CHAPTER 2

CONSTITUTIONAL DIMENSIONS OF FILM-CENSORSHIP

2.1 AN INTRODUCTION:

Freedom of speech and expression is the concept of being able to speak freely. It is often regarded as an integral concept in modern liberal democracies. It is the backbone of democracy. Such freedom of expression is a cornerstone of functioning of the democracy. It promotes certain values, as noted by Professor Emerson in 1963:

“Maintenance of a system of free expression is necessary (1) as assuring individual self-fulfillment, (2) as a means of attaining the truth, (3) as a method of securing participation by the members of the society in social, including political, decision-making, and (4) as maintaining the balance between stability and change in society.”

Society can develop only by free exchange of ideas. Progress generally begins in skepticism about accepted truths. Justice Jackson rightly observed that, “A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all…Thought control is a copy right of totalitarianism, and we have no claim to it.”

86 Ibid.
Justice Cardozo of the US Supreme Court characterized it as “the matrix of the indispensable condition of nearly every other form of freedom.”

Freedom of thought is meaningless unless an opportunity is given to express the ideas. Thus freedom of speech & expression is a necessary concomitant of freedom of thought. Without freedom of expression, the freedom of thought will be an empty shell. To quote Mill,

“If all mankind minus one, were of opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, then he, if he had the power would be justified in silencing mankind.”

Freedom of speech ensures exchange of ideas. Freedom of speech and expression is necessary for a full enjoyment of other rights.

Article 19 of the Universal Declaration of Human Rights states: Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The same right is also stressed by the Article 10 (1) of the European Convention on Human Rights in 1950.

Constitutions of various states provide for freedom of speech and expression.

Article 19 (1) (a) of the Constitution of India guarantees to every citizen the fundamental right to the freedom of speech and expression. The said Article guarantees to every citizen the fundamental right to the freedom of speech and expression. In a democratic society every citizen has a right to speak as indeed, the right to know. Knowledge of the affairs of governance and the invocation of peaceful forms of dissent is a necessary precondition to the existence of a stable

society formed of informed citizens. Nothing can be as destructive of the social fabric in a democratic society than the attempt of those who govern to prevent access to information to those whose security depends upon the preservation of order. As environment in which human rights are respected is nurtured by a vibrant flow of information and avenues for a critical assessment of governance.

Various judgments of the Supreme Court have referred to the importance of freedom of speech and expression both from the point of view of the liberty of the individual and from the point of view of our democratic form of government.

For instance, in the early case of *Romesh Thappar v. State of Madras*⁹¹, the Supreme Court stated that “freedom of speech lay at the foundation of all democratic organizations”. In *Sakal Papers (P) Ltd. v. Union of India*⁹², a Constitution Bench of the apex Court said freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved.

In a separate concurring judgment, Justice Beg, in *Bennett Coleman & Co. v. Union of India*⁹³, said that “the freedom of speech and of the press is the ‘Ark of the Covenant of Democracy’ because public criticism is essential to the working of its institutions.” Equally, in *S. Khushboo v. Kanniamal*⁹⁴, the Court stated that “the importance of freedom of speech and expression though not absolute was necessary as we need to tolerate unpopular views. This right requires the free flow of opinions and ideas essential to sustain the collective life of the citizenry.” While an informed citizenry is a pre-condition for meaningful governance, the culture of open dialogue is generally of great societal importance.⁹⁵

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⁹¹ (1950) SCR 594.
⁹² (1962) 3 SCR 842.
⁹³ (1973) 2 SCR 757.
2.2 CINEMA AND FREEDOM OF EXPRESSION:

Cinema is unarguably the most powerful medium of the present with tremendous affective and performative potential. In terms of performance art-forms evolving from myth to modernity, from ritual to theatre, cinema has grabbed the space within and outside the human mind. Small wonder that within a few years of its emergence, the medium has swiftly seeped through the corners of the open edge of mass publicity through its performative dispensations, namely the element of anonymity that characterizes any public communication in the age of mass publics: in the sense that what makes cinematic communication public is not just that “it addresses me” by way of public channel, but also that “it addresses me insofar as it also, and by the same token, addresses unknown others” in the shared public sphere.\textsuperscript{96}

Films have always been regarded as constituting a powerful medium of expression. It is judicially recognized that cinema is a form of speech and expression.\textsuperscript{97} Justice Clark of the United States’s Supreme Court said:

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“It cannot be doubted that motion pictures are significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of thought which characterizes all artistic expression .The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.”\textsuperscript{98}
\end{quote}

Like other media platforms such as newspaper, books and radio, cinema plays a creative role in dissemination of ideas. Likely, the influence of cinema is more noteworthy than that of other medium. Its educative esteem, if used appropriately,

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\textsuperscript{97} \textit{Mutual Film Corporation v. Industrial Commission of Ohio}, (1915) 236 US 230.
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is additionally more prominent. Cine-goers are incomprehensibly large in number which is going up day by day. The influence of this medium on life of the people is incredible. The influence it will have in moulding the morality and habits of the youth cannot be neglected. Cinema is the most influential and popular form of art. Although to a great extent its object is commercial, cinema is an effective agent in disseminating ideas. Therefore it should have the constitutional protection of freedom of speech and expression in any Constitution. May be this is the reason that the banning of the films brings us to the cardinal question do we have the freedom of speech and expression?

Some nations guarantee specific constitutional protection to movies against pre-censorship. Then there are some which do not specifically guarantee protection to cinema but consider exhibition of movies as a part of freedom of speech and expression.

Censorship of cinematographic exhibition is a world-wide phenomenon. There may be difference in degree. Some sort of censorship, either self-censorship or statutory censorship, is adopted by almost all countries even though in a few countries criminal prosecution is thought to be the only form of control. The question of constitutionality of film censorship will arise only in the case of official or statutory censorship. It again depends on the phraseology of the provisions of the Constitution.

The Constitution of India guarantees to the citizens the fundamental right to freedom of speech and expression. However unlike the constitution of United States, the Indian Constitution empowers the state to impose reasonable restrictions on the exercise of this right. In the constituent assembly, there was severe criticism against the inclusion of restrictions in the Constitution itself.

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99 Article 19(1) (a) of The Constitution of India.
100 Article 19(2) of The Constitution of India.
This criticism was mainly based on the Constitution of the United States where the right was in absolute terms. These criticisms were repelled by Dr. Ambedkar, the Chairman of the Drafting Committee, in a letter to the Chairman of the Constituent Assembly in the following words:  

“That the fundamental rights in America are not absolute rights is beyond dispute. What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of “Police power”, it permits the state directly to impose limitations upon the Fundamental Rights.”

2.3 CONSTITUTIONAL RESTRICTIONS:

The question that naturally would surface is how far is this censorship compatible with the constitutional provisions of a democratic nation? In many ways then censorship not merely silences speech but it also produces authorized forms of truth. This pertains not only to cinema but figures in the larger issues of all human creativity. It is argued that struggles over free speech and the dynamics of governmentality have their distinct regional and national histories. However, even from its inception, cinema has a global history, and thus to follow its evolution vis-à-vis censorship is to trace a graph of disciplinary technology that proliferates normalized understandings of subjectivity, sexuality, and citizenship in the lines of Michel Foucault.

The Constitution attempts to strike a balance between individual liberty and social control. Justice Mukherjee rightly observed:

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“There cannot be any such thing as absolute or un-controlled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. The question therefore, arises in each case of adjusting the conflicting interests of the individual and of the society.”

A limitation on the exercise of the right shall satisfy the following requirements for its validity:104

i) The restriction must be one imposed by a valid law. A restriction imposed by executive action will be valid.

ii) The restriction must be reasonable, and

iii) The restriction must be proximately related to purposes mentioned in the respective sub-clauses of Article 19.

The presence of the term reasonable in sub-clause (2) of Article 19 empowers the judiciary to sit in judgment over legislative determination. The Supreme Court time and again pointed out that reasonableness will depend upon facts and circumstances of each case, the evil sought to be remedied and the condition present in society at a given time.

Justice Mahajan has summarized the scope of the term in the following words:105

“The phrase “reasonable restriction” connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word ‘reasonable’ implies intelligent care and deliberation that is the choice of a course

which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed and the social control, it must be held to be wanting in that quality.”

The Supreme Court, in the case of Life Insurance Corporation of India v. Prof. Manubhai D. Shah, stated that “the restriction had to be interpreted strictly and narrowly. Such restrictions are bound to be viewed as anathema, inasmuch as they are in the nature of curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities who seek to impose them.”

