

(1996) 03 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 383 of 1996 and Civil Miscellaneous Appeal No. 722 of 1996

Om Pal Singh Hoon

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Citation : (1996) 2 AD 265 : (1996) 63 DLT 564 : (1996) 36 DRJ 721

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : A.K. Kaul, Rakesh C. Aggarwal, K.K. Aggarwal, E.X. Joseph, Meera Bhatia, Gajendra Kumar, D.N. Sawhney, Ashok Gumani, Kapil Sibal, S. Murlidhar and N.S. Vashisht, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) RULE.

(2) The movie in question "Bandit Queen" which has been given "A" Certificate pursuant to the order of the Film Certification Appellate Tribunal (for short "FCAT") dated August 14, 1995, depicts a story of ordeal and agony of a woman who is shown to have been subjected to atrocities, maltreatment, rape and incarceration. The film is based on the book of the same name by Mala Sen and is directed and produced by the fifth respondent and the third respondent respectively. Facts as appear from the court record and as also from the files produced by the second respondent are:

(3) By an application dated August 16/17, 1994, the third respondent requested the Board of Film Certification for a certificate under the Cinematograph Act, 1952, (for short "the Act") to exhibit the film "Bandit Queen". The Central Board of Film Certification (for short "the Board") through a letter of the Regional Office, Bombay, dated September 7, 1994, which was in the nature of a show cause notice, informed the third respondent that the film was viewed by the Examining

Committee and the Board had provisionally come to the conclusion that the film was not suitable for unrestricted public exhibition but maybe suitable for public exhibition restricted to adults provided the following excisions/modifications were carried out:-

- 1.Cut No. 1, Reel No. 1 Delete the title card of true story and replace it with the title "This film is based on the book "Bandit Queen" and prison papers and it is not claimed to be an authentic version of the life of "Phoolan Devi".
- 2.Cut No.2, Reel No.2 Delete the dialogues spoken by Havalgars in Jail humiliating Phoolan Devi to have group sex with them. Dir.No.2(ix)
- 3.Cut No.3, Reel No.2 Delete the visuals of Policeman hitting Phoolan with the butt of the gun. Dir.No.2(x)
- 4.Cut No.4, Reel No.3 Delete all visuals of Phoolan being raped by Babu Gujjar.Dir.No. 2(x)
- 5.Cut No.5, Reel No.3 Delete the visuals of copulation and dialogue between Phoolan and Vikram in a room in Kanpur City. Dir.No.2(vii)
- 6.Cut No.6, Reel No.4 Reduce by 70% Phoolan torturing her ex-husband after tying him up. Dir.No.2(iv)
- 7.Cut No.7, Reel No.4 Delete the visuals of gang rape of Phoolan retaining only suggestive visuals.Dir.NoJ(x)
- 8.Cut No.8, Reel No.4 Delete all visuals of Phoolan Devi in total nudity when she is paraded in the village after being humiliated.Dir.Nos2(vii), 2(x)
- 9.Cut No.9, Reel No.5 Reduce by 50% the sequence where the Thakurs are being humiliated and shot dead particularly deleting the humiliation of Thakurs by removing the turbans and dialogues abusing them.Dir.No.2(iv), 2(xii)
- 10.Cut No. 10, Reel No.6 Delete the dialogue spoken by Shriram humiliating Phoolan using sexual abuses.Dir.No.2(vii), 2(ix) General cuts Delete the words "B ...Ch" and "MaCh" throughout the film.

(4) The letter also stated that the board had decided to grant "A" Certificate to the film subject to cuts. It also spelt out the following reasons for its view: "The film deals with sex, rape and vendetta. Hence, not suitable for no adults "

(5) It may be mentioned that the decision of the Examining Committee dated August 25, 1994, which was the basis of the aforesaid letter of the Regional Officer, was rendered by a majority of 4:1, one member being totally opposed to the grant of a Certificate to the film. The Examining Committee had examined the film with specific reference to the guidelines issued by the Ministry of Information and Broadcasting u/s 5B(2) of the Act vide notification No. S.O. 836(E), dated December 6, 1991, published in Gazette of India, Extra. Part II, section 3(ii) dated December 6, 1991, and the members had given opinions separately under rule 22(9) in form VII set out in Schedule II to the

Cinematograph Rules, 1953 (for short "the Rules").

