
(2016) 06 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition (L) No. 1529 of 2016

Phantom Films Pvt. Ltd., Mumbai

APPELLANT

Vs

The Central Board of Film Certification, Mumbai

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 593

Hon'ble Judges : S.C. Dharmadhikari and Dr. Shalini Phansalakar Joshi, JJ.

Bench : Division Bench

Advocate : Mr. Ravi Kadam, Senior Advocate with Mr. Ashish Kamat, Mr. Ameet Naik, Mr. Madhu Gadodia and Mr. Kunal Mehta i/b. M/s. Naik Naik and Co, for the Appellant; Mr. Advait M. Sethna with Mr. D.N. Mishra with Ms. Ruju Thakker and Ms. Richa Mishra, Advocates, for

Final Decision : Partly Allowed

Judgement

S.C. Dharmadhikari, J.(Oral)—Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. By this petition under Article 226 of the Constitution of India, the petitioners seek a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the record of the decision Annexure I-4 to the writ petition and after scrutinising the legality, validity and correctness thereof to quash and set aside the same. The next relief is that of issuance of a writ of mandamus or a writ, order or direction in the nature thereof, directing respondent no. 1 to forthwith and/or in such time as this court deems fit and proper to issue in favour of the petitioners a certificate styled as "A" certificate in respect of the film "Udta Punjab", without the same being subjected to any of the cuts/conditions set out in the said decision.

3. This writ petition was placed before us on 8th June, 2016. It was adjourned to 9th June, 2016. On that date, a copy of the order dated 6th June, 2016, along with all annexures thereto came to be served on the petitioners. Thereupon, at

the request of the petitioners, we granted leave to amend.

4. Aware as the petitioners were of a preliminary objection on the point of maintainability of the petition in the face of the remedy available to them of an appeal under section 5C of the Cinematograph Act, 1952, it was submitted by Mr. Kadam, learned Senior Counsel appearing for the petitioners that in terms of section 5D of this Act, the constitution of the appellate tribunal envisages that it should consist of a Chairman and not more than four other members appointed by the Central Government. A person shall not be qualified for appointment as the Chairman of the tribunal unless he is a retired Judge of a High Court or is a person who is qualified to be a Judge of a High Court.

5. Mr. Kadam pointed out that though an appeal was preferred by the petitioners, they were informed that the Chairman of the tribunal is unavailable till 17th June, 2016. The submission of Mr. Kadam was that the petitioners have determined and decided the date of release of the film and that is 17th June, 2016. They would suffer considerable loss and prejudice in the event the film is not released on that date. The theaters have been booked in advance, the prints have been despatched and bearing in mind the investment so also considering the mandate of Article 19(1) (a) of the Constitution of India, this writ petition be entertained. Mr. Kadam submitted that availability of an alternate equally efficacious remedy is not an absolute bar for entertaining a writ petition under Article 226 of the Constitution of India. It is a rule of discretion and prudence rather than a legal bar. He would, therefore, submit that the petition be entertained.

6. After the initial hearing and the petition was amended, Mr. Sethna appearing for the respondents took instructions and stated that the Chairman would become available and the petitioners, therefore, should press their appeal.

7. After we heard the counsel on this limited point, we were of the opinion that since larger questions and going to the root of the freedom guaranteed by Article 19(1)(a) of the Constitution of India are involved in this writ petition, it would be desirable to hear the writ petition on merits rather than to uphold the preliminary objection. Further, a ready film being subjected to a viewing and now review by the 1st respondent consuming so much of time there is no guarantee that the deadline of release set can be met by a belated decision of the appellate authority. We had the benefit of detailed submissions by both sides on the constitutional, legal and factual issues. The basic facts are admitted. The respondents did not desire to put any counter affidavit. Their counsel was ready to address the court after we gave him sufficient time. We, accordingly, overrule the above objection.

8. We now turn to the facts.

9. Petitioner no. 1 is a private limited company incorporated under the Indian Companies Act, 1956. Petitioner no. 2 is a citizen of India and share holder and director of petitioner no. 1.

10. It is stated that petitioner no. 1 company is engaged inter alia in the business of production of cinematograph films. It has to its credit the production and release of critically acclaimed and commercially successful films. Petitioner no. 1 is producer of the film "Udta Punjab" (hereinafter referred to as "the said film"), which is a work of fiction. It depicts the problems faced by the people of the State of Punjab on account of drug addiction. The film, therefore, deals with socially and morally relevant subject. After the film was ready, on 10th May, 2016, the petitioners applied to respondent no. 1 for certification of the film for exhibition. That was invoking the powers of the said board, a statutory authority constituted under the Cinematograph Act, 1952. It is stated that this respondent no. 1 board is statutorily empowered to examine and certify cinematograph films prior to their exhibition. In exercise of such powers, the Act empowers the Government to frame Rules. The Cinematograph (Certification) Rules, 1983 (hereinafter referred to as "the said Rules") have been framed. To guide the issuance of certificates, the respondents can take assistance of the guidelines styled as "Guidelines for Certification of Films for Public Exhibition" issued by the Central Government dated 6th December, 1991.

11. The case of the petitioners is that prior to the release of this film and since it requires that certification, an application was made on 10th May, 2016. It was notified that the release was scheduled on 17th June, 2016. Petitioner no. 1 sought the certificate for exhibition of the film to adults styled as "A" certificate. It is their case that the first respondent, after examining the film on 18th May, 2016, conveyed to the petitioner on 24th May, 2016 that it's Chairperson had referred the subject film to Revising committee. The complaint of the petitioners is that no reason was assigned nor a copy of the report or remarks in that regard were made available to them. The petitioners submit that the Revising Committee examined the subject film on 3rd June, 2016 and it is statutorily obliged to make its report within three days. At the time of institution and filing of this petition, its decision was not conveyed.

12. It is pertinent to note that the first respondent on 8th June, 2016, communicated to the petitioners its decision. Based on that decision, the writ petition has been extensively amended. We would refer to the amended grounds a little later.

13. It is the claim of the petitioners that expenditure of approximately Rs. 24,50,00,000/- is incurred for production of the said film. The said film is seeking to depict the prevailing alarming drug addiction problem faced by the State of Punjab. It is a socially relevant film. For making the film, various contracts and arrangements have been executed and made with third parties. It is stated that such third parties are cinema owners, advertising and marketing firms, agents etc. Till date, the petitioners have expended a sum of Rs. 5,00,00,000/- on promotional and advertising expenses. There are about 1000 theaters and 1800 screens booked for the subject film. It is in these circumstances that the sum of Rs. 29,50,00,000/- approximately has been spent and expenses incurred.

14. As mandated, the application for certification in the prescribed form was made. Bearing in mind the topic and subject of the film, the petitioners sought "A" certificate. The scheduled date was mentioned in the said application. It is the case of the petitioners that there was enormous procedural delay in taking a decision on this application. It is submitted that until the writ petition was moved in this court complaining about the total inaction on the part of respondent no.1, nothing was communicated. It is only on the eve of the release and some days before it that the impugned decision has been communicated. To be precise, the petitioners complain that on the institution of the writ petition on 8th June, 2016, post filing and moving it before this Division Bench, at about 12.30 noon on that date the petitioners received a copy of the decision. The decision was taken on 6th June, 2016.

15. Since the whole controversy and issue revolves around this decision, we reproduce the same. The same reads as under:-

"-1-

Regd. A. D./By Hand

No. DIL/230/2016-MUM/48 "A with Cuts"

Central Board Of Film Certification

91-E, Bharat Bhavan,

Walkeshwar Road,

Mumbai 400 006

Date: 06/06/2016

To,

Phantom Films Pvt. Ltd.

