

(1997) 09 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12677 of 1997

M. Hasan and Another

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Andhra Pradesh Prison Rules, 1974 — Rule 793(2)
Cinematograph Act, 1952 — Section 5
Constitution of India, 1950 — Article 19(1), 19(2)
Prisons Act, 1894 — Section 59

Citation : AIR 1998 AP 35 : (1997) 6 ALT 209 : (1998) 1 RCR(Criminal) 255

Hon'ble Judges : N.Y. Hanumanthappa, J;Avinash Somakant Bhate, J

Bench : Division Bench

Advocate : V.V.S. Rao, for P. Ravi Prasad, for the Appellant; Sadasiva Reddy, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—This Writ Petition is filed by the petitioners questioning the order passed by the 2nd respondent herein i.e. The Director General & Inspector General of Prisons and D.C.S., Government of Andhra Pradesh, Hyderabad, wherein the request of the petitioners to interview the two condemned prisoners, namely, S. Chalapathi Rao and G. Vijaya Vardhana Rao, who were sentenced to death, was turned down.

2. The facts, in brief, are as follows :

The 1st petitioner is an experienced documentary film maker and a free lance journalist and he made about 200 documentary films on various subjects touching social, historical and technical aspects. The 2nd petitioner is a Free Lance Journalist and he has contributed various articles on various subjects" and he is the publisher and Executive Committee Member of "Bhoomika"---leading Feminist Journal in Telugu in Andhra Pradesh. The documentary films of the 1st petitioner won number of awards and received number of appreciation

certificates. Therefore, the petitioners are entitled to exercise their rights under Article 19(1)(a) of the Constitution of India as Free Lance Journalists.

3. The petitioners also submit that in the field of Criminal Correctional Services, the debate on the subject of death sentence -- whether it should be abolished or not -- has gained currency after the Sessions Court and Appellate Courts have imposed and confirmed the death sentences on S. Chalapathi Rao and C. Vijaya Vardhana Rao for a charge u/s 302 of the Indian Penal Code in an incident that occurred on 8-3-1983 resulting in the death of 23 passengers travelling in a Road Transport Corporation bus. The death sentences imposed on them was finally confirmed by the Supreme Court and the mercy petitions filed by them were also rejected by the President of India. The Supreme Court of India stayed the execution by an order dated 5-4-1997 on petitions made by the Social Activists and Educationalists like Gnanapeetha Award Winner Mahaswetha Devi and a well-known political thinker-Sri Rajani Kothari.

4. The petitioners submit that because of the debate that raked up on the imposition of the death sentence on S. Chalapathi Rao and G. Vijaya Vardhana Rao, the petitioners, who are having experience in making documentary films, - desired to make a documentary film, they thought of collecting data from primary and secondary sources. In this connection they wanted to interview the Hon'ble Judges, Social Activists, Members of Amnesty International and convicts who have been sentenced to death; and they also decided to interview, as a part of documentary film, S. Chalapathi Rao and G. Vijaya Vardhana Rao for about 5 minutes each to have unique information as to the state of human mind of a person condemned to death for violating the penal law of the land. As a part of making of a documentary film, the petitioners raised amounts, purchased necessary tapes and also engaged videographer for the purpose of filming and editing. They even interviewed Sri Kannabhiran Senior Advocate and well-known Civil Liberties Leader and also Prof. K. Balagopal, another well-known Liberties Leader.

5. The petitioners further submit that they made a representation to the 3rd respondent --The Superintendent, Central Prison, Rajahmundry and also to the Hon'ble Home Minister seeking permission from the Jail Authorities to interview the two convicts as a part of their documentary film. But, the 2nd respondent issued the impugned order rejecting their request informing that no rules are in force to interview and to make documentary film on condemned prisoners to the Prisons Department and hence no interview can be permitted. The petitioners further submit that the two convicts had expressed their willingness to be interviewed by their letter dated 10-6-1997.

6. The petitioners further submit that the citizens of this country especially those residing in the State of Andhra Pradesh have a right to know as to under what circumstances the two prisoners resorted to that drastic step which resulted in the killing of such large number of persons.

