
K.A. ABBAS V. UNION OF INDIA: CASE ANALYSIS

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ABSTRACT

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter”- George Washington

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Our Indian Constitution guarantees us some fundamental rights, of which freedom of speech and expression is the most inviolable and paramount. Film or cinema is one of the modes through which thoughts, ideas, and views are expressed and is covered under Article 19(1)(a) of the Constitution of India, and the same is protected under the abovementioned article. So, the article manifests how the Indian legal system here plays the role of judicial defender to validate the principles of natural justice and supremacy of law by protecting society from any kind of anarchy, obscenity, arbitrariness, or violence with landmark judgements like K. A. Abbas v. Union of India, which is a paradigm shift in clarity regarding the importance of pre-censorship in cinemas.

Keywords: *Cinema, Expression, Films, Indian Constitution , Pre-Censorship, Restriction.*

1. INTRODUCTION

Film broadcasts have been the major source and medium to amuse, entertain, depict, delight, and capture the souls of society since their very inception. Unavoidably, we can call cinemas the ideal machinery for a paradigm shift in the community and ultimately in the world at large.

Although cinema is one of the most vital sources of amusement and thrill for the maximum number of people in society, being the primary medium of expression and enjoying its periphery under the scope of one of the most celebrated fundamental rights prescribed under Article 19(1)(a) of the Constitution of India¹, it is still bound and restricted and is kept under check through reasonable restrictions by enormous legal provisions, including Article 19(2)², Article 19(4) of the Indian Constitution of India³, Section 5B and Section 4 of the Cinematograph Act 1952, and by its regulatory body like the Central Board of Film Certification. Cinema has unavoidably and undeniably contributed to the economic and cultural affairs of the country and has been acting as the *parens patriae* as well as one of the most essential elements for maintaining and balancing the status quo of a peaceful society and the environment. It is the most commonly used medium of expression where the utilisation of rights is done for the maximum number of people by a single medium⁴.

The particular case of *K.A. Abbas v. Union of India*⁵ is the landmark case with the clarification of ambiguity with regards to most of the most discussed and talked about, i.e., the burning issue of the validity of pre-censorship in cinemas, which arose with the inception of the movie "A Tale of Four Cities," and resolving the same with the contention and scholarly judicial interpretation by the hon'ble bench headed by the then Chief Justice, Justice Hidayatullah in the Supreme Court of India.

The particular case analysis highlights the major legal provisions and gets going with the full length of the questions, deliberations, discussions, and contentions put forth in reaching the end decision.

¹ INDIA CONST. art. 19(1)(a)

² INDIA CONST. art. 19(2)

³ INDIA CONST. art. 19(4)

⁴ NAVAI PRABHAKAR & NARENDRA BASU, *MEDIA ETHICS & LAW* 35 (Commonwealth Publishers Private Ltd. 2022)

⁵ *K. A. Abbas V Union of India* (1970) 2 SCC 780

2. BACKGROUND OF THE CASE

We are very well acquainted with the facts of censoring, gagging, repressing, muting, and restraining some or more parts of the films by different nations to scrutinise and ban the movies that are ubiquitously harming the social, cultural, economic, as well as political sanctity of the country issues and which may promote or spread hatred to the society among the people at large, for example, communal violence, sentimental hurt, etc., as justified.

In the abovementioned case of *K. A. Abbas v. Union of India*, the appellant filed a judicial writ petition under Article 32 of the Constitution of India⁶ to secure the right of freedom of expression enshrined under Article 19(1)(a) of the Constitution of India. Through this particular writ petition, the petitioner additionally demanded issuing guidelines against the pre-censorship guidelines by the Board, which are only applied to films and not to other means of communication, like the movie ‘A Tale of Four Cities’ in a short span of time.

2.1 Facts of the case

The petitioner, K. A. Abbas, was a journalist, playwright, author, as well as a film maker who was GD Khosla Film Censorship Committee’s member established in 1969 and who directed this film called ‘A Tale of Four Cities’, popularly regarded as “Chaar Sheher Ek Kahani,” which depicted the conflicting manner of living of some portion of people belonging to those four metropolitan cities in contrast to the sumptuous lives of them, including Bombay, Madras, Calcutta, and Delhi at a later period.