J-6, Hemlata Aditya

Bunglows, Millat Nagar,

Andheri West - 400 053

Mumbai

Maharashtra

Sir/s,

With reference to your application to the Central Board of Film Certification dated 10/05/2016 for a certificate under the Cinematograph Act, 1952 to exhibit the film entitled "UDTA PUNJAB" (Hindi). I am directed by the Board to inform you that the film has been viewed by the Revising Committee and the Board has come to the conclusion that the film is not suitable for unrestricted public

exhibition but may be suitable for public exhibition restricted to adults provided you carry out the excisions/modifications in the film listed in the Annexure and that you should accordingly be requested to carryout the excisions/modifications, so that the film may be sanctioned for public restricted to adults.

The above decision has been taken after

a. Considering the submissions made by you/your representative before the Committee during the personal hearing, the opportunity for which was given to you.

X b. Offering you an opportunity for making oral submissions, which you did not avail of.

In case you are aggrieved by the decision of the Board based on the recommendation of the Revising Committee you may, if you so desire, prefer an appeal to the FCTT. The appeal to the FCAT be made within 30 days. If no reply is received from you within the said period the Board will proceed to take action as indicated above.

The receipt of this communication may kindly be acknowledged.

Yours faithfully,

Regional Officer

N.B.1. In case of reduction of scene, Duration of portion retained may be indicated.

2. Cuts may be submitted along with affected Cassettes.

3. Cuts from positive, negative and sound may be joined and given in the serial order by inserting white piece in between cuts.

Reasons for grant of "A with Cuts" certificate to the film subject to the following cuts: The theme, presentation, language and visuals of the film are not suitable for non-adults.

Cut No.

Location

Cut Description

Guidelines

1

Delete sign Board of Punjab in the beginning

5B, 2(xiv)

2

Delete Punjab, Jalandhar, Chandigarh, Amritsar, Tarantaran, Jashanpura, Ambesar, Ludhiana and Moga be deleted from background and dialogue wherever it occurs.

5B, 2(xiv)

3

From song no. 1 delete the word "Chittave" and "harami" everywhere.

2(vii)

4

From song no. 2 delete "Tom di cock jevhe chitti chitti cock" and "coke cock" in the entire song

2(vii), 2(viii)

5

Delete Behendchod, Behenchodo, Bund, Tatte, Gandia, Gandu, laudu, haramzadi, matherchod, chusa hua aaam, kutti, maiyove, kudi occurs. Reg. Tommy, Behenchodo, Behenchod before TCR 1.31. allowed and after that all to be deleted.

2(vii), 2(ix)

6

Delete the word "Election", "MP", "Party" from party worker, MLA, Punjab, Parliament.

5B 2(xiv)

7

38.

From the song No. 3, delete the visuals of scaratching/itching side portion by Sardar.

2(vii)

8

Delete the closeup shots of injecting the drugs wherever it appears

2(vi)

9

2.06

Delete the shot of urinating by Tommy in front of the crowd.

2(vii)

10

2.15

Delete the line "Jamin Banzar te Aulad Kanjar".

2(vii)

11

Delete the name of dog as "Jacky Chain".

2(vii)

12

First disclaimer should be audio/video and to be changes as - "The film focuses on the rising menace of drugs and the war against drugs and is an attempt to show the ill-effects of drugs on today's youth and the social fabric. We acknowledge the battle against drugs being fought by the government and police. But this battle cannot be won unless the people of India unite against the menace.

13

Second disclaimer of fiction to be increased according to audio/video

Note: Most of the spoken language of the film is in Punjabi

Regional Officer"

16. Mr. Kadam, learned Senior Counsel appearing for the petitioners would submit that the sequence of cuts and deletions would disclose as to how the first respondent has approached the matter. Mr. Kadam would submit that a producer of a film and after incurring so much of expenditure and making a huge investment, expects the statutory authorities to act reasonably and expeditiously. It is submitted that if the respondent decides to go on referring the films for viewing by several committees, then, the least that was expected is that the Chairman discloses the reasons as to why he referred film on his own to a Revising Committee. True it is that the Chairman possesses such powers, but the basis for exercising such powers ought to be known to the parties like the petitioners. They should be informed as to why there is a need for the film to be referred to the Revising Committee. Mr. Kadam would submit that it is not mandatory that each and every film should be referred to such committee. He would invite our attention to the Cinematograph Act, 1952. Mr. Kadam submits that section 4 of the Act provides for examination of films. Prior thereto, Mr. Kadam would invite our attention to the object and purpose of the Act. He would submit that this is an Act dealing with two separate matters, namely, (a) examination and certification of films as suitable for public exhibition and (b) regulation of cinemas including their licensing. Mr. Kadam relies upon the definition of the words "adult" appearing in section 2(a), "Board" appearing in

section 2(b) and the term "film" appearing in section 2(dd). He would also rely upon the definition of the term "prescribed" as defined in section 2(f) to mean prescribed by rules made under this Act. Mr. Kadam invites our attention to part II of the Act and submits that section 3 therein enables the Central Government by notification in the official gazette to constitute a board to be called the Board of Film Certification, which shall sanction the film for public viewing. It comprises of a Chairman and not less than twelve and not more than twenty five other members appointed by the Central Government. Section 4 of the Act, according to Mr. Kadam requires an application to be made by a person desiring to exhibit any film in the prescribed manner to this board for a certificate in respect thereof. Mr. Kadam would submit that the board, after examination or having the film examined in the prescribed manner, either sanction the film for unrestricted public exhibition, sanction the film for public exhibition restricted to adults or sanction the film for public exhibition to members of any profession or any class of persons having regard to the nature, content and theme of the film. Mr. Kadam would rely upon and emphasise the words "having regard to the nature, content and theme of the film". He would submit that the board is empowered to direct the applicant to carry out excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses. Equally, the board may refuse to sanction the film's exhibition. Sub section (2) of section 4 requires the board to act after giving an opportunity to the applicant for representing his views in the matter. That is to be done provided the board decides to take action under proviso to clause (i), clause (ii), clause (ia), clause (iii) or clause (iv) of sub-section (1) of section 4.

17. Mr. Kadam submits that there are advisory panels in place. The certification of films is contemplated by section 5A and Mr. Kadam would submit that the subsections of this section would denote as to how the certification after examining a film or having it examined in prescribed manner has to be done. Mr. Kadam submits that the guiding principles in certifying films are to be found in section 5B.

18. Mr. Kadam's argument is that Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression. That takes within its import the right of a citizen to produce and make a film so also exhibit the same. The right granted by Article 19(1)(a) includes a further guarantee to exhibit a film for viewing by the public. Therefore, a certificate is sought under the Cinematograph Act, 1952. Bearing in mind the overriding constitutional guarantee, which cannot be diluted nor whittled down save and except in the opinion of the authority competent to grant the certificate a film is not liable to be certified as it or any part of it is against the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence. Thus, Mr. Kadam's submissions on this point are that the citizens' right to freedom of speech and expression ought to be safeguarded and protected at every cost. For the exercise of such right meaningfully and

purposefully, the State must ensure that the certification is expedited. A certificate cannot be withheld or refused save and except in cases where the board is of the opinion it would be necessary to refuse it to protect the sovereignty and integrity of India, security of State etc. The opinion that the board forms for this purpose ought to be based on definite and relevant material. The power to refuse the certificate is to be exercised in the manner set out in section 5(2) of the Act. If the board acts contrary thereto, then, its decision can be set aside in terms of the power of judicial review.