7. The petitioners further submit that the Government of Andhra Pradesh in exercise of its powers u/s 59 of the Prisons Act, 1894 have made Rules known as A. P. Prison Rules, 1979 (Popularly called as Jail Manual"). Chapter XLIV of the Jail Manual specifically deals with prisoners sentenced to death. The petitioners placed reliance on Rules 784, 793(2)(f) and 793(3) of Jail Manual, which read as follows :

784. Condemned Prisoners who can read may be provided at their request with a supply of such books as are in the prison library. Subject to the control of the Superintendent, they may also be allowed to purchase at their own cost, or, obtain from their relations or friends any other books which they may wish for, provided the Superintendent may, in deserving cases, purchase books for the prisoners at the expense of Government. They may also be allowed to purchase any daily newspaper or newspapers at their own cost. They may be given, on request, betels and nuts and tobacco in the form of cigars, cigarettes or beedies for smoking in the form of leaves for chewing and in the form of snuff for snuffing. Provided the Medical Officer of the Prison finds no objection to their supply from the point of view of health. They shall be supplied with soap, oil and tooth powder at the expense of Government. They may be allowed to wear chappals in deserving cases on medical grounds at the expense of Government. All reasonable indulgence shall be allowed in the matter of interviews with relatives, friends and legal advisers. It shall be the duty of the religious teacher of his persuasion attached to the prison to visit the condemned prisoner daily and if he expresses a desire to see any other approved religious minister, endeavours shall be made to comply with his request.

793(2)(f) : Allow all reasonable indulgence in the matter of interviews with relatives, friends and legal advisors and to write letters to his friends and relatives.

793(3) : Even in cases in which condemned prisoners do not elect to submit petitions for mercy, the Superintendent while acting according to Rule 789 shall follow as far as may be applicable the instructions in Sub-rule (2)."

8. Hence, the petitioners pray this Court to set aside the impugned order as it violates the fundamental right to freedom of speech and expression enshrined under the Constitution of India under Article 19(1)(a), as well as Jail Manual; and consequently direct the respondents to provide all facilities to the petitioners to interview Sri S. Chalapathi Rao and Sri G. Vijaya Vardhana Rao -- the two convicts sentenced to death imprisonment.

9. A counter affidavit has been filed by the respondents stating that videography cannot be allowed for the reasons of security and safety; exposing the identity of the prisoners to the outside world would lower the dignity of the Court; and that the alleged documentary film appears to be for commercial exploitation of the situation of the condemned prisoners rather than any laudable non-profit motive. It is also stated that the interview may quite turn out to deride the legal system

under which the death penalty is imposed and show the Courts in a poor light and it may not be desirable.

10. It is further stated that it is not desirable to allow the petitioners not only to interview the two condemned prisoners but also videograph the interview and publicise the same. When the Honourable the President of India is still seized of the matter, even if the videograph interview is not immediately shown to the public, the very fact of the interview by the petitioners would be publicised and it would have the effect of trying to influence public opinion for showing clemency to the condemned prisoners and arouse public opinion against any decision that may be taken by the Hon"ble the President of India. No fundamental rights can be claimed by the journalists or producers, of commercial or documentary films to videograph the prisoners, in the jail premises.

11. It is also further stated that the Rules referred to in the affidavit filed in support of the writ petition are to provide the facility for the prisoners to meet and speak to their relatives and friends of their choice at the instance of the prisoners, and the said rules do not contemplate the persons who are unconnected with the prisoners to seek interview and also videograph the prisoners for their commercial or idealistic documentary productions. In the case on hand, when the petitioners made a request and when the same was rejected, the condemned prisoners had not asked for an interview with the petitioners. But, it is at the instance of the petitioners, the condemned prisoners agreed for their interview. Hence, the impugned order is in accordance with the Jail Manual and did not violate any fundamental rights under the Constitution of India and prays the Court to dismiss the writ petition is limini.

12. Heard both sides. Sri V.V. S. Rao, the learned Senior Advocate appearing for the petitioners submits that the petitioners are making the documentary film to have the views on the death sentence; that their documentary films won number of awards and received appreciation certificates from India and abroad; that the documentary film is not for commercial purposes; that the film is being made without any ulterior motive; and that the impugned order violates freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India. Hence the impugned order has to be quashed; and direct the respondents to provide all facilities to interview the said two convicts -- S. Chalapathi Rao and G. Vijaya Vardhana Rao.

13. The learned Government Pleader for Home supports the averments made in the counter-affidavit filed by the respondents.