As noted above, film censorship was in vogue in India from 1918 onwards. Before the commencement of the Constitution of India, the question of constitutional validity of the law did not arise at all. The law continued even after the commencement of the Constitution until it was repealed and re-enacted by the Cinematograph Act 1952. The Act provides for the establishment of a ‘Central Board of Film Certification’, the regulatory body for films in India to issue the certificate to the makers of the film for public exhibition. As per the provision of the law, the Board after examining the film or having it examined could (a) sanction the film for unrestricted public exhibition; (b) sanction the film for public exhibition restricted to adults; (c) direct such excisions and modifications in the film before sanctioning the film to any unrestricted public exhibition or for public exhibition restricted to adults; and (d) refuse to sanction the film for public exhibition.

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107 So far censorship of films in India is concerned, the power of legislation is vested with the Parliament under Entry 60 of the Union List (or List I) of the Schedule VII of the Constitution. The States are also empowered to make laws on cinemas under Entry 33 of the State List (or List II) but subject to the provision of the central legislation. The prime legislation in this respect is the Cinematograph Act, 1952, No. 37 of 1952, and the Cinematograph (Certification) Rules, 1983, Gen. S.R. 381(E).
2.4 PRINCIPLES FOR CERTIFICATION OF FILMS:

In a free society, it is necessary to restrict the freedom of one individual so that it may not collide with the freedom of others. If liberty is a social conception, there can be no liberty without social control. Limitations on the exercise of freedom are an accepted fact. The only controversy is the extent to which such restrictions are to be imposed.

On the one hand, the freedom is must for human progress. On the other hand, it is equally important to restrict the freedom not only in the interest of society. Ideally what is required is to strike a balance between these two competing claims. The extent of limitations necessarily depends upon the changing conditions of society.

Indian Constitution, recognizing the need for limiting the exercise of fundamental right in public interest, expressly authorizes the State to impose reasonable restrictions on the exercise of the said right. The grounds on which these restrictions can be imposed are enumerated in clause 2 of Article 19 of the Constitution. It is significant to note that this clause does not impose any obligation on the State to impose restriction. The provision is only permissive. The concept of ‘reasonableness’ imports judicial review.\(^1\)

Section 5 B (1) of the Act sets out the principles for guidance in certifying films. The Section is more or less a replica of Clause 2 of Article 19. The Supreme Court while upholding Section 5 B (1) of the Act opined that the absence of the term ‘reasonable’ in the section would not make any difference at all and the court could still look into the reasonableness of the action taken by the Board. The scope and ambit of the grounds mentioned in Article 19 (2) of the Constitution has been judicially expounded. Since Section 5 B (1) uses the very same terms, the interpretation given to these terms in other cases can be used for expounding the scope of the section.

2.4.1 Sovereignty and integrity of India:

These words were added to Article 19 (2) of the Constitution by the Constitution (Sixteenth) Amendment Act 1963 to provide for a legal framework to arm the Government with sufficient powers to meet effectively with the demand for dismemberment of the country and cession. The amendment was incorporated at a time when the disintegrating tendencies in the country have assumed alarming proportions. Cinema should not encourage these tendencies. Perceiving the possibility of such a threat, Parliament amended Section 5 B (1) of the Act in 1981 by adding the words: “sovereignty and integrity of India” in order to refuse certification to a film.

2.4.2 Security of State and Public Order:

The scope of the term ‘public order’ is wider than ‘security of state’ although more often than not the two overlap. The original Clauses (2) of Article 19 did not contain the word ‘public order’ for which restrictions could be imposed. Measures taken by the Government for maintaining public order or public safety were declared unconstitutional by the Supreme Court holding that the phrase originally contained in Clauses (2) of Article 19 of the Constitution vis., ‘Security of State’ would apply only aggravated forms of breaches of public order such as those endangering the foundations of State or threatening the overthrow of the Government by force and, therefore, any restriction in the interest of public order not amounting to security of state would not be valid. In order to overcome the difficulties caused by these decisions the Constitution (First) amendment Act 1951 introduced ‘Public order’ as an additional ground in Article 19(2) of the Constitution.

It has been observed by Justice Subba Rao that the term public order in its most comprehensive sense is so wide enough as to include all the grounds mentioned in Article 19 (2) but as the Constitution details different species of public order in the same clause, the term public order as used in Article 19(2), shall be demarcated from the others and be given a specific meaning.\textsuperscript{110} The learned judge, however, took the view that the term ‘public order’ as used in Article 19 (2) is broad enough to include all activities against public tranquility and public safety short of those affecting ‘Security of State.’

He said:

“Public order is synonymous with public safety and tranquility; it is the absence of disorder involving breaches of local significance in contradiction to national upheavals, such as revolutions, civil strife, was affecting the security of the State.”

This broad interpretation of the term ‘public order’ was not accepted in toto in subsequent cases. Although public order overlaps with public tranquility, it is only partial. Public order includes all acts which are danger to the security of state as well as insurrection, riot, turbulence or crimes of violence but not acts which disturb only the serenity of others. For instance playing loud music in his own house causing annoyance and disturbance to others, though may affect public tranquility, cannot be deemed to be a violation of public order. The scope and content of the expression public order and security of State has been stated by Justice Hidayatullah in the following words:\textsuperscript{111}

“One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of state. It is then easy to see that an act may

\textsuperscript{110} Superintendent, Central Prison v. Dr. Ram Manohar Lohia, (1960) AIR SC 639.

\textsuperscript{111} Ram Manohar Lohia v. State of Bihar AIR (1966) SC 740 at 758-759.
affect law and order but not public order just as an act may affect public order but not security of India”.

In short, these pronouncements advocated that a restriction can be imposed in the interests of public order only when there is some danger to the public at large posing threat to public peace. A mere criticism of the minister cannot in the absence of any proof regarding force be treated as a violation of public order. And aggravated form of public order which undermines the very existence of state either by preaching war or by internal rebellion constitutes a threat to security of state.

Whether an activity endangers security of state of public order or one merely affecting public tranquility depends on the degree of gravity of the act in question. In the first two categories it appears that the State may impose a valid restriction whereas in the third category no restrictions can be imposed under Article 19(2) However, there is no watertight division between these categories and therefore, much will depend upon the circumstances of the transaction. This, naturally, confers a wide discretion on the authorities concerned. Discretion has to be exercised properly in order to maintain reasonableness. While censoring films for certification, the censorial authorities can ban a film or can order for deletion of some scenes in films on this ground only when the above mentioned conditions are satisfied. Here it must be emphasized that such objectionable matters in the films should have real likelihood of affecting security of state or public order.

2.4.3 Friendly relations with foreign States:

Depiction in a film of anything which has the effect of malicious and persistent propaganda against a foreign State having friendly relations with India may cause embarrassment to the Governments of both the countries. This may go to the extent of straining Indian’s relationship with that state.
Inevitably the practice has to be banned. The terms ‘friendly relations with foreign States’, if broadly interpreted may include even a criticism against the foreign policy of the Government of India.

Both the board as well as the Government have been hypersensitive in this regard. Numerous times, they have objected to scenes in films having a mere reference to the history or culture of foreign countries. Opposing this practice, the Khosla Committee112 maintained that there is no need for such a super sensitiveness to all such objections from foreign countries. The Committee was of the view that “to extend this inhibition to the absurd limit of being afraid of the slightest objection from an over-sensitive foreigner is not consistent with our dignity and freedom.”

The film censor has to bear in mind this aspect of the problem. It appears that the censor can validly object to a film on this account only for a willful attempt to tarnish a foreign state which has friendly relation with India or if the effect of the film is to strain the relationship of that state with India. At any rate, it may be conceded that the board is not at all competent to judge films on this ground because the Government is the best judge to decide whether or not a film is against it’s friendly relations with foreign States. Thus, practically the censor has to accept the claims of Government. Still, as envisaged elsewhere an independent Board with dignity and high status consisting of eminent personalities will be in a position to determine impartially the claims of Government. In case of disagreement with the decision of the Board, the Government can approach the appellate tribunal, which with its qualified personnel can render an unbiased decision.

2.4.4 Incitement to an offence:

For an effective suppression of crimes, it is necessary to punish those who instigate or aid or abet the commission of an offence over and above the actual wrongdoer. The Constitution, therefore, permits the State to impose a reasonable restriction on the exercise of the right to speech and expression for the purpose of preventing incitement to an offence. Incitement to commit serious offences like murder or waging war against the Government of India can also be treated as an action against the security of State. Such incitement can be validly prohibited.