19. In assailing the impugned order, Mr. Kadam would submit that the power to make rules conferred in the Central Government is for the purpose of effective implementation of the provisions of the Act. Accordingly, Mr. Kadam relies upon the Cinematograph (Certification) Rules, 1983. He would submit that the Rules, apart from enlisting various authorities and officers of the board also provides for application for examination of films. Apart from the procedural aspects, Mr. Kadam submits that once the film has been presented for such certificate along with the application revealing all the details thereof, then, it is for the various committees including the Revising Committee to take a decision. The Rules incorporate a mandate that the presiding officer of the Revising Committee shall within three days sent recommendations of all members of the Revising Committee to the Chairman and where the Chairman is away from the centre where the film is examined, by registered post [Rule 24(10)]. Thereafter, the decision has to be communicated. Mr. Kadam submits that Rule 26 provides for issuance of a certificate subject to removal of portions of film. In that regard, our attention is invited to Rule 26. Mr. Kadam submits that the film in question was always intended to be exhibited to the adult members of the public. It was not meant to be certified for universal exhibition. The certificate applied for was a "A" certificate. The alphabet "A" stands for adult which term is defined to mean a person who has completed his eighteen years. True it is that even while granting such certificate, the board is empowered to insist that a portion or portions objected to by it shall be removed from the film. Yet, that power has to be exercised, fairly, reasonably and not in an arbitrary or discriminatory manner. The exercise of the power should not in any manner violate the constitutional guarantee of freedom of speech and expression. Mr. Kadam would submit that if the impugned order is tested on such touchstone and the suggested cuts are considered accordingly, it would negate this constitutional guarantee completely. Relying upon the grounds in the writ petition, Mr. Kadam would submit that in the instant case, the mandate emerging from section 5B of the Cinematograph Act, 1952 and Article 19(1)(a) of the Constitution of India, is completely violated. He would submit that it is not for the board to determine as to how the subject of the film should be dealt with by the maker or producer of a film. The treatment of the subject and prior thereto the choice of the same or the selection of the theme is entirely left to the creative team. That is the real purport of the right guaranteed by Article 19(1)(a) of the Constitution of India. The cuts or excisions if at all to be directed must have a nexus with the object sought to be achieved

by the Act. Merely because the board holds a opinion that some part or portion is unnecessary or is not required considering the story of the film, that would not enable it to cut or excise the film in that manner. Mr. Kadam would submit that if the impugned order is considered in the backdrop of the guidelines, then, it would be evident that there is complete non application of mind. He would submit that there are 13 cuts, which are suggested. If one goes serially and cut by cut, that would demonstrate as to how the board in this case, instead of applying its mind and to the central theme so also the feature film in its entirety, has passed a blanket direction that the theme, presentation, language and visuals of the film are not suitable for non adults. True it is that it is meant to cater to the adult audience and that is the certificate applied for still the cuts from the film should, as directed, not reflect any pre-conceived notions of censoring films. That would kill creativity. Mr. Kadam submits that the deletion of the sign board of Punjab in the beginning of the film in the opinion of the board violates section 5B and the guidelines, which indicates as to how the board thoughtlessly and mindlessly goes about its job.

20. Before we proceed to note down the other submissions and based on each cuts, we must refer to the argument of Mr. Kadam that the guidelines for certification of films for public exhibition have to be viewed as guidelines and not as a statute by itself. Mr. Kadam would submit that the objectives of film certification are to ensure that the medium of film remains responsible and sensitive to the values and standards of society, artistic expression and creative freedom are not unduly curbed, certification is responsive to social change. The medium of film provides clean and healthy entertainment and as far as possible, the film is of aesthetic value and cinematically of a good standard. Mr. Kadam would submit that true it is that the certification work is performed by experts in the field. In certification of films by experts, judicial review of their decision is permissible on restricted grounds. However, if the order passed by them and decision taken eventually runs counter to the objectives of the film certification completely and negates the constitutional guarantee, then, this court can interfere in its writ jurisdiction. This court can also interfere in the decision of experts if it is completely arbitrary and perverse in the sense that no reasonable man placed in the position of board members would arrive at a conclusion which is arrived at and impugned in the present case. He would also submit that if the decision is coloured by considerations not wholly relevant and germane, then as well this court must interfere in writ jurisdiction. The writ jurisdiction is also available in the event the decision is vitiated by mala fides.

21. Proceeding on these lines, Mr. Kadam would submit that deletion of sign board of Punjab in the beginning is stated to be referable to guideline 2(xiv). That guideline state that the Board of Film Certification shall ensure that the sovereignty and integrity of India is not called in question. Mr. Kadam criticises the approach of the board by submitting that mere depiction of a sign board of the State in the beginning by itself and without anything more calls in question the sovereignty and integrity of India is a conclusion difficult to appreciate and

understand. He would submit that the whole film is based on the drug menace across the country and rampant in Punjab. The film depicts the character of a pop singer. He is rather a rock star and very popular across the state so also internationally. It is such a character, who takes to drugs and by regular consumption leading to addiction, the film depicts his downfall. In the course of such downfall, he is on the verge of creative bankruptcy. He wishes to reform and change himself. There are other characters, namely, a girl who is forced to work in the fields in Punjab after her father's death. She is a young girl and has her dreams. When she comes across a packet and which is thrown at her feet, it is natural that she is tempted to open it. Not only is she tempted to open it, but she tastes the contents thereof. Now from which part of the world the packet is flung across is inconsequential, the attempt of the filmmaker is to depict as to how a young and innocent girl opens it and is attracted to its contents. She is not aware of the fact that the same is a poisonous and dangerous substance totally unfit for human consumption. Through her character, the vulnerability and susceptibility of the young is shown. The film also depicts a narcotics department cop, who is aware of the destruction caused by drugs all around. However, all of it changes when the drug menace hits somebody very close to him. That is how he realises and then as shown in the company of one full time doctor and part time NGO worker he decides to fight the rising drug menace in the State. It is how these four characters are fighting the menace of drugs is depicted in the film. Hence, the focal and central theme is about the menace of drugs and how it brings about one's downfall. The accessibility to and availability of drugs being easy and effortless, how the controlling channels are required to act strictly and how the drug menace has taken over the State and the youth inhabiting it is what is depicted and presented. In such a work, merely because one sign board appears and showing the name of the State by itself does not call in question the sovereignty and integrity of India. Mr. Kadam would, therefore, submit that there is no material on record supporting the cut at Sr. No.1. Equally, cut at Sr. No. 2 is vitiated by non application of mind. A blanket deletion is suggested of the names of some cities in the State of Punjab. The deletion has to be effected from the background and dialogues wherever it occurs, which, according to Mr. Kadam, would destroy the theme of the film. If the story line is depicting the events in one State and suggestive of the menace of drugs in that State, then, reference to some towns and cities is bound to be made. By such reference and completely ignoring the central or focal theme, the sovereignty and integrity of India is not affected much less adversely.

22. Then, Mr. Kadam submits that cut No. 3 is from song no. 1. It seeks to delete two words from that song and everywhere. That cut is referable to the board's responsibility to ensure that human sensibilities are not offended by vulgarity, obscenity or depravity. Mr. Kadam would submit that this song was exhibited by the producers and directors in the promotional exercise. In the promotion material or promo this song was incorporated. That promo or trailer was also presented for certification by the board. The board certified the visuals and this

song in the promo. That was certified as fit for viewing without any cuts. These words are a part of the song-line. If the song has already hit the screen and as a part of the promo it has been shown on the television channels, then, one fails to understand, according to Mr. Kadam, how this cut from the film now serves any purpose. Apart therefrom, Mr. Kadam would submit that the words which are sought to be deleted from the song as suggested cut nos. 3 and 4 do not in any manner offend human sensibility. One line or one word cannot be picked from the whole song and read out of context or in isolation. There is no vulgarity, obscenity or depravity. It is a depiction of how a rock star, after being taken over by the drugs and under influence of the same, on occasions, forgets the lyrics and the words in a song and utters abuses. The petitioners are only depicting fictional characters shown as drug addicts and they often use such cuss words in their dialogue and conversation. The subject film seeks to convey that drug abuse leads to loss of control. The normal talk and movement of a human being is affected by regular consumption of drugs. If one desires to only pick certain words from the song and not see the contents as a whole, then, possibly, such a conclusion can be reached. However, the guidelines are not to be read as a binding document. Guideline nos. (vii) and (viii) have been invoked as far as cut no. 4 is concerned. In the opinion of the board, the words have dual meaning. Mr. Kadam would submit that mere usage of dual meaning words would not be enough to arrive at a conclusion that such cuts have to be imposed. The dual meaning words must be found to be catering to baser instincts. Mr. Kadam submits that it cannot be held that the song is arousing baser instincts. The song appears as a integral part of a continuing story and does not glorify consumption of drugs far from actively supporting it. It must be viewed in the context of the storyline and the theme of the film which deprecates drug usage.