14. The request made by the petitioners to interview the convicts who were sentenced to death revolves around whether these petitioners have a right to interview a prisoner and also to record videography. If one understands properly the contentions of the petitioners, their assertion is that they have a fundamental right to interview the condemned prisoners and elicit information from them. On the other hand, the stand of the State-respondent is that though the petitioners

have a right to elicit information from the prisoners and publish it, however, the authorities can refuse or restrict such interview or videograph if it is found that eliciting of such information or recording videography is not in the public interest, it is purely for commercial purpose, such interview or videograph threatens the security or safety of the State, it disturbs the public order. The contentions of the parties now take us to know what are the fundamental rights, how far they are enforceable and when can they be restricted.

15. A developing democratic society necessarily imbibes in itself that its citizen whether small or big, rich or poor, living in a palace or struggling in a slum are all equal and shall be free to enjoy certain rights. The founding fathers of our Constitution thought it fit that if freedom brought to the nation to be meaningful that there shall be equal protection of law, expression of free will and protecting of personal liberty etc., which are bed-rocks of our democratic system. Article 14 of the Constitution envisages that State shall not deny any person equality before law or equal protection of laws within the territory of India which means persons placed in similar circumstances in respect of privileges and liabilities shall be treated alike except when reasonable classification is required. Article 19 of the Constitution is one of the jewels in our Constitution which conveys to the nation that a citizen of the country has certain fundamental rights which he can exercise them freely subject to the reasonable restrictions which are imposed for compelling reasons.

16. Article 19(1) envisages that all citizens shall have the right -

- (a) to freedom of speech and expression;
- (b) to assemble peacefully and without arms;
- (c) to form association of unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and.....
- (g) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India. The security of the State, friendly relations with foreign State, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

Article 19(1) explains that a citizen of this nation has the above freedoms but some times the same can be restricted if the State finds that exercise or mode of enforcement of such freedom is not reasonable in the interest of safety and security of the State.

17. Thus any restriction imposed upon the above freedom is prima facie unconstitutional, unless it can be justified under the limitation Clause, i.e. (2). The clause authorises the State to impose restrictions upon the freedom of speech only on certain specified grounds so that if, in any particular case, the restrictive law cannot rationally be shown to relate to any of these specified grounds, the law must be held to be void.

18. Article 21 of the Constitution protects personal liberty which reads as follows :--

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

19. While considering the above rights the Supreme Court in A.K. Gopalan Vs. The State of Madras, and in The Collector of Malabar, Kozhikode and Another Vs. Erimmal Ebrahim Hajee, held that the rights conferred under Article 19 of the Constitution are the rights of free man. These are natural law or common law rights and not created by a statute. As such every citizen is entitled to exercise such rights provided conditions to be imposed whenever so required by the State, in the case of The State of West Bengal Vs. Subodh Gopal Bose and Others, while dealing with the scope of Article 19(1) of the Constitution, the Supreme Court held that these rights are great and basic rights which are recognised and guaranteed as the natural right and inherent in the status of a citizen in a free country. The Supreme Court while dealing with the question as to how far the above rights can be exercised in D.F.O. v. Biswanath Tea Company AIR 1981 SC 337 held that possession and enjoyment of such rights are subject to reasonable restrictions and conditions. As such control is necessary and essential to the safety, health, peace, general order and morale of the community. In a free and democratic society a citizen has right to say what he wishes. However, it is the duty of the Constitution that a balance be struck between individual liberty and social control as explained by the Supreme Court in The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, thus drawing support from the earlier decision of the Court in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, . What is reasonable restriction or whether such a restriction abuses a fundamental right, it is the duty of the Court to decide. The fundamental rights are allowed to be enjoyed and there shall be great restraint of their interference by executive action and the Executive cannot interfere without the sanction of law authorising such act or interference.

20. Freedom of speech and expression claimed in this writ petition are by two Sections one by the press and another by the videographers. The duty of the press and videographers is to collect information and inform the same to the public. Every citizen of the country is entitled to possess and enjoy the above rights which are basic in nature. The possession and enjoyment do not discriminate between a free man and a prisoner condemned to death. In Vasanta Vs. State of Maharashtra, the Supreme Court said that prison wall do not keep

out the fundamental rights. In *Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi*, , *Sunil Batra Vs. Delhi Administration and Others etc.*, and *Sunil Batra Vs. Delhi Administration and Others etc.*, , the Supreme Court laid down that a person even under sentence of death can also claim fundamental rights. In *Sunil Batra v. Delhi Administration* (cited supra), the Supreme Court held as follows :

"It is no more open to debate that convicts are not wholly denuded of their fundamental rights. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration."