According to the General Clauses Act\textsuperscript{113}, an offence means any act or omission made punishable by any law for the time being in force. It may therefore be possible for the State to create any offence by a law and then the incitement to commit that offence can also be made punishable. Accordingly, one eminent commentator on the Indian Constitution argues that “the freedom of speech can be effectively circumscribed as any subject can be precluded from public discussion by making it an offence”.

However, it may be noted that the creation of the offence itself will be valid only if it is reasonable and that free speech can be regulated on the ground of incitement to commit an offence only if the offence relates to the other grounds mentioned in Article 19 (2) of the Constitution. Obviously, incitement to commit an offence having no relation to any of the restrictive grounds mentioned in Article 19 (2) cannot be invoked for the purpose of regulating freedom of speech and expression.

It has been suggested that since the phrase ‘incitement to commit’ is used along with the term ‘security of State’ and ‘public order’, the incitement contemplated by Article 19 (2) of the Constitution has reference only to an offence relating to security of State or public order.

\textsuperscript{113} The General Clauses Act 1897, s 3.
Accordingly, it has been held that a mere instigation not to pay tax will not amount to an incitement to commit an offence. However, it may be noted that the phrase ‘incitement to commit an offence’ is used not only along with ‘the security of State and public order’ but also along with the other grounds mentioned in Article 19(2).

Thus, as already discussed, it appears that incitement envisaged by this Article refers to an offence under all the grounds mentioned in Article 19(2).

It may not be possible for a film censor to object to a film on the ground that it contains an incitement to commit any offence. It can object only to those acts depicted in a film if such depiction constitutes an incitement to commit an offence directly related to the grounds mentioned in Article 19(2). Thus, in order to object to a film on the ground of incitement to commit an offence the Board has to decide two things. The first is whether there is an incitement to any offence at all and secondly, whether the particular offence has a rational relation with the grounds mentioned in Article 19(2).

2.4.5 Morality and Decency:

Another ground on which a reasonable restriction can be imposed on the exercise of freedom of speech and expression is ‘in the interest of morality and decency’. These are terms of wide import having no fixed meaning. Societies being dynamic, the norms of decency and morality have to change its colour in tune with the changing norms in society.

As these terms are indefinable, the judiciary in India has not attempted to define these terms. Lord Simon\textsuperscript{114} opined that morality and decency are not synonymous. The former refers to standards accepted by the general public and uphold by all

\textsuperscript{114} Kneller \textit{v. DPP} (1973) AC 435.
law abiding citizens. The latter refers to the feelings of that section of the general public likely to be exposed to the offending material.

In short, public morality has to be ascertained in a generic way as the moral standards available in society at a particular time whereas indecency refers to those matters considered as repulsive or disgusting by a particular section of the public to whom it is exposed irrespective of whether it is immoral or not.

Indecency is not concerned with the moral of individuals but the object of prohibiting indecent publication is to protect the right of a significant section of the public against an affront to his sense of aesthetic propriety.

Thus, the concept of decency is wider than that of morality. Though the society does not consider a matter as morally taboo, a section of public any consider the same as indecent.

True, the concept of obscenity falls within the comprehension of indecency or immorality but the test of obscenity is more stringent that the latter.

In the United States, obscenity has never been considered as part of free speech. The judiciary for the first time laid down a test of obscenity in Roth v. United States. The test is “Whether to an average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.”

Later decisions sought to explain the Roth test. Even then, these ‘tests’ were far from satisfactory and in their application to concrete facts, they raised a Pandora’s’ box of questions. The unsatisfactory nature of various tests together with the liberalism of the judiciary towards obscenity charges resulted in an unprecedented rise in dealing with sexual matters.

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\[115\] (1957) 354 US 476.
Not surprisingly, the Supreme Court adopted a new test in *Miller v. California*116, considerably modifying the earlier tests. Chief Justice Berger laid down the following test of obscenity:

(a) Whether the average person, applying contemporary standards would find that the work, taken as whole, appeals to the prurient interest.

(b) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable State law; as written or authoritatively construed; and

(c) Whether the work, taken as whole lacks serious literary, artistic, political or scientific value.

The new test thus substituted the old test of national standards by contemporary community standards. The prior requirement that the material must be shown to be “utterly without redeeming social value” was rejected. Now it is sufficient to show that the material “lacks serious literary, artistic, political or scientific value.” Even in spite of the improvement, the new test also fails to provide a satisfactory definition to obscenity. Because of the indefinable nature of obscenity the court always insisted that a penalty can be imposed for obscenity only after a prompt determination of obscenity in proceedings which itself must ensure strict procedural safeguards.

In Britain obscenity was considered as a common law offence in early days. In 1858, the first Obscene Publication Act was enacted making it a statutory offence to publish obscene matters. However, the stature did not contain a definition of ‘obscenity’.

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116 (1973) 413 US 15.
The test to determine obscenity was laid down by Chief Justice Cockburn in *R. v. Hicklin*\(^{117}\) in the following words:

“Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall”.

This test has been adopted as basic premises by all common law countries. However, the gloss put on to the test and the prosecution of works of high literary standards necessitated some modification in the above test. Accordingly, the Obscene Publications Act 1959 adopted a new test. The test as modified by the Obscene Publications Act 1964 provided that obscenity has to be determined with reference to the matter taken as a whole. The stature provided for some defence to the accused including the defence of public good.

The Supreme Court of India in *Ranjit Udeshi v. State of Maharashtra*\(^{118}\) adopted the Hicklin test with some modifications, without trying to define the indefinite; the Court explained the content of the term ‘obscene.’ According to the Court the test of obscenity is the tendency of the material to deprave and corrupt, judged according to the present day community standards. At the same time the court underlined the need for considering the artistic presentation of the material. Where obscenity and art are mixed, art must be so preponderating as to throw obscenity into shadow or render obscenity so trivial and insignificant that it can be overlooked. Even though an overall view of the matter in the setting of the whole work is essential, obscene matter must be considered separately to find out its effect. The Court further observed that obscenity is treating with sex in a manner appealing to the carnal side of human nature or having such a tendency.

In Britain and in the United States an exhibitor of cinema can be tried for obscenity and therefore the test of obscenity has some relevance in the field of

\(^{117}\) (1868) LR 3 QB 360.

\(^{118}\) (1965) SCR (1) 65.
exhibition of films. As film censorship in these countries are carried on by the film industry itself there may be some justifications for resorting to a trial for obscenity. But in India, the position is entirely different. In theory and in practice no person can be tried for an obscenity charge for exhibiting a certified film.

The duty of the censor is not confined to determination of obscenity alone; it includes something more. The censor is duty bound to determine whether the film in question is contrary to the accepted standards of society and further, whether or not it is morally objectionable, the film is shocking or disgusting to the film viewer. In K.A Abbas v. Union of India\textsuperscript{119} the Supreme Court instructed the censors to adopt and apply the test of obscenity laid down in Udheshi case. Since the film censors are competent to adjudge the suitability of film on a much wider plane, the above instruction appears to be a misconceived one.

2.4.6 Contempt of Court:

Lord Russel, C.J.\textsuperscript{120} has defined contempt of court as:

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“Any act done or writing published calculated to bring a court or a judge of the Court into contempt, or to lower the authority is a contempt of court. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the court is contempt of Court.”
\end{quote}

The object of contempt proceedings is two-fold. Firstly, it ensures a fair trial in judicial proceedings and secondly, it prevents the bringing of the authority and administration of law into disrespect.

\textsuperscript{119} (1971) AIR 481.
\textsuperscript{120} R v. Grey (1900)2 QB 36 40.
In India the principle has been followed for a long time. The present law on the subject is contained in the contempt of Court Act 1971. The Constitution of India also empowers the Supreme Court and High Courts to punish for its contempt.

Section 2 of the Contempt of Courts Act 1971 defines contempt of court as including civil contempt and criminal contempt. Civil contempt means willful disobedience to nay orders or other processes issued by the court or willful disobedience of any undertaking given to the court.

Criminal contempt includes any act or statement scandalising or tending to scandalise or lowering or tending to lower the authority of any court or prejudicially interfering or tending to interfere with the due course of any judicial proceedings or obstructing or tending to obstruct the administration of justice in any manner. However, an innocent publication cannot be characterised as contempt of court. The Act further makes it clear that any publication with respect to a matter which is not pending will not amount to contempt of court. The act provides for some exceptions to the offence including a fair criticism of judicial acts.

