

## Privatising Film Certification: Towards a Modern Film Rating Regime<sup>1</sup>

Madhav Chandavarkar, Adhip Amin, Shikha Pathak, Siddarth Gore, Devika Kher  
and Guru Aiyar<sup>2</sup>

### EXECUTIVE SUMMARY

The Central Board of Film Certification (CBFC) is in charge of the regulation of the exhibition of films in India under authority granted by the Cinematograph Act, 1952. The current system of regulation is failing due to three primary reasons: the subjectivity of the medium of film, the lack of qualified members to actually watch and certify the film, and the lack of autonomy from the union government. The final point is particularly worrying as the certification of films is liable to be done on the basis of political expediency as determined by the whims of politicians in power. This malaise is only furthered by the fact that both the certifying authority and the first avenue for appeal are appointees of the union government.

The primary thrust of this advisory is to screen films using a marketplace model. It is suggested that:

1. The CBFC be renamed the Indian Movie Authority (IMA) and that the primary purpose of the IMA would be to license and regulate private organisations called Independent Certifying Authorities (ICAs) which will then certify films.
2. The certificate granted by ICA will only restrict what age groups the film is appropriate for. This is the only form of pre-censorship that is necessary in today's age as all other restrictions on film exhibition should be applied retrospectively.

---

<sup>1</sup> In response to the calls for comments from the public on the certification process by the Expert Committee headed by Shri Shyam Benegal.

<sup>2</sup> Madhav, Adhip, Shikha, Siddarth, Devika and Guru are researchers at The Takshashila Institution, an independent think tank on strategic affairs and public policy contributing towards building the intellectual foundations of an India that has global interests.

To contact us about the research write to [scholars@takshashila.org.in](mailto:scholars@takshashila.org.in) or visit [takshashila.org.in](http://takshashila.org.in)

The choice of ICAs available for producers to approach will render the question of subjectivity moot as the producer can switch to another ICA if unsatisfied with the certificate. The IMA will set the guidelines for the ICAs to follow and will be the first point of appeal.

3. The IMA will consist of the following bodies: the Board, the Tribunal of Movie Certification, the Cinema Regulatory Board, the Grievance Redressal Authority and the IMA Journal. The primary purpose of the Board shall be to regulate ICAs and issue the guidelines that ICAs must follow in certifying films. The Tribunal will have jurisdiction over all complaints regarding a film's certification, including from State Governments anticipating a law and order situation.

Presided by an ex-justice of a High Court or the Supreme Court, the Tribunal will have to resolve all complaints in a timely manner. The Cinema Regulatory Board will ensure safety standards in cinema halls as well as strictly enforce the restriction of underage viewers into cinema halls.

The Grievance Redressal Authority will be the body to which any complaints about the ICAs should be forwarded. The Authority will examine whether the ICA has violated any provisions of its license and send its report to the Board who shall then sentence the ICA accordingly. Finally, the IMA will publish the IMA Journal which will be a regular compendium of all the TMCs judgments as well as any judgments in the High Courts or the Supreme Court that affect the exhibition of films.

The ideal method for implementing this new regime would be a new legislation repealing the Cinematograph Act, 1952, entitled the Indian Movie Authority Act. This Act, aside from constituting the various bodies of the IMA, will contain various provisions necessary for the functioning of the new regulatory framework. This will include the appointment process of officers of the IMA, the necessary qualifications for an ICA and the procedure to apply for a license, the broad principles for certification of films to be interpreted by the Board of the IMA and the procedure for appealing a certificate to the Tribunal.

By ensuring the functional autonomy of the IMA and opening up the option of independent certifying bodies, the regulation of film exhibition will thus be on par with that of other modern democracies. In an age where film is the primary storytelling medium and people are brought up with a slew of visual imagery, this will increase the level of public discourse. The current regime is preventing this space for debate and is often a target of ridicule in popular media. It is believed that the time is now ripe to introduce a more forward-thinking approach to the topic at hand.

## INTRODUCTION

Most other democratic countries merely grant certificates to films that attach restrictions on the age of permissible viewers. But in India, the Central Board of Film Certification engages in pre-censorship by requesting cuts before going on to restricting the age of permissible viewers as well. Though it is ostensibly called the “Central Board of Film Certification”, the CBFC is still referred to as the “Censor Board”. This is symptomatic of how the regime for the regulation of films in India is one of the most stringent in the democratic world. Though the Indian Constitution does allow free speech to be reasonably restricted, it also guarantees this right because such freedoms are integral to the liberty promised to the people of India in the Preamble. As such, it is necessary to examine the loopholes in the current machinery and implement reforms so that the regulatory framework for film regulation does not unduly compromise this liberty.

