

Bill No. 78 of 2018

THE CINEMATOGRAPH (AMENDMENT) BILL, 2018

By

DR. SHASHI THAROOR, M.P.

A

BILL

further to amend the Cinematograph Act, 1952.

Be it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Cinematograph (Amendment) Act, 2018.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

37 of 1952. 5

2. In section 4 of the Cinematograph Act, 1952 (hereinafter referred to as the principal Act),—

Amendment of section 4.

(a) in sub-section (1), clause (iii) shall be omitted; and

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) No person apart from the Board shall sanction films for public exhibition."

- Amendment of section 5B. **3.** In section 5B of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—
- "(2) Subject to the provisions contained in sub-section (1), the Board shall exercise its power to certify a film for public exhibition in accordance with the guidelines mentioned in Schedule I." 5
- Amendment of section 5C. **4.** In section 5C of the principal Act in sub-section (1), clause (e) shall be omitted.
- Omission of section 6. **5.** Section 6 of the principal Act shall be omitted.
- Amendment of section 13. **6.** In section 13 of the principal Act, in sub-section (1), for the words "likely to cause a breach of the peace, by order, suspend the exhibition of the film", the words "likely to cause a breach of public order, despite taking reasonable measures to prevent the same, by order, suspend the exhibition of the film" shall be substituted. 10
- Insertion of Schedule I. **7.** After Part IV of the principal Act, the following Schedule shall be inserted,—

"SCHEDULE I

PART I

OBJECTIVE OF GUIDELINES 15

1. These guidelines shall ensure that—

(a) Children and adults are protected from potentially harmful or otherwise unsuitable content;

(b) Audiences, particularly parents and those with responsibility for children, are empowered to make informed viewing decisions; 20

(c) Artistic expression and creative freedom are not unduly curbed in the process of classification of films;

(d) The process of certification by Board is responsive, at all times, to social change.

PART II

CATEGORY OF CERTIFICATION 25

2. Certification of a film by the Board shall be in the following categories—

(a) U—film suitable for all persons, regardless of age, and is often family friendly;

(b) U/A 12+ — film suitable for persons above twelve years of age or for a person under the age of twelve with parental guidance;

(c) U/A 15+ — film suitable for persons (adolescents) above fifteen years or for a person under the age of fifteen with parental guidance; 30

(d) A—film suitable for public exhibition, but restricted to adults;

(e) C (A with Caution)—film restricted for adults with the specific purpose of cautioning them that it has more than a reasonable amount of content such as violence, sex, nudity, drugs and other related contents; 35

(f) S—film restricted to viewership by members of a profession or any class of persons, having regard to the nature, content and theme of the film.

PART III

GENERAL GUIDELINES FOR CLASSIFICATION OF FILMS

3. There are general factors that may influence a classification decision at any level and in connection with any issue. The following factors, and the intention of the filmmaker 40

vis-a-vis the same, are of particular importance when a film or video is a borderline case between two stages categories, and are to be read with Part IV of the Guidelines.

(a) Context:

5 The Board shall ensure that a film is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates to. Therefore, the context in which an issue is presented within a film or video shall be given consideration. Factors such as the setting of a work (historical, fantasy, realistic and contemporary), the manner of presentation of the film, the apparent intention of the film, the original production date of the work, and any special merits of
10 the work may influence the classification of films.

(b) Theme:

Classification of films shall take into account the theme of a work, but shall depend significantly on the treatment of that theme, and especially the sensitivity of its presentation. The most challenging themes (for example, drug misuse, violence, paedophilia, sex, racial or communal hatred or violence) are unlikely to be appropriate
15 at the most junior levels of classification.

(c) Tone and Impact:

The Board shall ensure that a film is judged in its entirety from the point of view of its overall impact. The tone of the film may be an important factor in deciding the influence it may have on various groups of people. Thus, films that have a dark and unsettling tone may receive a higher classification. Other tonal considerations that might have an influence on classification include the extent to which the film presents a view of the world that is anti-life, pessimistic, or despairing or the extent to which transgressive or harmful behaviour is condoned or made to appear normal.
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(d) Target Audience:

25 The classification of the film shall also depend upon the target audience of the work and the impact of such work on such audience.