(6) On December 8, 1994, the third respondent responded to the show cause notice dated September 7, 1994, by submitting his reply to the Board in which it was contended that the excisions/modifications indicated to be carried out, were unreasonable and excessive, inter alia, on the grounds that "the. social purpose and interest of the film lies in the depletion and denouncement of child marriage, rape and caste oppression"; that the cuts would diminish the impact of the film; that the cuts would ruin the artistic quality of the work as a whole; that the film had not sought to exploit sex for commercial purposes; that in cut No.8 there was no suggestion of sex or eroticism; that the scenes showing rape were not made explicit; that in such scenes brutality of the act had been emphasised; and that conclusions have been made by the Board without appreciating that a substantial allowance must be made for the freedom of thought, speech and expression. The third respondent requested that the matter be put to the "Review Committee" (though it appears that reference was to the "Revising Committee"). Accordingly, the matter was placed before the Revising Committee.

(7) During the pendency of the matter before the Revising Committee, the third respondent by his letter dated May 12, 1995, informed the Regional Officer, Censor Board of Film Certification, Bombay, that the rights in the film had been assigned to the sixth respondent which had been authorised to submit the film for revision and any subsequent attention.

(8) On July 19, 1995, as per the request of the third respondent the film was examined by the Revising Committee in accordance with Rule 24 of the Rules, and the Committee by a majority of 5 to 4 recommended the grant of "A" Certificate to the film subject to certain cuts. In accordance with Rule 24(9) of the Rules each member recorded his/her opinion in writing in form Vii set out in Schedule Ii spelling out the reasons for the same with reference to the aforesaid guidelines. As would be manifest from the following, the cuts suggested by the Revising Committee were more or less the same as proposed by the Examining Committee :-

"1.Cut No.1, Reel No.1 (a) Delete the title card of true story and replace it with the title - "This film is based on the book "Bandit Queen" and prison papers and it is not claimed to be an authentic version of the life of "Phoolan Devi" and also delete the quotation mentioned as "ManuSmfiti"s..Dir.No.2(xii) (b) Delete the dialogue uttered by Thakur boys after seeing Phoolan "Tange Uttake...Ut Rahi Hai". Dir.No.2(vii)

2.Cut No.2, Reel No. 1I Delete the dialogues spoken by havaldars in jail humiliating Phoolan Devi to have group sex with them including the dialogue "Hum ko bhi lele Aage se piche se".Dir.No2 (vii)

3.Cut No.3, Reel No. 1I Delete the visuals of Policeman hitting Phoolan with the butt of the gun.Dir.No.2(x)

4.Cut No.4, Reel No. 1II: Delete all visuals of Phoolan being raped by Babu Gujjar. Dir.No.2(x)

5.Cut No.5, Reel No. 1II Delete the visuals of copulation and dialogue between Phoolan and Vikram in the room Kanpur City. Dir.No.2 (vii)

6.Cut No.6, Reel No. 1V Reduce by 70% Phoolan torturing her ex-husband after tying him up. Dir.No.2(iv)

7.Cut No.7, Reel No.IV Delete the visuals of gang rape of Phoolan retaining only suggestive visuals. Dir.No.2(x)

8.Cut No.8, Reel No. 1V: Delete all visuals of Phoolan Devi in total nudity when she is paraded in the village after being humiliated. Dir.No2 (viii)

9.Cut No.9, Reel No.V: Reduce by 50% the sequence where the Thakurs are being humiliated and shot dead particularly deleting the humiliation of Thakurs by removing the turbans and dialogues abusing them. Dir.No.2(xii)

10.CUTNo.10"Reel No.VI: Delete the dialogue spoken by Shriram humiliating Phoolan using sexual abuses including the words "Yaad hai na tere ko ... Yaad karke maja aata ho ga". Dir.No.2(vii)& 2(xii)

11.Cut No.11, General Delete the words "B ... Ch" and "MaCh" throughout the film. "

(9) The decision of the Revising Committee was communicated to the third respondent by the letter of the Board dated July 19, 1995.