A libellous reflection upon the conduct of a judge may not always amounts to contempt. Such a scurrilous attack on a judge will amount to contempt only when it is calculated to obstruct or interfere with the due course of Justice or proper administration of law. However, the courts time and again made it clear that a fair criticism of the judgment in good faith would not amount to contempt of court. Lord Justice Salmon121 has rightly observed:

“The authority and reputation of our courts are not so frail that their judgments need to be shielded from criticism. It is the inalienable right of everyone to comment fairly on any matter of public importance. This right is one of the pillars of individual liberty—freedom of speech, which our courts have always unfailingly

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121 R v. Commissioner of Police, (1968) 2 All ER 319.
upheld. It follows that no criticism of a judgment however vigorous can amount to contempt of court, providing it keeps within the limits of reasonable courtesy and good faith.”

In England, the judicial awareness of the fact that a fair criticism is very essential for maintaining the high quality of judgments, has resulted in greater tolerance towards criticism.

The above legal exposition has been accepted by the judiciary in India. In \textit{E.M.S. Namboodiripad v. T. Narayanan Nambiar}\textsuperscript{122} the Supreme Court held that scandalising the judiciary by charging it as an instrument of oppression, accusing judges as dominated by class hatred instinctively favouring the rich, and imputing that judges often acted against their conscience amounted to contempt of court. According to the Court, such an allegation was not fair criticism because the allegation had the tendency to interfere with the course of justice by lowering the image and dignity of judges and courts in the eyes of general public and thereby to shake the confidence of people in judiciary. It appears that the Indian Judiciary is not prepared to show a greater degree of tolerance towards criticism as manifested by English Courts.

However, recently the Kerala High Court held that a criticism which Prima facie appeared to be more vitriolic than the one involved in the E.M.S. Nambudiripad’s case and made by a retired Supreme Court judge, did not constitute contempt of court because the object of such a statement was not to lower the reputation and good image of the judiciary but with the laudible object of improving the system of administration of justice.

As noted above, one of the cardinal objectives of punishing contempt of court is to ensure a fair administration of justice. Any act of statement likely to affect the prospects of fair trial amounts of contempt of court.

\textsuperscript{122} (1970) AIR SC 2015.
A comment about a pending issue or about a person involved in it may adversely affect the proceedings. In England, contempt of court proceedings are not uncommon for comments in the media about pending cases or on incidents about which there is a real prospect for subsequent judicial proceedings. Although, the intention of the person making the comment is immaterial, lack of knowledge about the pendency of the case, or about the real likelihood of future proceedings, have been accepted as valid defence.

As said above, in India, the Contempt of Court Act 1971 specifically provides that an act or statement relating to any matter which is not pending will not amount to contempt of court.

It is a usual practice of film makers to select events which have a public appeal for making films. Usually sensational criminal offences are selected for this purpose. At the time when it is ready for public exhibition, the criminal proceedings may have started and in such an event, the exhibition of the film may constitute a contempt of court. There are instances, wherein films dealing with sensational issues have been freely allowed by the Board, without looking into the question whether proceedings have been already initiated or not.

### 2.4.7 Defamation

Defamation is both civil and a criminal wrong. It is the tarnishing of a person’s image in the estimation of right thinking members of society. It is defined as the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or which tends to make them shun or avoid that person.\(^{123}\)

The Board of film certification must ensure that visuals or words involving defamation of an individual or a body of individuals are not presented.

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\(^{123}\) Winfield and Jolwize on Torts (1971).
2.5 JUDICIAL APPROACH VIS A VIS FILM CENSORSHIP IN INDIA:

Indian courts have consistently upheld and championed the fundamental right to free speech and expression enshrined in the Constitution. This includes the right to put forward different and contrary views, right or wrong. The judgments from the Supreme Court of India and High Courts clearly set out key issues relating to freedom of expression and censorship by the state.\(^{124}\)

The Constitutional validity of film censorship regulations was challenged before the Supreme Court for the first time in *K.A. Abbas v. Union of India*.\(^{125}\)

The challenger was the producer-cum-director of a documentary film. Before the hearing of the case started the government decided to grant certificate without cuts as previously ordered. Thus the petition had become infructuous. However the court showed an extra-ordinary enthusiasm in expounding the Constitutional issues raised in the case because it felt the at the issues were important and a clear guidance would be of immense help to those who invest capital in producing films.

The petitioner, K. A. Abbas, a veteran writer, producer and director, produced a documentary film, *A Tale of four Cities*. There is an obvious contrast between luxury and squalor, and riches and poverty in our cities. In his film the petitioner attempted to depict this contrast in the lives of the people in four cities- Calcutta, Bombay, Madras and Delhi. He applied for a ‘U’ Certificate, i.e. for unrestricted public exhibition, under the provisions of the cinematograph Act 1952. The Censor Board, which is now known as the Board of Film Certifications after the amendment of the Act in 1981, decided provisionally to grant an ‘A’ Certificate

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\(^{125}\) (1971) AIR SC 481.
restricting the exhibitions of the film to adults only. The Central Government was the appellate authority under the Act at that time. The petitioner appealed. The appellate authority decided to grant a ‘U’ Certificate after ordering for certain cuts in the film. Dissatisfied with this decision, the petitioner approached the Supreme Court. He claimed that censorship itself offending his freedom of speech and expression enshrined in Article 19 (1) (a) of the Constitution. The petitioner raised four arguments-

(1.) Censorship itself cannot be tolerated under the constitutional guarantee of the freedom of speech and expression,
(2.) Even if it is a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action,
(3.) There must be a reasonable time limit fixed for the decision for the authorities censoring the film, and
(4.) The appeal shall lie to a court or an independent tribunal and not to the Central Government.

The respondent, Union of India, conceded the third and the fourth and assured the court that early steps would be taken to cure these defects. The Court therefore considered only the other two arguments. The Court thereby held the view that “censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression”.

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**Pre-censorship**

Some judges of the United States’ Supreme Court maintained that pre-censorship itself violated the freedom of speech. The petitioner in this case attempted to persuade the Supreme Court of India to accept this view. The court rejected the argument pointing out that there is difference between the guarantees provided by the constitution of United States and that of the constitution of India. In United States the freedom is guaranteed in absolute terms while in India it is specifically restricted. Justice Douglas, the strongest exponent of the freedom had made the following observation:

“if we had a provision in our Constitution for ‘reasonable’ regulation of the press such as India has included in hers, there would be room for argument that censorship in the interests of morally would be permissible.”

Chief Justice Hidayatullah cited this in Abbas case and pointed out that in spite of the absolute nature of the terminology of the First Amendment, the majority of the Supreme Court of the United States tried to read the words “reasonable restrictions” into the First Amendment so as to make the right subject to reasonable regulations. After an analysis of case law, the court found that the majority view in the United States also supported a case for censorship of motion pictures.

In view of the express provision for imposing reasonable restriction in the Indian Constitution, the Court dismissed the contention that pre-censorship itself violated the constitutional guarantee of free speech and expression.

Chief Justice Hidayatullah said:

“Pre-censorship is but an aspect of censorship and bears the same relationship in quality to the material as censorship after the motion picture has

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had a run. The only difference is one of the stage at which the state interposes its regulations between the individual and his freedom. Beyond this there is no vital difference. That censorship is prevalent all the world over in some form or other and pre-censorship also plays a part where motion pictures are involved shows the desirability of censorship in this field. The method changes, the rules are different and censorship is stricter in some places than in others, but censorship is universal.”

**Reasonableness of Film Censorship**

Constitutionality of film censorship being challenged in the Abbas case, Justice Hidayattullah justified the reasonableness of film censorship in the following words:

“Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other from the instant appeal of the motion picture, its versatility, realism (often surrealism) and its coordination of the visual and aural senses. The art of cameramen, with trick photography, Vista vision and three dimensional 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. 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 on a different footing is also a valid classification.”

The higher potentiality of cinemas to influence people and the consequent possibility for misuse of the medium is suggested as a justification for film censorship.

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127 (1971) AIR 481.
Assuming on the grounds of morality, that cinema is subject to a treatment different to other forms of expression, can it be said that greater chances of abuse affords a sufficient justification for such a differential treatment. Is there any rational basis for the conclusion of the court that cinema stir up emotions more deeply than other form of expression like paintings, sculpture, dramatic performances and books? Will not a painting or a sculpture of a nude woman in a suggestive manner or a nude dance stir up emotions more deeply than a cinematograph? All these doubts question the reasons furnished by the court as justification for differential treatment towards cinema.