PART IV

CATEGORIZATION GUIDELINES

30 **4.** This Part of Guidelines provides the specific approach the Board shall take for various categories of certification from U to A-C.

(a) U

Films classified as 'U' shall be suitable for all audiences of all ages, set within a positive framework and should offer reassuring counterbalances to any violence, threat or horror and shall take into account:—
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(i) *Discrimination*—Discriminatory language or behaviour shall not be acceptable unless clearly disapproved of in the film;

(ii) *Psychotropic Substances, Liquor, Smoking, Tobacco*—References to illegal drugs, or misuse of drugs, cigarettes, liquor shall be infrequent and innocuous, or have a clear educational purpose or anti-drug message suitable for young children;
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(iii) *Imitable behaviour*—Potentially dangerous or anti-social behaviour which young children may copy shall be clearly disapproved of and no emphasis on realistic or easily accessible weapons such as knives shall be made thereto;

(iv) *Language*—Infrequent use only of very mild offensive language;
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(v) *Nudity*—The work may have infrequent nudity but with no sexual context;

(vi) *Sex*—The work may have only very mild sexual behaviour such as kissing, and references to such behaviour;

(vii) *Fear, Threat & Horror*—Scary or potentially unsettling sequences should be mild, brief, and unlikely to cause undue anxiety to young children and the outcome should be reassuring; and

(viii) *Violence*—Violence should generally be very mild and acceptable if it is justified by context (for example, comedic animated, wholly unrealistic). 5

(b) U/A-12+

Films classified as 'U/A-12+' shall not unsettle a child aged around twelve or older. Unaccompanied children of any age may watch, but parents are advised to consider whether the content may upset younger, or more sensitive children taking into account:— 10

(i) *Discrimination* — Discriminatory language or behaviour shall not be acceptable unless clearly disapproved of, or in an educational or historical context, or in a particularly dated work with no likely appeal to children. Discrimination by a character with whom children may readily identify is unacceptable;

(ii) *Psychotropic Substances, Liquor, Smoking, Tobacco* — References 15 to illegal drugs, or misuse of drugs, cigarettes, liquor shall be infrequent and innocuous, or have a clear educational purpose or anti-drug message suitable for young children;

(iii) *Imitable behaviour* — No detail of potentially dangerous behaviour that young children are likely to copy, if that behaviour is presented as safe or fun. No glamorization of realistic or easily accessible weapons such knives. No focus on anti-social behaviour which children are likely to copy; 20

(iv) *Language* — Infrequent mild offensive language use only, provided that the theme calls for the same;

(v) *Nudity* — There may be nudity with no sexual context; 25

(vi) *Sex* — Sexual activity may be implied, but shall be discreet and infrequent. Mild sex references and innuendos only;

(vii) *Fear, Threat & Horror* — Frightening sequences or situations where characters are in danger shall not be prolonged or intense and fantasy settings may be a mitigating factor; and 30

(viii) *Violence* — Violence will usually be mild. However, there may be moderate violence, without detail, if justified by its context (for example, history, comedy or fantasy).

(c) U/A- 15+

Films classified as U/A-15+ contain material that is generally not suitable for children aged under fifteen but may be viewed by adolescents. No one younger than fifteen may see a U/A-15+ film in a cinema unless accompanied by an adult. Adults planning to take a child under fifteen to view a U/A-15+ film shall consider whether the film is suitable for that child taking into account:— 35

(i) *Discrimination* — Discriminatory language or behaviour shall not be endorsed by the work as a whole. Aggressive discriminatory language or behaviour shall not be acceptable unless clearly condemned; 40

(ii) *Psychotropic Substances, Liquor, Smoking, Tobacco* — Misuse of drugs, cigarettes, liquor, shall be infrequent and shall not glamorized or give instructional detail; 45

(iii) *Imitable behaviour* — No promotion of potentially dangerous behaviour which children are likely to copy. No glamorization of realistic or easily accessible weapons such as knives;

(iv) *Language* — There may be moderate language. Abuse, vulgar and sadistic expression may be permitted, depending on the manner in which it is used, who is using the language, its frequency within the work as a whole and any special justification;