(10) On August 3, 1995, the sixth respondent informed the Censor Board of Film Certification that it was not satisfied with the decision of the Revising Committee. Thus, aggrieved, it carried the matter in appeal u/s 5-C of the Act to the FCAT. The Tribunal by its order dated August 14, 1995, partly allowed the appeal. In so far as expletives which have been used in the movie quite generously, the Tribunal was of the opinion that they were not intended to be taken literally and were used for force and effect by way of normal and common parlance in those parts. The Tribunal was also of the opinion that "there is nothing sensual or sexual about these expletives used as they are in ordinary and habitual course as part of the language in those parts and express as they do emotions such as anger, rage, frustration and the like, and represent as they do the colour of the various locales in this film." But in so far as expletives coming from Phoolan as a child, they were directed to be deleted. In so far as Cut No 1 - Reel No.1 (a) and I(b) is concerned, the Tribunal upheld the deletion in toto. As regards Cut No.2 - Reel No.2 is concerned, the Tribunal agreed with the Board and upheld the deletion. Regarding Cut No.3 - Reel No.2, the Tribunal did not agree with the deletion recommended by the Revising Committee. The Tribunal was of the opinion that the deletion would negate the very impact of this film in its endeavor to depict the maltreatment and cruelty heaped upon the victim by the perpetrators of the crime. Regarding Cut No.4 - Reel No.3 which pertain to

visuals of the victim being raped by Babu Gujjar, the Tribunal felt that the sequence was in three parts. It directed that the second of the three sequences be deleted altogether and, on concession of the appellant, directed deletion of 30% of the first sequence and 20% of the third sequence with the further qualification that the visuals of the man's bare posterior, while raping the woman, in the first and third sequences be reduced to a flash. Dealing with Cut No.5 - Reel No.3, the Tribunal, on the concession of the appellant, directed reduction of the sequence to three seconds. As regards Cut No.6 - Reel No.4, the Tribunal rejected the deletion recommended by the Revising Committee. In so far as Cut No.7 - Reel No.4 is concerned, the Tribunal was of the opinion that by and large the visuals were not depicted with obscene overtones, but with delicacy and sensitivity. It was, however, directed on the undertaking of the appellant that "the explicit portions of gang rape, be they fleeting, be deleted". Dealing with Cut No.8 - Reel No.4, which pertain to visuals of the victim in total nudity when she is paraded in the village after being humiliated, the Tribunal was of the opinion that to delete or even to reduce these climactic visuals would be a sacrilege. The Tribunal observed that while recommending the deletion of the visuals, perhaps, the Revising Committee forgot "Schindler's List" which was passed by the Board without a cut .and despite prolonged sequences of frontal nudity of men and women depicted therein, and rightly so because the scenes of frontal nudity in that film were intended to create a feeling of revulsion and a sense of horror that such crimes could indeed be committed, as in the present film. In so far as Cut No.9 .. Reel No.5 is concerned, the Tribunal rejected the same as according to its view reduction/deletion of the sequence which was climactic in nature was uncalled for. Dealing with Cut No. 10 - Reel No.6, the Tribunal upheld the recommendation of the Revising Committee as to the deletion suggested by it. In so far as Cut No.11 regarding abuses used in the film was concerned, the Tribunal did not agree with the recommendation of the Revising Committee as according to it the context in which severe words were spoken in the film and the persons by whom they were spoken, and spoken as they were as colloquially and as part of their daily life, it would be unfair to castigate the use of these words.

(11) The sixth respondent by its letter (wrongly dated as May 30, 1995 instead of August 30, 1995) informed the Regional Officer, Cbfc, Bombay, that it had accepted the decision of the Fact and had carried out the requisite cuts. It was also requested that certificate be issued before August 31, 1995. Thereafter, "A" Certificate was granted by the Board on August 31, 1995. The petitioner feeling aggrieved by the grant of certificate to the film filed the instant petition on January 27, 1996.

(12) According to the petition, the film is obscene, contravenes the guidelines, depicts Gujjar community in bad light and incites hatred and violence amongst communities. The first and the sixth respondents in their respective affidavits have denied these allegations.

(13) The film was viewed by me in the company of the learned counsel for the

petitioner, the first respondent and the sixth respondents on February 13, 1996. Thereafter, elaborate arguments were addressed by the learned counsel for the parties and the same concluded on February 27, 1996.