Visual mediums like films have now supplanted books as the dominant form of literary entertainment, and have indeed become more than mere ‘entertainment’ as many films, especially documentaries, have beneficial cultural value. Cinema is a medium of expression capable of depicting a variety of social behaviour without always endorsing such activities. However, in India this medium of expression is severely restricted with the CBFC functioning as a jury of what kind of images and ideas the public is fit to view. Leaving aside the question of whether such restrictions are constitutionally permitted or desired, it is necessary to examine the CBFC’s capacity to fulfil its role as a moral arbiter of society.

Cinema is a medium open to a myriad of subjective interpretations, a belief borne out in film theory. Film scholar Annette Kuhn writes that attempts at censoring are bound to fail as the censors “construct” film texts as “carriers of fixed meanings, when meaning is not actually inherent in film texts but produced in the process of their consumption.”<sup>3</sup> The enforcement of guidelines by a single body is therefore quite problematic especially when they are subjective in nature. What may be offensive to some may not be so to others. The biggest danger, in the words of the Supreme Court in *K.A. Abbas v. Union of India*<sup>4</sup>, is that we must not be “reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read.”

This makes the composition of the CBFC and its subsidiaries doubly important. Under the current framework, the Board consists of a Chairman and other non-official

---

<sup>3</sup> The secret life of film censorship, *Infochange news & features*, July 2011

<sup>4</sup> *K. A. Abbas vs The Union Of India & Anr on 24 September, 1970*, *Indian Kanoon*, accessed on 19th April 2016

members whose number has to be between twelve and twenty five people. The Board is assisted in the viewing of films by Advisory Panels who actually watch the film and identify the objectionable content. The Board then reviews the report of the Panel before granting the certificate. However, the only qualification present in the Act is that the Advisory Panel is to be filled with persons who the Union government thinks are qualified to judge the effect of films in the public. If it is to impose a selective interpretation of a film on to the rest of the public the degree to which its composition mimics the public is crucial. Are the CBFC and the Advisory Panels a representative sample of the views of society on a film, if indeed that is possible? This ability of the CBFC to reflect public opinion must also be reconciled with legal principles such as equality lest the CBFC become a mouthpiece of majoritarian dogma. To this end the Mukul Mudgal Committee had proposed minimum qualifications for members of the Board, which would certainly make some progress in creating a more representative and reflective censorship regime.<sup>5</sup>

But perhaps the most crucial aspect restricting the CBFC is the dominant role the government plays in its functioning. This issue was addressed head on by the Khosla Committee. The Committee's report bluntly pointed out that the present board was not independent from governmental control and the board's decision could be set aside by an order of the Union government. The report stated that "censorship should be exercised not by a department of the state whose decisions are subject to revision, appeal or interference by the government, but by an independent body which has been given sufficient authority and a sufficient sense of responsibility to deal with the matter finally and irrevocably"<sup>6</sup>. It is essential that censorship be kept separate from the vagaries of politics with the regulatory authority enjoying a functional level of autonomy.

---

<sup>5</sup> Report of the Committee of Experts to Examine Issues of Certification under The Cinematograph Act 1952, dated 28th September 2013, accessed 19th April 2016

<sup>6</sup> AG Noorani, *The villain in the picture*, *The Indian Express*, dated 8th February 2016, accessed on 20th April 2016

## **RECOMMENDATIONS**

It is therefore abundantly clear that censorship in India is in need of reforms and that such reforms must significantly change the architecture of film regulation in the country. It is paramount that the CBFC be detached from excessive control from the legislature with more stringent regulations on its composition. But this will not address the problem of subjectivity in the guidelines and or ensure that the CBFC is completely representative of the audience; a task which is nigh impossible. As such it is proposed that the primary purpose of the CBFC should be to license independent organisations to certify films with the CBFC acting as the regulator and first court of appeal for these certificates. This will allow the marketplace of ideas to draw the lines of what kind of content is fit for what kind of audience with the government still being capable of stepping in to curb prurient sensibilities. For this purpose, incremental steps are not enough, holistic changes are needed to address the situation. It is suggested that the CBFC be renamed the Indian Movie Authority (IMA), preferably by an entirely new legislation, The Indian Movie Authority Act (hereinafter referred to as “the Act”).