However, the fact remains that there is no differential treatment to cinema. All forms of speech and expression are subject to censorship. There may be difference in the form of censorship. Thus newspapers and other printed matters are subject to censorship by a post publication penal model for publishing any prohibited matters. Similar is the case with paintings, sculpture, dance and speech. Dramatic performances are subject to pre-publication censorship like films, though the effect of such a censorship is only marginal. In India, Radio and Television are under the direct control of Government and therefore work under strict and close watch and supervision of the governmental machinery. In the case of printed matters, pre-censorship is not practically feasible because much of the objectionable materials are published from underground press and the only effective control possible is post publication control of penal action and confiscation.

Pre-publication control over the media, wherever such control is practicable, is the most effective remedy, the evil if any, is eliminated before its publication. Such a preventive measure is more effective than a subsequent punishment. The state may adopt a practicable system in accordance with the nature of the activity in question. It is comparatively easier to implement the mechanics of expression.
Since pre-censorship is only particular form of control not materially different from other forms of censorship, the question of discrimination does not arise at all.

But the justification given by the court for a classification of films into ‘U’ and ‘A’ category appears to be a sound one. A material, though innocuous to adults, may be harmful to children. The mental make-up of children is not as stable as that of adults. Thus it is perfectly reasonable to classify films into different categories for safeguarding the legitimate interests of children. Such a classification also enables the state to discharge its constitutional duty to protect the interest of children.

**Reasonableness of censorship regulations**

Are the censorship regulations reasonable under Article 19 (2) of the Constitutions? The Court examined this question after finding that the State is competent to impose restrictions by way of censorship.

The guidelines provided by the Act for the censors are described in general terms. The Act authorises the Central Government to issue ‘directions’ to censors. In exercise of this power the Central Government issued ‘directions’ to the Board of Film Censors. The then existing ‘directions’ provided in detail the grounds on which films were to be censored.

In K.A. Abbas case the petitioner contended that the guidelines for censorship of cinematographic exhibition, especially those contained in the directions issued by the Central Government were very vague. He made an attempt to substantiate his plea basing the “void for vagueness” doctrine evolved by the Supreme Court of the United States. The Respondent, Union of India, argued that the American doctrine is not applicable in India. It was contended that in the United States the doctrine was adopted as part of ‘due process’ and therefore, it could not be imported into India.
However, the Court did not reject the ‘void for vagueness’ doctrine in toto. When the law is vague or is open to diverse interpretations, the language of the law should be construed in accordance with the intentions of the legislature. But when the language is quite uncertain and the law infringes fundamental rights, the law will be unconstitutional on that score. The court laid down the proposition in the following manner:

“The Real rule is that if a law is vague or appears to be so, the Court must try to construe it, as far as may be, and language permitting, the construction sought to be placed on it, must be in accordance with the intention of the legislature. Thus if the law is open to diverse construction, that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where however, the law admits of no such construction and the persons applying it are in boundless sea of uncertainty and the law prima facie take away a guaranteed freedom, the law must be held to offend the constitution.”

However, applying the principle to the film censorship regulations, the court held that none of these regulation is uncertain and void. The directions embodied some general principles namely maintenance of the moral standards of the viewers, the country and the people, discouraging the audience to sympathise with criminals, wrong doers or other sinners; and prevention of disrespect to the rule of law. The provisions of the Act relating to certification of films also lay down similar principles which are justified under the permissible restrictions mentioned in clause (2) of Article 19 of the Constitution. Since the provisions of the Constitution cannot be said to be vague, these provisions are also not vague and therefore not void. After elaborately discussing the various provisions contained in the ‘Directions’ the court opined that the words used therein such as rape, seduction, immoral traffic in women, soliciting prostitution or procuration, indelicate sexual situation and scenes suggestive of immorality, traffic and use of

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129 Ibid.
drugs, class hatred, blackmail associated with immorality are within the understanding of the average man. Such words therefore, cannot be said to be vague.

The directions thus afforded a clear guidance to the censors. The Court further found that the principle set out in the directions to safeguard the interests of children and young persons were quite specified and also salutary and hence no exception could be taken.

Realising the need for sufficient flexibility in approach by the censors, the Court found that directions is necessary to fence the discretion within proper limits.

Chief Justice Hidayatullah rightly observed:

“The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest.”

However, the court pointed out that the ‘directions’ were defective in one sense, viz., they did not provide for a value judgment by the censors. The ‘direction’ only provided for cases in which the censors should either ban the film for unrestricted public exhibition or order for cuts in films. While doing so the censors were not expected to take into account the artistic touch in the relevant sequences.

The court held:

“But what appears to us to be the real flaw in the scheme of the directions is a total absence of any direction which would tend to preserve art and promote it. The artistic appeal or presentation of an episode robs it of its vulgarity and harm and this appears to be completely forgotten. Artistic as well as inartistic

\[\text{Ibid.}\]
presentations are treated alike and also what may be socially good and useful and what may not.”\textsuperscript{131}

The court went to illustrate how an artistic touch can redeem a presentation otherwise prohibited under the directions and concluded thus:

“Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor’s scissors but how the theme is handled by the producer. It must however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour and movement, would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the Kamasutra but a documentary from them as a practical sexual guide would be abhorrent.”\textsuperscript{132}

The court insisted that the censor has to adopt the standard of an average man. What is objectionable is not a naked portrayal of life or society but such a portrayal without the redeeming touch of art or genius or social value when the average man begins to feel embarrassed or disgusted in seeing it. In other words a redeeming touch of art, or genius or social value may robe away the otherwise vulgarity of a film. The censors must necessarily be armed with such a power to take into account the artistic quality of a film presented to them for certification.

Chief Justice Hidayatullah opined:

“The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in toto and forever from human thought and must give scope for talent to put them before society. The requirement of art and

\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid.
literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man or moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value.”

Another important case regarding the problem dealt herein is the case of S. Rangarajan v. P. Jagjivan Ram\textsuperscript{133}. In the instant case, the decision of the Madras High Court which revoked the ‘U-Certificate’ issued to a Tamil film called ‘Ore Oru Gramathile’ (In One Village), was challenged through an appeal before the Supreme Court. In the meantime, the film had already won National Award. The film criticized the reservation policy in jobs as such policy is based on caste and was unfair to the Brahmins. It was argued through the film that economic backwardness and not the caste should be the criterion. The High Court had held that the reaction to the film in Tamil Nadu is bound to be volatile considering the fact that a large number of people in Tamil Nadu have suffered for centuries. Certain remarks were also made against Dr. B.R. Ambedkar and several Tamil personalities. The Supreme Court overruled the High Court decision and upheld the freedom of speech and expression.

It stated:

“\textquote{The democracy is a Government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value.}”

\textsuperscript{133} (1989) 2 SCC 574.
The Court further added:

“Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of it. But he has a right to ‘think out’ and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however, hateful to its policies.”

In doing so, the Court did acknowledge to have a compromise between the interest of freedom of expression and social interests. Censorship is permitted only on the grounds envisaged under Article 19(2) and the standard of judging a film to be applied by the Board or courts should be that of “an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man”. It went on to observe that the anticipated danger should not be remote, conjectural or far-fetched but should have proximate and direct nexus with the expression and equivalent of a “spark in a powder keg”.

The Court criticized the State and emphasized that “Freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. 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.”

The Court observed:

“Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the
public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".\(^{134}\)

Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of. But he has a right to “think out” and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however hateful to its policies.\(^{135}\)

It was also held:

“Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1) (a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.”\(^{136}\)

There is no separate censorship required for television serials or films as they are telecasted only if they are certified by the Board. An incident came up concerning a television serial ‘Tamas’ (Darkness) which depicted the Hindu-Muslim and Sikh-Muslim tension before the partition of India. Appeal was preferred before the Supreme Court against the judgment of Bombay High Court (which allowed the screening of the serial) in \textit{Ramesh v. Union of India} \(^{137}\) to restrain the screening of the serial as it was violative of Section 5B of the 1952 Act.

\(^{134}\) \textit{Ibid.}
\(^{135}\) \textit{Ibid.}
\(^{136}\) \textit{Ibid.}
\(^{137}\) (1988) 1 SCC 668.
It was alleged by the petitioner that the screening of the serial on *Doordarshan* (the State television network) would be against public order and it was likely to incite the people to indulge in the commission of the offences. The Supreme Court affirmed the High Court decision and dismissed the petition. Here the Supreme Court agreed with the observations of Justice Vivian Bose in *Bhagwati Charan Shukla v. Provincial Government*,\(^{138}\) that:

“...The effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.”