23. Similarly, with regard to cut no. 5, Mr. Kadam would submit that this is also referable to another guideline in addition to guideline no. 2(vii). That is guideline no. 2(ix). That guides the board to ensure that scenes degrading or denigrating women in any manner are not presented. Mr. Kadam would submit that the abuses and the expletives in the mouth of some characters as are to be found in the film are to be viewed in the backdrop of the setting, the story and theme of the film. That shows as to how some rustic villagers would speak in a rough tone. If that is how the fictional characters are and the writer, maker, producer and director of the film depict how because of officials the State is caught in a drug menace, then, this guideline has no application nor could the board have taken its assistance. Mr. Kadam would submit that there is no justification to direct deletion of some words. That would not be a correct and proper application of the guideline to the facts and circumstances of the present case. That would mean that some words or abuses have been picked up and taken in isolation. The direction to delete the above reproduced words from the dialogues of the film wherever they occur would mean in any sentence or dialogue of the film they be omitted. No particular scene is referred. If these cuss words or abuses occur in the dialogues in one scene, then, their deletion may mean the dialogue

should be omitted or altered. That would be senseless. One cannot presume that all dialogues are sheer abuses. Similarly, their addition does not depict the fondness of the director and writer for such words. If the fictional character is either a corrupt or bribe taking public official and those corrupting him are drug-peddlers, criminals, then, their tone, makeup and demeanor should appear to be real. The endeavour is towards perfection.

24. With regard to cut no. 6, Mr. Kadam would submit that there is no material for the direction to delete the words "election", "MP", "party" from party worker or "MLA", "Punjab" and "Parliament". By mere utterance of these words by fictional characters, it is not clear as to how the sovereignty and integrity of India is called in question. Mr. Kadam, therefore, submits that this is one more instance where the board, instead of certifying the film for adult exhibition has gone to the extent of cutting and clipping it to such an extent that its whole content is destroyed.

25. Mr. Kadam then would submit that one visual is picked up for cut at Sr.No. 7. This cut is without in any manner suggestive as to how human sensibilities are offended by vulgarity, obscenity or depravity, which is to act as the basis for applying guideline no. 2(vii). Application of this guideline to this scene serves no purpose. Apart therefrom, this visual in song no. 3 shows the side portion of a Sardar scratching/itching is only 10 seconds passing visual which tries to depict an individual addict undergoing withdrawal symptoms.

26. Mr. Kadam would submit that cut no. 8 is suggested because the board comes to a conclusion that this is a scene tending to encourage, justify or glamorise drug addiction. A closeup shot of the drugs being injected and running throughout the film if deleted in this manner, it would not carry forward the message or theme of the film. Merely because a drug is being shown to be injected and there is a closeup shot thereof, it may not by itself viewed as tending to encourage, justify or glamorise drug addiction. Thus, Mr. Kadam's emphasis is that without in any manner considering the backdrop, central theme and looking at the film as a whole, such cuts are made. That is how the petitioners' fundamental freedom has been adversely affected.

27. With regard to cut nos. 10 and 11, Mr. Kadam would submit that one line has been picked up and is taken to be obscene or depraving human sensibility. However, that cannot be the conclusion reached if one views the work as a whole. The test is that it must be viewed as a whole. If that is how the work has to be viewed, then, cut nos. 10 and 11 do not in any manner suggest that the visuals or words are contemptuous of racial, religious or other groups.

28. Mr. Kadam would submit that the disclaimer, which appears at the very beginning of the film and copy of which is to be found at page 111 of the paper book inter alia indicates as to how the makers of the film do not in any manner support or encourage consumption of drugs. Therefore, it is clarified that the makers and producers of the film have greatest respect for the culture of the

State and its people. However, if certain section of the population of that State has been affected by the drug menace, then, the disclaimer demonstrate the bonafides of the petitioners. That may not be allowed to be interfered with nor any additional or substituted disclaimer be directed to be inserted.

29. Alternatively, without prejudice, Mr. Kadam would submit that if this court is of the opinion that cut no. 9 cannot be said to be integral to the film and by itself and the human sensibilities are affected, then, the producers and directors are ready and agreeable to make suitable changes therein. He also submits that a revised disclaimer incorporating additional clarification on the part of the makers can be inserted, however, he would submit that if the events, songs and characters are integral to the film, then, merely because they do not appear in a neat, clean and refined tone that is not enough to interfere with it.

30. In support of his contentions, Mr. Kadam has placed reliance on the following decisions of the Hon"ble Supreme Court of India.

(i) Bobby Art International and Ors. v. Om Pal Singh Hoon and Ors., (1996) 4 SCC 1.

(ii) S. Rangarajan v. P. Jagjivan Ram and Ors., (1989) 2 SCC 574.

31. Mr. Sethna, learned counsel appeared for the respondents, on notice. He states that the respondents do not desire to file any affidavit in reply. The script of the film as handed over to the board has been filed and we took that on record by consent of parties. Mr. Sethna, at the out set, would submit that the Act envisages the setting up of a board comprising experts. Mr. Sethna relies upon the settled principle that this court cannot interfere with the decision of an expert as if it is an appellate authority. Merely because another view is possible or in the opinion of this court few cuts would suffice is no ground to interfere with the decision of the experts in the field. Mr. Sethna would submit that the board must be allowed to operate and function within the framework of the Act. It is not necessary that the decision of the board should always be to the liking of the petitioners/filmmakers and that is no ground to interfere with it by presuming that the same is not consistent with the object and purpose of the Act and the guidelines. If the restrictions can be viewed as reasonable in the facts and circumstances of the present case, then, Mr. Sethna would submit that no interference is permissible in writ jurisdiction with the decision of the board. So long as the decision of the board reflects application of mind to germane and relevant facts, then, this court should not interfere with its decision. Mr. Sethna would submit that in the present case, the board has come to a conclusion that the film is not suitable for unrestricted public exhibition but restricted to adults, provided certain excisions and modifications in the film are carried out and such cuts or changes or modifications are listed with specific reference to section 5B and the guidelines, then, it is apparent that an informed and rationale decision has been taken. Once that decision is taken and reasons to support them are also set out, then, this court should dismiss the writ petition. Mr. Sethna would