### **The Indian Movie Authority: The New Regime**

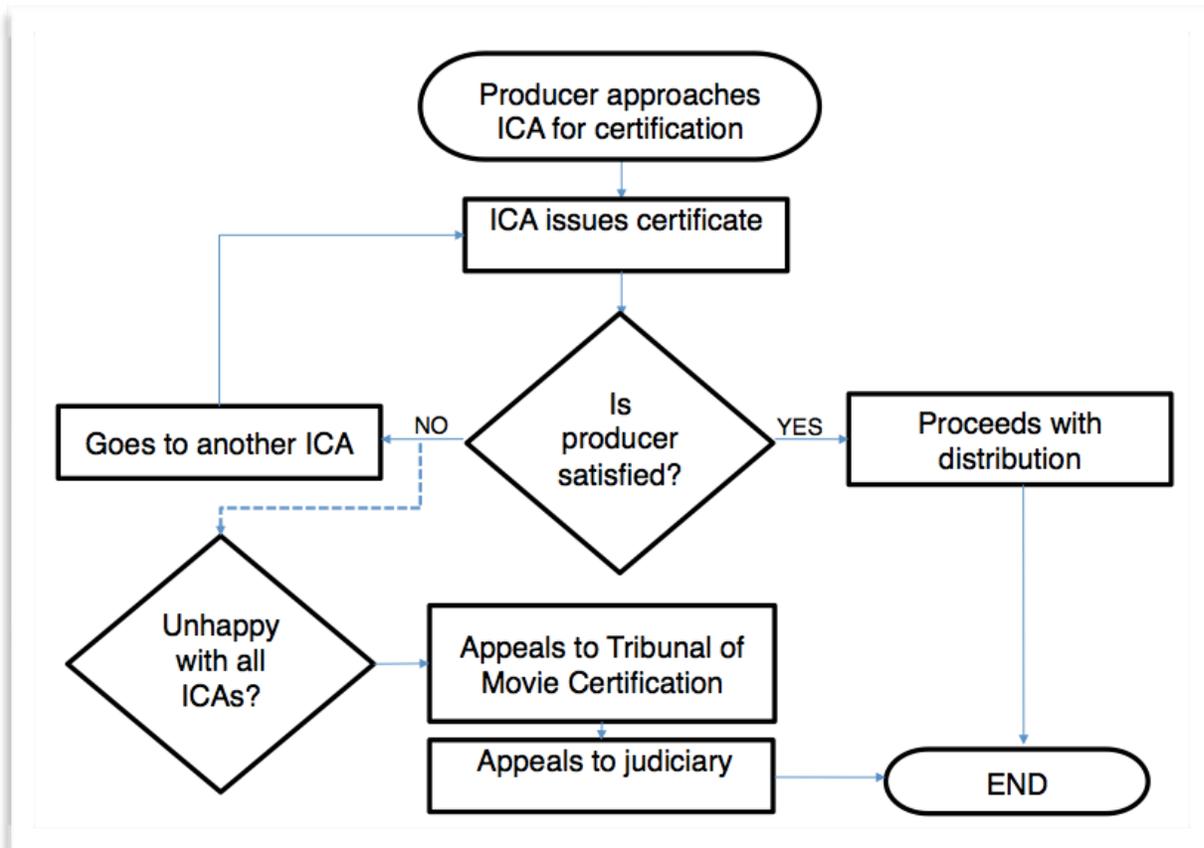
Under the proposed framework, private individuals can form a company and apply to the IMA to earn a license to certify films. These companies or Independent Certifying Authorities (ICAs) will have to meet the qualification criteria as set under the Act in order to earn this license.

The certificates provided by the ICAs will have to follow certain procedures and guidelines as prescribed by the IMA under the Act. These certificates will only classify the film on the basis of the appropriateness of the content to a certain age group. Additional punishments will therefore be required to ensure that cinemas enforce age restrictions.

If a film producer is unsatisfied with the certificate provided, the first stage of appeal will be the private appeal process of the ICA. If still unsatisfied he can always apply for a certificate from another ICA. However, if he is unsatisfied with all certificates provided by the ICAs he may apply to the Tribunal of Movie Certification (TMC), the quasi-judicial body of the IMA. The TMC shall have exclusive jurisdiction to hear appeals against certificates. A significant court fee should be levied from members of the public filing appeals with the TMC to deter frivolous lawsuits. State Governments may apply to the TMC if they object to the content on the grounds that it could lead to a law and order problem. Such applications may be accompanied by limited temporary injunctions against the exhibition of the film with the proviso that they will

lapse if the TMC does not decide the matter within a week. Figure 1 illustrates the certification workflow.