The petitioner wanted the ‘U’ certificate, which means unrestricted permission for every group and class of society to watch the movie, which was in disagreement with the Central Board of Film Certification’s notion. The contrasting opinion between the petitioner and the Board seismically quivered the Indian judiciary’s contentions about the attenuation of the right to freedom of expression by pre-censorship involvement in this contentious film release.

Although the appellant was given an alternate option to amend and rectify certain parts of the movie, but the petitioner did not find the grounds for rejection of granting ‘U’ certification for the movie and was not convinced to slit the censored part of the movie, finding it unreasonable, unjust, and arbitrary of the board.

⁶ INDIA CONST. art. 32

2.2 Issues Raised

- Whether the introduction of the concept of pre-censorship is violative of the freedom of speech and expression prescribed under Section 19(1)(a) of the Indian Constitution?
- Whether even if there is legitimate restraint on freedom, it must be exercised within the definite principles with no scope of arbitrariness or not?

2.3 About the movie and the controversial part: A Tale of Four Cities

The plot of the movie portrays the contrasting lifestyles of affluents and substandard or marginalised groups in the four most prominent metropolitan cities of India, and the story revolves around superstructure buildings in a deprived area on the outskirts of the town with numerous shanty dwellings.

Meanwhile, in the alternative shots of the movie, the polished and lavish lives of cash-rich people with villas and multiple vehicles and workers perspired with pulling rickshaws and carts have been exhibited.

Apart from that, in continued concatenation and for a shot, the house of prostitution has been picturized with girls in the character of streetwalkers or prostitutes in skimpy dresses entertaining their customers, mainly the rich class men⁷.

In the series of shots, we get to see the aspirations of those women about their lives prior to this occupation in comparison with this miserable life.

3. RELATED LEGAL PROVISIONS

3.1 The Cinematograph Act, 1952

As per section 5 B of the act which sets guidelines /principles in certifying films:

⁷ Balram Pandey, *Is It the Problem of 'Necessity': The Freedom of Free Speech and the Constitution of India?*, SSRN ELEC. J. (2020)

(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of 1 [the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence⁸.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition⁹.

3.2 Article 19 (1) (a), article 19 (2) and article 19(4) of the Indian Constitution

The foundation for filing this writ petition was Article 19(1)(a) of the Indian Constitution, which addresses freedom of speech and expression. The director, producer, playwright, and petitioner have all sought and enjoyed this privilege in a broad sense. On the other hand, the judgement and interpretation by the hon'ble judges in this landmark decision have been delivered as per the grounds of reasonable restrictions mentioned under Sections 19(2) and 19(4) of the Indian Constitution.

As per Section 19(2), “reasonable restriction could be made to subclause (a) of Section 19(1) on the grounds of sovereignty, integrity, security of India, and in the interest of public order, decency, or morality. The same has been discussed in the judgement.

4. RELATED CASE LAWS

In another case of Bobby Art International v. Om Pal Singh Hoon¹⁰, the hon'ble court said, “The film must be judged in its entirety from the point of view of its overall impact. Where the theme of the film is to condemn degradation, violence, and rape on women, scenes of nudity and rape and the use of expletives to advance the message intended by the film by arousing a sense of revulsion against the perpetrators and pity for the victim are permissible”.

[2]

⁸ Cinematograph Act, 1952, § 5B (1), No. 37, Acts of Parliament, 1952 (India)

⁹ Cinematograph Act, 1952, § 5B (2), No. 37, Acts of Parliament, 1952 (India)

¹⁰ Bobby Art International v. Om Pal Singh Hoon, AIR 1996 SC 1846

In *Sree Raghvendra Films v. Govt. of Andhra Pradesh*¹¹, the release of the movie “Bombay” was censored by the government, exercising the power under Section 891 of the Andhra Pradesh Cinemas Regulation Act, 1955, on the grounds of hurting the emotions of a particular community in the society, although certification was given by the Board. The hon’ble Supreme Court declared the order impugned and arbitrary, not given on any justified ground, as nothing in the movie was to be restricted.

5. ARGUMENTS BY PETITIONER

The petitioner and the director, K.A. Abbas, put forth four arguments, which were mainly:

- Pre-censorship goes against freedom of speech and expression.
- The legitimate restraint on freedom must be based on very solid and definite principles, not on abstract or vague ones.
- A reasonable time limit is fixed for the decisions of the authorities in censoring a film.
- The decisions regarding censorship should be taken up by a court or tribunal and not the central government.

