film media themselves. The list should be left open ended. Functions evolve as a result of the evolution within a medium, of the larger art world, and of the culture at large."*

On 'the cinematic art form', Stecker stated:

*"Compare film with literature, which seems like a roughly analogous category within the arts. Poetry, the novel, and the short story are three different literary forms. Within each of these categories, there are different subforms or genres. So while the feature film has lots of genres perhaps it should be regarded as a cinematic art form, and similarly for the documentary and the short film. Cutting across this kind of classification are others. Animation seems like a different form than the live-action film, but both can be feature films or shorts. Silent film might be regarded as a different form than talkies. The technology used in creating a moving image also can have a much bigger impact on a final product than it does in literature, where it matters little to the reader whether the writer uses a pencil or a word processor. But whether one uses photography, video, digital technology, computer graphics, motion capture, or animation makes a difference to what one sees and the way one sees it."*

18.1 Samantha Barbas, a professor of Law at the State University of New York at Buffalo, has written a detailed article on the evolution of cinema as speech in the United States. Her theory of the history of film censorship in the United States reveals a very pertinent jurisprudential evolution of 'the medium of films' from unprotected tool of entertainment to constitutionally protected speech essential to communication of ideas during the span of 1915 to 1952. What had happened over those years was not only a change in the First Amendment doctrine but also a fundamental transformation in the communication environment. The transformation is recognized as a 'social convergence of mass communications'. In its 1915 decision in *Mutual Film Corp. v. Industrial Commission of Ohio*, 236 U.S. 230, 244-45 (1915) the U.S. Supreme Court, upholding an Ohio film censorship law, held that motion pictures were not part of "the press of th[is] country" and were therefore unprotected by freedom of speech and press. Films were, as a medium, mere entertainment and visual "spectacles" with a powerful capacity to incite audiences to immoral behaviour. *Mutual Film* legitimated an extensive regime of state and local film censorship that existed until the mid-twentieth century. In seven states and nearly one hundred municipalities, censor

boards banned or ordered deletions to films deemed to be immoral, sacrilegious, or otherwise objectionable. By the 1940s, the Supreme Court had proscribed prior restraints on speech and begun the practice of heightened scrutiny of state actions restricting speech on the basis of viewpoint or content. By the 1950s, movies occupied a role in public life and popular culture that increasingly resembled the traditional "press," or print journalism. At the same time, print journalism took on styles and functions that were more like those historically associated with the movies. The distinctions that had been so critical to the *Mutual Film* court—between information and entertainment, visual and print media, and rational and "sensational" forms of communication—no longer held. In the 1950s, they pointed out the absurdity of a legal structure that allowed banned films to be shown on television. It was only in 1952, with its landmark decision in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 that the Supreme Court overturned *Mutual Film* and declared motion pictures, like the traditional press, to be an important medium for the "communication of ideas" protected by the First Amendment. By the end of the next decade, film censorship had been almost entirely abolished. The demise of film censorship reflected not only more

capacious understandings of freedom of expression but also the social reality of convergent communications.

**The Recommendations of Benegal Committee**

**dated 26<sup>TH</sup> April 2016**

19. The Respondent No. 1 appointed a committee chaired by Shri. Shyam Benegal vide OM F. No. M-34016/3/2015-DO (FC)-Part II dated 01.01.2016 in order to evolve guidelines, procedures for the benefit of the Respondent No. 2. On 26.04.2016 the said committee submitted its Report whereby drafts of Rules and Guidelines were proposed and while recommending amendments in certain provisions of the Act as well. The copy of the said Report dated 26.04.2016 which is available on the internet site of the Respondent No. 1 is annexed herewith and marked as **Annexure P-3 (Page 170 to 392)**. The Petitioner states that the Central Government has neither accepted the said recommendations nor acted upon its suggestions. The Petitioner state that the committee involving the experts has studied the provisions in depth and its recommendations regarding the guidelines, the removal of Section 4(1)(iii), the composition of the Board and its committees and the Tribunal etc along with the qualifications of its members, the

extension of existing four categories of rating, among others, are acceptable to them. The Petitioner submits that the said recommendations ought to be accepted by the Respondent No. 1 considering the huge changes taken place in the social reality as well as the consequences of the technological advancement in last 2 decades.

20. The Hon'ble High Court of Judicature at Bombay has recently directed certain cuts in the film titled Jolly LLB which were not considered necessary by the Board .A true copy of the judgment dated 06.02.2017 passed by the High Court of Judicature at Bombay Aurangabad Bench in Public Interest Litigation No. 11 of 2017 is annexed herewith as **Annexure P-4 (Page 394 to 404)**.

### GROUND S

Hence, the present Writ Petition against the impugned Sections 2, 3(1), 4(1)(iii), 5(1)&(2), 5A(1), Guidelines 1 & 2 dated December 6<sup>th</sup>, 1991 formed under Section 5B(2), 5D(5) of the aforesaid 1952 Act and Rules 3, 7(3), 22(2) &(8), 24(2), 32, 33(2) and 43(6) formed there under the Cinematograph (Certification) Rules, 1983 which are violative of Articles 14, 19 and 21 of the Constitution of India for the reasons mentioned herein below. The Petitioner therefore urges the following, among other grounds, in the alternative and without prejudice to each other:

A. That Section 4(1)(iii) of the Act which empowers the Board to direct the applicant to carry out excisions, modifications as it thinks necessary before certifying the film for public exhibition amounts to pre-censorship of motion pictures which is violative of Art 19(1)(a) of the Constitution.

B. That the citizens of India have been guaranteed a fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution. The aforesaid right can only be curtailed in accordance with Article 19(2) viz. by a law imposing reasonable restrictions in 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 in relation to contempt of court, defamation or incitement of offence. The impugned provision of Section 4(1)(iii) of the Act does not fall within the scope of any of the terms mentioned in Article 19(2) of the Constitution. Further, assuming without admitting that the aforesaid falls within the terms mentioned in Article 19(2) of the Constitution, the restriction imposed by the aforesaid provision is unreasonable.

C. That Section 5-B of the aforesaid Act which provides for guidance for certifying films, really reproduced clause (2) of Article 19. However, it is pertinent to note that the guidance

is for 'certifying' and not for 'pre-censoring' films. Therefore, Section 5-B cannot be said to be applicable to the impugned Section 4(1)(iii).

D. That the reasonableness of the restriction is to be judged today and in the context of circumstances now existing. The immediate effect and circumstances ought to be considered by this Honourable Court while considering the reasonableness of the restrictions. In the contemporary times, because of the advent of television, internet etc., the restrictions in the form of pre-censorship being imposed only on cinematograph films, makes it unreasonable.

E. That while determining the reasonableness of the restrictions, the relationship with the object of the act, necessity of that time and situation, social interest, provision for review, discretionary power guided, and unprecedented circumstances are to be considered. If the aforesaid factors are considered, it will be evident that the restrictions imposed by Section 4(1)(iii) are unreasonable.

F. That while applying the test of reasonableness, the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of individuals on the other hand. This Honourable Court may take into account the nature of the right infringed,

underlying purpose of the restriction imposed, evils sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at the time. If the provisions of Section 4(1)(iii) are examined, it will be clear that the restrictions are disproportionate and contrary to the contemporary standards prevailing in contemporary times. Hence, the aforesaid restriction is unreasonable.

G. That there is a distinction between 'certification' and 'censorship'. The Oxford Advanced Learner's Dictionary defines 'censorship' to mean 'the act or policy of censoring books, etc.'. The aforesaid dictionary defines 'censor' (in its verb form) to mean 'to remove the parts of a book, film/movie, etc. that are considered to be offensive, immoral or a political threat'.

H. The impugned Section 4(1)(iii) of the afore said Act as it reads today was substituted by Act 49 of 1981, S.4 (w.e.f. 1-6-1983). The original Act No. XXXVII of 1952 titled The Cinematograph Act, 1952 did not have this provision of empowering the Board to direct cuts/alterations. Thus the original intention of the law makers not to give this unbridled power to executive wing of the Government was evident from this fact.

- I. That the powers exercised by the Respondent No. 2 under Section 4(1)(iii) of the aforesaid Act are the powers of censorship, not certification. The general principles provided for in Section 5-B(1) and the guidelines issued by the Central Government dated 6<sup>th</sup> December 1991 under Section 5-B(2) are applicable only to the act of certification films. As a consequence, it is submitted that there are no guidelines whatsoever which guide the Board while exercising its power of 'censorship' under the impugned section. On this ground alone the provisions of Section 4(1)(iii) deserve to be declared unconstitutional and being violative of Article 14. It is a well settled position of law that a provision which grants an unbridled power to an authority cannot in any sense be characterised as reasonable.
- J. The unguided discretion granted to the Board by the impugned Section 4(1)(iii) cannot be cured by the Guidelines dated 6<sup>th</sup> December 1991 which amount to supplementary executive instructions. The said Guidelines are abstract, vague, imprecise leading to rampant erratic, subjective interpretations of scenes in a film, hence amount to unfair and curtailing the filmmakers' freedom of expression.
- K. Since the afore said Act does not specify any qualifications for the members of the Board and/or the Examining

Committee, or the Revising Committee, or even the Film Certification Appellate Tribunal (FACT), the subjective, erratic interpretation of overbroad, imprecise Guidelines in the hands of unqualified members is almost guaranteed which in itself is very unfair and unreasonable restriction on the filmmaker's freedom of speech.

- L. To prevent financial penury which might be caused due to subjective interpretations of the Guidelines while exercising the pre-censorship given by the impugned Section 4(1)(iii), the film-makers avoid potentially controversial themes which in effect amounts to severe restriction on their freedom of speech and expression as guaranteed by Art 19(1)(a) of the Constitution and also prevents the audience to receive information regarding those themes which is violative of their right to have information guaranteed by Art 21 of the Constitution. Potentially controversial themes through the medium of films can question power with truth, or can trigger issue based discussions, deeper introspection despite which those are not handled by the film makers which mars the very objective of film certification as stated in Guideline 1(b) which is 'artistic expression and creative freedom are not unduly curbed'.

M. Guideline 1 (a), (d) and (e) ought not to be the objectives while certifying a film. The Respondent No. 2 can not be the protectors of moral compass of the society when the values and standards of society are constantly changing with the changing times. Similarly, the Respondent No 2 is incapable of ensuring that the film is of aesthetic value and cinematically of a good standard, since it is the prerogative of the film-makers.

N. That Section 4(1)(iii) is violative of Article 14 of the Constitution in as much as it treats two similarly situated entities in a dissimilar manner. In *Abbas* (Supra), this Hon'ble Court has observed as follows:

"20. Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. The art of the cameraman, with trick photograph, vistavision, and three-dipmensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes

them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or imitate what they have seen. Therefore, classification of films into two categories of 'U' films and 'A' films is a reasonable classification. It is also for this reason that motion pictures must be regarded differently from other forms of speech and expression. A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore the treatment of the latter of a different footing is also a valid classification."

[Emphasis Supplied]

Similarly, in ***S. Rangarajan v. P. Jagjivan Ram & Others*** (1989) 2 SCC 574, a two-Judge Bench of this Hon'ble Court has observed:

"10. Movies doubtless enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movie and other modes of communication. The movie cannot function in a free marketplace like the newspaper, magazine or advertisement. Movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focussing of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act and speech, sight and sound in semi-darkness of the theatre with

elimination of all distracting ideas will have an impact in the minds of spectators...In view of the scientific improvements in photography and production the present movie is a powerful means of communication...It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instil or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally no selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free marketplace just as does the newspaper or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary."

[Emphasis Supplied]

O. That as is mentioned hereinabove, this Hon'ble Court has treated motion pictures to be different from other forms of art and expression on the basis of its instant appeal, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. It observed that the motion picture is able to stir up emotions more deeply than any other product of art. These aforementioned characteristics of motion pictures most certainly distinguish it from literature (prose and poetry), painting, sculpture and to a certain extent theatre as well. However, certain other forms of

visual entertainment and expression can also be attributed with the aforesaid characteristics. For instance, television and internet videos available on digital platforms are most certainly as influential as motion pictures and (in certain cases) have a much wider reach. The characteristics of instant appeal, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses are attributable to television and internet videos as well. However, there is no pre-censorship for the content shown on television or via the internet. In other words, there is no provision akin to Section 4(1)(iii) of the Cinematograph Act 1952 which is applicable either to Television or to videos available on the digital mediums like Youtube, Netflix etc. Hence, the pre-censorship that can be exercised by the Board amounts to discriminatory and violative of Art 14 of the Constitution.

P. That person/s found contravening the provisions of the Cable TV Act are punished in accordance with Section 16 of the Cable TV Act. It is pertinent to note that Cable TV Act does not have any provisions akin to Section 4(1)(iii) or Section 5B of the Cinematograph Act, 1952. Thus, insofar as television programmes are concerned, they are not

subjected to any form of censorship (neither pre nor post).

It is entirely voluntary with the deterrent of punitive action.

Q. That in *Ramesh Dalal v. Union of India* (1988) 1 SCC 688, this Honourable Court has held:

"21. ...It is no doubt true that the motion picture is a powerful instrument with a much stronger impact on the visual and aural senses of the spectators than any other medium of communication; likewise, it is also true that the television, the range of which has vastly developed in our country in the past few years, now reaches out to the remotest corners of the country catering to the not so sophisticated, literary or educated masses of people living in distant villages..."

Therefore, now it cannot be argued that there is any sort of distinction between televisions and films. The issue about identical characteristics being shared by televisions and films now stands settled by the aforesaid judgment of *Ramesh Dalal* (Supra).