It was further observed:

“If some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, an equally deep, strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish interests, scenes depicting mutual respect and tolerance, scenes showing comradeship, help and kindness which transcend the barriers in religion.”

It was held that “viewed in its entirety” the film was “capable of creating a lasting impression of this message of peace and co-existence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film.”

Commenting on the reaction of the average men, the Court held that the average person would learn from the mistakes of the past and perhaps not commit those mistakes again. Incidentally, the serial was given ‘U’ certificate by the Board.

\(^{138}\) (1947) AIR NAG 1.
In *Odyssey Communications Private Limited v. Lokvidayan Sanghatana*, the telecasting of the serial ‘Honi Anhonee’ was sought to be restrained on the ground that it was likely to spread blind beliefs and superstitions. The Supreme Court vacated the injunction which was granted by the High Court holding that the right of a citizen to exhibit a film on television would be curtailed only in the circumstances set out in Article 19(2) of the Constitution.

In another case, Doordarshan refused to telecast a documentary film on the Bhopal Gas Disaster titled ‘Beyond Genocide’, in spite of the fact that the film won Golden Lotus award, being the best non-feature film of 1987 and was granted ‘U’ certificate by the Censor Board. The matter came before the Supreme Court in the case of *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*. The reasons cited by Doordarshan were inter alia, the political parties had been raising various questions concerning the tragedy, and the claims for compensation by victims were sub-judice. Upholding the freedom of speech and rejecting the abovementioned arguments, the Court held: “Merely because it is critical of the State Government . . . is no reason to deny selection and publication of the film. So also pendency of claims for compensation does not render the topic sub-judice so as to shut out the entire film from the community.”

The Court made it clear that subject to Article 19(2), a citizen has a right to publish, circulate and disseminate his views to mould public opinion on vital issues of national importance. Hence, any attempt to thwart or deny the same would offend Art. 19(1) (a). Under such circumstances, the “burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law”. In other words it was held that the burden is on the state to show that the benefit from restricting the freedom is far greater than the perceived harm resulting from the speech or depiction.

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The State has to ensure that the restrictions do not rule out legitimate speech and that the benefit to the protected interest outweighs the harm to the freedom of expression. The Supreme Court underscored that the restrictions in Article 19(2) on the freedom under Article 19(1) (a) had to be interpreted strictly and narrowly.

In *Sree Raghavendra Films v. Government of Andhra Pradesh*¹⁴¹, the exhibition of the film ‘Bombay’ in its Telugu (the official language in the State of Andhra Pradesh) version was suspended in exercise of the powers u/Sec.8(1) of the A.P. Cinemas Regulation Act,1955, despite being certified by the Censor Board for unrestricted exhibition. The suspension was imposed citing the cause that it may hurt sentiments of certain communities. The Court discovered that the authorities who passed the impugned order did not even watch the movie. Hence, the Court quashed the order as being arbitrary and not based on proper material.

In *Bobby Art International v. Om Pal Singh Hoon*¹⁴², the Supreme Court held that a film ‘that illustrates the consequences of a social evil necessarily must show that social evil’. No film ‘that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil’. Dealing with the theme of the film, the Court held thus:

“First, the scene where she is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men. The exposure of her breasts and genitalia to those men is intended by those who strip her to demean her. The effect of so doing upon her could hardly have been better conveyed than

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by explicitly showing the scene. The object of doing so was not to titillate the cinema goer's lust but to arouse in him sympathy for the victim and disgust for the perpetrators. ‘Bandit Queen’ tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did: her rage and vendetta against the society that had heaped indignities upon her”.

Award winning documentary film, ‘In Memory of Friends’ by Anand Patwardhan about the violence and terrorism in Punjab, though granted ‘U’ certificate by the Censor Board, was rejected by Doordarshan reasoning that if such documentary is shown to people, it would create communal hatred and may lead to further violence. The Bombay High Court quashed the order emphasizing: “Everyone has a fundamental right to form his own opinion on any issue or general concern. He can form and inform by any legitimate means.”

The film ‘War and Peace’ examined the costs being extracted from citizens in the name of national security. From the plight of residents living near the nuclear test site to the horrendous effects of uranium mining on local indigenous populations, the movie dealt with the journey of peace activism in the face of global militarism and war. The board recommended few cuts for issuing the certificate for public exhibition. Patwardhan appealed before the FCAT against the decision of the Board. The FCAT viewed the film and directed issuance of ‘U’ Certificate, provided that Patwardhan carried out two cuts and one addition as per its order. Ultimately the matter reached before the Bombay High Court. In its conclusion, the High Court was very candid to hold that the cuts recommended by FCAT were merely to harass the petitioner. The Court observed that it must be left to the discretion of the filmmaker.

As already acquainted with the fact that many of the movies on Gujarat riots ran into controversy with the Censor Board, they required the Court’s assistance to see the light of the day. The documentary film ‘Aakrosh’ focussed on the communal riots which took place in Gujarat in 2002. The CBFC declined to grant a certification of exhibition to the film. The FCAT held that the film depicted a “one sided version of one particular community and if it is shown to masses, not only a selective crowd but anyone and everyone, is bound to provoke communal feeling and desire to revenge”. The FCAT observed that the film endangered restoration of peace and tranquility. Setting aside the order of the CBFC and the FCAT the Division Bench of the Bombay High Court in *Ramesh Pimple v. CBFC*\(^\text{145}\) observed:

“But we are unable to share the views of the tribunal that the riots are how history, and therefore, be forgotten by public to avoid repetition of such cruel acts. It is when the hour of conflict is over it may be necessary to understand and analyze the reason for strife. We should not forget that the present state of things is the consequence of the past; and it is natural to inquire as to the sources of the good we enjoy or for the evils we suffer.”

Allowing the film, ‘Aakrosh’, the Bombay High Court aptly reasoned that riots were a part of history by then and hence:

“When the hour of conflict is over it may be necessary to understand and analyze the reason for strife. We should not forget that the present state of things is the consequence of the past; and it is natural to inquire as to the sources of the good we enjoy or for the evils we suffer”.\(^\text{146}\)

In another case, while overruling the FCAT’s order to censor the movie, ‘Chand Bujh Gaya’, the Bombay High Court in *F.A. Picture International v. Central*


\(^{146}\) *Ramesh Pimple v. Central Board of Film Certification*, (2004) 3 MAH LJ 746, 750.
Board of Film Certification\textsuperscript{147} opined: “Censorship in a free society can be tolerated within the narrowest possible confines and strictly within the limits which are contemplated in a constitutional order.”

The feature film ‘Chand Bujh Gaya’ dwelled on the travails of a young couple, a Hindu boy and a Muslim girl, whose friendship and lives are torn asunder in riots in the State of Gujarat.

The court strongly criticized the role of the concerned authorities:

“The view of the censor does no credit to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme. The certifying authority and the Tribunal were palpably in error in rejecting the film on the ground that it had characters which bear a resemblance to real life personalities. The constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditioned on the premise that he must depict something which is not true to life. The choice is entirely his”.

What weighed with the CBFC and FCAT was that the film depicted gruesome communal violence, which, they felt would foment communal disharmony. The CBFC further held that “the Gujarat violence is a live issue and a scar on national sensitivity. Exhibition of the film will certainly aggravate the situation”.

The Bombay High Court reversed both the decisions of the CBFC and FCAT. It observed that dissent was the quintessence of democracy and that “those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon”.

It was then observed; that “films which deal with controversial issues necessarily have to portray what is controversial. A film which is set in the backdrop of communal violence cannot be expected to eschew a portrayal of violence”.

\textsuperscript{147} (2005) AIR BOM 145.
In Da Vinci controversy as well, the Supreme Court rejected the writ petition by the *All India Christians Welfare Association* seeking a ban on the movie on the ground that it hurt the religious sentiments of Christians. The court found no point of objection when the Censor Board and the Central Government has given a green signal. It also held that that no predominantly Christian country had banned the film and there has been no definite reason forwarded by the petitioners to ban the movie in India.\(^{148}\) In the States of Andhra Pradesh,\(^{149}\) Kerala\(^{150}\) and Tamil Nadu,\(^{151}\) the respective High Courts quashed the bans imposed by the State Governments and also imposed costs on the governments. Upholding the right to freedom of speech and expression, the Courts found the act of Governments ‘irrational’ and ‘unconstitutional’. They were of the opinion that the bans were imposed mechanically due to the veto of a few sections of people who objected rather than arriving at a decision based on informed satisfaction.