In *Sunil Batra Vs. Delhi Administration and Others etc.*, , the Supreme Court held as follows (at p. 1583 of AIR) :--

"Prisons are built with stones of law and so it behoves the Court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant "guardians" of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials "dressed in a little, brief authority", when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. And when the Court takes cognizance of such violence and violation if does, like the hound of Heaven, "But with unhurrying chase. And unperturbed pace. Deliberate speed and Majestic instancy" follow the official offender and frown down the outlaw adventure."

Thus, the Supreme Court held that a prisoner whose rights under the Constitution of any other law are violated, is entitled to invoke the Courts' writ jurisdiction.

Article 19(1)(a) speaks about freedom of speech and expression but not included the freedom of press. But it is implied that freedom of speech and expression includes freedom of press also. In other words, freedom of speech and expression carries with it the right to publish and circulate or propagate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication subject again to such restrictions as can be legitimately imposed under Article 19(1). The success of democracy depends upon free, fair, honest and independent press. In *Smt. Prabha Dutt Vs. Union of India (UOI) and Others*, , where the Hon'ble President of India had declined to commute the death sentence to life imprisonment, the Supreme Court held that the press should be allowed to interview the willing prisoners in the absence of good reasons for refusing the interview. In modern democratic society the role of press is very important and quite educative. However it is powerful and dynamic yet shall observe self-imposed restrictions. Otherwise there will be a risk of public interest being jeopardized. Marshall J. in *Law of the Press* had to say as follows :--

"It is the liberty of the press that is guaranteed, not the licentiousness. It is the right to speak the truth, not the right to bear false witness against your neighbour. Every citizen has a constitutional right to the enjoyment of his character as well as the ownership of his property, and this right is as sacred as the liberty of the Press... As there is always a class of moral perverts and degenerates in every community who feed their morbid appetites upon such scandals and rejoice at the injury thus done to those who are infinitely their superiors that they are not worthy to fasten the latches of their shoes. But to the credit of the news papers profession it is due here to make a record of the fact that the great majority of the members of that profession do not approve or sanction such practices or such "yellow" journalism, but have a proper appreciation of the rights and purposes and functions of a newspaper and deplore the fact that such unworthy persons are engaged in the profession, as such as lawyers would deplore the black sheep that would sometimes creep into the fold. The contrast between the two classes marks the differences between respectability and indecency, between intelligence and ignorance, between law abiding patriotic citizens and the Ishmaelite, the assassin of character for the accumulation of lucre. The great body of people condemns such practices and such miscreants and the Courts would deserve condemnation and abolition if they do not vigorously and fearlessly punish such offenders. Such practices are an abuse of the liberty of the Press....."

21. Justice Blackstone in his commentary on the laws of England while dealing about the freedom of press in England, opined as follows :--

"The liberty of the press, properly understood, is essential to the nature of a free State; but that this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity....."

22. Lord Justice Denning in "Freedom under the Law" while dealing with publication of news and control etc., observed as follows :--

"Every country preserves to itself the right to prevent the expression of views which are subversive of the existing Constitution or a danger to the fabric of society..... Free and frank discussion and criticism of matters of public interest must in "no way be curtailed, but there comes a point at which every country must draw the line; and that is When there is a threat to overturn the State by force...."

Thus a "free press" which is neither directed by the Executive nor subjected to censorship, is a vital element in a free State.

23. Arthur Hays answers what the freedom of press is in the following words :

"Perhaps we ought to ask ourselves just what freedom of the press really is. Whose freedom is it? Does it merely guarantee the right of the publisher to do and say whatever he wishes, limited only by the laws of libel, public order and decency....? Is it only a special license to those who manage the units of the press? The answer, of course, is No. Freedom of the press -- or, to be more precise, the benefit of freedom of the press belongs to everyone -- to the citizen as well as the publisher. The publisher is not granted the privilege of independence simply to provide him with a more favoured position in the community than is accorded to other citizens. He enjoys an explicitly defined independence because it is the only condition under which he can fulfill his role, which is to inform fully, fairly and comprehensively. The crux is not the publisher's "freedom to print"; it is rather the citizens' right "to know".