R. That what is true in case of Television programmes is equally true in case of Internet videos. Internet videos are governed by the provisions of the Information Technology Act, 2000 (hereinafter referred to as the "IT Act"). No provision akin to Section 4(1)(iii) or Section 5B of the Cinematograph Act, 1952 is formulated in the said IT Act.

Hence, content available on the internet is completely free of censorship.

S. That once it is established that motion pictures, television programmes and internet videos, all form a part of the same class, then the differential treatment accorded to the same content expressed on/through these various mediums would be violative of Article 14 of the Constitution. Article 14 guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment provided they are equals and are similarly situated. But, it is equally well established that Article 14 seeks to prevent or prohibit a person or class of persons from being singled out from others situated similarly. In other words, Article 14 prohibits dissimilar treatment to similarly situated persons. Thus, in the present case, a motion picture producer is faced with censorship, but a television programme or internet video producer is not. He is required to exercise self-restraint or face prosecution. On that ground alone, the provisions of Section 4(1)(iii) and Section 5B of the aforesaid Act are violative of Art 14 of the Constitution and vulnerable to a challenge.

T. That it is a well settled position of law that a reasonable classification is one which includes all who are similarly situated and none who are not. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. The provisions of Section 4(1)(iii) of the Cinematograph Act suffers from the vice of 'under-inclusiveness' and is therefore violative of Article 14 of the Constitution.

U. That the power to demand cuts and to deny certification respectively under Section 4(1)(iii) and also 4(1)(iv) has been used for extraneous purposes. Objections of a political and/or ideological nature have often been raised to the advantage of the ruling party, at the cost of artistic freedom of speech. The Petitioner submits that as a consequence, the

Petitioner has been deprived of the opportunity of viewing acclaimed and informative films which give an alternate perspective. The Petitioner, as a citizen of India, has the right to receive information and the right to know under Article 19(1)(a) and Article 21 of the Constitution which are violated by the impugned Sections as is exercised presently.

V. That as Adults, the Petitioner is entitled to watch any film which has received either certification *viz.* U, U/A or A. However, refusal to grant certification based on guidelines which are vague, overbroad and unreasonable defeats the fundamental right of the Petitioner as an audience to receive information, to get entertained. On this ground alone, the power given vide Section 4(1)(iv) of the Act needs to be restricted so as not to curb the fundamental rights of the Petitioner and the audience at large.

W. That the aforesaid Act provides for other provisions such as Section 6(2), Section 13(2) and Rule 32 whereby the Government can cater to the sentiments of the audience and either act *suo moto* or upon any objection/complaint of alleged offensive or incite full scene/film is received through its mechanism. The said provisions allow the Government to re-examine the already certified film in light of the facts developed or complaint received post its exhibition. Hence,

even in the absence of the impugned provisions of Section 4(1)(iii), the five objectives of film certification as are specified in Guideline 1(a) to (e) can be ensured equally effectively.

X. That a 'cinematograph film' as is defined under Clause (dd) of Section 2 of the aforesaid Act includes '...any apparatus for the representation of moving pictures or series of pictures'. Documentaries which depict reality are closer to news or investigative reports, and are chronicles of an event or an incident. Documentaries are not merely a reflection of reality, but the reality itself. Documentaries can be equated to news reports and or editorial submissions. As mentioned hereinbefore, news reports or editorial submissions are neither subjected to censorship, nor certification. That being the case, it is absolutely unconstitutional to subject Documentaries to pre-censorship and pre-certification. Treating documentaries and news reports in different manner violates the provisions of Article 14 of the Constitution.

Y. That the medium of documentaries is routinely subjected to ruthless censorship. The Petitioner, as a citizens of India, has the right to receive information under Article 19(1)(a) and Article 21 of the Constitution which along with Article 14

are violated due to the application of Section 4(1)(iii) of the aforesaid Act to Documentaries. It is therefore necessary that documentaries ought to be exempted from the requirement of certification from the Board. The aforesaid Act, insofar as it does not make any distinction between a documentary film and a non-documentary film treats two dissimilar forms of artistic expression and medium of communication in a similar fashion and thus violates the guarantee of equal protection of the laws stipulated in Article 14 of the Constitution.

Z. That although news reports of an event are not prevented from being made available for public viewing, documentaries on the same issue are refused certification, thus denying public access thereto. It is submitted that the Petitioner has been denied access to documentaries such as *Sikkim* (made by the renowned and award winning filmmaker Satyajit Ray) and *No Fire Zone*, despite the news reports of the events depicted in the documentaries being publicly available.

AA. That the Petitioner is also aggrieved by Section 3 of the aforesaid Act in accordance with which the Board is constituted. Section 2(b) of the Act defines the term "Board" to mean '...the Board of Film Certification constituted by the Central Government under Section 3'.

BB. That the Section 3 does not prescribe / lay down the qualifications of the Chairman or the Members of the Board. On this ground alone the constitution of the Board is void and constitutionally invalid. The Board carries out important statutory functions. Despite its role, the members can be selected at random by the Central Government. Neither the 1952 Act nor the 1983 Rules provide for even bare minimum qualifications which a member or the Chairman must possess for being appointed to the post. The lack of qualifications and guidelines for appointment of members and Chairman of the Board is violative of Article 14. On this ground alone, the provisions of Section 3 of the act deserve to be declared unconstitutional.

CC. That the Board is required to assess whether a particular cinematograph film is in consonance with the guiding principles enumerated under the guidelines issued under Section 5B(2). On the basis of the application and the aforesaid provisions of Section 5B, the Respondent No. 2 Board is to certify the films under Section 5A. The acts of the said Board directly affect the fundamental rights of the citizens (more particularly, the right to freedom of speech and expression, including the right to receive information by means of a motion picture). In these circumstances, the very

fact that no qualifications for the members are prescribed completely defeats the aforesaid constitutional mandate. This gives the Central Government an unbridled power to appoint any person as a member or Chairman of the Respondent No. 2 Board. The power of the Central Government being unbridled violates Articles 14, 19 and 21 of the Constitution.

DD. That the aforesaid provision is required to be juxtaposed to Section 5-D which prescribes for constitution of an Appellate Tribunal. It provides that the Chairman must be a retired High Court Judge or a person who is eligible to be appointed as a High Court Judge. Thus, there are clear qualifications prescribed for the post of the Chairman of the Appellate Tribunal. However, no such qualifications are prescribed for the members of the Appellate Tribunal. Thus, the constitution of the Board as well as the constitution of the Appellate Tribunal is arbitrary and therefore violative of Article 14 of the Constitution.

EE. That the objectives 'a', 'd' and 'e' in the 1991 Guidelines (1) suffer from vagueness, overbreadth and cause ambiguity in interpretation, and those ought to be quashed.

FF. That to the best of the knowledge of the Petitioner, usually the board members are selected from various social

backgrounds and such persons who are appointed to the Board need not have any connection whatsoever with the motion picture industry. However, it is the specific contention of the Petitioner that the function of the Board and the qualifications of the members usually appointed have no reasonable nexus. Assuming that the members of the Board may be learned or at least experienced individuals in the field of motion pictures, their aforesaid knowledge or experience does not assist them in any manner to determine whether a particular motion picture or any part thereof is against the interests of –

- (i) The sovereignty of India; or (ii) The integrity of India; or
- (iii) The security of the State; or (iv) Friendly relations with foreign States; or (v) Public order; or (vi) Decency; or (vii) Morality; or
- (viii) Whether it involves - Defamation; or Contempt of court; or (ix) Whether it is likely to incite the commission of any offence.

An individual who may have special experience in the field of motion pictures, or teaching, or social work, or literature etc may be able to appreciate the artistic, literary or the commercial aspect of the motion picture. However, their respective knowledge or experience does not in any way enable him or her to appreciate whether the factors specified in Section 5B(1) are violated or not.

GG. That in order to appreciate the relevance of the factors specified in Section 5B(1), a judicially trained mind is required. According to the Petitioner, only a mind which is aware of the constitutional principles, changing social conditions, legal positions and other contingencies will be able to appreciate whether the factors specified in the aforesaid section are affected. However, even with the appointment of a retired judge of a High Court as the Chairman of the Appellate Tribunal as is specified in Section 5D(4) of the aforesaid Act, there is no guarantee of exercise of reasonableness on his part as he may not have cinematic or artistic expertise and/or in the absence of clear guidelines for certification.

HH. That the aforesaid Act and the 1983 Rules formed there under are completely silent on the qualifications of members of the Board (Section 3), or the Examining Committee (Rule 22(2)), or the members of the Appellate Tribunal (Section 5D(5)), or the Revising Committee (Rule 24(2)), or the Examining Committee to be formed under Rule 33(2) to exercise powers under Rule 33(1). In the absence of specification of credentials, experience, expertise etc, any person can be appointed and entrusted with important

statutory functions which might, and do in fact, affect the filmmakers' and the viewers' fundamental rights adversely.

- II. That Section 5D, which provides for constitution of an Appellate Tribunal provides for qualifications for being appointed as a Chairman or a member of the said Appellate Tribunal. Section 5D(4) provides that a person shall not be qualified for appointment as the Chairman of the Tribunal unless he is a retired Judge of a High Court, or is a person who is qualified to be a Judge of High Court. Further, Section 5D(5) provides that the Central Government may appoint such persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal. Such qualifications are provided for the Appellate Tribunal but not for the Board.
- JJ. That the aforesaid Act and the 1983 Rules also do not provide for the qualifications of the Chairman of the Board.
- KK. That the guidelines issued by the Respondent No. 1 under Section 5B(2) of the Act are beyond the guiding principles mentioned in Section 5B(1).
- LL. That in the judgement in *Shreya Singhal v Union of India* (2015) 5 SCC 1, this Hon'ble Court has elaborately dealt with the 'chilling effect' and 'over breadth test', and it

has been laid down that restrictions under Article 19 on the freedom of speech and expression must be crunched in the narrowest of terms. Accordingly Section 66A of the IT Act was struck down as unconstitutional.

MM. That the power given by the impugned provisions are operated more like a weapon whereby the content of the film is controlled, the artistic freedom is curtailed, the filmmaker is harassed and harmed financially, and the audience is deprived of entertainment and information. The filmmakers either have to succumb to the dictate of the Board or approach the legal system to fight out. Therefore, these provisions have a chilling effect on the exercise of the constitutional right to free speech and expression which would include (a) the artistic freedom to produce documentary and non-documentary works (b) the right of the artist to have her work disseminated (c) the right of the public to have access quality cinematographic and documentary works which in turns addresses the public's right to information and the right to receive entertainment. While this Hon'ble Court has gone to the extent of holding that these rights emanate from the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, in this present era of information technology, it

may be said that these rights are also traceable to the right to life under Article 21 of the Constitution.

NN. That cinematograph films ordinarily require a large outlay of finances, and various resources to make. A vast majority of cinematograph films are also made with a profit motive, while sub-serving the interests of growth of the arts, as well as of the right to freedom of speech and self expression. It is submitted that certification of films are routinely withheld with the sole intent of coercing the film-makers, producers and distributors thereof into acceding to the modifications demanded for certification, resulting in gross abuse of the power of certification and pre-censorship.

OO. That the various frivolous cuts are demanded of films for certification thereof, usually for oblique and political motives, which majority of film-makers unwillingly accede to, owing to financial burdens. Some instances of such frivolous cuts being demanded are:

a. Kuttrapaththirikkai (Tamil, 1993/2007): Certification was withheld for cuts to be made of scenes showing training of rebels in the Sri Lankan Civil Wars, and of police officers fleeing from the scene when former Prime Minister Rajiv Gandhi is assassinated. The film was

released without cuts in 2007, fourteen years later, on orders of the Madras High Court.

- b. *Kama Sutra: A tale of love* (English, 1996): Certification was withheld for deletion of scenes depicting nudity. The nudity was an essential part of the film, where one character was a courtesan, and the theme of the film was the two central female protagonists attempting to win the sexual favours of one of the male protagonists. Was released in India after extensive cuts.
- c. *Fire* (Hindi, 1998): Certification was withdrawn due to hooliganism at the time of its release, and it was re-examined.
- d. *Paanch* (Hindi, 1998): Was certified for release eventually after various cuts of scenes depicting violence and drug usage, but could not be released owing to financial difficulties incurred by the Producer by then.
- e. *War and Peace / Aman aur Jung* (Documentary; English / Hindi, 2002): Certification was withheld for cuts of about 20 minutes of the film. Bombay High Court eventually permitted release of the film without any cuts.
- f. *Pink Mirror / Gulaabi Aaina* (English / Hindi, 2004): Still unreleased in India since it depicts homosexuality, sexual

relationship between a transsexual / transvestite and a male.

- g. Hava Aaney De (Hindi, 2004): Still unreleased in India since certification was withheld on demands of cuts of about 20 minutes, which the filmmakers refused to accede to.
- h. Amu (English, 2005): When the filmmakers applied for reconsideration of the "A" certificate to be modified to a "U/A" certificate to enable them to release it in television also, all references to the 1984 anti-Sikh riots was demanded for the same; the film based on the 1984 anti-Sikh riots.
- i. Had Anhad (Hindi, 2009): Certification was withheld unless cuts were made; Delhi High Court eventually permits release without cuts, and awards costs of Rs. 10,000/- to the filmmaker.
- j. The Girl with the Dragon Tattoo (English, 2011): Certification withheld demanding scenes showing rape and torture be deleted. Still unreleased in India.
- k. Papilio Buddha (Malayalam / English, 2013): Was certified after scenes were blurred and audio was muted as demanded.