**Figure 1: Revised Workflow for Film Certification**



### Composition of the IMA

The IMA will be comprised of the following bodies:

#### 1. The Board

Presided by a President appointed by the government in consultation with the Leader of Opposition and Chief Justice. Other members will include the Registrar of ICAs, the Chairman of the TMC and other members. These other members should include at least

- i) One woman.
- ii) One member of the Scheduled Castes or Scheduled Tribes.
- iii) A representative of each major religion that is not an official member of the clergy or religious denomination to which he belongs.
- iv) A representative from each regional film industry.

v) A member or former member of the industry who is not a technician, such as an actor or director.

vi) A member or former member of the industry who is a technician, such as a cinematographer, composer, sound engineer etc.

## **2. Tribunal for Movie Certification**

The TMC will be the adjudicating authority of the IMA and will function independently from the Board. It will be presided by an ex-Justice of the High Court or Supreme Court. The remaining members should have experience and knowledge of film or be qualified as a child psychologist or counsellor. At least one of the members should be a woman and one should be a member of the Scheduled Castes or Scheduled Tribes. The composition of the TMC should be one that will ensure representation of minorities, ensure fairness and also be competent to determine the age appropriateness of a film. Appeals of orders issued by the TMC shall lie with High Courts.

## **3. Cinema Regulatory Board**

Part III of the Cinematograph Act also regulates the cinemas in which films are exhibited as this is required for purposes of safety. Under the new framework, another reason for regulation is added.

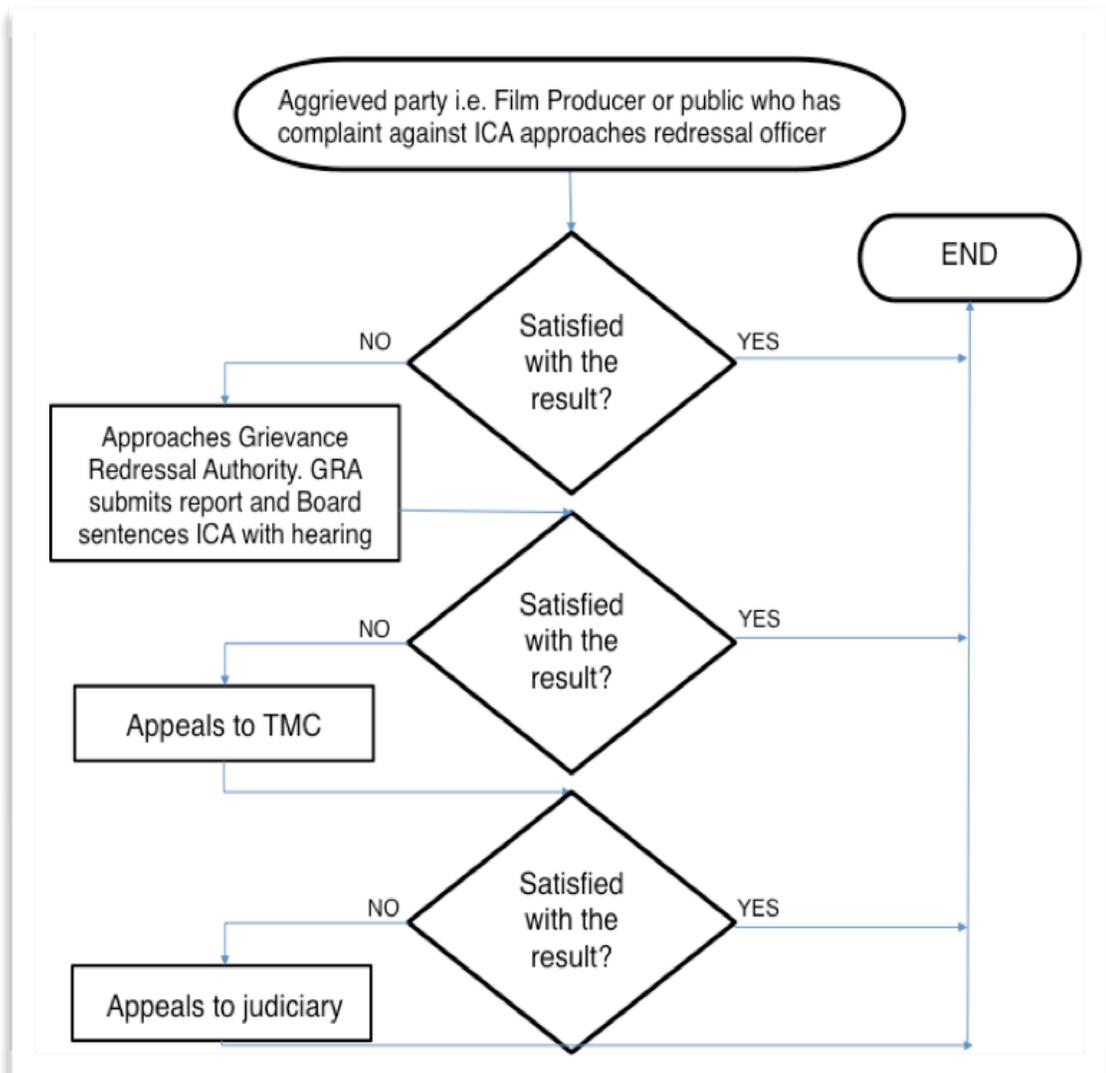
If the certificates issued by ICAs merely specify the age appropriateness of films it becomes essential that persons under the age specified are not permitted to watch those films. For this to be ensured, stringent punishments need to be included in the Act. The Cinema Regulatory Board will thus certify new cinemas as well as organise random inspections of cinemas to insure that underage persons are not watching films.