24. From the above it is clear that the right of freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publications subject : again to such restrictions as could be legitimately imposed under Article 19(1). Imposition of pre-censorship criticized by the Courts as unreasonable restrictions on the liberty of the press which is included in Article 19(1)(a) of the Constitution.

25. One's ideas, views etc., can be expressed and conveyed by many other modes apart from the press, for instance, radio, movies, television and cinematograph which includes videograph. The films are more popular in our country and specially with the rural masses, if the freedom of speech and expression includes freedom of press the same can be extended to expression through radios, movies, films, television and videographs. It is needless to say that freedom of speech and expression includes freedom of propagation. While propagating one's views to the listeners such propagation through the above modes shall not incite to commit murder or other violent crime. If such things are existing, the same can be restricted under Article 19(1) of the Constitution of India as explained by the Supreme Court in *The State of Bihar Vs. Shailabala Devi*, , while observing the scope of Article 19(1)(a) and use of Article 19(1) observed that while exercising one's views one should see whether such views are in conflict with the social interest or public order as held by the Supreme Court in many cases to the following effect namely our social justice or interest ordinarily demands free propagation and interchange of views but circumstances may arise when the social interest or public order may require reasonable subordinate of the social interest in free speech and expression to the needs of our social interest and public order. The Supreme Court observed that restrictions can be imposed if the utterances are going to create feelings of enmity and hatred between different sections of the community. Thus, restrictions, if any shall be only in the public interest and to maintain social control to prevent ill-will and hatredness between different Sections. Such restrictions shall stand to the test of the reasonableness.

26. On similar questions namely right to freedom of press, movie, videograph and to when and what extent the restrictions or censorship shall be imposed, in other words, the scope of Article 19(1) and (2) the Supreme Court in a few more following decisions held as follows :

27. In *Romesh Thappar Vs. The State of Madras*, , the majority of the Judges of the Supreme Court on freedom of press and its limitation held as follows (Paras 6 and 10) :

"Freedom of Speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation.

The Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgment of freedom of speech and expression. Thus, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly (Sub-clause (b)) and the right of association (Sub-clause (c)) may be restricted under Clauses (3) and (4) of Article 19 in the interest of "Public Order", which in those clauses includes the security of the State."

In *Brij Bhushan and Another Vs. The State of Delhi*, , the majority Judges of the Supreme Court while dealing with an order issued by the Chief Commissioner of Delhi u/s 8(i)(a), East Punjab Public Safety Act, against the printer, publisher and editor of the English weekly of Delhi called the Organizer directing them "to submit for scrutiny in duplicate before publication till further orders, all communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies. ..." reiterated the views in *Ramesh Thapar's* case (supra), by observing thus :

".... .that the imposition of precensorship on the journal was undoubtedly a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19(1)(a) and for the reasons indicated in *Ramesh Thappar's* Case (cited supra), Section 7(i)(c) which authorised the imposition of such restriction fell outside the reservation of Article 19(1) as such was void. The impugned order of the Chief Commissioner should therefore be quashed."

In *Ramji Lal Modi Vs. The State of U.P.*, , the Supreme Court of India observed that restrictions can be imposed on the Rights guaranteed in the public order.

In *Virendra Vs. The State of Punjab and Another*, , the Supreme Court of India while dealing with a petition with regard to the validity of the Punjab Special Powers (Press) Act, 1956, it was held as follows (at p. 900 of AIR) :

"It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interest ordinarily demands the free propagation and interchange of views but circumstances may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. The Constitution recognizes this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of carrying on trade or business in the interest of the general public."

The Supreme Court of India while dealing with the issue involved in *Virendra Vs. The State of Punjab and Another*, , also took note of the test of reasonableness laid down by the Supreme Court in the *State of Madras Vs. V.G. Row*, , in the following words (at p. 900 of AIR) :

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

In *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, , the Supreme Court of India while dealing with the petitions questioning the constitutionality of the Newspaper (Price and Page) Act, 1956, and the Daily Newspaper (Price and Page) Order, 1960, observed as follows :

"The right of freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject to such restrictions as could be legitimately imposed under Clause (2) of Article 19..... .The right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression. A restraint placed upon either of them would be a direct infringement of the right of freedom of speech and expression."