- i. No Fire Zone: In the Killing Fields of Sri Lanka (Multilingual Documentary, 2014): Still unreleased in India as certification was withheld pending cuts regarding scenes showing prisoners of the Civil War in Sri Lanka being stripped, tortured, and extra-judicially exterminated by the Sri Lankan Army.
- m. Un-freedom (Documentary; English, 2015): Still unreleased in India as certification was withheld pending cuts, which were not acceded to.
- n. The Painted House (Malayalam / English, 2015): Still unreleased in India as certification was withheld pending demands for scenes involving nudity being deleted.
- o. Mohalla Assi (Hindi/2016): A film based on a very popular work "*Kashi Ka Assi*" by Dr. Kashinath Singh was refused certification citing reason that it might hurt religious sentiments. The Producer has filed a Writ Petition in Delhi High Court against the decision of the Appellate Tribunal confirming the Board's refusal.
- p. Sharanam Gachchami (Telugu/2017): A film on caste based quota was denied certificate on the grounds that it might affect public order and disrupt peace.
- q. Jolly LLB (Hindi, 2017): The facts surrounding the cuts demanded in Jolly LLB are unusual. In this case, after the

Board had given its certification, a PIL was filed in the Aurangabad Bench of the Bombay High Court alleging that since the image of the judiciary would be maligned due to certain scenes, the said scenes needed to be eliminated from the film. The High Court went on to direct certain cuts which were not considered necessary by the Board.

- r. Lipstick under my Burqa (Hindi, 2017): The CBFC recently has refused to certify this movie because, according to the Board "*the story is lady oriented ... there are sexual scenes, abusive words, audio pornography and a bit sensitive touch [sic] about one particular section of society*". The Board has refused certification under clauses 1(a), 2(vii), 2(ix), 2(x), 2(xi), 2(xii) and 3(i) of the 1991 Guidelines. The Producer has approached the Appellate Tribunal against the said decision.

It is submitted that the above list, though indicative, is by no means exhaustive, as a large number of cuts demanded by the Respondent No. 2 are not reported by film-makers, who are more concerned with ensuring timely release of their films.

PP. That the Petitioner has been denied his right to view many of the above films such as *Paanch* (Hindi, 2001) release of which was delayed by the Respondent No. 2 by arbitrarily demanding deletions from the movie, eventually resulting in the release of the movie financially unviable for the producer thereof.

QQ. That owing to the lack of guidelines, the unbridled power, and the subjective nature of the exercise of certification, the Petitioner has been denied his right to view films such as *The Pink Mirror / Gulaabi Aaina* (English / Hindi, 2001), *Hava Aaney De* (Hindi, 2004), *Gandu* (English / Bengali, 2010), *The Girl with the Dragon Tattoo* (English, 2011), *Chatrak* (Bengali, 2011), *50 Shades of Grey* (English, 2015), *Unfreedom* (English, 2015), *The Painted House* (Malayalam / English, 2015) and *Mohalla Assi* (Hindi, 2016) merely owing to the subjective perception of the members of the Respondent No. 2 of acceptable sexual and / or social behaviour. It is pertinent to point out when the above films were censored, there are numerous contrary examples of films depicting sexual intercourse (*Parched*, 2016 contained explicit scenes of sexual intercourse), LGBTQ persons, rights, relationships and intercourse (*Girlfriend*, 2004; *Ardha-naari*, 2012; *Darmiyaan*, 1997; *Kapoor & Sons*, 2016; *My Brother...*

Nikhil, 2015, I Am, 2010; etc.), and containing explicit language (*Omkara*, 2006 is particularly notable for gratuitous use of explicit terms / expletives in the *Khariboli* dialect by all the central characters) that were granted certificate without any objection being raised to such content. The arbitrariness of certification of the film *Parched* without any cuts/alterations despite a graphic sexually intimate scene while altering the a kissing scene which is quintessential in the James Bond film *Spectre* (2016) is unreasonable and violative of Constitutional rights of the Petitioner as well as other citizens of India.

RR. That the discrimination *ex facie* apparent from the instances cited above is solely owing to the absolute lack of any guidelines whatsoever in exercise of the powers, resulting in the power being exercised not merely arbitrarily, but also wilfully and intentionally in an oblique manner with a view to furthering ulterior motives, especially political, to shape opinions on socio-political and communal issues and perpetuate particular opinions.

SS. That the discrimination is even more apparent in respect of documentaries, which are mere depiction of real life events / facts, and inherently incapable of being pre-censored. Though a fundamental right of an Indian Citizen, the right to

free speech and expression by means of documentaries has been and is being subject to large scale illegal abridgement / denial. The consequence of curtailment of free flowing information is that any healthy debate and criticism, essential to the proper functioning of a democracy is stifled.

TT. This Hon'ble Court in the judgment in ***R.K. Anand v. Delhi High Court***, (2009) 8 SCC 106, while holding that NDTV could telecast a sting operation (involving a prosecution witness and public prosecutor and defence lawyer) in relation to a case *sub judice* before the Court without any prior approval of the trial court, Delhi High Court also held that media cannot be subjected to pre-censorship in the following words :

**"290.** It would be a sad day for the court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to pre-censorship of reporting of court proceedings. And this would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under **Article 19(1) of the Constitution.**"

UU. That the right to freedom to practice any trade, profession or business is completely effaced by the illegal and arbitrary exercise of the power of certification. It is submitted that

films require large outlay of financial and other resources being made at the outset and at various stages in the making of a film, which investment is made relying largely on the timely release of the film in the same form in which it was made. However, by arbitrarily and illegally exercising the power to withhold / refuse certification, the entire process is frustrated, resulting in denial of the said Fundamental Right guaranteed under Article 19(1)(g).

W. That the power is untrammelled and, being without guidelines, suffers from vagueness and deserves to be set aside is especially apparent from the fact that despite a large number of films being denied certification, the said films are nonetheless released upon judicial review of the order denying or withholding certification, solely on the ground that the same were exercised arbitrarily or illegally.

WW. That assuming the pre-censorship provisions are removed from the aforesaid Act, just the way the Act was when originally drafted, no adverse impact on the society will be made, no law and order situation will be created, none of the objectives of film certification as specified in Guidelines Clause (1) will be hampered among other things, because the films get released with due certification but without any pre-censorship. The fear of adversity is unfounded which is

proved by the fact that each film maker who has contested the Board's demands of cuts/ alterations on the grounds of impropriety or apprehension of law and order situation, has succeeded in releasing his/her film in its original form upon getting the Board's demands quashed and in fact no such danger or harm was posed with the said release.

- XX. That if free speech is about the right to receive information, an about the social good of a public sphere in which information circulates freely and widely, then the vehicles of information such as films, documentaries, news reports, artistic endeavours such as play, dance & music performance etc must occupy a place devoid of pre-censorship. If content in/on news reports, television entertainment channels, radio stations, internet flows freely sans pre-censorship without posing any harm/danger to society, to isolate and subject films, documentaries from this freedom is merely regressive. It has been 27 years since the decision in *Abaas* was given and massive changes in infrastructure, technology and all other spheres of life including the social/cultural reality have taken place. It is high time the Judiciary helps improve our democracy and public space while ensuring genuine freedoms, directing due exercise of self-restraint, for which it removes the provisions

of pre-censorship from the aforesaid Act and the impugned 1983 Rules.

YY. The restriction on the freedom of expression under Article 19(2) of the Constitution of India and Section 5B(1) and 5B(2) of the Act need to be interpreted narrowly. It must be shown that the 'direct' and 'immediate' impact of the film will be against the interests of 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. When films, particularly documentary films are made portraying facts and reality, the objectives may be varied and their content is open to subjective interpretation. Therefore a test of a 'direct' and 'immediate' impact must be required to be applied for such artistic expression to be curtailed in any manner.

ZZ. The Shyam Benegal Committee was constituted by the Government. It has rendered a detailed report laying down the manner in which the Board must carry out or recommend modifications in such artistic expression. The recommendations of the Benegal Committee must be given effect to and the Act, Rules and Guidelines thereunder must

be enforced in accordance with the Benegal Committee recommendations.

AAA. That the potential for adaptability with changing times is engraved in the aforesaid Act through Section 5A(3) whereby the validity of the certificate granted is declared to be valid only for ten years and not in perpetuity. Rule 29(2) of the impugned Rules provides for renewal of the certificate which is mandated to be treated as 'if it were an original application.' The intention behind keeping the validity only for ten years was to keep the possibility for a film maker who was given a 'A' certificate ten years ago to apply for and to receive a fresh 'U' certificate commensurate with the changing times. The original intention of law makers was not even to grant powers of demanding changes in the original film content as the said impugned provision of Section 4(1)(iii) was absent in the original Act and was introduced only in 1981.

BBB. The recent Judgement of the Supreme Court in *Abhiram Singh & Ors v. C.D. Commachen(Dead) & Ors* 2017 SCC 9, J. Lokur, in paras 48 to 51, while emphasizing on the need of the law to adapt to the changing social reality caused by the technological advancement, observed, "...it has to be recognized that there is a continuing process of the growth

of law and one can retard it only at the risk of alienating law from life itself." Considering the mammoth changes in human reality and societal composition since the decision of **K. Abbas** (Supra), it is high time the impugned Act, Rules and Guidelines get an overall face lift.

CCC. That the categories for certification as is specified in Section 4(1) or Section 5A(1) of the aforesaid Act may be increased and changed so as to accommodate the content in the film to different groups of population. New categories such as 'not for Under 12', 'not for Under 15', 'Under Parental Guidance', 'Adult with Caution' with mandates of 'specific disclaimers in the publicity material and before the initial credit titles of the film' etc may be introduced.

DDD. That the Guidelines dated 6<sup>th</sup> December 1991 specified in Clause (2) thereof ought to be quashed on the ground of being overbroad, arbitrary, imprecise, vague, etc. The removal of the said Guidelines will not have any adverse effect as the Board will still be bound by the guidelines provided by Section 5B(1) of the aforesaid Act which are replication of the restrictions set in Article 19(2) of the Constitution. Hence no injury/harm will be caused upon quashing of the said Guidelines.

EEE. That it is pronounced in *M.P. v Rakesh Kohli* (2012)6 SCC 312 by this Hon'ble Court that when the laws passed by the Parliament have flaws which are of Constitutional nature, the impugned Act needs to be declared invalid. The present Act suffers from so many inadequacies and defects hampering the fundamental rights of the Petitioner and other Indian citizens that the impugned portions of the same ought to be declared invalid to that extent.

FFF. A documentary maker is capable of taking responsibility of articulating an appropriate disclaimer which will alarm, warn or give notice to the audience about its theme/treatment and issues raised thereon along with information whether it involves violent or sexual content etc that may be inappropriate for potentially vulnerable audience (including children). The text of the said disclaimer may be verified by the Respondent No. 2 who shall then suggest changes in that text if the content of the documentary warrants the same.

GGG. If the said disclaimer stays on the screen for a duration ranging from 30 seconds to 90 seconds depending on the

length of the text, before the beginning of the actual documentary, the audience will be able to make an informed choice about viewing the content.

HHH. It is unfair and discriminatory to impose same amount of fees as are presently required to be paid for certification of documentaries as that for the feature films which have budgets running in crores of rupees. Considering this disparity and the limited avenues for revenue generation open for documentaries, the fee be completely waived or be fixed at a token value for the documentaries.

III. The rampant arbitrariness, favouritism, prejudice in decision making while processing the application for certification which is prevalent presently as is evident from the decisions made in cases of films "*Parched*", "*Saat Uchchakke*", "*Udto Punjab*" and "*Befikre*", ought to be stopped so as to restore faith of the film-makers and audience along with guaranteeing their fundamental rights.

JJJ. Shyam Benegal committee that was appointed by the Respondent No. 1 itself has submitted its recommendations which were arrived at after taking the film fraternity's

submissions and the Petitioner is satisfied with their suggestions.

KKK. That the Petitioner has not filed any other / similar petition before this Hon'ble Court in respect of the issues raised in the present petition. It is submitted that this Hon'ble Court thus has the jurisdiction to entertain the present Writ Petition.

22. That the Petitioner has not filed any other or similar petition either before this Hon'ble Court or any other Court in respect of the issues raised in the present petition. This Hon'ble Court has the jurisdiction to entertain the present Writ Petition.

23. That Annexures P-1 to P- 4 produced along with this Writ Petition are true and correct copies of their respective originals.

24. The Petitioner craves leave of this Hon'ble Court to add to, alter, amend and/or modify any of the grounds afore stated.

25. The Petitioner has no other equally efficacious remedy available to him other than to file the instant Writ Petition under Article 32 of the Constitution for the protection of his fundamental rights under Articles 14, 19 and 21 of the Constitution. The issues canvassed in this Petition are constitutional questions of seminal importance.
26. The Petitioner states that the present petition is being filed *bonafide* and in the interests of justice.