In all those cases of *Da Vinci*, it was alleged that the film violated *inter alia*, Article 25 of the Constitution with respect to the Christian community.\(^{152}\) Particularly in the case of Tamil Nadu, the Madras High Court was of the opinion that for a harmonious interpretation of Articles 25 and 19, it is clear from a reading of those provisions that the rights under Article 25 are subject to the other provisions of Part III; which means they are subject to Article 19(1). It was also not clear before the court how the exhibition of the film will interfere with anyone’s freedom of conscience or the right to profess, practice and propagate a particular religion.


\(^{151}\) *Sony Pictures Releasing of India Ltd. v. State of Tamil Nadu*,(2006) 3 M.L.J. 289.

\(^{152}\) INDIA CONST. art. 25. cl. 1. Freedom of conscience and free profession, practice and propagation of religion. – Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
Moreover, the Court expressed that under no circumstances ‘blasphemy’ is a ground under Article 19(2). The reasoning makes greater sense when no empirical evidence across the world has also proved the right to freedom of religion is better served, or protected with or through blasphemy laws.\(^{153}\)

Another interesting aspect of this phenomenon is that irrespective of the effect of the movies, there is often a call for a total ban without exploring any other possibilities. The Supreme Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*\(^ {154}\) stated that a total prohibition under Article 19(2) to (6) must also satisfy the test that a lesser alternative would be inadequate.

The aspect of right of the viewers with regard to freedom of information has not gone unnoticed by the Courts. Freedom of information is, of course, inseparable from freedom of speech. If a speaker cannot express a view, then hearer cannot receive information. In the case of *Secretary, Ministry of I & B v. Cricket Association of Bengal*,\(^ {155}\) it was held by the Supreme Court that freedom of speech and expression includes “right to acquire information and to disseminate it to public at large.” Hence, Article 19(1) (a) also includes the right of viewers.

Further, in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*,\(^ {156}\) it was held by the Supreme Court that the people have a right to be informed of the developments that take place in a democratic process.

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\(^{154}\) (2005) 8 SCC 534.


\(^{156}\) (1986) AIR.SC 515.
One should also take note of *Union of India v. K.M. Shankarappa*\(^{157}\), in which the Supreme Court declared Section 6(1)\(^{158}\) of the Cinematograph Act, 1952 *ultra vires* the Constitution.

In this case the court held:

“The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal (FCAT), consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the executive and the Government is concerned. The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The Executive cannot sit in an appeal or review or revise a judicial order.\(^{159}\)

Doing so, the court emphasised that the Government should be bound by the ultimate decision of the Tribunal.

On the apprehension of law and order problem, the Court further reminded the Government about their duty:

“In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the Executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law.”\(^{160}\)

\(^{157}\) (2001) 1 SCC 582.

\(^{158}\) Provides revisional power to the central government.

\(^{159}\) (2001) 1 SCC 582.

\(^{160}\) *Ibid.*
In *CBFC v. Yadavalaya Films*¹⁶¹, the FCAT had granted an ‘A’ certificate to the film *Kutra Pathirikai* subject to certain cuts and deletions which the producer accepted. The film concerned the assassination of the former Prime Minister Shri Rajiv Gandhi and the subsequent events including the investigation and the fate of the assassins and some of the abettors and conspirators. However, the CBFC challenged the order of the FCAT. The Single Judge of the Madras High Court opined that the film should be granted an ‘A’ certificate subject to certain cuts and deletions. The CBFC then appealed against the said judgment. While dismissing the appeal, a Division Bench of the Madras High Court held that each and every piece of evidence depicted in the film “is a matter of public record and public knowledge.” It was held that “The protection of the Constitution does not extend only to fictional depictions of artistic themes. Artists, film makers and playwrights are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents which according to them represents a balanced portrayal of social reality. The choice is entirely of the film maker. Critical appraisal is the corner-stone of democracy and the power of the film as a medium of expression lies in its ability to contribute to the appraisal.”

*Gopal Vinayak Godse v. Union of India*¹⁶², a decision rendered by a Full Bench of the Bombay High Court, concerned the validity of the ban on the Marathi novel ‘*Gandhi-hatya Ani Mee?’* authored by the petitioner which purportedly contained passages and words that were allegedly distortions of history and promoted feelings of communal hatred. The Bombay High Court struck down the ban.

Speaking for the Court, Justice Chandrachud underscored the importance of considering the offending passages in the context of the entire book.

¹⁶¹ (2007) 1 CTC 1.
¹⁶² (1971) AIR Bom 56.
He observed:

“We find ourselves wholly unable to take the view that the several passages on which the learned Advocate General relies are capable of promoting feelings of enmity and hatred between Hindus and Muslims in India. A passage here or a passage there, sentence here or a sentence there, a word similarly, may if strained and torn out of context supply inflammatory matter to a willing mind. But such a process is impermissible. We must read the book as a whole, we must not ignore the context of a passage and we must try and see what, reasonably, would be the reaction of the common reader. If the offending passages are considered in this light, the book shall have to be cleared of the charge leveled against it.”

In *Prakash Jha Productions v. Union of India*¹⁶³, petition was filed asking the Court to set aside the decisions taken by the respondents, namely State of Punjab, State of Andhra Pradesh and State of Uttar Pradesh suspending the screening of the film “Aarakshan” in their respective States for a specified period. The Court held:

“In the present case, the Examining Committee of the Board had seen the film along with the experts and only after all the members of the Committee as also the two experts gave positive views on the screening of the film, thereafter only the certificate was granted. Therefore, since the expert body has already found that the aforesaid film could be screened all over the country, we find the opinion of the High Level committee for deletion of some of the scenes/words from the film amounted to exercising power of pre-censorship, which power is not available either to any high-level expert committee of the State or to the State Government. It appears that the State Government through the High Level Committee sought to sit over and override the decision of the Board by proposing deletion of some portion of the film, which power is not vested at all with the State.

¹⁶³ (2011) 8 SCC 372.
It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the present case.”

**Vital Media v. State of Punjab**\(^{164}\) was the case concerning the film ‘Sadda Haq’ which depicted the real picture of Punjab during the militancy days. It was a story of a hockey player-Kartar Singh Bazz, whose circumstances weighed down his passion for the game and compelled him to be a militant instead. The story shows how many extremely talented Sikh youngsters in India fell prey to the state of affairs and became what they never wanted to become. The unchecked use of torture made the period 1980’s to mid 1990’s one of the most disturbed periods in the history of Punjab.

The film was set to be released on the 5th of April, 2013. But on 4th of April, 2013, the Government of Punjab issued a notification suspending the screening of the film indicating that a Committee set up by the Punjab Government consisting of the Chief Secretary and other high officials, which had viewed the film was of the view that the screening of the film was likely to cause a breach of the peace. The said notification was followed by another notification dated 5th April, 2013 issued by the Government of NCT of Delhi and then by the District Magistrate, UT Chandigarh for the same very reason.

One of the main reasons for the banning of screening of the film has been the use of the song “Baggi” which is said to have been used as a promotional engine for the purpose of promoting the film.

Thereafter, Vital Media filed a Writ Petition in the Supreme Court of India challenging the constitutionality of the stay order and praying for the revocation of the stay order so that the film can be screened in the above mentioned three states.

\(^{164}\) (2013)WP (C) 205.
The Supreme Court, after hearing the arguments of both the parties, requested a group of four learned senior advocates\textsuperscript{165} practicing in the Supreme Court and the Delhi High Court to view the film and to submit a report to the Hon’ble Court.

The committee dismissed the apprehension of governments of Delhi, Punjab and the Union Territory of Chandigarh that the screening of the film is likely to cause breach of law and order.

The said learned Counsel submitted their views in writing whereby they recommended that the certificate of the film from ‘U’ may be changed to ‘A’, which was unconditionally accepted by the Petitioner. Also, it was further agreed that the song “Baggi” shall not in any way be used either for promotional purposes or as a background to the film. The said song shall not in any way be identified with the film “Sadda Haq”.

The Hon’ble Court further ordered the Censor Board to take a decision in the matter and issue ‘A’ certificate to the film by Monday, the 19th April, 2013 as the film has already been released in other parts of the country and that pirated CDs of the film has been starting to be circulated in the market.

The court considered view that suspending the screening of the film on the ground that it is likely to cause a breach of peace calling for pre-emptive action by state authorities is totally inappropriate since it is the duty of the state to maintain law and order and prevent any apprehended breach of peace.

After perusing the report of the four-member committee, which watched the movie, a bench headed by Chief Justice Altamas Kabir said the Central Board of Film Certification which is the statutory authority will re-consider its decision after which the film can be released across the country.