5 (v) *Nudity* — There may be nudity, but very discreet sexual context;

(vi) *Sex* — Sexual activity may be discreetly portrayed. Moderate sex references are permitted, provided that they have a place in the context of the narrative of the film;

10 (vii) *Fear, Threat & Horror* — There may be moderate physical and psychological fear inducing and horror sequences. Although some scenes may be disturbing, the overall tone should not be so. Horror sequences shall not be frequent or sustained;

15 (viii) *Violence* — There may be moderate violence but it shall not dwell on detail. There shall be no emphasis on injuries or blood, but occasional gory moments may be permitted if justified by context. Sexual violence may only be implied or briefly, and discreetly indicated, and its depiction shall be justified by context;

(d) A

20 Films classified as 'A' are suitable only for persons of the age of eighteen years and above taking into account:—

(i) *Discrimination* — While there may be discriminatory themes and languages in the film, the film as a whole shall not endorse or glorify discriminatory language or behaviour;

25 (ii) *Psychotropic Substances, Liquor, Smoking, Tobacco* — Imbibing of these elements may be shown, but the work as a whole shall not promote or encourage misuse of the same. The misuse of easily accessible and highly dangerous substances (for example, aerosols or solvents) is not acceptable;

30 (iii) *Imitable behaviour* — Dangerous behaviour (for example, committing suicide or inflicting self-harm) shall not be shown in detail that could be copied by others. Context, realism and setting shall determine the acceptability of depiction of easily accessible weapons;

(iv) *Language* — Very strong language, including abuse and vulgar words is permitted;

35 (v) *Nudity*—There may be nudity, even in a sexual context, but without explicit detail;

(vi) *Sex*—Sexual activity may be portrayed but without strong detail. References to sexual behaviour is permitted, but very strong reference can only be justified in context. Works whose primary purpose is sexual arousal or stimulation is not acceptable;

40 (vii) *Fear, Threat & Horror*—There may be strong threat and horror. A sustained focus on sadistic or sexual threat is not acceptable;

45 (viii) *Violence*—Strong violence is permitted, but explicit gory images are not acceptable. Strong sadistic violence is not acceptable, there may be detailed verbal references to sexual violence but the depiction of sexual violence must be discreet and justified by context.

(e) A-C

(i) Films categorized as A-C are suitable only for adults above the age of 18 years, with the caution that the film has more than a reasonable amount of

content falling under restricted categories such as violence, sex, nudity and drugs;

(ii) Films under this category shall not qualify for certification in the event of the following—

(1) Where the material is in breach of criminal law, or has been created through the commission of a criminal offence; 5

(2) Where material or treatment appears to the Board to risk harm to individuals;

For example, the detailed portrayal of violent or dangerous acts, or of illegal use of psychotropic substances, which may cause of public harm or morals. Other examples may include portrayals of sadistic or sexual violence that make this violence looking appealing; reinforce the suggestion that victims enjoy sexual violence; or films that invite viewer complicity in sexual violence or other harmful violent activities; 10

(3) Where the work is pornographic in nature and or compromises explicit sexual activity or dialogue that is non-contextual in nature. However, any sexually explicit material for educational purposes shall be allowed; 15

(4) Where the work involves sadistic or sexual violence with children;

(5) Where the work, including its dialogues, are likely to encourage an interest in sexually abusive activity which may include adults role-playing as non-adults. 20

(f) S

Films categorized as S are meant for viewership for members of a profession or any class of persons, having regard to the nature, content and theme of the film, fall under this category. 25

PART V

CLASSIFICATION OF A FILM BY BOARD

5. (i) When an applicant producer or distributor submits the final cut of the film to the Board, he shall specify his target audience and the classification sought. If the Board is of the view that the film can be certified by them as per the preceding guidelines for certification, the Board shall inform the producer/distributor about the likely classification the work will receive and reasons for such decision. 30

(ii) If the applicant producer/distributor does not accept a particular classification given to its film, he shall have the liberty to effect changes to the film and resubmit the same to the Board for achieving the desired category. 35

(iii) The Board shall not propose or make any cuts, revisions or modifications to the film to meet any of the classification categories.