#### PRAYER

In light of the above facts and submissions and in the interest of justice, it is humbly prayed that this Hon'ble Court be graciously pleased to:

- (i) Issue a writ, order or direction in the nature of certiorari declaring the provisions of Section 4(1)(iii) of the Cinematograph Act, 1952 as unconstitutional, by virtue of

being in violation of Articles 14, 19(1)(a) and 21 of the Constitution of India and quash the same; and

- (ii) Issue a writ, order or direction in the nature of certiorari, declaring the provisions of Section 3(1) of the Cinematograph Act, 1952 and Rule 3 of the Cinematograph (Certification) Rules, 1958, as unconstitutional by virtue of being in violation of Articles 14, 19(1)(a), and 21 of the Constitution of India and quash the same; and
  
- (iii) Issue a writ, order or direction in the nature of certiorari, declaring the provisions of Section 5(1) and Section 5(2) of the Cinematograph Act, 1952 along with Rule 7(3) of the Cinematograph (Certification) Rules, 1958, as unconstitutional by virtue of being in violation of Articles 14, 19(1)(a), and 21 of the Constitution of India and quash the same; and
  
- (iv) Issue a writ, order or direction in the nature of certiorari, declaring the provisions of Section 5D(1) to (5) of the Cinematograph Act, 1952 as unconstitutional by virtue of being in violation of Articles 14, 19(1)(a), and 21 of the

Constitution of India, and Rule No. 24(2), No. 33(2), No. 43(6) of the Cinematograph (Certification) Rules, 1958 and quash the same; and

- (v) Issue a writ, order or direction in the nature of certiorari declaring the objectives 'a', 'd' and 'e' in the Clause 1 of the Guidelines dated 6<sup>th</sup> December 1991 as unconstitutional by virtue of being in violation of Articles 14, 19(1)(a), and 21 of the Constitution of India and quash the same; and
- (vi) Issue a writ, order or direction in the nature of certiorari, declaring the Clause 2 of the Guidelines dated 6<sup>th</sup> December 1991 as unconstitutional by virtue of being in violation of Articles 14, 19(1)(a), and 21 of the Constitution of India and quash the same; and
- (vii) Issue a writ, order or direction in the nature of certiorari, declaring the Rule No. 22(2) and 22(8) of the Cinematograph (Certification) Rules, 1958, as unconstitutional by virtue of being in violation of Articles 14, 19(1)(a), and 21 of the Constitution of India and quash the same; and

- (viii) Issue a writ, order or direction in the nature of mandamus declaring that the existing categories of the certification specified in Section 5A(1) of the Cinematograph Act, 1952 are inadequate as those fail to inform the audience about the suitability of the content to vulnerable viewers; and
- (ix) Issue an appropriate Writ, Order or Direction reading down the provisions of the Cinematograph Act, 1952 so as to exclude from its purview "documentary films", and declaring that "documentary films" do not fall within the ambit of Section 2(c) read with Section 2(dd) of the Cinematograph Act, 1952 and, consequently, are not subject to any pre-censorship norms; and
- (x) Issue a writ, order or direction in the nature of mandamus, directing the Central Government to frame appropriate rules so as to incorporate provisions of disclaimer, its text, appearance, length etc that should appear before the beginning of the documentary films and to that extent alter the provisions of the Cinematograph Act, 1952; and

- (xi) Issue a writ, order or direction in the nature of mandamus, directing the Central Government to waive the prevalent fee applicable to documentary films and to that extent alter the provisions of the Cinematograph Act, 1952;
- (xii) Issue a writ, order or direction in the nature of mandamus declaring that the present Respondent No. 2 Board is incompetent to carry out any functions under the provisions of the Cinematograph Act, 1952;
- (xiii) Issue a writ, order or direction in the nature of mandamus declaring that any executive body or board or commission appointed by the executive is not a competent body to adjudicate whether a film has content to invite a reasonable restriction under Article 19(2) of the Constitution as such an adjudication is only within the domain and competence of the Judiciary of India; and
- (xiv) Issue an appropriate Writ, Order or Direction declaring that the law laid down in *Abbas* was per incuriam as the *Abbas* decision was rendered without even considering the law laid

down in *Brij Bhushan* which was decided by a six Judge Bench of this Hon'ble Court;

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY**

Drawn By:

Filed by

Sanjoy Ghose &  
Gautam Narayan  
(Advocates)

Gautam Narayan  
(Advocate for the Petitioner)

Settled by:

Mr. Gopal Subramaniam Senior Advocate

DRAWN ON: 25.02.2017

FILED ON: .03.2017

IN THE SUPREME COURT OF INDIA  
ORDINARY CIVIL JURISDICTION  
WRIT PETITION (CIVIL) No. of 2017  
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Mr. Amol Palekar ... Petitioner

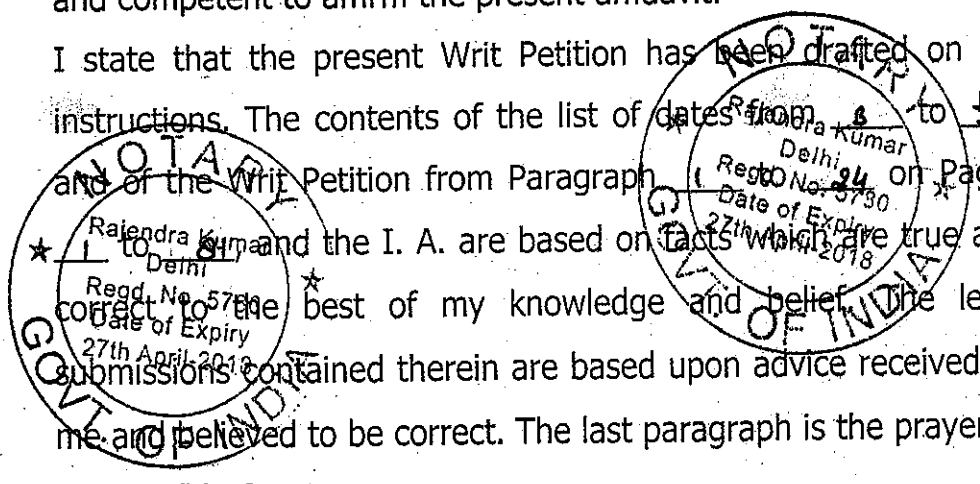
Versus

Union of India & Anr ... Respondents

AFFIDAVIT

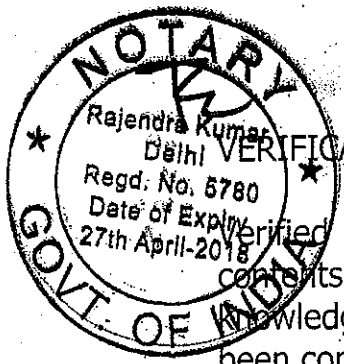
I, Mr. Amol Palekar, S/o. Kamalakar, aged about 72 years, residing at Prabhat Road, Pune - 411004, Maharashtra, presently in New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Petitioner herein, and as such am duly authorised and competent to affirm the present affidavit.
2. I state that the present Writ Petition has been drafted on my instructions. The contents of the list of dates from 1 to 24 and of the Writ Petition from Paragraph 1 to 24 and the I. A. are based on facts which are true and correct to the best of my knowledge and belief. The legal submissions contained therein are based upon advice received by me and believed to be correct. The last paragraph is the prayer to this Hon'ble Court.
3. That the annexures to the Writ Petition are true and correct copies of their respective originals.



*[Signature]*  
DEPONENT

*[Signature]*  
DEPONENT



VERIFICATION:

Verified at New Delhi on this the 27<sup>th</sup> day of February, 2017 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 27.02.2017 IDENTIFIED BY *[Signature]* REGISTERED BY GOVERNMENT OF INDIA SUPREME COURT OF INDIA COMPOUND, NEW DELHI Register Pg./Sl. No. 27.02.2017

Sh. 9212491692  
9899448209

IDENTIFIED BY EXECUTANT DEPONENT WHO HAS SIGNED IN MY PRESENCE  
WHO HAS SIGNED IN MY PRESENCE

**APPENDIX****The Cinematograph Act 1952**

Section 2(c) of the aforesaid Act defines "cinematograph" to include '...any apparatus for the representation of moving pictures or series of pictures.' Further, Section 2 (dd) defines "film" to mean cinematograph film. The aforesaid Act does not provide for a distinct definition for 'documentaries'.

Section 3(1) reads as under:

For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the Official Gazette, constitute a Board to be called the Board of Film Certification which shall consist of a Chairman and not less than twelve and not more than twenty-five other members appointed by the Central Government.

Section 4 of the aforesaid Act provides for examination of films which reads as under:

Examination of Films.— (1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner, -

(i) Sanction the film for unrestricted public exhibition:

[Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or]

(ii) Sanction the film for public exhibition restricted to adults, or

(iia) Sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or

(iii) Direct the applicant to carry out such excisions or modifications in the film as it things necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or

(iv) Refuse to sanction the film for public exhibition.

(2) No action under the proviso to clause (i), clause (ii), clause (ii-a), clause (iii) or clause (iv) of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter."

Section 5(1)

(1) For the purpose of enabling the Board to efficiently discharge the functions under this Act, the Central Government may establish at such regional centres as it thinks fit, advisory panels each of which shall consist of such number of persons, being persons qualified in the opinion of the Central Government to judge the effect of films on the public, as the Central Government may think fit to appoint thereto.

Section 5-A provides for certification of films as is reproduced hereunder –

"5A. Certification of films – (1) If, after examining a film or having the film examined in the prescribed manner, the Board considers that –

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the provision to clause (i) of sub-section (1) of section 4, it shall grant to the person

applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film a "A" certificate or, as the case may be, an "S" certificate, and cause the film to be so marked in the prescribed manner.

Section 5-B :- Principles for guidance in certifying films.-

"5B. Principles for guidance in certifying films-

(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide

the authority competent to grant certificates under this Act."

### **The Cable Television Networks (Regulation) Act, 1995**

Section 2(g) of the said Act defines the term programme as follows: '(g) programme means any television broadcast and includes –

- (i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;
- (ii) any audio or visual or audio-visual live performance or presentation, and the expression 'programming service' shall be construed accordingly.'

Section 5: Programme Code.-- No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

#### CHAPTER V

Section 19. Power to prohibit transmission of certain programmes in public interest.-- Where [any authorised officer], thinks it necessary or expedient so to do in the public interest, he may, by order prohibit any cable operator from

transmitting or re-transmitting [any programme or channel if, it is not in conformity with the prescribed programme code referred to in section 5 and advertisement code referred to in section 6 or if it is] likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity.

Section 20. Power to prohibit operation of cable television network in public interest.—[1] Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf.

[(2) Where the Central Government thinks it necessary or expedient so to do in the interest of the---

- (i) sovereignty or integrity of India ; or
- (ii) security of India ; or
- (iii) friendly relations of India with any foreign State; or
- (iv) public order, decency or morality,

it may, by order, regulate or prohibit the transmission or re-transmission of any channel or programme.

(3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in Section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme].

### **The Cinematograph (Censorship) Rules, 1958.**

Rule 22. Application for examination of films:- (1) Every application to certify a film for public exhibition shall be made in writing in Form II set out in the Schedule, according as the film is produced in, or imported into, India.

(4) If in the case of a news reel, documentary or other short film the Regional Officer is satisfied that the applicant is not able to furnish the documents specified in clause (b) of sub-rule (3), along with the application for reasons beyond his control, the Regional Officer may direct that such documents may be furnished within such period after the examination of the film as he may specify, or that the submission of such documents may be dispensed with.

23. Examining Committee:- (1) On receipt of an application under rule 22 the Regional Officer shall appoint an Examining Committee to examine the film. The examination shall be made at such place and at such time as the Regional Officer may determine and at the expense of the applicant.

(2) The Examining Committee shall consist of\_\_

(a) in the case of a news reel, documentary short, or a cartoon or in the case of a film predominantly educational, a member of the Advisory Panel and the Regional Officer or Assistant Regional Officer; and

(b) in the case of any other films, four members of the Advisory Panel and the Regional Officer or the Assisting Regional Officer;

(3) Immediately after the examination of the film, the opinion of the members of the Examining Committee attending the examination shall be recorded in duplicate by the Regional Officer or Assisting Regional Officer, or in the absence of both, by a member of the Committee appointed by the Regional Officer for this purpose stating, with regard to each member, whether he considers—

(a) that the film is or is not suitable for unrestricted public exhibition; or

(b) that the film will be suitable for unrestricted public exhibition, or public exhibition restricted to adults, as the case may be, if a specified portion or specified portions be deleted therefrom.

(c) that the film is not or is not suitable for public exhibition restricted to adults; or

### **The Cinematograph (Certification) Rules, 1983.**

#### **3. Terms of office-**

(1) A member of the Board shall hold office during the pleasure of the Central Government.

(2) Subject to the provisions of sub-rule (1), the Chairman shall hold office for a period of three years and shall continue to hold office until his successors is appointed;

Provided that pending the appointment of his successor, the Central Government may appoint another person to act as Chairman for a period not exceeding one year.

(3) Subject to the provisions of sub-rule (1), every other member shall hold office for a period not exceeding three years.

(4) A retiring member or a member whose term of office has expired by efflux of time shall be eligible for reappointment.

After the rule 3, the following new rule shall be inserted, namely:- "3A. Representation of women in the board.- The Central Government may take such steps as it thinks fit to appoint women members in the Board so that there is due representation for women."

10. Constitution of advisory panels.-

(1)The Central Government shall constitute an advisory panel at each of the regional offices of the Board.

(2)An advisory panel constituted under sub-rule (1) shall consist of such number of members as the Central Government may, after consultation with the Board, determine.

(3)The Central Government may after consultation with the Board, appoint any person whom it thinks fit to be a member of an advisory panel.

Provided that the Central Government may dispense with such consultation in respect of such members not exceeding one-third of the total number of members of the advisory panel as that Government thinks fit.

In sub-rule (3) of rule 7, after the proviso, the following proviso shall be inserted, namely:- "Provided further that there shall be

due representation to women in an advisory panel." (as per notification dated 16<sup>th</sup> Nov., 1994).

22. Examining Committee.-

(2) The Examining Committee shall consist of:-

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

(b) [in the case of a long film, four members of the advisory panel and an examining officer of whom two persons shall be women].

Provided that if the examining officer is unavoidably absent at the examination of a film, the Examining Committee shall consist of two members of the advisory panel in a case falling under clause (a) and five members of the advisory panel in a case under clause (b).