submit that the theme, presentation, language and visuals of the film are not suitable for non adults. The contents of the film are not suitable for non adults but with the deduction of the part or portions which are directed to be deleted, the film can be released for adult exhibition. Mr. Sethna would submit that the petitioners seek "A" certificate. An "A" certification can be granted with some deletions and cuts. That power of the board is not under challenge nor its discretion. He would submit that each cut has some reference to specific guideline in the sense that the name of the State is not required to be projected prominently. The reference to certain cities and towns in the particular State frequently and throughout the film would denote as to how the film, instead of projecting the increasing drug menace has targeted one State and the so called problems therein. The attempt is not to highlight the issue as a whole but to pick and choose one State and depict one side of the problem. Apart therefrom, throughout the film, filthy language is used and abuses are hurled. The dialogues and the language is not of such standard that a reasonable person can watch the film even with adult family members. The test, according to Mr. Sethna, is that whether the film is fit for viewing by family and the adult population. He would submit that adult population comprises of several persons between the age group of 18 to 30. They are still susceptible. Mr. Sethna submits that there was no requirement to insert dialogues which would demean the politicians. Eventually, elections have a sanctity in a democratic setup. The elected representatives cannot be insulted. Therefore, it is to generate a feeling of insult and to lower their image in the eyes of the society at large that the references have been made to elected representatives and even institutions of democracy. Some of the words are insulting and defamatory of living human beings. In that regard, reliance is placed by him on cut no. 11. Mr. Sethna would submit that the cut no. 10, which seeks to delete one line from the dialogue is upholding dignity and prestige of the people residing in the State of Punjab. The land itself is faulted for giving birth to drug menace and if its fertility is sought to be questioned by pointing out that nothing can grow therein except drugs, then, that deletion within the guidelines is permissible. Nothing, therefore, has been done which would violate the constitutional guarantee and freedom. Even a proper disclaimer is suggested so that the filmmakers realise that they cannot make any allegations against not only the whole population of a State but even the neighbouring countries. Once there is no proof of involvement of a foreign country, then, in the absence thereof, a general and sweeping allegation would jeopardize the already delicate foreign relationship. Mr. Sethna, therefore, would submit that no interference is required in this court's writ jurisdiction with the order of the board and the writ petition be dismissed. Mr. Sethna, with reference to the additional documents submitted by Mr. Kadam and the revised disclaimer, submitted that there is no fundamental right to vulgarity, obscenity and immorality. Merely because 34 movies with abusive words have been allowed to be viewed by the public in the past does not mean that the board cannot take a decision of the present nature in another case. Every work must be seen and considered independently. Therefore, every order of the board must be restricted

to the theme and story of a particular film. Based on certification of some films and without cuts, no reliefs can be claimed by the petitioners. Similarly, he would submit that the original disclaimer is no way diluted or toned down by the insertion as suggested. For all these reasons, he would submit that the alternative contentions of Mr. Kadam should also be rejected. Mr. Sethna relies upon a judgment of the Hon''ble Supreme Court of India in the case of K.A. Abbas v. Union of India, AIR 1971 SC 481. Mr. Sethna invited our attention to paragraph 50 of this judgment.

32. For properly appreciating the rival contentions, we must make a reference and very briefly to the facts. It is undisputed that the petitioners presented an application for certification of their film for viewing by adults. The Act enables making of such an application. It is for the applicants to make such application in the prescribed form requesting the board to issue a certificate for exhibition of their film. The board, after examining or having the film examined in the prescribed manner, sanctions it for unrestricted public exhibition and in the present case can sanction the same as restricted to adults. It is undisputed that the board possesses powers as conferred by the Cinematograph Act, 1952, to the effect that even when it sanctions the film for public exhibition restricted to adults, it can make cuts as are necessary in the case of a particular film. Therefore, it is common ground that the freedom guaranteed by Article 19(1)(a) of the Constitution of India is not absolute nor can be claimed in absolute terms. Article 19(2) of the Constitution of India, which finds complete reference in subsection (1) of section 5B, guides the authorities competent to grant a certificate to ensure that the film or any part of it does not offend or runs contrary to the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence. The words "sovereignty and integrity of India" came to be added in subsection (1) of section 5B by Act 49 of 1981 with effect from 1st June, 1983. That is because clause (2) of Article 19 of the Constitution of India itself was amended to insert this aspect. Thus, the sovereignty and integrity of India and the security of State, friendly relationship with foreign State, public order, decency or morality or defamation or contempt of court or inciting commission of any offence are the restrictions on the freedom of speech and expression, which are found to be completely reasonable. If such restrictions can be placed on the freedom and in terms of the Constitution, then, it is pointless suggesting that creative rights can never be restricted.

33. In a decision in the case of Life Insurance Corporation of India v. Prof. Manubhai D. Shah, AIR 1993 SC 171. the Hon''ble Supreme Court of India had an occasion to consider the ambit and scope of this constitutional provision. The Hon''ble Supreme Court was dealing with two appeals arising out of different circumstances and concerning different parties, but relating to the scope of the constitutional policy of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. One civil appeal arose out of the decision of

the Gujarat High Court. Therein, the respondent was an executive trustee of a non governmental organisation which was undertaking research on the working of Life Insurance Corporation of India (LIC). He published a study paper. Certain discriminatory practices adopted by the LIC were portrayed, which adversely affected the interest of large number of policy holders. This study paper was widely circulated by the respondent. A member of the LIC prepared a counter to the respondent's study paper and published the same as an article in a daily newspaper, challenging the conclusions reached in the said study paper. Respondent prepared a rejoinder, which was published in the same newspaper. The controversy arose when the respondent insisted on his rejoinder being published in a magazine, namely, "Yogakshema". That was in-house publication of LIC. The LIC resisted this attempt on the ground that this is an in-house magazine and is not put in the market for sale to the general public. The respondent's request was turned down. Thereupon, the respondent filed a petition contending that refusal to publish his rejoinder in the magazine violated his fundamental right under Articles 14 and 19(1)(a) of the Constitution of India. The writ petition was disposed of. The High Court took a view that merely because the magazine is restricted in its circulation among officers, employees and agents of the corporation, does not acquire the character of an in-house magazine since the same can be purchased by any member of the public on payment of subscription and members of the public are invited to contribute articles for publication in the said magazine. The corporation cannot under the guise of publication of an in-house magazine violate the fundamental right of the respondent. Given the position and status of LIC within the meaning of Article 12 of the Constitution of India, the High Court held that it must honour the right guaranteed under Article 19(1)(a) thereof. The High Court also concluded that the refusal of the LIC was arbitrary and violative of Article 14 of the Constitution of India as well. The High Court, therefore, directed LIC to publish in the immediate next issue of "Yogakshema" the respondent's rejoinder. That order led to the filing of this civil appeal by the LIC before the Hon'ble Supreme Court of India.

34. The other civil appeal pertained to a production of documentary film on what is now known as "Bhopal Gas Disaster". The film was awarded the Golden Lotus, being the best non-feature film. The respondent contended that at the time of presentation of award, the Central Minister for Information and Broadcasting had made a declaration that the award winning short films will be telecast on Doordarshan. The respondent submitted for telecast his film to Doordarshan but Doordarshan refused to telecast the same on the ground that the contents being outdated, do not have relevance now for the telecast. This decision was challenged in a civil writ petition and the High Court took a view that Doordarshan must telecast the film at a time and date convenient to it keeping in view the public interest and on such terms and conditions as it would like to impose in accordance with law. It is in the backdrop of such a controversy that the Hon'ble Supreme Court referred to the constitutional provisions. In para 6 of

this decision, it held that a constitutional provision is never static. It is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. It refers to certain American decisions. Then this trend was found to be discernible from the decisions of the Indian courts and that is referred from the observations and conclusions in para 7 onwards. From the resume of the case law, in para 10, the Hon''ble Supreme Court concludes that it is evident that this court has always placed a broad interpretation on the value and content of Article 19(1)(a) of the constitution of India, making it subject only to the restrictions permissible under Article 19(2). The efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled. More so, when public authorities have betrayed autocratic tendencies.