(iv) The Board may, in the event that it is of the view that the film does not merit classification under any category in accordance with the Guidelines contained herein, refuse to accord certification under any of the above categories, and record its reasons in writing for such decision. 40

(v) The Board shall, while refusing the certification, communicate the reasons for so doing to the applicant producer or distributor and due opportunity shall be given to him to be heard before such an order is passed, in which reasons for refusal of certification shall be recorded in detail by the concerned authority: 45

Provided that the applicant shall be given a period of fifteen days, from the date of communication of reasons, to respond and submit his argument in favour of the classification sought."

STATEMENT OF OBJECTS AND REASONS

The freedom of speech and expression guaranteed to all citizens of India under article 19(1)(a) of the Constitution of India is a fundamental basis for the manifestation of all forms of liberties.

Artistic freedom is an essential part of the freedom of speech and expression, the pursuit of art is integral to the cultural development of our country. Artists, particularly film makers should have a wide scope of freedom to express their various ideas and skills. The State may regulate artistic freedom only under the grounds enumerated under article 19(2) of the Constitution, not due to disagreement with the content of the film.

The exceptions to the freedom of speech and expression must be interpreted and read in a strict and narrow manner. The power to regulate cinema must be exercised in exceptional situations, and only due to an overriding compelling public interest.

The pre-censorship powers of the Central Board of Film Certification and the revisional powers of the Union Government constitute a paternalistic policy, which is incompatible with the polity of a mature democracy. The mandate of the Central Board of Film Certification should be strictly confined to the certification of films. The power to certify a film should rest exclusively with the Central Board of Film Certification and should not be supplanted by another entity. The power to certify a film should not be exercised in an arbitrary fashion, but in accordance with reasonable statutory guidelines.

The State has the positive mandate to uphold the space for free speech as guaranteed by the Constitution, and ensure strict action is taken against lawless elements which try to disrupt the free flow of cinematic expression. The State should only resort to the power of suspension of films as a last resort in order to maintain public order, after taking all necessary steps to prevent the disruption of public order. It is necessary that these principles are reflected in the Cinematograph Act, 1952.

Hence, this Bill.

NEW DELHI;

SHASHI THAROOR

January, 30, 2018.

ANNEXURE

(EXTRACT FROM THE CINEMATOGRAPHY ACT, 1952)

(ACT No. 37 OF 1952)

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Examination of films.

4. (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 thinks 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 1 [the proviso to clause (i), clause (ii), clause (iia), 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.

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Principles of guidance in certifying films.

5B. (1) * * * * *

(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 in sanctioning films for public exhibition.

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Appeals.

5C. (1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board—

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) * * * * *

may, within thirty days from the date of such order, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.

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6. (1) Notwithstanding anything contained in this Part, the Central Government [may, of its own motion, at any stage,] call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board, or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal) and after such inquiry, into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose off the matter in conformity with such order:

Revisional powers of the Central Government.

Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter:

Provided further that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose.

(2) Without prejudice to the powers conferred on it under sub-section (1), the Central Government may, by notification in the Official Gazette, direct that—

(a) a film which has been granted a certificate shall be deemed to be an uncertified film in the whole or any part of India; or

(b) a film which has been granted a "U" certificate [or a "UA" certificate or a "S" certificate] shall be deemed to be a film in respect of which an "A" certificate has been granted; or

(c) the exhibition of any film be suspended for such period as may be specified in the direction: Provided that no direction issued under clause (c) shall remain in force for more than two months form the date of the notification.

(3) No action shall be taken under clause (a) or clause (b) of sub-section (2) except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a film remains suspended under clause (c) of sub-section (2), the film shall be deemed to be an uncertified film.

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13. (1) The Lieutenant-Governor or, as the case may be, the Chief Commissioner, in respect of the whole or any part of a Union territory, and the District Magistrate in respect of the district within his jurisdiction, may, if he is of opinion that any film which is being publically exhibited is likely to cause a breach of the peace, by order suspend the exhibition of the film and during such suspension the film shall be deemed to be an uncertified film in the State, part or district, as the case may be.

Power of Central Government or local authority to suspend exhibition of films in certain cases.

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further to amend the Cinematograph Act, 1952.

(Dr. Shashi Tharoor, M.P.)