(14) Dr. Koul, the learned counsel for the petitioner, in his oral submissions reiterated the submissions made in the writ petition. He emphasised that the film is obscene, lewd, lascivious and was likely to corrupt and deprave the minds of those who are open to immoral influences. He was critical of the expletives used in the film. He also canvassed that the Fact did not keep in mind statutory guidelines issued by the Central Government while examining the film. He also submitted that the excisions and cuts directed by the Tribunal have not been carried out.

(15) On the other hand, Mr. Muralidhar, learned counsel for the sixth respondent contended that the film depicts the suffering of an oppressed woman and it has a strong social purpose. It was also submitted that the basic test for determining whether the film is obscene is whether the average person applying the contemporary community standards would find that the film, taken as a whole, appeals to the prurient interest and applying that test the film cannot be classified as obscene. It was further canvassed that the Fact having judged the film, the court sitting in writ jurisdiction can only examine the manner in which the decision has been rendered by it. Mr. Joseph and Ms. Bhatia learned counsel appearing for the first respondent and Mr. Sawhney appearing for second and third respondents reiterated the aforesaid submissions advanced by the learned counsel for the sixth respondent. Besides, the learned counsel for the first respondent while raising a preliminary objection submitted that the writ petition should be dismissed as the petitioner has not availed of an efficacious alternative remedy under the provisions of section 6 of the Act.

(16) From the arguments of the learned counsel for the parties three basic questions emerge for determination:

1. Whether the Film Certification Appellate Tribunal's decision is in accordance with the aforesaid guidelines issued by the Central Government u/s 5B(2) of the Act?
2. Whether the Film Certification Appellate Tribunal has applied correct and proper standards in determining the question of obscenity in the film?
3. Whether the cuts/deletion directed by the Film Certification Appellate Tribunal have been carried out in the film" ?

(17) In order to appreciate the controversy, gist and theme of the story need to be described briefly. The film portrays the pain and suffering of a humiliated woman on whom untold indignities were heaped. Still a child she was married off to a man who would have been fit to be her father. She was beaten and raped by him. After having been robbed of her childhood she returned to her paternal home. As a young woman she was tormented by the village boys. She was

beaten by them when she foiled the advances of one of them. In the Panchayat, which followed after the incident, she was blamed for trying to entice the boy belonging to the higher caste. As a consequence of the decision of the Panchayat, she had to leave the village. As if that was not enough, she was arrested by the police. In the police station she was subjected to fresh round of indignity and humiliation. She was released on bail at the intervention of some persons, who were not moved by compassion for her but for their carnal pleasure. Thereafter, she was kidnapped by dacoits and sexually brutalized by their leader, a character called "Babu Gujjar". While she was being sexually assaulted by him, another member of the gang Vikram Mallah, who had developed feeling for her, shot him dead in a fit of rage. She was attracted towards Vikram and joined his gang. Along with Vikram she visited her husband, tied him up with a tree and took her revenge by brutally beating him. Her days of happiness with Vikram were transitory. The Thakur leader of the gang Sri Ram, who was released from Jail, felt insulted by her as she spurned his advances. He treacherously killed Vikram Mallah. Having lost the protection of Vikram Mallah, she was gang raped by Sri Ram and Lalaram, another member of the gang, and their associates. She was also stripped naked and was made to get water from the village well in full gaze of the villagers but none came to her rescue. Burning with desire to take revenge from her persecutors, she joined Baba Mustkin gang. While seeking out Sri Ram, she humiliated and killed twenty Thakurs of the village Behmai. Ultimately she surrendered and remained incarcerated for number of years.

(18) Having given the brief story of the film I proceed to consider the first two issues together.

(19) The basic submission of the petitioner is that the film has been granted the Certification contravention of the permissible standards laid down by the judicial decisions and the guidelines issued by the Central Government u/s 5-B of the Act. I would Therefore, focus on the various decisions of the Courts both in this country and elsewhere regarding the formulation of standards and tests for judging whether material is obscene, lewd, lascivious. The classic definition of obscenity which stood the ground in England till the passing of the Obscene Publication Act, 1959 was rendered by Cockburn, C.J. in *R. V. Hicklin*, 1868 L.R. 3 Qb 360.