\textsuperscript{165} Fali Nariman, Rajiv Dhavan, Indira Jaising (Additional Solicitor General) and Rebecca John.
In *Rashttavadi Shiv Sena v. Sanjay Leela Bhansali Films Pvt. Ltd.*\(^{166}\), the Delhi High Court while reiterating that freedom of expression is of inestimable value in a democratic society based on the rule of law, held:

“Our written Constitution guarantees not only freedom of speech but also freedom after speech. Though censorship of films constituting prior restraint is justified under the Indian Constitution, yet the censors have to make a substantial allowance in favour of freedom, thereby leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. Consequently, the film being a piece of art, is entitled to protection of Article 19(1)(a) of the Constitution of India.”

The Supreme Court refused to entertain a public interest litigation seeking ban on the release of PK for promoting nudity and vulgarity. Dismissing the plea, the apex court told the petitioner, “If you don't like then don't watch the film but don't bring religious facets in it”, adding that, “these are matters of art and entertainment and let them remain so.”\(^{167}\)

The petition, filed by All India Human Rights and Social Justice Front, alleged that the film promoted nudity and pleaded the apex court to immediately intervene in the matter. However, the court, hearing the case said, 'any restrictions on release of film would affect constitutional right of the film makers'.

Advising the petitioner to learn to accept change, the Chief Justice of India said, “Don’t be sensitive to such things. What will you hide in the age of Internet? Today's youth is very smart.”

Arya Samaj leader Swami Agnivesh had said Aamir Khan-starrer ‘PK’ should not be opposed on “flimsy” grounds by people who haven’t even seen the film. “I think it is high time that a film like ‘PK’ must be welcomed by one and all.”

\(^{166}\) WP (C) 6384/2013.

Moreover, hearing a similar plea regarding “PK”, the Delhi High Court in Ajay Gautam v. Union of India held:

“Dissenters of speech and expression have no censorial right in respect of the intellectual, moral, religious, dogmatic or other choices of all mankind and the Constitution of India does not confer or tolerate such individualized, hypersensitive private censorial intrusion into and regulation of the guaranteed freedom of others. Seeing a film is of the own volition and conscious choice of the spectator and those offended by the content or the theme of the film are free to avoid watching the film.”

In Sanskar Marathe v. The State of Maharashtra, the Bombay High Court said:

“Censorship is permitted mainly on social interest specified under Article 19(2) of the Constitution with emphasis on maintenance of values and standards of society. Therefore, the censorship by prior restraint must necessarily be reasonable that could be saved by the well accepted principles of judicial review.”

In the K. Ganeshan v. Film Certification Appellate Tribunal, it was held that “censorship of a film has to be on a case to case basis and there cannot be a uniform policy for deciding as to whether a film is fit for public exhibition”.

In Bikramjit Singh v. Union of India, the petition was filed before the Punjab & Haryana High Court to ban the screening of film ‘Sarbjit’ as no sanction or consent has been taken by the respondents from the petitioners. The High Court while dismissing the petition held as follows:

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169 Criminal Public Interest Litigation No. 3/2015.
171 CWP No. 9417 of 2016 (Punjab & Haryana High Court).
“The film in question is on the life of a person and is an informative film. The freedom of speech and expression includes right to acquire information and to disseminate it to the public at large. The citizens of India have a right to be informed of the developments taking place in the country and outside the country. When a film is banned, it does not only affect the freedom of speech and expression of the director or the producer, it also affects the financial and economic aspects of many people. Film making, 3 of 4 distribution and screening are essential aspects of films business, which is guaranteed under Article 19 (1)(g) of the Constitution.”

The film ‘Udta Punjab’ has been the new scene of a controversy. The case is clearly drawn between the need to censor movies versus the manner in which excessive censorship stifles creativity and freedom of expression. The movie had been under the censor’s scrutiny due to use of cuss words, references to drug trafficking and state of Punjab etc. The review committee of the CBFC had passed the movie with 13 deletions. However, the film-makers challenged the same in Bombay High court. The Bombay High Court directed the Central Board of Film Certification (CBFC) to issue an ‘A’ certificate to the movie with the deletion of one scene and a modified disclaimer.172

While dictating the strongly-worded order, the court said, “The power to exercise deletion and cuts should be consistent and in consonance with provisions of the Constitution and directions of the Supreme Court, so that creative freedom is not curtailed.”

The Court held:

“It is for the film makers to decide and take a call on whether they need to mould themselves and their ideas in the changing times. Surely, the State and particularly the Central Board of Film Certification cannot, in the garb of alleged public interest or audience taste, try to mould, shape and control public opinion. That would be disastrous and would strike at the very root of the democracy and the fundamental freedom so dearly cherished by all. A balance and blend in right measure, of entertainment and message, may be required even according to the Board so that the objectives of film certification are achieved. According to it the objectives, particularly of ensuring that the medium of film remains responsible and sensitive to the values and standards of society, the medium of films provides clean and healthy entertainment and as far as possible, the film is of aesthetic value and cinematically of a good standard may enable the Board to certify films with cuts and deletions, but it must not overlook or brush aside equally important objectives of not unduly curbing artistic expression and creative freedom and its certification being responsive to social change. Thus, the objectives of film certification cannot be applied ignoring the Constitutional guarantee or to defeat and frustrate it completely. The Board certifies films for exhibiting them to the members of public or restricted sections or classes of the same and not necessarily censors them.”173

The High Court further clarified the role of CBFC. The court served a reminder that certification, and not censorship, is the real job of the CBFC.

There have been instances when the decisions of CBFC have invited controversy.174


Recently, the CBFC has denied certificate to Prakash Jha’s upcoming film ‘Lipstick Under My Burkha’ on the ground that it promotes vulgarity.\textsuperscript{175} It is being argued that the movie has also become a victim of regressive laws of censorship.\textsuperscript{176}

Former Chief Justice of Delhi High Court, AP Shah, has aptly observed:

“Despite the power of regulating the content of films being vested in the Censor, the Central Board of Film Certification (CBFC) has often failed in the task entrusted to it by either stifling creativity or hijacking morality and trying to substitute it with the morality of certain vested interests. It is at times like these that the courts have to step in as the saviour of freedom, safeguarding different forms of expression against the censorial instincts of the state.”\textsuperscript{177}

\textbf{2.6 CONCLUSION:}

The Constitution of India protects the right of the artists to portray social reality in all its forms. Some of that portrayal may take the form of challenging the established values and norms of the society. The beauty of literature lies in the ability of its writer to criticise idiosyncrasies around.

\textsuperscript{176} A 2015 Report titled “Imposing Silence: The Use of India's Laws to Suppress Free Speech” brought out as the result of a joint research project by the International Human Rights Program (IHRP) at the University of Toronto, Faculty of Law; PEN Canada, the Canadian Centre of PEN International, PEN International discussed the Indian regressive laws regarding censorship of literature and movies. See “Twelve laws that make freedom of expression in literature, cinema and art difficult in India”, \textit{Scroll}, 22 May 2015, available online at https://scroll.in/article/728997/twelve-laws-that-make-freedom-of-expression-in-literature-cinema-and-art-difficult-in-india(last accessed 2 March 2017).
In the same sense, a writer, producer and director of a film deserve the freedom to depict the harsh realities of life. It would be most inappropriate to expect in a film based on a theme of communal violence that the film should shun a reference to what has taken place.

Constitutional commitment to free speech was held to be predicated on the belief that a free society cannot function with coercive legal censorship in the hands of persons supporting one ideology who are motivated to use the power of the censor to suppress opposing viewpoints. Moreover, when there is a conflict between the freedom of expression and the restrictions, there should be a compromise between the interest of freedom of expression and special interests. In order to understand the object and purpose of constitutional freedom of artists and writers, it would be apt to conclude by referring to what Justice D.Y. Chandrachud had held in *F.A. Picture International v. Central Board of Film Certification*:\(^{178}\):

> “Artists, writers, playwrights and film makers are the eyes and the ears of a free society. They are the veritable lungs of a free society because the power of their medium imparts a breath of fresh air into the drudgery of daily existence. Their right to communicate ideas in a medium of their choosing is as fundamental as the right of any other citizen to speak. Our constitutional democracy guarantees the right of free speech and that right is not conditional upon the expression of views which may be palatable to mainstream thought. Dissent is the quintessence of democracy. Hence, those who express views which are critical of prevailing social reality have a valued position in the constitutional order. History tells us that dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.”

\(^{178}\) (2005)AIR BOM 145.