## **4. Grievance Redressal Authority**

It is possible that the ICAs may not function under the framework specified under the Act. The Grievance Redressal Authority will be a statutory body tasked with regulating ICAs for any contraventions of the Act and any requirements laid out under it. For example, when an ICA does not follow the composition of signatories for each certificate as specified for in the 10 year license. However, each ICA must also designate one of its employees as a Grievance Redressal officer. This officer will be tasked with receiving all complaints from the producers and the public about the certification process of the ICA. A direct complaint to the Grievance Redressal Authority will not be entertained without proof that the complainant has first approached the Grievance Redressal officer of the respective ICA. The Grievance Redressal

officer of each ICA must also file an annual report of complaints received by that ICA to the Grievance Redressal Authority. The Grievance Redressal Authority will have the power to issue summons to officers of the ICA or requests for financial records and any other documents required. At the end of its investigation the Authority will file its conclusions in a report to the Board who shall then fine, suspend or revoke the license of that ICA as it sees fit. The Board will allow the ICA to present its case before issuing its sentence. Appeals against the decision of the Board will lie first with the TMC and then subsequently with the High Courts. A visual framework for grievance redressal is given in Figure 2.

**Figure 2: Grievance Redressal Mechanism**

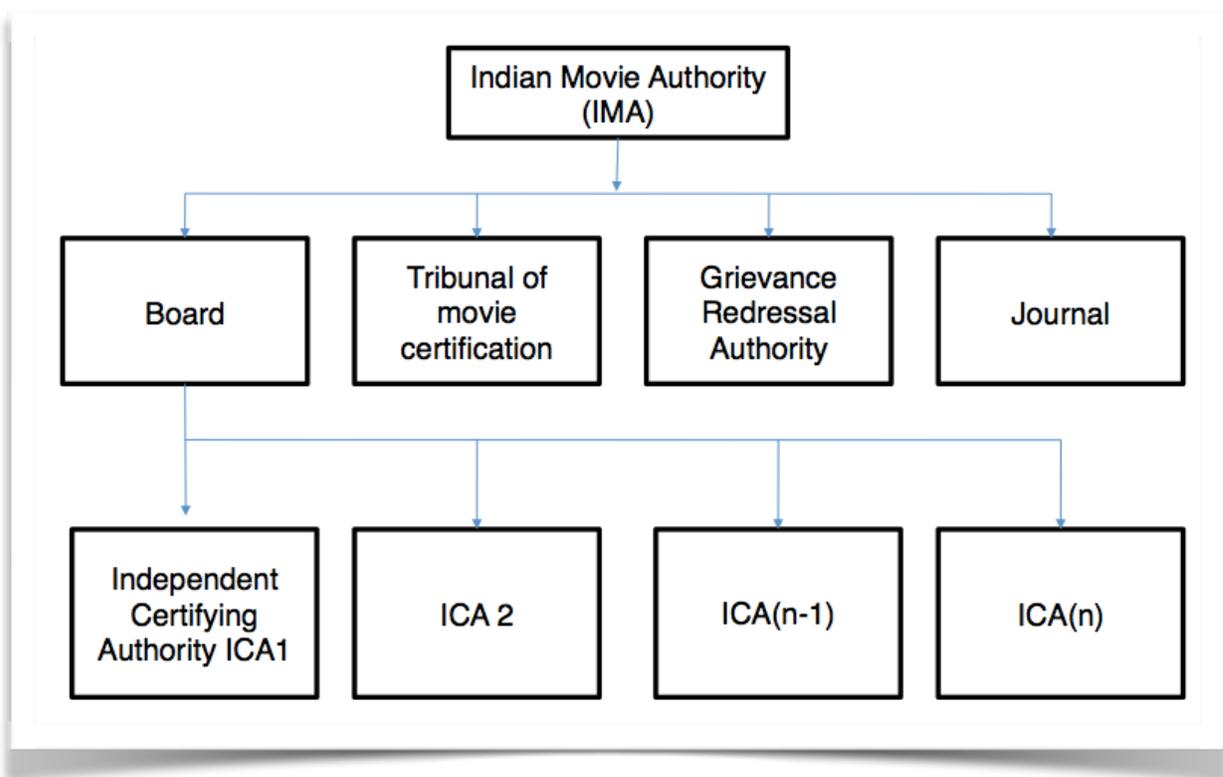


## 5. IMA Journal

The IMA will also maintain a compendium of cases of all cases decided under the TMC as well as any appeals to the High Court and Supreme Court. As these cases will form the precedent regulating the functioning of the ICAs the consolidation of them into a single journal will clarify the legal position of film regulation on specific subjects.

The organisation chart of the IMA is illustrated in Figure 3.

**Figure 3: Composition of the IMA**



### Primary Functions of the Board of the IMA

- i) Granting licenses to ICAs to certify films under the procedure specified in the Act. The Registrar will be the officer in charge of processing the applications of ICAs with the Board providing the final vote of approval. The Registrar will also maintain records of ICAs.