(20) The test of obscenity laid in the said decision is this:-

"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."

(21) This decision was followed in a catena of cases notable being *Steele v. Brannan*, L.R. 7 C.P. 261 *Galletty v. Laird* 1953 S.L.T. 67 *R. v. Martin Seeker & Warburg*. (1954) 1 W.L.R. 1138. .

(22) Further more under the Hicklin test the effect of the book on the 14 year old

school girl tended to be the criterion for determining whether the book was obscene. According to this test, offending matter must be considered by itself and separately from the rest of the work to find out whether it is so gross that it is likely to deprave or corrupt. The test of literary morality was put as what a father could read aloud in his own home. This test reduced literary standards to the level of what was morally proper for the young. " Judges also refused to permit evidence of the author's intent or purpose or of his literary reputation or to hear the testimony of recognised literary critics. The courts in the United States until the middle of the 20th century applied the definition of obscenity as enunciated in the case of *Regina vs. Hicklin* (supra). Subsequently, in the landmark decision in *Roth vs. U.S.* (1957) 354 U.S. 476, the U.S. Supreme Court tendered a basic redefinition of obscenity which is, whether to the average person applying the contemporary standards the dominant theme of the matter taken as a whole appeals to the prurient interest. Under the Roth test the question whether a work is obscene is to be answered by analysing and identifying the dominant theme of the work and the degree of its appeal to the prurient interest. Applying the test one is required to weigh obscenity against the merits of the work in order to" decide whether it is for public good. If the scales do not tilt towards obscenity but towards merit of the work, the same cannot be banned being obscene lewd or salacious.

A few years later the U.S. Supreme Court in *Memoirs v. Massachusetts*, (1966) 383 U.S. 413, made a slight departure from the Roth concept by enunciating a new test of obscenity by holding that a work would be obscene if it was utterly without redeeming social value. In this regard it was observed as follows:-

"AS elaborated in subsequent cases, three elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value."

(23) Subsequently, in *Miller v. California*, 413 U.S. 15 the test of "utterly without redeeming social value" articulated in *Memoirs* case was rejected.

(24) In England also the courts have veered to Roth Test.

(25) In *R. vs. Colder and Boyars, Ltd.*, (1968) 3 All ER 644, the Court of Appeal laid down as to how the jury is to be assisted by the Court for determining whether it is obscene or otherwise. In this regard it was observed as follows:- "In the view of this court, the proper direction on a defense under s. 4 in a case such as the present is that the jury must consider on the one hand the number of readers they believe would tend to be depraved and corrupted by the book, the strength of the tendency to deprave and corrupt, and the nature of the depravity or corruption; on the other hand, they should assess the strength of the literary, sociological or ethical merit which they consider the book to possess. They

should then weigh up all these factors and decide whether on balance the publication is proved to be justified as being for the public good. A book may be worthless; a book may have slight but real merit; it may be a work of genius. Between those extremes the gradations are almost infinite. A book may tend to deprave and corrupt a significant but comparatively small number of its readers or a large number or indeed the majority of its readers. The tendency to deprave and corrupt may be strong or slight. The depravity and corruption may also take various forms. It may be to induce erotic desires of a heterosexual kind or to promote homosexuality or other sexual perversions or drug-taking or brutal violence. All these are matters for the jury to consider and weigh up; it is for them to decide in the light of importance they attach to these factors whether or not the publication is for the public good. The jury must set the standards of what is acceptable, of what is for the public good in the age in which we live. No doubt if a direction along these lines had been given to the jury they might well have concluded that in all the circumstances no defense had been made under s. 4. Such a conclusion would then have been unassailable in this court."

(26) In *John Calder (Publications) Ltd. v. Powell*, (1965) 1 All E.R. 159 the Queen's Bench Division while noticing *Roth v. United States* (supra) held that there was no reason to confine obscenity and depravity to sex.