35. In dealing with the second civil appeal, the Hon''ble Supreme Court refers to the Cinematograph Act, 1952. After setting out its complete scheme, the Hon''ble Supreme Court once again refers to section 5B and particularly sub-section (2). The guiding principles have been noted and thereafter, the Hon''ble Supreme Court refers to three judgments, firstly in the case of K. Abbas (supra) and secondly it refers to a very important judgment delivered in the case of Ramesh v. The Union of India, (1988) 1 SCC 668. where a petition was filed to restrain the screening of the television serial "Tamas" on the ground that it violated Articles 21 and 25 of the Constitution of India and section 5B of the Act. The argument based on section 5B was noted in that decision and finally, the Hon''ble Supreme Court of India refers to the decision relied upon by Mr. Kadam in the case of S. Rangarajan v. P. Jagjivan Ram and Ors, (1989) 2 SCC 574. In para 22, the Hon''ble Supreme Court concluded that every right has a corresponding duty or obligation and so has the fundamental right of speech and expression. The freedom conferred by Article 19(1)(a) is, therefore, not absolute as perhaps in the case of the U. S. First Amendment; it carries with it certain responsibilities towards fellow citizens and society at large. A citizen who exercises this right must remain conscious that his fellow citizen too has a similar right. Therefore, the right must be so exercised as not to come in direct conflict with the right of another citizen. In paras 20 and 23 of the above LIC decision, it was observed as under:-

"20. ?.. In Ramesh v. The Union of India, (1998) 1 SCC 668 : (AIR 1988 SC 775) a petition was filed to restrain the screening of the serial "Tamas" on the ground that it violates Arts. 21 and 25 of the constitution and S. 5B of the Act. Based on the novel of Bhisma Sahni this serial depicted the events that took place in Lahore immediately before the partition of the country. Two Judges of the Bombay High Court saw the serial and rejected the contention that it propagates the cult of violence. This Court after referring to the observations of Hidayatullah, C. J. in K.A. Abbas (AIR 1971 SC 481) proceeded to state as under (at p. 781 of AIR 1988 SC 775):

"It is no doubt true that the motion picture is a powerful instrument with a much stronger impact on the visual and aural sense of the spectator than any other

medium of communication; likewise, it is also true that the television, the range of which has vastly developed in our country in the past few years, now reaches out to the remotest corners of the country catering to the not so sophisticated, literacy or educated masses of people living in distant villages. But the argument overlooks that the potency of the motion picture is as much for good as for evil. If some senses of violence, some nuance 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 developments 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 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 analyse 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 foment 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."

This Court upheld the finding of the Bombay High Court that the serial viewed in its entirety is capable of creating a lasting impression of this message of peace and co-existence and there is no fear of the people being obsessed, overwhelmed or carried away by scenes of violence or fanaticism shown in the film."

23. From the above discussion it follows that unquestionably the respondent had a right to convey his perception of the gas disaster in Bhopal through the documentary film prepared by him. This film not only won the Golden Lotus award but was also granted the "U" certificate by the censors. Even according to the petitioners "the documentary is an appraisal of what exactly transpired in Bhopal on the date the gas leak occurred". The petitioners, therefore, concede that the film faithfully brings out the events that took place at Bhopal on that fateful night. Therefore, the respondent cannot be accused of having distorted the events subsequent to the disaster. How then can it be alleged that it is not fair and balanced or lacks 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 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, it is difficult to understand how Doordarshan could refuse to exhibit it. 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. The learned Additional Solicitor General was not able to point out how it could be said that the film was not consistent with the accepted norms set out earlier. 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. We, therefore, see no reason to interfere with the High Court order."

36. What the Hon"ble Supreme Court has, therefore, emphasised throughout is that there is a need for prior restraint and our laws have assigned a specific role to the censors as such is the need in a rapidly changing social 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. A heavy burden is on the authorities, therefore, to show that the restrictions are reasonable and permissible in law.

37. The other decision of the Hon"ble Supreme Court of India in the case of K. Abbas (supra), which is equally important and for our purpose. That is the one relied upon by Mr. Sethna. The legality and validity of the Act itself, namely, the Cinematograph Act, 1952 was challenged. In deciding such a challenge and at the instance of a well known journalist, playwright and writer of short films, producer and director of cinematograph films, who was insisting on depicting realities of the society, the Hon"ble Supreme Court concluded that the whole of the law and the regulations under it will have always to be considered. The Hon"ble Supreme Court has referred to one more decision, in which, the Hon"ble Supreme Court considered the legality and validity of section 292 of the Indian Penal Code, 1860 (Ranjit D. Udeshi v. The State of Maharashtra, AIR 1965 SC 881). In para 40 this has been referred to and from para 42 onwards, the court observed thus:-

"42. It would appear from this that censorship of films, their classification according to age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interests of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression. This has, however, happened in the United States and therefore decisions, as Justice Douglas said in his Tagore Law Lectures (1939), have the flavour of due process rather than what was conceived

as the purpose of the First Amendment. This is because social interest of the people override individual freedom. Whether we regard the state as the *paren patriae* or as guardian and promoter of general welfare, we have to concede, that these restraints on liberty may be justified by their absolute necessity and clear purpose. Social interests take in not only the interests of the community but also individual interests which, cannot be ignored. A balance has therefore to be struck between, the rival claims by reconciling them. The larger interests of the community require the formulation of policies and regulations to, combat dishonesty, corruption, gambling, vice and other things of immoral tendency and things which affect the security of the State and the preservation of public order and tranquility. As Ahrens said the, question calls for a good philosophical compass and strict logical methods.

43. With this preliminary discussion we say that censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition of cinema films. We need not generalize about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interests of society. If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution.

44. This brings us to the next questions : How far can these restrictions go? and how are they to be imposed? This leads to an examination of the provisions contained in s. 5- B (2). That provision authorises the Central Government to issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition.

49. Judging the directions from this angle, we find that there are general principles regarding the films as a whole and specific instances of what may be considered as offending the public interest as disclosed in the clause that follows the enunciation of the freedoms in Art. 19(1)(a). The general principles which are stated in the directions seek to do no more than restate the permissible restrictions as stated in cl. (2) of Art. 19 and S. 5-B(1) of the Act. They cannot be said to be vague at all. Similarly, the principles in S.IV of the directions in relation to children and young persons, are quite specific and also salutary and no exception can be taken. It is only the instances which are given in Section I Clauses A to D which need to be considered. Read individually they give ample direction as to what may not be included. It is argued on the, basis of some American cases already noticed by us that these expressions are vague. We do not agree. The words used are within the common understanding of the average man. For example the word "rape" indicate what the word is, ordinarily, understood to mean. It is hardly to be expected or necessary that the definition of rape in the Penal Code must be set down to further expose the meaning. The

same may be said about almost all the terms used in the directions and discussed before us. We do not propose to deal with each topic for that is really a profitless venture. Fundamental rights are to be judged in a broad-way. It is not a question of semantics but of the substance of the matter. It is significant that Justice Douglas who is in favour of a very liberal and absolute application of the First Amendment in America is of the view that "sexual promiscuity" was not vague, while those in favour of prior restraints thought that it was. We have referred earlier to the case. We are quite clear that expressions like "seduction", "immoral traffic in women", "soliciting, prostitution or procuration", "indelicate sexual situation" and "scenes suggestive of immorality", "traffic and use of drugs", "class hatred" "blackmail associated with immorality" are within the understanding of the average men and more so of persons who are likely to be the panel for purposes of censorship. Any more definiteness is not only not expected but is not possible. Indeed if we were required to draw up a list we would also follow the same general pattern.

51. We may now illustrate our meaning how even the items mentioned in the directions may figure in films subject either to their artistic merit or their social value over-weighing their offending character. The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. 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 favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in to 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 or genius or 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 in 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. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censors scissors. Thus audiences in India can be expected to view with equanimity the story of Oedipus son of Latius who committed patricide and incest with his mother. When the seer Tiresias exposed him, his sister Jocasta

committed suicide by hanging herself and Oedipus put out his own eyes. No one after viewing these episodes would think that patricide or incest with one's own mother is permissible or suicide in such circumstances or tearing out one's own eyes is a natural consequence. And yet if one goes by the letter of the directions the film cannot be shown. Similarly, scenes depicting leprosy as a theme in a story or in A documentary are not necessarily outside the protection. If that were so Verrier Elwyn's Phulmat of the Hills or the same episode in Henryson's Testament of Cresseid (from where Verrier Elwyn borrowed the idea) would never see the light of the day. Again carnage and bloodshed may have historical value and the depiction of such scenes as the sack of Delhi by Nadirshah may be permissible, if handled delicately and as part of an artistic portrayal of the confrontation with Mohammad Shah Rangila. If Nadir Shah made golgothas of skulls, must we leave them out of the story : because people must be made to view a historical theme without true history? Rape in all its nakedness may be objectionable but Voltaire's Candide would" be meaningless without Cunegonde's episode with the soldier and the story of Lucrece could never be depicted on the screen.