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6. DECISION AND CASE ANALYSIS

The landmark judgement by the hon’ble Supreme Court of India in *K.A. Abbas v. Union of India*, 1970, was pronounced by the hon’ble then Chief Justice Hidayatullah and the bench, accompanied by Justice Shelat, Justice Mitter, Justice Vidyalingam, and Justice Ray. The court, being in opinion of censorship or pre-censorship in movies, clarified that this is justified in the light of Article 19(1) of the Indian Constitution and is applied to secure social and moral justice in society.

The hon’ble justice limpidly opined that the pre-censorship is nowhere violating the fundamental rights of any citizen, including the right conferred under Article 19(1)(a) of the Indian Constitution, which talks about freedom of speech and expression, as the specific restriction by the board on the particular is constitutionally valid in the arena of reasonable

¹¹ *Sree Raghvendra Films v. Govt. of Andhra Pradesh*, 1995 (2) ALD 81

restriction mentioned under clause 2 of Article 19 of the Indian Constitution. So, the hon'ble Supreme Court rationalised the concept of pre-censorship of artistic work by citing logic that "pre-censorship or prior restriction is simply one component of censorship in general; censorship in the interests of decency and morality, etc., is constitutionally sound in India under Article 19(2) of the Constitution; consequently, pre-censorship is also constitutionally valid."

If pre-censorship is analysed on the pedestal of restricting one of the most enjoyable fundamental rights, i.e., freedom of speech and expression, it becomes "far easier for censors to do the same thing with a pen or scissors than it is for government officials under a prior restraint system since they don't have to go through the lengthy and costly process of litigation."

Additionally, the "pre-censorship system also lacks the procedural safeguards of a criminal prosecution, such as the assumption of innocence, stricter standards of evidence and process, and a heavier burden of evidence on the state. As a result, under a system of pre-censorship, the censor has far more latitude to trample on the right to free expression."

Moreover, the principle of pre-censorship is not open to public discussion, so there is a high possibility of prejudice, bias, and ambiguity. Respectively, "the policies and procedures of licencing bodies do not receive as much people's attention as they should, and the grounds for administrative action are less likely to be recognised and challenged as they should. This nefarious encroachment into civil rights does not bode well for the future of the democratic system."

Undoubtedly, the insertion of the concept of prior censorship acts as a pre-vaccination for some catchy disease and fits in the square of the proverb "Prevention is better than cure," but here all the censored parts of the movies by the concerned board may not prove to be disease or obscene to society as it might be arbitrary due to a lack of public judgement or comment.

As per the case of *Bhushan v. State of Delhi*¹², "the Chief Commissioner of Delhi had violated the East Punjab Security Act by ordering the printhead, publisher, and editor of an English-language weekly journal called the 'Organizer' to report all communal issues, news,

¹² *Brij Bhushan And Another vs The State of Delhi*, 1950 SCR 605

and views about Pakistan, besides those deduced from legitimate sources, to be scrutinised in duplicate before publishing in the Organizer." The hon'ble court held the restriction on the press here to be unjustified and unreasonable.

Correspondingly, in the opinion of the Hon'ble Supreme Court, the Cinematograph Act, 1952's restrictions are valid on artistic works, like films, for manifestation to the public at large, and the present petition was rejected, citing that "pre-censorship fell within the reasonable restrictions allowed under freedom of speech and expression and that the Act provides a means and arrangements to avert arbitrariness in the exercise of powers conferred." The case of *Municipal Committee Amritsar and another v. State of Rajasthan*¹³ was cited by the court to establish that "mere vagueness is not enough for the courts to strike down a statute."

The idea that censorship is done to avoid obscenity and the spread of wrong messages is appropriate and thus valid under the constitution. However, the court pointed out clearly that it is necessary to understand the context in which such censorships are done and that not everything that is portrayed on the big screen is obscene, and the context in which they are used is what should be important in the matter of censorship. The judgement mentioned the example of the tale of Oedipus and used it as an example to mention how a sensitive topic such as incest is the focal point and used it to drive the point that despite being a questionable topic, the story handled the theme in such a way that towards the end the story shows the consequences, and this works in its favor".