In *Smt. Prabha Dutt Vs. Union of India (UOI) and Others*, , it was observed as follows by the Supreme Court of India :

"Constitution of India-- Articles 19(1)(a), 32 -- Right of Press to interview convicts in jail --Held, not absolute but inter alia subject to consent of the interviewee and rules and regulations of Jail Manual -- Rules 549(4) and 559-A of the Manual do not prohibit such interviews -- But authorities can deny such interviews on weighty reasons which must be recorded in writing -- In case of

unjustified refusal of interviews. Court can direct the jail authorities to grant interviews, Court can direct the jail authorities to grant interviews to the petitioner Press Reporters --But Court cannot direct the authorities to allow representatives of the Press to be present in the jail at the time of execution of the convicts sentenced to death."

In *Odyssey Communications Pvt. Ltd. Vs. Lokvidayan Sanghatana and Others*, , while considering a citizen's right to exhibit films, the Supreme Court held as follows (at p. 1644 of AIR) :

"The right of a citizen to exhibit films on the Doordarshan subject to the terms and conditions to be imposed by the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India which can be curtailed only under circumstances which are set out in Clause (2) of Article of the Constitution of India. The right is similar to the right of citizen to publish his views through any other media such as newspapers, magazines, advertisement hearing etc. subject to the terms and conditions of the owners of the media."

In *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCJ 128, while dealing on the issue relating to pre-censorship of movies and motion pictures, the Supreme Court held as follows :

"The motion pictures were originally considered as a form of amusement to be allowed to titillate out not to arouse. They were treated as mere entertainment and not an art or a means of expression. This theory was based on the concept that motion picture was a business "pure and simple originated and conduct for profit, like other spectacles." It was considered strictly as an amusement industry.

Movie doubtless enjoys the guarantee under Article 15(1)(a) but there is one significant difference between me movie and other modes of communication. The movie cannot function in a free market place like the newspaper." magazine, or advertisement. Movie motivates thought and action and assures a high degree of attention and retention. In some cases, it will have a complete and immediate influence on and appeal for every one who sees it.The effect of motion pictures is cumulative. Even though one movie relating to a social issue may not significantly effect the altitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behaviour. With the sequelities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as does the newspapers or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary.

The standard to be applied by the board or Courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of

the ordinary or hypersensitive man. The Censors Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country. The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. The great thinkers and sages through their life and conduct provided principles for people to follow the path of right conduct. These are the bedrock of our civilization and should not be allowed to be shaken by unethical standards. It does not mean that the Censors should have an orthodox or conservative outlook. Far from it, they must be responsive to social change and they must go with the current climate. The Censors may display more sensitivity to movies which will have a markedly deleterious effect to lower the moral standards of those who see it.

In democracy it is not necessary that everyone should sing the same song. Freedom of expression is the rule and it is generally taken for granted. Every one has a fundamental right to form his own opinion on any issue of general concern. He can form and inform by any legitimate means. 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 of democracy 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.

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 rights 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.

The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(1) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and social interest. But we cannot simply balance the two interests as if they are of equal weight. Our commitment to 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 interests. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

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 quicks and of convenience or expediency. Open criticism of Government policies and operations is not a ground for restricting. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.. ..."

The Supreme Court of India while dealing with S. Rangarajan's case (cited supra), also referred to K.A. Abbas Vs. The Union of India (UOI) and Another, , Ramesh Dalal Vs. Union of India (UOI) and Others, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , and Handyside v. United Kingdom, 1976 EHRR/737 and Naraindas Indurkha Vs. The State of Madhya Pradesh and Others, .

28. In K.A. Abbas Vs. The Union of India (UOI) and Another, , a Constitution Bench of the Supreme Court considered important questions relating to pre-censorship of cinematograph films in relation to the fundamental right of freedom of speech and expression. With regard to the power of precensorship, Hidayatulla, C. J. observed therein as follows (at p. 498 of AIR) :

"The task of the censor is extremely delicate.The standards that we set out 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 relationship as banned in toto and for ever from human thought and must give scope for talent to put them before society. The requirements of art and 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, moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art of genius of social value. If the depraved begins to see in these things more than what an average person would, in much the same way as it is wrongly said, a Frenchman sees a woman's legs is everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth."