In rule 22, in sub-rule (2), after the first proviso, the following proviso shall be added, namely:-

Provided further that in the Examining Committee, in a case falling under clause (a) one member shall be woman and in a case under clause (b) two members shall be women. (as per notification dated 3<sup>rd</sup> August, 1994)

(8) The Examining Committee shall examine the film having regard to the principles for guidance issued by Government under section 5B (2).

24. Revising Committee:-

(2) The Revising Committee shall, subject to sub-rule (5), consist of a Chairman and not more than nine members, being of the Board or members of any of the advisory panels, to be specified by the Chairman. "Provided that subject to the provisions of sub-rule(11), the Chairman shall give due representation to women in the Committee by nominating such number of women members as the thinks fit." (as per notification dated 16.11.1994)

32. Re-examining of certified films – (1) Where in respect of a film which has been certified for public exhibition, any complaint is received by the Board, the same shall be forwarded to the Central Government.

(2) The Central Government may, if it considers it necessary so to do, direct the Chairman to re-examine any film (in respect of which a complaint has been received by it directly or through the Board) in such manner and with such assistance as may be specified in the direction.

(3) The Chairman may, for the purpose of re-examining aforesaid, require by written notice the person who made the application for

certification of the film or the person to whom the rights of ownership or distribution in the film have passed, to arrange at his expense to deliver a print of the certified film to any specified regional officer within such time as may be specified in the notice for the purpose of re-examination.

(4) The place, date and time of such re-examination shall be determined by the Chairman.

(5) The Chairman shall forward his opinion together with the print of the film in relation to which a certificate was issued earlier to the Central Government who may after such enquiry as it deems fit, pass such orders thereon in exercise of the revisional powers under section 6.

(6) The provisions of this rule shall apply only in cases where the revisional powers are exercisable by the Central Government under section 6.

### 33. Alteration of film after issue of certificate.-

(2) For the purpose of exercising its powers under sub-rule (1) the regional officer shall appoint an Examining Committee to examine at the expense of the applicant, the reel or reels of the film in which the portion or portions are altered in such manner and with such assistance as he may deem fit and where the Examining

Committee considered it necessary so to do, it shall re-examine the entire film.

Provided that where the examining officer is unavoidably absent at the examination of the film or any reel thereof, the Examining Committee consist of two members of the Advisory Panel.

43. Terms and conditions of service of the Chairman and members of the Appellate Tribunal:-

(6) The Central Government may, after consultation with the Chairman of the Appellate Tribunal, appoint any person whom it thinks fit to be a member of the Appellate Tribunal:

Provided that the Central Government may, for reasons to be recorded in writing dispense with such consultation.

### **The Bombay Police Act, 1951**

#### **Section 33(wa)(iii)**

Prior scrutiny of such performances [and of the scripts in respect thereof, if any, and granting of suitability certificate therefore subject to conditions, if any], [ by the Board appointed by the State Government for the purpose, either for the whole State or the area concerned] [the members of the Board being persons who in the opinion of the State Government possess knowledge of, or experience in literature, the theatre and other matters

relevant to such scrutiny, or by an Advisory Committee appointed by the Commissioner, or the District Magistrate in this behalf;]

[Provided for appeal against the order or decision of the Board to the prescribed authority, its appointment or constitution, its procedure and other matters ancillary thereto, and the fees (whether in the form of court-fee stamp or otherwise) to be charged for the scrutiny of such performances or scripts for applications for obtaining such certificates and for issuing duplicates thereof and in respect of such appeals;]

## ANNEXURE P- 1

An indicative and non-exhaustive list of films that have been denied certification or had their certification withheld subject to modifications proposed by the Respondent No. 2 is set out below:

Year	Film	Reasons for refusal / withholding of certificate
1971	Sikkim	A documentary about the (then) nation of Sikkim. Was banned for depicting Sikkim as a sovereign nation, had all its copies seized and destroyed. Was subsequently released in 2010 in one theatre.
1973	Garam Hawa (Urdu)	Depicts the life and family of a Muslim businessman in Uttar Pradesh during the Partition. Was banned for about eight months due to its political content.
1975	Aandhi	Depicts the inter personal relationship between an estranged couple that meet after several years and at different stations in life. Was banned

Year	Film	Reasons for refusal / withholding of certificate
		for political reasons during the Emergency, and subsequently released in 1977,
1977	Kissa Kursi Ka	A political satire and a commentary on the Emergency. Was banned, had all reels seized and destroyed during the Emergency.
1984	Indiana Jones and the temple of Doom	An action-adventure fictional movie and part of the famous <i>Indiana Jones</i> series. Was banned for hurting religious sentiments since it portrayed Goddess Kali as a demon of the underworld, and Indians as consuming monkey brain (while monkeys were regarded as sacred). The ban was subsequently rescinded.
1987	Pati Parameshwar	A commentary on the devotion shown a lady to her husband despite his being more attached to his mistress. Was banned for depicting a woman in

Year	Film	Reasons for refusal / withholding of certificate
		<i>ignoble servility</i> of her husband. The ban was set aside by the Bombay H Ct.
1993	Kuttrapaththirikai (Tamil)	A drama film adapted in the backdrop of the Sri Lankan civil war and the assassination of former Prime Minister Rajiv Gandhi. Though completed in 1993, certification was refused unless cuts were made to the film, which was refused. The film was eventually released without cuts in 2007 on the directions of the Madras High Court.
1996	Kama Sutra: A tale of love (English)	A story of the interpersonal relationship between two ladies from different stations of life whose relationship becomes strained as they grow older and their differences in station becomes more pronounced. Was refused certification initially for its sexual content, and was released after

Year	Film	Reasons for refusal / withholding of certificate
		extensive reduction of sexual content.
1998	Fire	Though certified and released uncut, it was sent for re-examination due to hooliganism at the time of its release. Was released two months thereafter uncut.
2001	Paanch	Certification withheld initially for its violent content and depiction of drugs usage. Was certified for release eventually after various cuts but could not be released owing to financial difficulties incurred by the Producer by then.
2002	War and Peace / Jang aur Aman (English / Hindi)	A documentary exploring the 1998 nuclear tests by India and Pakistan. Certification was withheld pending 21 cuts. The Bombay High Court eventually permitted release of the film without any cuts.

Year	Film	Reasons for refusal / withholding of certificate
2003	Hawayein	A drama film set against the backdrop of the 1984 anti-Sikh riots. Was banned from being released in New Delhi, Punjab, Haryana and Jammu & Kashmir.
2004	The Pink Mirror / Gulaabi Aaina	Was refused certification for portraying homosexuality and sexual relationship between a transsexual/transvestite and a homosexual person.
2004	Final Solution	Based on the 2002 Gujarat communal riots, the film was initially refused certification owing to its communal and political content. It was eventually certified after several months due to sustained protests and campaigning against the ban. The film was unofficially released in the meantime by means of "pirated" compact discs / digital video discs containing the film.

Year	Film	Reasons for refusal / withholding of certificate
2004	Hava Aaney De	A film exploring the lives of four friends in the backdrop of a nuclear war breaking out between India and Pakistan. Certification was withheld subject to cuts of about 20 minutes and muting of various dialogues. The filmmakers refused the cuts and the film was never released in India.
2005	Amu (English)	Based on a novel of the same name, the film is a fictionalised account of a lady discovering her past and her family's involvement in the 1984 anti-Sikh riots. Certification was withheld pending cuts. Despite the cuts, the film was granted only an "A" certification. On an application for re-certification to U/A, the same was refused unless all verbal references to the riots were removed. This was refused and the film released with an

Year	Film	Reasons for refusal / withholding of certificate
		"A" certificate.
2009	Had Anhad	A documentary exploring the religious and political significance of the poems of the 15 <sup>th</sup> Century poet, Kabir. Was refused certification unless cuts were made. The film was eventually released in 2011 with the directions of the Delhi High Court, which also awarded costs of Rs. 10,000/- to the filmmaker.
2010	Gandu (English / Bengali)	A musical exploring the life of a frustrated unsuccessful young man as he tries to come to terms with his sexual maturity, and realities of life. Was refused certification for its sexual content and never released in India.
2011	The Girl with the Dragon Tattoo	A fictional psychological-thriller film. Certification was withheld pending deletion of scenes involving rape and torture. The filmmakers refused to

Year	Film	Reasons for refusal / withholding of certificate
	(English)	concede, and the film was not released in India.
2011	Chatrak (Bengali)	A film exploring interpersonal relationship between a lady and her boyfriend, who is in search of his long-lost brother. The film was not allowed theatrical release due to its sexual content.
2012	Pithavinum Puthranum (Malayalam)	Certification refused for depicting the christian community in a bad light – is a drama film about the interpersonal relationship two nuns at a convent.
2013	Papilio Buddha (Malayalam / English)	A film exploring atrocities committed on Dalits, women and the environment. Certification was withheld unless scenes depicting Mahatma Gandhi and certain other leaders were removed. Was certified after scenes were blurred and audio

Year	Film	Reasons for refusal / withholding of certificate
		was muted.
2014	No Fire Zone: In the Killing Fields of Sri Lanka	An investigative documentary about the Sri Lankan Civil War. Certificate was withheld pending cuts, which the filmmaker refused to accede to. The film did not have a theatrical release, but was released on the internet by the filmmaker.
2014	Kaum De Heere (Punjabi)	Based on the lives of the assassins of former Prime Minister Indira Gandhi, the certification was withdrawn a day prior to its slated release date for re-examination.
2015	50 Shades of Grey (English)	A film based on the book by the same name, exploring the interpersonal relationship between a man and a lady who explore sexual paraphilia. Was refused certification despite voluntary cuts by the filmmaker.

Year	Film	Reasons for refusal / withholding of certificate
2015	Unfreedom (English)	A film exploring homosexuality, same sex relationships and interpersonal power struggles. Certification was refused initially. The revising committee suggested cuts, which the filmmaker refused to accede to, and preferred an appeal from. The Appellate Tribunal refused certification notwithstanding the cuts.
2015	Patta Patta Singhan Da Vairi (Punjabi)	A film based on the Sikh Armed Freedom movement of the 1980s and 1990s. Certification was refused owing to the film being "objectionable". The film was eventually cleared for certification by the Appellate Tribunal.
2015	The Mastermind Jinda Sukha (Punjabi)	A film based on the assassins of former chief of army Arun Vaidya. Though initially certified, its release was delayed for several months before finally being released.

Year	Film	Reasons for refusal / withholding of certificate
2015	The Painted House (Malayalam / English)	A film about an aged writer's self discovery and gaining insight on the basis of his attraction and relationship with a lady much younger than him. The film was refused certification owing to three scenes containing nudity.
2016	Udta Punjab	A film exploring drugs use and abuse. Certification was withheld with a demand for about 90 cuts from the film, based on political motives. The film was eventually permitted to be released with nominal modifications by the Bombay High Court.
2016	Mohalla Assi	A film exploring the commercialisation of the pilgrimage to the city of Kashi. Certification was denied owing to its commentary on religious issues, and the use of expletives.

Year	Film	Reasons for refusal / withholding of certificate
2016	Mud Maza (Malayalam)	Certification withheld for deletion of a scene showing pre-adolescent children dancing naked in celebration.
2016	Ka Bodyscapes (Malayalam)	Certification refused for insulting Hindu religion, depiction of homosexual relationships, etc.
2017	Kathakali	Certification withheld for deletion of a scene showing the protagonist stripping to cross a river.
2017	Sharanam Gachchami	Certification refused because it might affect public order and disrupt peace.
2017	Modi kaa Gaon	Certification refused pending a demand for No Objection Certificate from PMO.
2017	Lipstick under my Burqa	Certification refused under clauses 1(a), 2(vii), 2(ix), 2(x), 2(xi), 2(xii) and 3(i) of the 1991 Guidelines citing " <i>the story is lady oriented ... there are sexual scenes, abusive words, audio</i>

Year	Film	Reasons for refusal / withholding of certificate
		<i>pornography and a bit sensitive touch [sic] about one particular section of society".</i>

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## CENTRAL BOARD OF FILM CERTIFICATION

SUMMARY RECORDS OF THE 138<sup>th</sup> BOARD MEETING OF THE CENTRAL BOARD OF FILM CERTIFICATION HELD AT HOTEL SUN-N-SAND, MUMBAI ON 23<sup>RD</sup> FEBRUARY, 2015.

The 138<sup>th</sup> Board Meeting of the Central Board of Film Certification was held at Hotel Sun-N-Sand, Mumbai and it was presided over by the Chairman, Shri Pahlaj Nihalani. The following members of the Board were present.

A. Members of the Board –

1. Shri S.Ve. Shekher, Chennai
2. Smt. Jeevitha Rajasekhar, Hyderabad
3. Shri George Baker, Kolkata
4. Dr. Sadhana Kapoor, Bhopal
5. Shri Haranath Chakraborty, Kolkata
6. Shri Aseem Kaistha, New Delhi
7. Shri Chander Mukhi Sharma, New Delhi
8. Smt. Nandini Sardesai, Mumbai

9. Shri Ramesh Patange, Mumbai
10. Dr. Chandraprakash Dwivedi, Mumbai
11. Prof. Syed Abdul Bari, Gujarat
12. Shri Mihir Bhuta, Mumbai
13. Shri Ashoke Pandit, Mumbai
14. Shri Raghu Menon, Mumbai
15. Smt. Vani Tripathi, Tikoo, New Delhi

**B. Officers of the Board -**

1. Shri Shravan Kumar, CEO
2. Shri Raju S. Vaidya, RO, Mumbai.
3. Shri Bhaswar Gangopadhyay, RO, Kolkata.
4. Shri V. Packirisamy, RO, Chennai.
5. Shri T.V.K. Reddy, RO, Hyderabad.
6. Shri Nagendra Samy, RO, Bangalore.
7. Shri Dhiraj Kakadia, RO, Delhi.
8. Smt. Pratibha A., RO, Thiruvananthapuram.
9. Shri Amitabh Sharma, Addl. Regional Officer, Kolkata.
10. Shri Sanjai Jaiswal, Sr. Administrative Officer, Mumbai.