- ii) Issuing guidelines that more specifically interpret the broad principles for certification of films provided in the Act. These guidelines will only be applicable for a definite period of 10 years after which the Board must re-issue

them. This ensures that the guidelines will adapt to changing societies and modes of expression.

- iii) Fine, suspend or revoke the licenses of ICAs on the basis of the report filed by the Grievance Redressal Authority. The Board will not do so without first providing the ICA with a fair hearing under the principles of natural justice. Appeals against punishments accorded by the Board will not lie with the TMC.

## **Independent Certifying Authorities**

### **Qualifications**

1. A company formed under Section 8 of the Companies Act, 2013 (formerly Section 25 of the Companies Act, 1956).
2. Any other requirements as may be necessary. To be prescribed by the IMA and published in the Official Gazette.

### **Procedure**

The applying ICA must furnish the following documents to the Registrar of the IMA:

1. The Articles and Memorandums of Association and any other documents prescribed as compulsory for companies formed under Section 8 of the Companies Act, 2013 (or Section 25 of the Companies Act, 1956).
2. The list of the shareholders and board of the ICA at the time of application. Any change to this list after a the license has been granted must must be intimated to the Registrar within 45 days.
3. A list of the various officers of the ICA who are eligible to attach their signatures to certificates provided by that ICA. The Act shall contain a prescription for the ideal composition of 7 signatories on each certificate such as one woman, one member of the Scheduled Castes or Scheduled Tribes. If the application follows this specified composition of signatories, that ICA shall be eligible for a 10 year license. ICAs that fail to follow this composition shall only be granted a 3 year license. Though, not a compulsory requirement it is hoped that this will provide a sufficient incentive to ICAs to compose their reviewing panels in a more equitable and representative manner.

## Certification Guidelines

These guidelines are modelled after the film ratings as assigned by the MPAA – the Motion Picture Association of America, which is constituted by a group made up of the large studios. Broadly, there are five kinds of certification which are given: G, PG, PG-13, R, and NC – 17.