In the words of the scholar Gautam Bhatia, "When the only weapon you have is a hammer, every problem looks like a nail. In recent times, the judiciary's approach to freedom of speech and expression seems to be proving this adage true. In response to people saying things that may not be to a judge's liking, the response has invariably been to reach for the hammer, to ban, prohibit, or compel. Jolly LLB has a few scenes mocking lawyers. Make a committee and order cuts. Fundamental duties don't have enough of an impact on people. Force them to stand up for the national anthem in cinemas. Condom packets have racy pictures. Direct the Additional Solicitor-General to come up with a way of "regulating" them. People are losing touch with cultural values. Force all schools in Tamil Nadu to teach the

¹³ *Municipal Committee, Amritsar v. The State of Rajasthan*, AIR 1960 SC 1100

Thirukkural. There are bandhs in Meghalaya. Ban the press from carrying statements about them. And so on.”¹⁴

The court overall opined that if naked portrayal, manifestation, or depiction is allowed without the blanket of pre-censorship, a standard will be set, and a substantial portion of the population will be mortified to watch the movie. So, the umbrella of censorship is required for them.

7. SOME MAJORLY HIGHLIGHTED CONCEPTS OF JUDGEMENT

- **Application of Articles 19(2) and 19(4) for restricting some contents with reasonability:** Since rights always come with a bundle of duties to protect the rights of others and no fundamental rights are absolute in nature, reasonable restrictions could be implied for protecting security, sovereignty, and maintaining peace, tranquilly, and public morality.
- **Stabilised judicial interpretation:** In order to stabilise the rights and duties, the concerned authorities, like the Central Board of Film Certification, must preserve security and maintain peace by holding on midway to regulate the situation.
- **Constant and Ultimate Predominance of the Constitution of India:** Maintaining the Rule of Law in India, where if any ambiguity or any kind of volatility or inconsistency arises, nothing will go ultra vires to the Constitution of India.

8. CONCLUSION & RECOMMENDATION

Since ages, cinema has been the source of entertainment, amusement, diversion, pleasure, and connects with the soul of the public with the enthralled depiction and manifestation of the genuine status quo and historical or futuristic conditions of society. Although there are several means of speech and expression, as compared to cinema, they are less impactful, as the craze for cinemas has been constant for almost every section of people, from children to youth to senior citizens. It impacts society on multiple grounds, be it raising the living

¹⁴ Gautam Bhatia, *Judicial Censorship, Prior Restraint, and the Karnan Gag Order*, INDIAN CONSTITUTIONAL LAW & PHILOSOPHY (Dec. 05, 2023, 5:00 PM), <https://indconlawphil.wordpress.com/2017/05/09/judicial-censorship-prior-restraint-and-the-karnan-gag-order/>

standards of society, opting for startups, encouragement towards entrepreneurship, nationalism, patriotism, against terrorism, or the importance of amusement and delightfulness in our day-to-day affairs and in almost every walk of life. Cinema could be regarded as the tool or medium to convey or depict any consequential or purposeful message to the public at large, as the viewers are always in mass and in maximum number as compared to any other medium. It acts as a guardian for the evolution of a favourable, progressive, liberative, and positive shift in the community, society, nation, and ultimately the world at large.

The freedom of speech and expression guaranteed by Article 19(1)(a) has been highlighted with regard to cinema and films, as well as their regulation through the Cinematograph Act and its regulatory body, the Central Board of Film Certification, and reasonable restrictions under Section 19(2) of the Constitution. The major issue and concerns pertain to the abovementioned case of *K. A. Abbas v. Union of India*, which was the application of pre-censorship on films challenged on the grounds of constitutional validity in respect of Article 19(2) of the Indian Constitution, Section 5(1)(B), and Section 4 of the Cinematograph Act, 1952, and the withholding and denial of U certification by the Central Board of Film Certification as being violative of freedom of speech and expression given under Article 19(1)(a) of the Indian Constitution. Nevertheless, the Hon'ble Supreme Court opined that the restrictions with regard to pre-censorship are valid and essential to protect the society from any kind of obscenity, tranquilly, communalism, or other type of violence spread through one of the best mediums of expression, i.e., cinema in the society, with the yardstick of Articles 19(2) and 19(4) of the Indian Constitution, which talk about the reasonable restrictions on decency and public morality in the interest of sovereignty and security of India; otherwise, without such reasonable hindrance, it will curtail the basic human rights of the public. Still, many film directors, actors, the public, and other scholars have some dissenting opinions regarding the pre-censorship concept, especially with the ambiguity and flexibility of the qualifications of the appointed members of the board, as there are no guidelines or criteria prescribed under the Cinematograph Act, 1952, so the members could act arbitrarily as they hold office at the central government's pleasure with no qualification specified.