**Leave of Absence granted to -**

1. Dr. Naheed Abidi
2. Ms. Amal Allana, Delhi
3. Shri Saeed Mirza, Mumbai
4. Smt. Arundhati Nag, Mumbai

5. Smt. Mamang Dai, Guwahati
6. Shri Dipesh Mehta, Mumbai
7. Shri Nikhil Alva, Mumbai
8. Shri Anjum Rajabali, Mumbai
9. Shri Pankaj Vohra, New Delhi
10. Shri B. N. Adhikari, Addl.RO., Cuttack
11. Smt. Ashiko Lassa, RO, Guwahati

1. Introduction of the Chairman, Board Members and Officers of CBFC by CEO :

The CEO, Shri Shravan Kumar welcomed the Chairman, Board Members and the Officers of the Board and said it is a proud privilege to meet them all. CEO requested all the Board Members and Officers of the Board to offer their introduction.

The Board Members and Officers of the Board introduced themselves.

The CEO read out the names of the absentees. Smt. Nandini Sardesai, Board Member informed that most of the absentees (Board Members) have resigned to which the CEO clarified that the Board (CBFC) didn't receive any official communication about so. The Board granted leave of absence to those members and Officers, not present.

CEO requested the Chairman, Shri Pahlaj Nihalani to give his welcome address.

2. Welcome address by the Chairman :

The Chairman, Shri Pahlaj Nihalani extended a warm welcome to the CEO, Members of the Board and Officers of the Board. He shared his experience of being in the film industry for 40 years and said he is eagerly looking forward to the new experience of being with the Central Board of Film Certification as Chairman. He felt that CBFC should take appropriate measures so that there is no agitation and can confer justice to the responsibilities given. The Chairman talked about the guidelines. He mentioned that the Rules changed in 1983 and subsequently the guidelines were updated in 1997. Films changed with times but the Act and Guidelines of CBFC are still the same. He informed the Board that the then Chairperson, Smt. Sharmila Tagore initiated to change the Cinematograph Act, 1952 and the amendment of Act is under process. He informed the Board that in the year 2013, the Ministry has constituted a Committee of Experts headed by Justice Mukul Mudgal to examine the issues relating to certification of films and they have submitted the report to the Ministry. He informed that in the Committee of Experts the then Chairpersons, Smt. Sharmila Tagore and Ms. Leela Samson and eminent personality of film industry, Shri Javed Akhtar were also associated.

The Chairman informed the Board that the recommendations for changes in the Act are being sent to the Ministry and very soon CBFC will work according to the new Act but at present, the current Act has to be followed. He mentioned that the Cinematograph Act Bill will go to the parliament for approval.

The Chairman informed the Board that the guidelines are not followed in respect of double meaning words. He also informed about –

- the Publicity material being accepted by CBFC from the organizations which are not authorized.
- Rush print of films for examination.

He said the above points were taken into consideration and accordingly an important communication is sent to all ROs and Associations for compliance.

3. Presentation of summary records of 137<sup>th</sup> Board Meeting and action taken thereon.

CEO requested the Board to go through the summary records of the 137<sup>th</sup> Board Meeting and approve the same. CEO also presented the action taken report.

Shri Chandraprakash Dwivedi, Board Member said since the minutes were of the last Board, the Members of the last Board present should approve the same.

Smt. Nandini Sardesai, Board Member pointed out that para 2.6, 2.7, 3.1 of the Minutes of 137<sup>th</sup> Board Meeting were not complied. She said the criteria for selection of panel members should be raised as many of the panel members are not competent enough to fill their individual reports. She also mentioned that training should be provided to Examining Officers regarding certification of films.

CEO said the point regarding selection of panel members are in the ambit of Mudgal Committee which was constituted by the

Ministry and will very well be taken up. He also requested to raise additional points in the end of the meeting and to abide by the agenda so that the meeting is concluded on time.

4. Approval of Annual Report of the year 2013-2014.

CEO requested the Board Members to approve the Annual Report of the Year 2013-2014. Many of the members said the Annual Report may be circulated well in advance so that they can go through the same and offer their comments.

Shri Chandermukhi Sharma also requested the CEO to circulate the agenda of the meeting along with the notice of the meeting so that they can be well aware of the points to be discussed.

CEO directed CBFC officials to send the Annual Report to all the Board Members well in advance.

CEO briefed the members about the statistics and the changing trend of films which are moving towards digitalization. He pointed

out the prominent rise in certification of Digitals than Celluloid films. CEO said digitalization will gear up the process of certification and will also make the constitution of EC/RC more transparent. The applicants can know the status of their applications.

CEO enlightened the Board about the budget of CBFC. He said the revenue collected through CESS is forwarded to the Labour Ministry. CEO said with the amount of revenue collected, CBFC can generate resources on its own and can be a self sustaining organization. Restructuring of CBFC can be thought about and since it is a statutory body, it can only be recommended to the Ministry.

Smt. Nandini Sardesai mentioned about the delay in consultancy fees. She also mentioned about the money being spent on RC. She said the revenue collected through application of Revising Committee is way too less in ratio towards money spent on consultancy fees for the members. Chairperson noted the points raised by Ms. Nandini Sardesai.

Smt. Sardesai mentioned about dubbed films. She said it is totally unnecessary to have four members for dubbed films as the real job is only of the language expert. She suggested that the dubbed films should be sent to the respective regions as that of the language of the film.

CEO informed said as per the Cinematograph Act dubbed films are to be certified in the same region where the original version was certified and the EC either for fresh or for dubbed has to be comprised of four members and an Examining Officer. Shri T.V.K. Reddy, RO Hyderabad and Shri Bhaswar Gangopadhyay, RO Kolkata informed that the dubbed films are to be certified at the same region as that of the original version.

Shri Ashoke Pandit, Board Member suggested to have regional language knowing members on the Board.

CEO said jurisdiction lies with the producer and suggested that dubbed films should go to a person who is well versed with the language so that regional sensibilities are take care of.

Shri V. Packirisamy, RO Chennai informed the Board that according to the Important Communication and provisions of the Cinematograph Act, 1952 dubbed films are to be certified at the place as that of original version.

5. Regional Officers discussion regarding difficulties being faced by them while certification of films.

RO, Delhi said there is no permanent staff in CBFC, Delhi.

CEO requested all the ROs to talk about only policy issues and that other regional issues will be taken up in the ROs meeting.

Shri T. V. K. Reddy, RO Hyderabad talked about the Quebec system. He suggested that when a CD is sealed before issuing CC, another copy of the same CD can be sealed and issued to the lab by CBFC for distribution so that there will be transparency. He also mentioned that some producers requests for A certificate instead of UA so that they can interpolate in the film after certification. Shri Ashoke Pandit objected to RO Hyderabad's suggestion.

Chairman praised the idea and said this is a very valid point and can curb piracy. He also informed the Board about the Important Communication being issued regarding producing certificate of lab/ studio along with the application stating that the film is ready for public exhibition as many a times rush print is being shown to CBFC.

Shri Chandraprakash Dwivedi, Board member objected to the RO Hyderabad's suggestion and said that the power to distribute a film should not lay with CBFC and it is the prerogative of the producer and also that CBFC should not be the authority to it. He also said there is no such guideline in the Act. He also said that it is the responsibility of the producer to exhibit the film. Shri Ashoke Pandit agreed to Mr. Dwivedi's views.

Smt. Vani Tripathi Tikoo, Board Member asked what would be the course of action in case of anomalies being found on part of the Producer and also is it under the ambit of CBFC to curb it. She suggested that procedures should be followed.

CEO informed the Board that the authority to curb interpolation in films lies with the State Government. He said interpolation should be reported to the police and the action is to be taken by the police which is the enforcing authority. He also said CBFC has no control over it.

Shri Chandraprakash Dwivedi asked the Board what if the producer does not want to release the film and that the film is meant for private view. It was informed to him that this issue has been discussed in the Mudgal Committee report.

Shri M. Nagendrasamy, RO Bangalore talked about Scrabble and Quebec which does not follow the norms as laid in section 6A of the Cinematograph Act, 1952 and releases uncertified portions of the film. He also said as per the rule no uncertified portion should go to the lab.

The Chairman said the point is well noted and CBFC should stop accepting applications without lab certificate.

Smt. Jeevitaa Rajasekhar, Board Member informed the Board that many a times the producer incorporates visuals of scantily dressed heroines and inserts scenes which are not certified by the CBFC. She suggested that the CBFC should have the power to take action against the defaulter. The points raised by her were noted.

Shri Mihir Bhuta, Board Member asked the Board whether the Board has a role to scrutiny interpolations and is vigilance the activity of the Board.

The Chairman answered that as per rule 37 laid down in the Cinematograph Act, 1952 any examining officer or officer of the Board can enter the theatre and can inspect interpolations. He said that for this purpose identity cards have been issued to the members and officers.

The Chairman also stated that due to technology there is tremendous increase in piracy. He also mentioned that in older days due to physical print the producers used to show 'A' rated movies in villages with incorporated cuts. Due to digital content it is not possible to insert cuts except for in rural areas.

The CEO informed the Board that the implication of violation of rules can be stopped by vigilance and by the authority given to inspect places of exhibition. He also informed that the exhibition place is under the jurisdiction of State Government and the same has to be reported to the State Govt. Further action is to be taken by the police which is the enforcing authority. CBFC has no control over the interpolation. The CEO said a mechanism has to be involved and CBFC is relying on the honesty of the Producer.

Prof. Syed Abdul Bari, Board Member asked whether it is the duty of the CBFC to be vigilant. CEO answered that the CBFC is a quasi-judicial body and every member becomes a judge and follow the law of the land and it's not necessary to always follow written instructions. The CEO also said the rights and duties of the Government Servant and Board Members are that of to be on 24 hours duty always.

Smt. Nandini Sardesai, Board Member informed that the posters of the film don't indicate the certification and neither the print media follows the rule of indicating the certification.

The Board members also mentioned that usually the font of the certification is not readable and it is important to make it mandatory for the producers to use readable and prominent font for indicating the certification.

Smt. Vani Tripathi Tikoo said that since we are bound by the Cinematograph Act, 1952, the members of the Board need to be vigilant all the time.

Shri Dwivedi said when the producer make a film and when it is for private exhibition, the lab should not ask for the certificate from CBFC before exhibition of the film. CBFC has no role for private show but for public exhibition the producer has to take certificate from the CBFC. The Chairman said that this point is already in the Mudgal Committee report.

Smt. Vani Tripathi Tikoo added that in this era of tremendous competition it is very important for the producer to show their films for marketing and public opinion.

6. Telecast of Advertisements carrying brand name/ logo of alcoholic products.

CEO said there are advertisements which are being telecast with brand name and logo irrespective of surrogate ads being banned vide Ministry's notification dated 27<sup>th</sup> February, 2009. He also mentioned that TV programmes are not under the jurisdiction of CBFC and that it is under the jurisdiction of Cable Television Network Act 1994.

Smt. Mandini Sardesai said only theatre is under the jurisdiction of CBFC and ASCI has upheld all the surrogate and medical ads.

Smt. Vani Tripathi Tikoo said the surrogate ads are very clever advertisements and they sponsor many big events with surrogate names.

Shri Chandraprakash Dwivedi said since we are a certification body, we cannot regulate private events. He also added that if a pan masala or such banned product is not banned then we have to follow the Health Ministry notification and we can ask the

applicant to produce the certificate from the concerned department. Mr. Dwivedi also queried about hoardings of surrogate advertisements while shooting the film and how to regulate such ads if they are in the background of the film.

Smt. Vani Tripathi said we cannot pass such ads as per Health Ministry's norms and should delete such visuals.

Shri S.Ve. Sekhar said usually the size of such surrogate advertisements is very small and in such case CBFC should be socially responsible and stop such advertisements being shown on television or films. He also brought up the issue that in Chennai region many films eligible for 'UA' are being granted 'U' certificates and many films are granted 'UA' which are meant for 'A' category by the officers of Chennai region.

Shri V. Packirisamy, RO Chennai objected to the allegation of Shri S.Ve. Sekhar and stated that every filmmaker pressurizes to pass his or her film either by political interference or by going public through the media. RO Chennai further mentioned that the officers of CBFC Chennai carries out their duty with utmost efficiency and certifies films as per the Cinematograph Act, 1952.

The Chairman stated that if anybody has any complaints, it is their duty to involve the CEO as the CEO is authorized to speak to the media.

Shri Ashoke Pandit, Board Member said as all the Board Members are responsible and that their freedom of expression should be respected. He added that all the members have their own individual opinions and they should be allowed to talk to the media.

Shri S.Ve. Sekhar, Board Member agreed with Mr. Pandit and said the Board Members should be above suspicion and should be allowed to clarify their stance as they are answerable to the media. It won't be possible that a each time a matter is forwarded to the CEO.

Chairman said the Board should maintain uniformity and for that it is necessary that other than CEO, no member should talk to the media.

Shri Mihir Bhuta, Board Member added that there are bound to have global differences and the Board should get bolder and be united.