The following are the broad categories specified in the Act, with an example of a potential guideline as issued by the IMA:

1. G: Nothing that shall offend parents for viewing by children .  
Eg. - “no sex and nudity, substance abuse, or realistic/non-cartoon violence.”<sup>7</sup>
2. PG: “Parents urged to give ‘Parental Guidance’, may contain some material inappropriate for children under the age of 8  
e.g. - “There may be mild strong language and some violence, but there will not be substance use or abuse.”<sup>8</sup>
3. PG – 13: Parents are urged to be cautious, some material may be inappropriate for pre-teenagers.  
e.g. - “any nudity has to be non-sexual, any swear words have to be used sparingly, and not used in a sexual context.”<sup>9</sup>
4. R: Contains some adult material. Parents are urged to learn more about the film before taking their children with them.  
e.g. - “strong and frequent language and violence, nudity for sexual purposes and drug abuse.”<sup>10</sup>
5. NC-18: Clearly adult, children are not permitted.  
e.g. - “films which feature mature elements in such profusion – or in such intensity – that they surpass even the R rating.”<sup>11</sup>

The main principle guiding the certification is what kind of content deemed appropriate to show to children. Another principle will be the context of the content.

---

<sup>7</sup> *Film Ratings*, Motion Pictures Association of America, accessed on 19th April 2016

<sup>8</sup> *How Does a Movie Get its Rating?*, *about.com*, accessed on 18th April 2016

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

For instance, it could be possible for a character to say “Oh, (EXPLETIVE) this!” in a PG-13 film, but not more than once. But it would not be possible for a character to say “I’d love to (SEXUAL EXPLETIVE) Denise” as that is a combination of foul language and sexuality.

However, limits can also be prescribed regarding the importance of context. For instance, bloody violence, whatever the context, will always fall in the PG-13 category. Exceptions may also be made for certain kinds of films. For example, in Germany, films depicting explicit war violence in a real war context (such as the Second World War) are handled more leniently than films with purely fictional settings. So the guidelines for certification should be embedded in social and historical contexts. It will be the duty of the IMA to determine such principles on which certificates are granted. But the guidelines published by the IMA must only last for 10 years before the Board issues fresh guidelines. Attaching a sunset clause to the guidelines will ensure that they don’t become obsolete and stay updated with changing social mores.

A somewhat bold suggestion is that a new sub-category of NC-18 should be created for films that contain so much mature content and the story is merely a top-dressing for a pornographic film. Such films could be granted a rating of K and only cinemas certified to exhibit K-rated films will be allowed to do so. Such cinemas will face different regulations such as stricter punishments for allowing entry, shall be forbidden from being 1 Km from a school, etc.

However, in India many concerns about films extend beyond what people think children should watch. The CBFC has requested cuts on grounds such as protecting national honour or protecting public morality.

The Constitution does of course, permit reasonable restrictions under the grounds specified in Article 19(2) but the Supreme Court has also held that just because restrictions are permissible does not mean they are desirable. As such, the only grounds for pre-censorship of films should be the age appropriateness of the content. All other restrictions of free speech may be enforced after the exhibition of the film.