(27) In India the test of obscenity has been enunciated in several decisions of the Supreme Court and the High Courts. In the landmark decision of the Constitution Bench of the Supreme Court in the case of *Ranjit D. Udeshi Vs. State of Maharashtra*, , Hickin's test of obscenity was approved and it was further held as follows:-

"BUT even if we agree thus, the Question remains still whether the Hicklin test is to be discarded ? We do not think that it should be discarded. It makes the court the judge of obscenity in relation to an impugned book etc. and lays emphasis on the potentiality of the impugned object to deprave and corrupt by immoral influences. It will always remain a question to decide in each case and it does not compel an adverse decision in all cases. "

(28) In *Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others*, , the Supreme Court while following the test laid down in *Ranjit D. Udeshi v. State of Maharashtra* (supra) held as under :-

"It is," Therefore, the duty of the Court to consider the obscene matter by taking an overall view of the entire work and to determine whether the obscene passages are so likely to deprave and corrupt those whose minds are open to such influences and in whose hands the book is likely to fall and in doing so one must not overlook the influence of the book on the social morality of our contemporary society;

29. It further observed-

"THE concept of obscenity would differ from country to country depending on the

standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. "

(29) Again in K.A. Abbas Vs. The Union of India (UOI) and Another, the Supreme Court held that the principles laid down in Udeshi's case applied mutatis mutandis to films and also other areas besides obscenity. In so far as the standards which the censors should apply to consider whether the film should be allowed to be screened, it held as under:-

"OUR standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favor 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 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 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."

(30) In Samresh Bose and Another Vs. Amal Mitra and Another, the Supreme Court held that the Court must make an objective assessment of the book, story or article as a whole and with particular reference to the passages complained in the book, story or article. It further observed that the Court must make an overall view of the matter complained of as obscene in the setting of the whole work, but the matter charged as obscene must also be considered by itself and separately to find out whether it is so gross and its obscenity so pronounced that it is likely to deprave and corrupt those whose minds are open to influence of this sort and into whose hand the book is likely to fall.

(31) In Ramesh Dalal Vs. Union of India (UOI) and Others, , while considering the Serial Tamas" depicting Hindu Muslim tension and Sikh Muslim tension during partition it was observed as follows:-

"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 of religion. Unfortunately, modern development both in the field of cinema as well as in the field of national and international politics have rendered it inevitable for people to face the realities of internecine conflicts, inter alia, in the name of religion. Even contemporary news bulletins very often carry scenes of pitched

battle or violence. What is necessary sometimes is to penetrate behind the scenes and analyze the causes of such conflicts. The attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and formant conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message" in depth and if it is able to do this, it will be an achievement of great social value. In the present case the finding of the learned Judges of Bombay High Court is that the picture viewed in its entirety is 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. We see no reason to differ from this conclusion."

(32) In Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and Cinemart Foundation, , the Supreme Court while reviewing several decisions rendered on the subject of the freedom of speech and expression, held as follows :- "Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, Therefore, a basic human right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). The People of India declared in the Preamble of the Constitution which they gave unto themselves their resolve to secure to all citizens, liberty of thought and expression. Every citizen of this free country, Therefore, has the right to air his or her views through the printing and/ or the electronic media subject of course to permissible restrictions imposed under Art. 19(2) of the Constitution .The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifetime of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death- knell to democracy and would help usher in autocracy or dictatorship. "

(33) Having regard to the aforesaid decisions it is clear that the Supreme Court has not discarded the Hicklin test, but has diluted it. The trend apparent from the decisions of the Supreme Court is that while judging a film, a writing or a book one should view the same from the point of view of an average person, applying the contemporary community standards and taking into consideration the dominant theme of the material taken as a whole. Thus viewed, if the work appeals to the prurient interest, it would be regarded as obscene. At the same time it cannot be denied that the concept of obscenity would differ from country to country depending upon the contemporary community standards. These standards in one country may be different from those in the other. For instance, what may be regarded as obscene in England may not be regarded so in France.

Similarly, what may not be regarded as obscene in England, may be regarded obscene in India. Therefore, each society has its own standards and yardsticks to judge what would be considered obscene and derogatory to public morality. It is in view of our own contemporary standards that the Central Government laid down guidelines u/s 5B of the Act. At this stage, it will be useful to notice some of the aforesaid guidelines which are as follows :-

"2.In pursuance of the the above objectives, the Board of Film Certification shall ensure that - xxxxxxxx

(III)scenes -

(A)showing involvement of children in violence as victims or as perpetrators or as forced witnesses to violence, or showing children as being subject to any form of child abuse;

(B)showing abuse or ridicule of physically and mentally handicapped persons; and

(C)showing cruelty to or abuse of, animals are not presented needlessly.