Shri Dwivedi requested the Chairman to appoint official spokesperson for media but Since Mr. Ashoke Pandit is the President of IFTPA he is answerable to the media to the large extent.

Chairperson said since CEO is responsible if any controversy erupts and is answerable to the Ministry, hence in case of any problem the CEO should be reported upon. Shri Chandraprakash Dwivedi said it is understood that CEO will be the spokesperson and the individual view of the Board will be respected. The Chairman urged the Board to stay united.

The Chairman cleared that the list of abusive words were issued way back in 2003. He said the film 'Omkara' was passed alongwith abusive words even though the guidelines been unchanged. The Chairman also added that the Board is being given the responsibility and it is imperative to follow the rules laid by the Government.

Shri Ashoke Pandit said the chairman cannot issue orders without discussion with the Board.

Mr. Ramesh Patange, Board Member said that the previous Board was in controversy and we should follow the decorum and be more vigilant and responsible as we are expected by present Government.

Mr. Mihir Bhuta, Board Member said the Board should not be as per the Government charges. He also asked for the list of objectionable words.

Smt. Vani Tripathi Tikoo said the media will pounce and ask questions. She requested that being an internal democratic body the members not to go public and be a collective body. She also said it is important to reflect uniformity and no democratic right to be taken away. Smt. Tripathi also added that the old Board became a controversy because of politics.

Shri George Baker asked about the duty towards society.

Prof. Syed Abdul Bari said the Board being all educated individuals should not be shrieking and also that CEO being authorised cannot talk about any individual view. He also said we should not speak anything in public and it is collective responsibility of the Board to follow rules. Prof. Bari also added that the Board is responsible to the entire society and the stakeholders. He said the member can speak as a decision of the Board but not as an individual.

Shri Mihir Bhuta, Board Member said since we (CBFC) is a quasi-judicial body, any matter is appealable to the higher level.

The Board unanimously agreed that the CEO CBFC will speak to the media on behalf of the CBFC.

7. Certification of Hospital advertisements.

The Board felt it is the responsibility of the Medical Council of India to ban such ads. Such ads if comes to CBFC should not be certified and be forwarded to the Medical Council of India.

Smt. Nandini Sardesai, Board Member informed the Board that she is a member of Advertising Standing Council of India and they refer all medical advertisements to the Medical Council of India.

Shri Shravan Kumar, CEO instructed all ROs not to stop medical ads and refer them to MCI and said let the Medical Council stop such ads.

The Chairman said since this being a policy decision and an order to maintain uniformity make be sent across the officers of CBFC.

8. Re-certification of films for satellite channels (of foreign movies).

The Chairman explained the Board that a certificate issued to a particular film is permanent and two certificates with different certification cannot be issued. The producer of the film is the same but applicant pass on the right to other and applicant want to change the name on censor certificate.

The CEO said certification is picture specific and person specific and there is no right to legally uphold certification to a film.

Shri Chandraprakash Dwivedi, Board Member asked what to be done when a film is certified 'A' and wants to go for 'U' or 'UA' certification for Doordarshan or satellite telecast.

The CEO said every film applied to CBFC is a fresh film and if there is any change in the original certificate or timing it should be examined as per the criteria laid down in the Cinematograph Act, 1952. The CEO also informed that a same certificate will be applied if the title or language or anything that of a certified film is same. He also informed that satellite broadcasting is not CBFC's responsibility.

The CEO informed the Board that CBFC is classification body and proposed to change the name of Central Board of Film Certification to Central Board of Film Classification.

The Chairman asked Shri Raju S. Vaidya, RO Mumbai to elaborate on the issue of re-certification of films.

RO, Mumbai said a same film is being shown on different channels and at different time. He said the satellite channels buy the rights of the film and they change the duration due to legal hassle and requests the Board for certification.

The Chairman informed the ROs that an applicant can change the length and the name of the Producer under rule 33 and the same can be authorised by CBFC and endorse the same on the original certificate.

CEO reiterated that as per section 5A (which is the charging section of Cinematograph Act) which states – Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted.

The CEO stated that as per the above section, the original certificate should remain the same.

The Chairman suggested if the applicant does not have original certificate then duplicate certificate may be provided.

Shri V. Packirisamy, RO Chennai said as suggested by Shri Rajiv Thakru, the then Secretary of Ministry of I & B during one of the meetings that when the applicant sell the rights of film they should sell the original certificate as well. He suggested that there should be alert system in the on line.

Shri Chandraprakash Dwivedi, Board Member asked many a times the producer make his/her film short by deleting scenes.

The CEO replied on such occasion, the certificate of the film still remains the same. He further said about films being applied for video and theatrical certification. He said the producer can apply but practically he/ she cannot because if the producer applies for theatrical he/ she will not get another certificate for video.

9. Enhancement of consultancy fee from Rs.1000/- to Rs.1200/- to the Advisory Panel Members/ Board Members/ FAB.

The Chairman said CBFC will propose to enhancement the consultancy fees from Rs.1000/- to Rs.1200/- (Rs.200 for refreshments) to the Ministry of I & B.

11. Any other points with the permission of the Chair.

Smt. Nandini Sardesai, Board Member reminded the Board that the term of almost all the panel was over. She said many of the panel members can't even fill an individual report of a film and are often relied on the examining officer to dictate. She further added that CBFC should be more responsible in the panel selection than the Government. She also suggested that those members have completed the two terms their term may not be extended.

All the Board members suggested that the Board Members should be allowed to recommend the names for panel members.

The Chairman asked all the Board Members to suggest names for the panel.

Shri Raghu Menon suggested that the panel members should be appointed in consultation with the Chairman and the Board as the Panel Members are the one who can make or break a film. He also told the Board that CBFC has the right to appoint 2/3<sup>rd</sup> of panel members and Ministry has the 1/3<sup>rd</sup> right as per the Act.

The Chairman said he will meet the Hon'ble Minister of I & B request to appoint right people on the panel from different sections of society.

Smt. Vani Tripathi said a nation wide representation is required for the appointment of panel members and Mumbai being a cosmopolitan city, the members have to be from all walks of life. She also said the members to be selected should be cinema sound and should responsible.

CEO raised the subject of streamlining and on-line certification of CBFC. He said the software of CBFC is outdated and hence attracts bad media publicity. He sensitized the Board about the on-line certification.

10. The reason for not implementing the guidelines 2(vii), 2(viii), 2(ix), 2(x) issued by the Ministry of I & b for certification of the film after the year 2006 regarding use of abusive language.

The Chairman sensitized the Board about the cuss words being used in the films.

Shri Chander Mukhi Sharma, Board Member said the circular issued by the Chairman regarding objectionable words is not acceptable. He said as per the Act, the Chairman cannot issue any orders without Board's consent and since the circular was not in consultation with the Board, the circular issued becomes null and void.

Shri Chandraprakash Dwivedi said there are books with abusive language and that too by award winning authors. He has shown the books to the members.

Shri S. Ve. Sekhar, Board member said Cinema is not only for educated people but for a larger society comprising of people from all walks of life whereas books are for educated people

Shri Ashoke Pandit, Board Member objected that the circular was sent to the Board Members late night at 11.00 pm and after it was issued to the Producers' Associations. He said as a film maker he objects to the circular as it curbs the freedom of expression of the film maker.

The Chairman asked the Board to go through the guidelines of abusive/ objectionable words and also asked to clarify about the abusive words to be used in films. The Chairman also said Mr. Ashoke Pandit should take it as a personal agenda and suggested that the Board should discuss and work for the larger picture of the society. He also added that Mr. Pandit should appreciate the fact that CBFC works even after office hours.

Shri Ashoke Pandit objected to the term 'personal agenda' used by the Chairman and said he objects to the circular issued as the Board was not consulted before issuing it.

Shri Chandraprakash Dwivedi asked whether the Chairman has executive powers to issue orders and if he has then what is the role of the Board. He also reminded that the Chairman mentioned that the abusive words were issued as per the guidelines issued by the Ministry. Shri Dwivedi wanted the point that the words were issued by the Ministry to be put on record.

Shri Ashoke Pandit asked whether the Chairman has the right or is it legal to approve the film and suggest more voluntary cuts and then issue censor certificate to the film.

The Chairman answered that it is part of Chairman's duty to see if there is difference of opinion and the film is referred to the RC.

The CEO explained that as per the duties of the Board laid in the Cinematograph (Certification) Rules, 1983, the Board (Board consists of a Chairman and members appointed by the Central Government) can review the work of Regional Officers and members of the Advisory Panels.

Shri Chandraprakash Dwivedi said the majority of the EC/ RC should be respected. The CEO said the Chairman can always refer the film to RC if not satisfied with the majority of the decision.

The Chairman informed the Board that though the circular of abusive words were for internal circulation but it was for the betterment of the producer and it is not circulated to the media. Chairman also said if he has done any mistake it is only unintentional and he is just a newcomer and he is learning every given day.

Shri Ashoke Pandit said a separate meeting should be held as soon as possible for detailed deliberations on the issue of objectionable words.

Shri Chandermukhi Sharma said only if the circular was with the consent of the Board, the Board could have probably suggested some more objectionable words i.e not 28 but the words could be 150.

Shri George Baker, Board member put forth his concern whether CBFC should go with the list issued or should treat the list as void.

Shri Chandraprakash Dwivedi said such circulars can only be issued by the Govt. Of India and not by the Chairman as it is not under his purview of executive powers.

Shri Mihir Bhuta, Board Member asked whether the list of objectionable words issued in 2003 was for internal circulation or was is it a policy decision of the Board.

Shri Chandraprakash Dwivedi suggested that the Chairman should go to the media and declare that the list is null & void.

Smt. Vani Tripathi Tikoo, Board member expressed her concern that such a move will only worsen the matter and it will create bad impression on the part of CBFC.

Prof. Syed Abdul Bari, Board Member put across his point stating that –

- i) the Board will not accept the list because it is not approved by the Board.
- ii) the view of Board should be cleared in the media and also that the list was not issued with the consent of the Board.
- iii) a separate meeting should be held as the earliest for detailed deliberation.

Shri Raghu Menon, Board Member suggested that the media should be told that since the list has been issued without discussion and the same will be discussed at an appropriate time very soon.

The Board met after lunch –

Shri Shravan Kumar, CEO CBFC said the circular of objectionable words should have been an advisory and the Board should sit again to deliberate and take a decision holistically. He said that

the letter was issued to the ROs in performing the duties in the year 2003 and it is an advisory to the ROs.

Smt. Nandini Sardesai, Board member asked about the use of word 'Mumbai' instead of 'Bombay'.

Smt. Vani Tripathi Tikoo said since it is a legislative rule since 1995, the rule should be followed unless the film is of that period when 'Mumbai' was 'Bombay'.

Smt. Vani Tripathi suggested that the Board should abstain from talking to the media and also that the CEO should make a press note for the media.

It was decided not to speak with media and issue a press release.

Shri Raghu Menon, Board member suggested the following press note –

Board discussed the issue of objectionable/ cuss words and was of the view that this matter require further deliberation before it is to be implemented and a separate meeting of the Board will be held very soon so that the matter could be discussed holistically.

Finally it was unanimous view that the matter required further consultation with the different sections of the society before it is implemented. It was also decided that a separate meeting of the board would be convened to deliberation on this issue.

Shri Chandraprakash Dwivedi suggested that the Board should meet the trade bodies as soon as possible.

Shri Ashoke Pandit suggested that one meeting should be held with the film industry at the earliest as there needs to be an interface. He also suggested that the Board should meet the industry atleast in every two months in all regions.

The Chairman agreed to the suggestion of the Board.

The Chairman mentioned that the Board is a great team and also said he is trying to make it easy for the producer and the industry.

Vote of thanks- Chairman thanked everyone for attending the meeting.

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GOVERNMENT OF INDIA  
MINISTRY OF INFORMATION & BROADCASTING  
CENTRAL BOARD OF FILM CERTIFICATION  
MUMBAI

91-E, Bharat Bhawan,  
Walkeshwar Road,  
Mumbai 400006

Date : 31.08.2015

MINUTES OF THE 139<sup>th</sup> BOARD MEETING  
OF THE CENTRAL BOARD OF FILM CERTIFICATION  
held at HOTEL SUN-N-SAND, MUMBAI  
ON 31<sup>st</sup> JULY, 2015.

The 139<sup>th</sup> Board Meeting of the Central Board of Film Certification was held at Hotel Sun-N-Sand, Mumbai on Friday, July 31, 2015.

The meeting was presided over by the Chairperson, Shri Pahlaj Nihalani. The following Members of the Board were present.

A. Members of the Board –

1. Shri Anand Prakash Narain Singh, Patna / Mumbai
2. Shri Aseem Kaistha, Delhi
3. Shri Ashoke Pandit, Mumbai
4. Shri Chander Mukhi Sharma, Chandigarh

5. Dr. Chandraprakash Dwivedi, Mumbai
6. Shri George Baker, Kolkata
7. Ms. Jeevitaa Rajashekhar, Hyderabad
8. Dr. Naheed Abidi, Varanasi
9. Ms. Nandini Sardesai, Mumbai
10. Shri Raghu Menon, Pune
11. Shri Ramesh Patange, Mumbai
12. Shri S. Ve. Sekhar, Chennai
13. Shri Sunil Vishwakarma, Patna
14. Prof. Syed Bari, Gandhinagar
15. Ms. Vani Tripathi, Delhi

B. Officers of the Board

1. Shri Manish Desai, CEO
2. Shri Raju S. Vaidya, RO, Mumbai.

Leave of Absence was granted to following members-

1. Shri Mihir Bhuta, Mumbai
2. Shri Pranjal Saikia
3. Dr. Sadhana Kapoor,
4. Shri Surendra Sharma

The 139<sup>th</sup> Board Meeting began by observing a two minute silence to mourn the sad demise of the former President of India, Dr. A P J Abdul Kalam.