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

53. We have said all this to show that the items mentioned in the directions are not by themselves defective. We have adhered to the 43 points of T.P. O'Connor framed in 1918 and have made a comprehensive list of what may not be shown. Parliament has left this task to the Central Government and, in our opinion, this could be done. But Parliament has not legislated enough, nor has the Central Government filled in the gap Neither has separated the artistic and the sociably valuable from that which is deliberately indecent, obscene, horrifying or corrupting. They have not indicated the need of society and the freedom of the, individual. They have thought more of the depraved and less of the ordinary moral man. In their desire to keep films from the abnormal, they have excluded the moral. They have attempted to bring down the public motion picture to the level of home movies.

54. It was for this purpose that this Court was at pains to point out in Ranjit D. Udeshi's case (1965) 1 SCR 65 = (AIR 1965 SC 881) certain considerations for the guidance of censorship of books. We think that those guides work as well here. Although we are, not inclined to hold that the directions are defective in so far as they go, we are, of opinion that directions to emphasize the importance of

art to a value judgment by the censors need to be included. Whether this is done by Parliament or by the Central Government it hardly matters. The whole of the law and the regulations under it will have always to be considered and if the further tests laid-down here are followed, the system of censorship with the procedural safeguards accepted by the Solicitor General will make censorship accord with our fundamental law."

38. Mr. Sethna would rely upon these observations to submit that the board is duty bound and it must ensure that larger public interest is served. While upholding the Act, the Hon''ble Supreme Court has accorded its approval of the observations in the case of *Ranjit Udeshi (supra)*. The prime and important observation and conclusion therein is that speaking in terms of the Constitution, it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the Article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions, or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Thus, once it is held that Article 19 is applicable and a fundamental right enumerated therein has been infringed, the only thing which can save the law from constitutional invalidity is if it comes within any of the exceptions enumerated in clauses (2) to (6) of Article 19 of the Constitution of India (see *Divisional Forest Officer v. Bishwanath Tea Co.*, AIR 1981 SC 1368.). The restrictive clauses in Article 19(2) of the Constitution of India are exhaustive and are to be strictly construed [see *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305.]. Importantly, the words decency or morality do not require a narrow or pedantic meaning given to these words. They are not confined to sexual conduct alone but encompass requirement of correct behaviour or propriety. (See *R.Y. Prabhoo v. P.K. Kunte*, AIR 1996 SC 1113 (paras 28-30 at pg. 1126).

39. We must also refer to another decision on the point in the case of *Samresh Bose and Anr. v. Amal Mitra and Anr*, AIR 1986 SC 967. Once again, in this decision, though the Hon''ble Supreme Court was dealing with an aspect whether the writers and publishers should be punished for an offence punishable under section 292 of the Indian Penal Code, in paras 21, 28 and 34, what the Hon''ble Supreme Court has held is of paramount importance. These paragraphs read as under:-

"21. ?.. Mr. Lalit has rendered useful assistance to the Court and he has aptly pointed out with reference to authorities that the position in law appears to be well-settled. He rightly contends that the real question is the proper application of the well-settled legal principles to the facts of any particular case. Mr. Lalit has drawn our attention to various passages complained of as obscene and noticed in the judgments and has fairly submitted that it will be for this Court to decide finally on a proper appreciation of the novel itself as a whole and in parts

whether the novel or any part thereof is obscene within the meaning of S. 292, I.P.C. ?..

28. ?.. In deciding the question of obscenity of any book, story or article the Court whose responsibility it is to adjudge the question may, if the Court considers it necessary, rely to an extent on evidence and views of leading literary personage, if available, for its own appreciation and assessment and for satisfaction of its own conscience. The decision of the Court must necessarily be on an objective assessment of the book or story or article as a whole and with particular reference to the passages complained of in the book, story or article. The court must take 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 hands the book is likely to fall. ?.. It is beyond dispute that the concept of obscenity usually differs from country to country depending on the standards of morality of contemporary society in different countries. In our opinion, in judging the question of obscenity, the Judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. A Judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of S. 292, I.P.C. by an objective assessment of the book as a whole and also of the passages complained of as obscene separately.

34. We have read with great care. It is to be remembered that Sarodiya Desh is a very popular journal and is read by a large number of Bengalis of both sexes and almost of all ages all over India. This book is read by teenagers, young boys, adolescents, grown-up youngmen and elderly people. We are not satisfied on reading the book that it could be considered to be obscene. Reference to kissing, description of the body and the figures of the female characters in the book and suggestions of acts of sex by themselves may not have the effect of depraving, debasing and encouraging the readers of any age to lasciviousness and the novel on these counts, may not be considered to be obscene. It is true that slang and various unconventional words have been used in the book. Though there is no description of any overt act of sex, there can be no doubt that there are suggestions of sex acts and that a great deal of emphasis on the aspect of sex in the lives of persons in various spheres of society and amongst various classes of people, is to be found in the novel. Because of the language used, the episodes in relation to sex life narrated in the novel, appear vulgar and may create a feeling of disgust and revulsion. The mere fact that the various affairs and episodes with emphasis on sex have been narrated in slang and vulgar language

may shock a reader who may feel disgusted by the book does not resolve the question of obscenity. It has to be remembered that the author has chosen to use such kind of words and language in expressing the feelings, thoughts and actions of Sukhen as men like Sukhen could indulge in to make the whole thing realistic. It appears that the vulgar and slang language used have greatly influenced the decision of the Chief Presidency Magistrate and also of the learned Judge of the High Court. The observations made by them and recorded earlier go to indicate that in their thinking there has been a kind of confusion between vulgarity and obscenity. A vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. We may observe that characters like Sukhen, Shikha, the father and the brothers of Sukhen, the business executives and others portrayed in the book are not just figments of the author's imagination. Such Characters are often to be seen in real life in the society. The author who is a powerful writer has used this skill in focusing the attention of the readers on such characters in society and to describe the situation more eloquently has used unconventional and slang words so that in the light of the author's understanding, the appropriate emphasis is there on the problems. If we place ourselves in the position of the author and judge the novel from his point of view, we find that the author intends to expose various evils and ills pervading the society and to pose with particular emphasis the problems which ail and afflict the society in various spheres. He has used his own technique, skill and choice of words which may, in his opinion, serve properly the purpose of the novel. If we place ourselves in the position of readers, who are likely to read this book, - and we must not forget that in this class of readers there will probably be readers of both sexes and of all ages between teenagers and the aged, - we feel that the readers as a class will read the book with a sense of shock, and disgust and we do not think that any reader on reading this book would become depraved, debased and encouraged to lasciviousness. It is quite possible that they come across such characters and such situations in life and have faced them or may have to face them in life. On a very anxious consideration and after carefully applying our judicial mind in making an objective assessment of the novel we do not think that it can be said with any assurance that the novel is obscene merely because slang and unconventional words have been used in the book in which there have been emphasis on sex and description of females bodies and there are the narrations of feelings, thoughts and actions in vulgar language. Some portions of the book may appear to be vulgar and readers of cultured and refined taste may feel shocked and disgusted. Equally in some portions, the words used and description given may not appear to be in proper taste. In some places there may have been an exhibition of bad taste leaving it to the readers of experience and maturity to draw the necessary inference but certainly not sufficient to bring home to the adolescents any suggestion which is depraving or lascivious. We have to bear in mind that the author has written this

novel which came to be published in the Sarodiya Desh for all classes of readers and it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. If a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and "will have to read books which are purely religious". We are, therefore, of the opinion that the Courts below went wrong in considering this novel to be obscene. We may observe that as on our own appreciation of the novel, we are inclined to take a view different from the view taken by the Courts below, we have taken the benefit of also considering the evidence given in this case by two eminent personalities in the literary field for proper appreciation and assessment by us. It has already been held by this Court in two earlier decisions which we have already noted that "the question whether a particular book is obscene or not, does not altogether depend on oral evidence because it is the duty of the Court to ascertain whether the book offends the provisions of S. 292, I. P. C." but "it may be necessary if it is at all required, to rely to a certain extent on the evidence and views of leading litterateurs on that aspect particularly when the book is in a language with which the Court is not conversant." it is indeed a matter of satisfaction for us that the views expressed in course of their evidence by the two eminent persons in the literary field are in accord with the views taken by us."