In Ramesh Dalal Vs. Union of India (UOI) and Others, , Sabyasachi Mukherji, J., quoting with approval of the observation of Vivian Bose, J., as he then was, of the Nagpur High Court in the case of Bhagwati Charan Shukla v. Provincial Government, AIR 1947 Nag I (SB), observed as follows while dealing with the standard of judging the effect of the words of expression used in the movie:

"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. This in our opinion is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the top of a Clampham omnibus"."

In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Bhagwati, J.

observed as follows :

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of Government action in a democratic set up. If democracy means Government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential."

In *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, while dealing with the power of the State to select text books for obligatory use by students said (at 1251 of AIR) :

"It is our firm belief, nay, a conviction which constitutes one of the basic values of a free society to which we are added under our Constitution, that there must be freedom not only for the thought that we cherish, but also for the thought that we hate. As pointed out by Mr. Justice Holmes in *Abramson v. United States*, 250 US 616 The ultimate good desired is better reached by free trade in ideas -- the best test of truth is the power of the thought to get itself accepted in the competition of the market". There must be freedom of thought and the mind must be ready to receive new ideas, to critically analyse and examine them and to accept those which are found to stand the test of scrutiny and to reject the rest."

In *Handyside v. United Kingdom*, 1976 EHRR 737, the European Court while dealing with Article 10 of the European Convention of Human Rights about freedom of expression it held as follows :

"The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a "democratic society". Freedom of expression constitutes one of the essential foundation of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad mindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued."

In *Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and Cinemart Foundation*, , while dealing in citizen's right to freedom of speech and expression, the Supreme Court held as follows :

"Every free citizen has an undoubted right to lay what sentiments he pleases before the public. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a

deathknell to democracy and would help usher in autocracy or dictatorship. The Supreme Court has always placed a broad interpretation on the value and content of Article 19(1)(a), making it subject only to the restrictions permissible under Article 19(1). Efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled, more so when public authorities have betrayed autocratic tendencies.

The words "freedom of speech and expression" must be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media i.e., periodicals, magazines or journals or through any other communication channel e.g. the radio and the television. The right extends to the citizen being levelled against the view propagated by him. The print media, the radio and the tiny screen, play the role of public educators, so vital to the growth of a healthy democracy. These communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby; educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(1). This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest."

"Once it is recognized that a film-maker has a fundamental right under Article 19(1)(a) to exhibit his film, the onus lies on the party which claims that it was entitled to refuse enforcement of this right by virtue of law made under Article 19(1) to show that the film did not conform to the requirements of that law; in the present case the guidelines relied upon. The respondent had a right to convey his perception of the gas diaster in Bhopal through the documentary film prepared by him. This film not only won the Golden Lotus award but was also granted the "U" cetificate by the censors. It has been conceded that the film faithfully brings out the events that took place at Bhopal on the fateful night. Therefore, the respondent cannot be accused of having distorted the events subsequent to the disaster and that it was not fair and balanced and lacked in moderation and restraint. It is nowhere stated which part of the film lacks moderation and/or restraint nor is it shown how the film can be described as not fair and balanced. Merely because it is critical of the State Government, perhaps because of its incapacity to cope with an unprecedented situation, is no reason to deny selection and publication of the film. So also pendency of claims for compensation does not render the matter sub judice so as to shut out the entire film from the community. In fact the community was keen to know what actually

had happened, what is happening, what remedial measures the State authorities are taking and what are the likely consequences of the gas leak. To bring out the inadequacy of the State effort or the indifference of the officers, etc., cannot amount to an attack on any political party if the criticism is genuine and objective and made in good faith. If the norm for appraisal was the same as applied by the censors while granting the "U" certificate, Doordarshan cannot refuse to exhibit it. If it is not that it was not sent for being telecast soon after the disaster that one could say that it is outdated or has lost relevance. It is even today of relevance and the press has been writing about it periodically. It has not been pointed out how it could be said that the film was not consistent with the accepted norms set out earlier. The refusal to telecast was not based on the ground that the list of award winning films was long and on the basis of inter se priority amongst such films and the time allocated for telecasting such films, it was not possible to telecast the film. Doordarshan being a State controlled agency funded by public funds could not have denied access to the screen to the respondent except on valid grounds."