<p>Opening remarks by the Chairperson, CBFC</p>	<p>Shri Pahlaj Nihalani, Chairperson, CBFC, extended a warm welcome to all the Members of the Board and also introduced the three newly appointed Board Members – Dr Naheed Abidi, Shri Sunil Vishwakarma and Shri Anand Prakash Narain Singh.</p> <p>Chairperson informed the Board that the film certification work in CBFC was on schedule and there was no pendency as far as feature films are concerned. He gave out details of the number of films certified in Mumbai and other Regional Offices since he assumed office. He asserted that the film industry is pleased with the pace at which CBFC is issuing certificates.</p> <p>Chairperson informed the Board that the</p>
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	<p>proposal regarding introduction of Tatkal system for film certification had been sent to the Ministry and approval is awaited.</p> <p>Shri Nihalani also said that it was proposed to increase the consultancy fee of Advisory Panel Members to Rs 1,300 per sitting from the present Rs 1,000.</p> <p>Presently, the sitting fee for Board Members for attending the Board Meetings is the same as the consultancy fee for Advisory Panel members. Chairperson felt that the sitting fees for Board Members should be higher, as most of the Banks are paying Rs 10,000 upwards per Board meeting. He said the sitting fees for the Board members for attending CBFC Board Meeting should be revised upwards to Rs 5,000 per sitting.</p>
<p>Progress Report of CBFC activities during 2014-15 by</p>	<p>CEO Manish Desai presented the progress report of CBFC, including a Trend Analysis of films certified during 2014-15. He said</p>

CEO.	CBFC certified 16,625 films during FY 2014-15 in 42 languages. Hindi, Tamil and Telugu were the dominant languages in certification of feature films, while UA was the most ubiquitous classification granted for films, accounting for 50% of all the feature films certified. He said 52% of all certification work was carried out in CBFC Mumbai Regional Office.
Discussion about Agenda Papers and Minutes of the Meetings	<p>Shri Raghu Menon suggested that the reports and other agenda papers should be sent in advance to Board Members, so that they can go through them and come prepared for discussion.</p> <p>Shri Chandraprakash Dwivedi was of the opinion that only Board members should be present in the Board Meeting and no staff or officers of CBFC should be in the meeting. Smt. Nandini Sardesai seconded the view and said there was a risk of matters getting leaked to the media.</p>

CEO said the earlier practice of calling all the Regional Officers for the Board Meeting has been done away with and the two staff members present in the meeting were required to take down the proceedings of the meeting in shorthand. He also informed the Board that under Rule 15 of the Cinematograph (Certification) Rules 1983, Chairperson can co-opt any one or more Regional Officers to attend the Board meeting, but without the right to vote.

Ms. Nandini Sardesai suggested that the Minutes of the meeting should be audio recorded. However, Prof. Syed Bari felt that audio recording is not advisable as discussions often become inter-personal.

Ms. Vani Tripathi said that in the absence of recording, the Minutes can be misconstrued or misinterpreted and hence the issue needs to be decided collectively whether or not audio recording is

	<p>required? CEO said that since the draft minutes would be circulated to all Board Members within 14 days, every member would have an opportunity to offer corrections, if his or her views were not appropriately reflected. Finally, by majority, the Board decided not to audio record the Minutes.</p> <p>Shri Chandraprakash Dwivedi desired that the minutes of the Board meeting be circulated to all the members within 15 days. CEO suggested a time limit of 15 days for circulation of the Minutes and 15 days for correction of the same.</p>
<p>Point of Order by Shri Chandraprakash Dwivedi, Member.</p>	<p>Shri Chandraprakash Dwivedi read out the press release mentioned in the Minutes of the 138<sup>th</sup> Board Meeting and said that that the press release regarding 'cuss words' mailed to all the Board Members differed from the Minutes. He observed that the minutes said "Shri Raghu Menon suggested....,where as it was the</p>

resolution of the Board passed unanimously.

Shri Raghu Menon and Ms. Vani Tripathi said that the Minutes were not out of place and the paragraph following the suggested wordings of the proposed Press Release did mention the fact that the 'list of cuss words' required further deliberations before it could be implemented.

Shri Dwivedi opined that before moving forward with the agenda, the matter relating to 'cuss words' be deliberated and discussed. Shri Chandermukhi Sharma said, the Minutes of the previous meeting had mentioned about summoning a special meeting of the Board to discuss the 'list of cuss words', and observed that no such meeting had been held .

Chairperson said the 'list of cuss words' circulated emanated from a meeting of

Regional Officers held in 2003 to deliberate on and interpret the guidelines of film certification and the said meeting was attended by the then Joint Secretary (Films).

Shri Dwivedi pointed out from the Minutes of the Regional Officers' meeting itself that the then Joint Secretary (Films) attended the 2003 meeting as an Observer, and as such it could not be claimed that its proceedings had the Ministry's approval. He asserted that Regional Officers could not be decision makers on behalf of the Board. Shri Dwivedi said abusive language had been part of the Indian culture since Vedic times and he had scholarly documentary evidence and research by scholars of Indology and art historians to prove it. He then submitted a copy of the compilation of the research in Hindi and English for records.

Prof. Bari and Shri Ashok Pandit said the Board was not opposed to the 'abusive language' per se, but it was only objecting to the circulation of the list under the Chairperson's signature limiting the autonomy of Examining Committees and Revising Committees.

Chairperson said the list of cuss words was in conformity with the guidelines issued by the Ministry and he was only following the film certification guidelines in letter and spirit. In support he said even FCAT has given cuts for abusive language. Shri Nihalini said the independence of Examining Committees and Revising Committees is guaranteed and he never interferes to influence them.

Shri Dwivedi further questioned that if the list was only a suggestion then why were many of the panel members deleting the cuss words in the Examining/ Revising

Committees? He cited 'NH 10' and "P se PM tak" as two of the examples.

Prof. Nandin Sardesai said EC and RC members are being orally instructed to cut the cuss words

Chairperson clarified that the list of cuss words was never circulated to the Advisory Panel members, but they came to know of it through the media. He raised the issue of the trailer of 'Mohalla Assi' which was uploaded on YouTube and said CBFC had received multiple complaints about the same. Shri Pandit and Shri Dwivedi said that since the matter of 'Mohalla Assi' was with Cyber Cell of Mumbai Police and Hon'ble Court of Law in Delhi and sub-judice, it was not appropriate to discuss it in the meeting.

Ms. Jeevitha Rajashekhar said abusive language portraying obscenity and

vulgarity needs to be deleted for the betterment of the society .

Shri S Ve Sekhar also said that for betterment of society abusive language and vulgarity should not be allowed as provided in the CBFC guidelines.

CEO then cited guideline 2(vii) of the Cinematograph Act, 1952 which states "" ...human sensibilities are not offended by vulgarity, obscenity or depravity."" He also said the guidelines are very clear about indecent portrayal of women.

Intervening in the discussion, Ms. Vani Tripathi said the whole issue about abusive language should be examined with reference to the context of the film, a view, that was supported by Prof. Sardesai. Prof. Bari said films should be examined in totality by the Examining Committees / Revising Committees as per

their wisdom reflecting a cross-section of opinion.

The Board then voted in majority by show of hands to withdraw the earlier circular w.r.t cuss words issued under Chairperson's signature.

The Board held a view that the deletion of cuss words would be contextual and be judged on the film's entirety rather than in an isolated manner and the decision be left to the Examining Committee / Revising Committee.

Shri Raghu Menon said that since no meeting was called for further deliberation on cuss words as decided during the 138<sup>th</sup> Board Meeting and neither any process of dialogue with cross section of society was initiated by Chairperson / CBFC, the list of cuss words should be withdrawn.

	<p>It was also requested by some board member to the Chairman and CEO that the "spirit of the board" regarding cuss words would be permeated to all the members of advisory panel.</p> <p>Chairperson said the provisions of the Cinematograph Act, Cinematograph (Certification) Rules and existing guidelines would strictly be followed in certification of films.</p>
<p>CAG Audit observations on working of CBFC.</p>	<p>CEO informed the Board about the audit observations made by the CAG on working of CBFC. He said the audit of 2014-15 had observed that CBFC converted 172 'A' films into UA and 166 UA films into U during 2012-15, without taking any law or provision into account. It had also observed that there were inconsistencies in the time taken by CBFC for issue of certificates to various producers.</p>

Chairperson said CBFC had been converting the films for video as per an Executive Order of 1995.

CEO said CBFC has not flouted any rules in recertification of films. He said that though the Cinematograph Act was silent about conversion a closer examination of the Act and the Rules revealed that Rule 35 of the Cinematograph (Certification) Rules 1983 mentions about Forms (Form IA and IIA specifically), for issue of certificates for public exhibition of a film in video format, which provide for recertification of cinematograph films for video.

Shri Raghu Menon said the CBFC should write to the Ministry / CAG on this issue and clarify the position. It was possible that the factual position had not been properly projected to the CAG team at the time of audit. If the correct position is conveyed, there was possibility of the

	<p>objection being dropped.</p> <p>The Board decided to seek clear direction from the Ministry of Information &amp; Broadcasting in this regard.</p>
Matter relating to fake certification of films	<p>Chairperson briefed the Board about an existing malpractice regarding issue of fake certificates. He said that though the Act provides for a clearly defined timeline for the certification process, many producers, in a hurry to export their films and sell satellite rights were being handed over fake certificates by certain agents/representatives. He said, some incidents had come to light, where the film's different versions portrayed certificates signed by different officers. Shri Nihalani informed the Board that the CBFC has lodged an FIR against a representative and asked the CBI to probe the issue.</p> <p>Chairperson said the matter should be</p>

	<p>taken up with the Ministry to change the form of certificate and advocated use of hologram to prevent its misuse.</p>
<p>Suggestions regarding Draft Cinematograph Bill</p>	<p>Chairperson informed the Board that CBFC had already sent to the Ministry, the suggestions put forward by Shri Chandraprakash Dwivedi and himself, regarding the Draft Cinematograph Bill. He appealed to all other members to give their valuable suggestions for improving or overhauling the film certification process. After a brief discussion over various provisions of the draft bill, it was agreed that the Members would send their suggestions to CEO, who would collate and compile them and send them to the Ministry as the collective submission of the CBFC Board.</p>
<p>Issue of surrogate advertising</p>	<p>Chairperson informed the Board that surrogate advertisements with regard to cigarettes, pan masala and liquor brands continue to be telecast on satellite TV channels, without CBFC certification. He</p>

	<p>said CBFC had taken up the matter with the Ministry, to request the Broadcasting Wing to restrain TV channels from showing these advertisements.</p> <p>Shri Chandermukhi Sharma said the CBFC Board should have a collective meeting with the Broadcast Content Complaints Council – BCCC.</p>
<p>Update on computerization of CBFC</p>	<p>CEO apprised the Board about the computerization project of CBFC. He said, the Ministry through NICSI has appointed M/s Wipro Ltd as the consultant for the computerization project of CBFC. Chairperson said that a system similar to passport office could be adopted for the film certification process. He added that once completed, it would enable online submission of forms, promos etc. for certification. The film examination process, however, would continue to be theatre based.</p>

<p>New office premises for CBFC.</p>	<p>CEO informed the Board that the Ministry of Information &amp; Broadcasting had allocated office space to CBFC on the 6<sup>th</sup> floor of the Films Division Building on Peddar Road, Mumbai. He said the refurbishing / renovation work was being assigned to the Civil Construction Wing of Prasar Bharati. Chairperson said the present premises on Walkeshwar Road, Mumbai shall be used as projection rooms.</p>
<p>Other matters with the permission of the chair</p>	<p>Shri Dwivedi said that in case of difference of opinion the film should not be referred to Chairperson but sent to Re – revising committee.) Prof. Nandini Sardesai stated that the majority opinion should prevail during RC and as far as possible Re-revising should be avoided as it causes hardship and delay to the film maker. She also said the chairperson should not sit on RC but be the final authority in case of conflict. Chairperson informed the Board that he was working as per the rule book and also clarified that the Chairperson has</p>

the power to constitute a Revising Committee or the Second Revising Committee.

Shri Dwivedi pointed out that unauthorized officials were examining films and sought a clarification from CEO. On this, CEO read out the definition of Examining Officer specified under the Cinematograph (Certification) Rules, 1983 and said that examination of films by Shri Deepak Tandel and Shri Sanjai Jaiswal examining films was very much within definition of "such other officers".

Shri Ashoke Pandit suggested that a meeting of the Board should be held with the film industry so that film related matters could be discussed collectively.

Shri S Ve Sekhar said the Board Members living in different cities should be given delegated powers to decentralize and

	<p>quicken the film certification process. He also said that the Regional Officer should not be part of the Revising Committee, which is often chaired by a Board Member. This was seconded by Prof. Nandini Sardesai as well.</p> <p>CEO informed the Board about the arrest of the then Regional Officer, CBFC Hyderabad and the case of piracy charges leveled against CBFC Thiruvananthapuram office.</p>
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#### Concluding remarks

Finally, Shri Chandraprakash Dwivedi said that the Chairperson was the senior most member with vast experience in film making and the Board looked forward to his advice and guidance. Chairperson said the Board itself was one big family and everyone should work for the betterment of the film certification process.

He said, with the help of ROs and staff of CBFC had reduced the pendency to zero and the film industry was happy about it.

The meeting ended with a vote of thanks to the Chair.

CBFC | CEO | MD | 0708

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