(IV)pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of desensitizing or dehumanizing people are not shown;

(VII)human sensibilities are not offended by vulgarity, obscenity or depravity;

(VIII)such dual meaning words obviously cater to baser instincts are not allowed;

(IX)scenes degrading or denigrating women in any manner are not presented;

(X)scenes involving sexual violence against women like attempt to rape, rape or any form of molestation, or scenes of a similar nature are avoided, and if. any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown ;

(XII)visuals or words contemptuous of racial, religious or other groups are not presented;

(34) The constitutionality of these guidelines is not in question. The standards laid down by the guidelines leave a vast area for expression of creativity and art and propagation of ideas, thoughts and speech. The film focuses on social order which is caste ridden, violent, unequal and inhuman. This is what the film strives to depict but while doing so it has in certain sequences transgressed the guidelines which are statutory in nature. Both the Examining Committee and the Revising Committee had rightly directed deletion of all visuals of the woman in total nudity when she was made to fetch water from the well (Cut No.8, Reel No. 1V). As per para 2(ix) of the guidelines, the Board cannot permit scenes in which a woman is denigrated or degraded. Therefore, in view of the aforesaid guideline there was no justification to show frontal nudity in the film. The requisite effect could have been created by a suggestive visual. This sequence being offensive to para 2(ix) of the guidelines was required to be deleted. The Fact while permitting

retention of the visual referred to "Schindler's list" which was passed by the Board without a cut though it showed sequences of frontal nudity of man and woman when they were dispatched to gas chambers in Nazi Germany. The aforesaid reason based on the example of Schindler's List cannot be sustained. The instant film cannot be given a certificate of exhibition merely because Schindler's List was passed by the Board. If the Board had failed to ensure the compliance of para 2(ix) of the guidelines in the case of one film it does not mean that it must ignore the guidelines for certification of all subsequent films. Every one has the basic duty to comply with the law. One cannot say that he will contravene the law as it has been contravened by others and still be entitled to the application of Article 14. It is only the person obeying the law who can seek the refuge or the protection of the Equality Clause.

(35) Another visual showing the naked posterior of Babu Gujjar (Cut No.4, Reel No.II, referred to as the first and the third sequence by FCAT) while subjecting the woman to rape also needs to be deleted for the same reasons as mentioned above. That apart, this sequence when considered by taking an overall view of the whole film and also considering it by itself separately is obscene. The Fact has not considered the offending scene in this context. The fact that Fact had directed the visuals of the man's bare posterior in the first and the third sequences to be reduced to a flash, shows that it must have considered the sequences indecent and obscene.

(36) When the standards are articulated in the guidelines, it is not legally permissible to justify the aforesaid scenes on basis which are outside these guidelines. Similarly, the expletives used in the film cannot be permitted having regard to the guidelines which are of a binding nature. These guidelines have been ignored by the Tribunal. By condoning frontal nudity, abusive language which is so liberally used in the film, and the aforesaid first and third sequences (which may have been reduced to a flash) one will be setting up new standards for the films, which are totally opposed to the guidelines. Already contemporary cinema has changed the values in our country. The youth after independence has been fed on sex and violence in the films. Giving a go bye to the guidelines will further erode the standards in the films;

(37) In so far as the contention of the petitioner that the cuts as directed by the Tribunal have not been carried out is concerned, the same is without force as on viewing the film and the portion relating to cuts the allegation was not found to be correct.

(38) As regards the preliminary objection raised by the first respondent I am of the opinion that the submission needs to be rejected. In the first place, the revisional power can be exercised by the Central Government on its own motion. This means section 6 does not give any right to a party to move an application for revision. Secondly, the first respondent in its counter affidavit has already expressed its opinion in the matter and it will be of no use asking the petitioner to move an application u/s 6 before it.

(39) In view of the aforesaid discussion, the aforesaid certificate granted in respect of the film is quashed. It is directed that the Board will consider afresh the grant of "A" certificate after the respondents 3 to 6 have made the appropriate excisions/modifications in accordance with the observations made hereinabove. The respondents are directed to stop the screening of the film till a fresh certificate is granted in respect of the film by the Board.