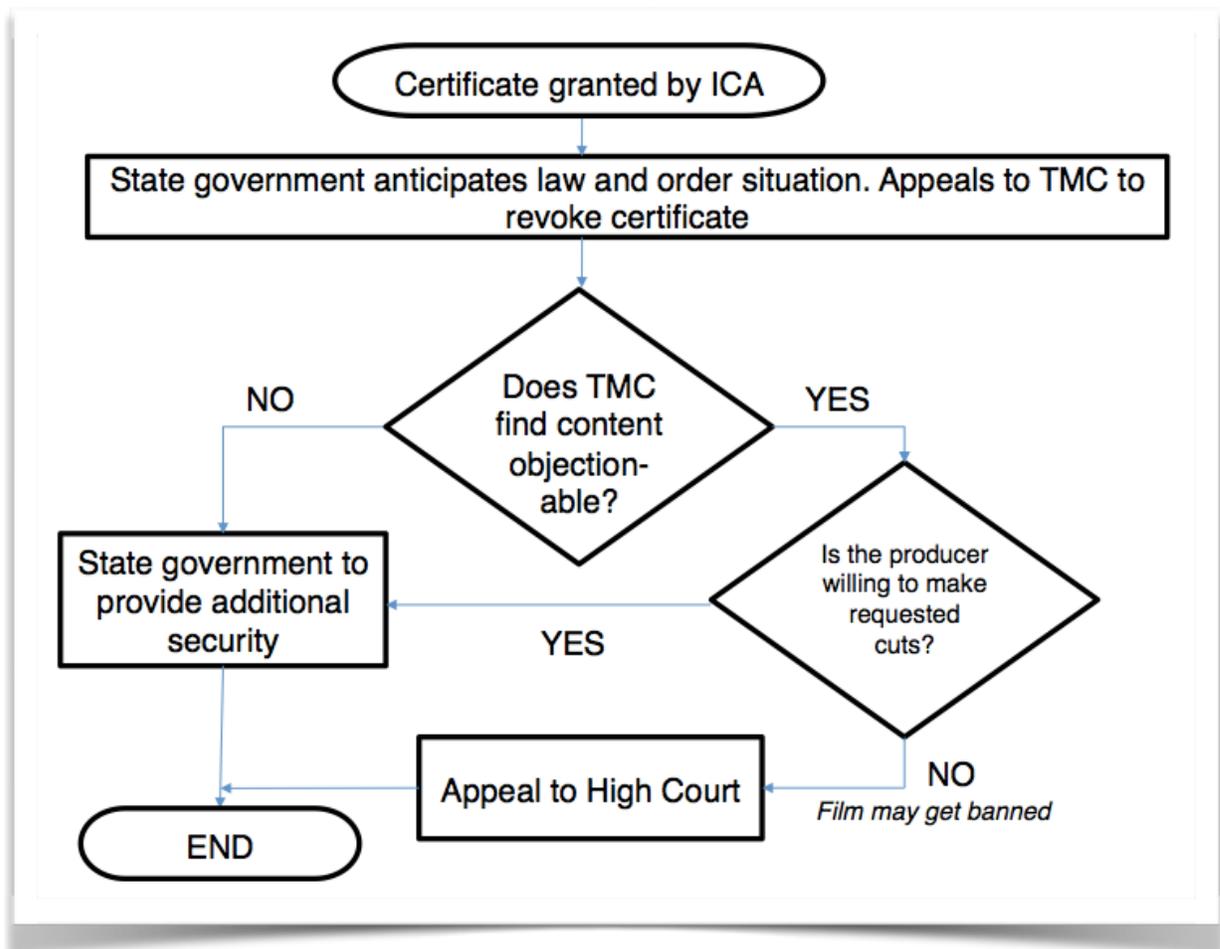
## **Procedure For Appeals**

Many films cause incendiary reactions amongst the public. Fearful of the reaction it is often the case that State Governments ban the release of that film in that State. This is actually against the rulings of the Supreme Court in S. Rangarajan Etc. v. P. Jagjivan Ram where it held “if the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence.” It is for that

purpose that the State Government may appeal to the TMC if it feels the film is unobjectionable.

The TMC shall give both the State Government and the film producer a chance to make their arguments before deciding its verdict. The State Government shall be allowed to plead for a temporary injunction against the exhibition of the film but this injunction shall lapse after one week. The entire process from hearing to verdict must therefore also take a week. The standard of objectionability shall be whether it violates a law already in force. If the TMC finds content that is objectionable it will first determine whether that content can be removed from the film. If the producer is willing to make these cuts the exhibition of that film will be allowed. However, if the content is unable to be removed from the film or the producer is unwilling to make the cuts the exhibition of the film in that State will be prohibited. The producer can appeal such an order to the High Court. But if the TMC approves the release of the film the State Government will provide any additional security required for the exhibition of the film. In the words of the Supreme Court, "it is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression."

Figure 4: Illustration of the procedure for appeals



## **CONCLUSION**

The reports of the Khosla and the Mudgal expert committees suggested amendments to no effect and that's why a new system needs to be introduced. The courts may have upheld the old system's constitutionality, however this doesn't mean that the current system is desirable. The proposed framework will allow for wider public discourse on the issues explored in films or on the content thought to be worthy of censorship post exhibition. Such a space does not currently exist in the present censorship system where such social choices are made by the government before films can reach society. There is no deliberation, with ideas being shut down before they are even disseminated. The solution is therefore to expand the space for deliberation by introducing various stakeholders into the censorship process. By allowing differing ideologies to compete in the marketplace of ideas the provision of certificates will expand the freedoms and liberties of film makers and their audiences. At the same time, the composition of an independent IMA functioning as a regulatory body in conjunction with a quasi-judicial appellate body will ensure that the exhibition of films will not go unchecked.

## **ACKNOWLEDGEMENT**

The authors would like to thank Lawrence Liang, former member and co-founder of the Alternative Law Forum for his guidance on censorship issues.