"The freedom conferred on a citizen by Article 19(1)(a) includes the freedom to communicate one's ideas or thoughts through a newspaper, magazine or a movie. Traditionally prior restraints, regardless of their form, are frowned upon as threats to freedom of expression since they contain within themselves forces which if released have the potential of imposing arbitrary and at times irrational decisions. However, the right must be so exercised as not to come in direct conflict with the right of another citizen. It must, therefore, be so exercised as not to jeopardise the right of another or clash with the paramount interest of the State or the community at large. Movie is a powerful mode of communication and has the capacity to make a profound impact on the minds of the viewers and it is, therefore, essential to ensure that the message it conveys is not harmful to the society or even a section of the society. Censorship by prior restraint, therefore, seems justified for the protection of the society from the ill effects that a motion picture may produce if unrestricted exhibition is allowed. Censorship is thus permitted to protect social interests enumerated in Article 19(1) and Section 5-B of the Act. For this reason need for prior restraint has been recognised and our laws have assigned a specific role to the censors as such is the need in a rapidly changing societal structure. But since permissible restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article 19(1)(a) such restrictions are bound to be viewed as anathema, in that, 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 that seek to impose them to show that the restrictions are reasonable and permissible in law. Such censorship must be reasonable and must answer the test of Article 14."

29. From the above it is clear that every citizen has a right to propagate his ideas and views on many aspects through available media without any fear or favour as long as they stand the test of reasonable restrictions. The reasons given by

the respondents to turn down the request of the petitioners are: (1) if permission is granted it results in campaigning by large number of public for reducing the sentence of the condemned prisoners; (2) Such exhibition or videograph may result in lowering the position of the Courts; (3) The prisoners earlier had not expressed their desire to be interviewed. On the other hand, their consent was obtained subsequently; (4) Reporting in the press or videographing the views or feelings of the condemned prisoners cannot be allowed for the reasons of safety and security. The reasons given by the respondents to refuse permission to interview the prisoners do not answer the restrictions declared under Article 19(1) of the Constitution of India. On the other hand, there are instances where Courts permitted to interview the condemned prisoners. A film, movie, television or videograph are the modes of communicating the views and ideas as such, refusal to interview the willing condemned prisoners is quite illegal and unconstitutional. Mere interview and videograph of condemned prisoners not a finality. In case of reporting in press, the press is guided by its own restrictions and censorship. Videograph which is included in cinematograph is controlled by the provisions of the Cinematograph Act, 1952. If there is any objectionable element or situation which falls within the prohibitions as mentioned in Article 19(1) appear, reporting of such interview or videograph be prohibited in public interest. Section 5-B of the Cinematograph Act, 1952 deals with the issuance of license. Thus, at every stage, before reporting or releasing, there will be a check and counter-check by the authorities. Reporters and producers also are aware of the consequences if they report or exhibit objectionable items or information. In case, an objectionable item or situation is reported or exhibited, the persons responsible for such publication or videographing will be liable for prosecution. Exercise of fundamental rights are concerned, position of a condemned prisoner is on par with a free citizen of the country. He has a right to give his ideas and he is entitled to be interviewed or to be televised. When such being the settled position we fail to understand why the jail authorities shall apprehend such reporting or videography as not reasonable and not in the interest of safety and security. Even their Jail Manual permits the prisoner to be interviewed by others including a friend provided he is willing. A friend includes a journalist and which in turn includes a videographer. There is a letter written by the condemned prisoners expressing their willingness to be interviewed by the journalist and the videographer. Under these circumstances, it is not just and proper for the jail authorities to prevent the petitioners to interview the condemned prisoners orally and by videographing. Any such denial is deprivation of a citizen's fundamental right of freedom of speech and expression. In our view, the order of the respondents which is challenged in this writ petition is quite arbitrary and incorrect and hence liable to be quashed.

30. Hence this writ petition is allowed and the order under challenge is quashed, the respondents are directed to reconsider the petitioners' request to interview the prisoners in the light of the observations made in this writ petition. Rejection of the request, if any, only by giving valid reasons that too if Regulations of

Prison Rules or Manual prohibits such interview. Compliance within eight days from the date of receipt of this order. There shall be no order as to costs.