40. We invite the attention of the respondents to these salutary principles simply because we find that in the facts and circumstances of the present case, these have not been considered leave alone applied.

41. It is necessary to bear in mind that depending upon the extent of the alleged interference with the freedom of speech and expression by such statutory authorities that a decision will have to be taken by the Court whether to view a feature film itself. In a given case particularly of a total ban or prohibition in the sense refusing any certificate that may be necessary so as to obtain a correct and complete picture. However, everything must depend upon the facts and circumstances of each case and no general rule can be laid down. Merely because in such cases one of the parties request that the film should be viewed or a joint request is made that the Court is not bound to accept it. In the present case, what we have found is that the Board directed deletion of only three visuals. The "A" certificate is issued with 13 cuts/deletions. No deletion is directed of any scenes or full dialogue. The first deletion is that of a signboard of "Punjab" in the beginning. The second deletion is that of a close-up shot of injection of a drug and wherever it appears. This is not from any particular scene. The third and the last deletion is that of a shot of urinating by Tommy in front of the crowd. At the outset, we must clarify that throughout the oral arguments, we suggested and after a point insisted on deletion of this third visual. We are happy to note that the petitioners also agreed to such a deletion. Therefore, this part of the deletion or cut as directed by the impugned order need not detain us.

42. Now to consider as to about the legality and validity of the direction to delete only the remaining two visuals would it be necessary to view this feature film and we concluded that this course is not required to be adopted given the facts and circumstances of this case. Once it is undisputed that the film projects and depicts the menace of drugs in the State of Punjab, then, to delete one visual and that too of a signboard of the State of Punjab at the beginning of the film makes no sense. The Act is enacted to make provision for certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs. The Board constituted thereunder has failed to apply its mind to the fact that it is considering certification of a feature film. The word feature film itself is defined in Rule 2 of the Cinematograph Rules to mean fictionalized story film exceeding 2000 metres in length in 35 millimeters or corresponding length in other guages or on video. The word "long film" is defined with length exceeding 2000 meters in 35 millimeter or corresponding length in other guages or compact video disc [See Rule 2(ix) and (xii)]. Now, when an application is made for examination of films in accordance with Rule 21, then, the Board has a power to scrutinize this application. After the Board scrutinizes this application by appointing an Examining Committee to examine the film and it has to take a decision on the issue of certification of the film, it is apparent that it is satisfied with the disclosures made in the application and the genuineness and authenticity of the documents so also the correctness of the declarations by the applicant. Thereupon, consistent with the mandate of Article 19(1)(a) of the Constitution of India, the Board must take a decision. In taking that decision, the Board ought to place the nature, content and theme of the film in the forefront. It cannot forget that a fictionalized work is presented to it for certification and a disclaimer is appended therewith. If the entire setting and the backdrop is the State of Punjab and the narrative as it unfolds portrays the drug menace in that State, then, to segregate one or two visuals of the above referred nature or a few lines in the dialogues merely because they contain abusive words, for excision or cut unmindful of the underlying theme would denote as to how the Board has proceeded in this case. We are in complete agreement with Mr. Kadam when he submits that the Board cannot direct deletion of one visual or a close-up shot of how the drug is injected in the body and wherever it appears in the film because the consumption of drugs, the trafficking therein and the abusive behaviour or vulgar mannerisms on account of prolonged consumption or temporary or permanent withdrawal of this habit is not supported or justified by the maker/director. In fact, that is attacked because all this is uncontrolled and unregulated. The film desires to invite the attention of all concerned, including members of the public that if the menace goes unchecked and is not restricted by the intervention of the State authorities, including the Police, it will destroy the youth of Punjab. It will completely ruin them. If that is how the projection goes and the narrative unfolds, then, merely because there is some close-up shot of injecting the drugs, that can hardly be said to be objectionable. A holistic view has to be taken. One cannot prejudge the work for a filmmaker has a freedom of presenting his story on screen the way he chooses. It necessarily

may not be to the liking of the Board officials or those comprising the Committee, but that by itself should not result in directing deletions and cuts. Deletion of one visual like this or deletion of close-up shot like this but permitting retention of other visuals where procurement, distribution and consumption of drugs is shown vividly and with details indicates as to how the Board has failed to ignore the applicable tests and settled principles. The members of the Board or Committees viewing the films are expected to issue certificates for exhibition of films. Their regulatory power does not enable them to direct uncalled for cutting and deleting portions of the work merely because they do not approve of a open and direct presentation. This is the reason why we thought that viewing the film is unnecessary. The controversy was restricted to the legality and validity of three cuts pertaining to visuals and balance in relation to dialogues/disclaimer. Most of the cuts and deletions are from the dialogues and songs of the film. It is, therefore, that we took on record the script of the film as presented by the applicant to the Board and perused it carefully in order to satisfy ourselves about the need for such cuts and deletions.

43. Once the test is that the work must be seen as a whole and viewed in entirety, then, it will not be permissible to pick and choose isolated scenes or events or characters. It will not be permissible to pick up some lines from some scenes and few dialogues and read them out of context. We have noted that there is no denial of the fact that "Udta Punjab" is a film depicting the menace of drugs. The backdrop and setting chosen is of the State of Punjab. It is open to a creative person to choose a particular setting and backdrop and move his story forward with due regard to the same. It is entirely for him to choose the underlying theme and story line. The creative freedom envisages presentation of certain works as per the choice of the maker or writer. None can dictate to him as to how he should produce or make his film and what should be the contents thereof. One acting as a Board of Film Certification is not obliged to censor films. Though the word "censor" is not to be found in the Cinematograph Act, 1952, the common parlance and dictionary meaning of that word means "an official authorised to examine printed matters, films, news etc. before public release and to suppress any part thereof on the ground of obscenity, vulgarity etc". It is in that sense the word has been understood by the Act. It refers to a official performing a statutory duty of certifying films. The word also means "making deletions and changes", but that is inbuilt in the power of certification of films by the board. That is but a part and parcel of the larger power. However, that is not the essential function. Else, every certificate application can be simply refused or granted conditionally by applying a formula already evolved. Therefore, if by law the board is empowered to make changes or deletions or cuts and these are the words employed in the impugned order, then, that power must be exercised consistent with the constitutional guarantee and the decisions of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, while upholding the Act, has held that it tries to achieve a balance so that creative freedom is not unnecessarily curbed.

44. We have also seen from section 5B of the Act and the guidelines themselves that an attempt is made not to discourage making of films and from exhibiting them. True it is that medium of film provides clean and healthy entertainment and as far as the film should be of good standard, yet, what one finds is that in pursuance of the objectives, the board has to ensure inter alia that the scenes tending to encourage, justify or glamorise drug addiction are not shown. That scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown so that human sensibilities are not affected.

45. In this regard, we must also bear in mind that we have a democratic set up and form of Government. In a democracy, we cannot expect the same head and brain on all shoulders. The very heart of democracy is the freedom to think and act differently. Implicit therein is a freedom to react and respond to same situations differently and distinctly. The very charm of democracy is that there are multiple views, thoughts and expressions. One cannot expect everybody to express themselves in the same manner. We have found that there is fresh blood injected in the film industry. This fresh blood is definitely enthusiastic and wants to set its foot in the industry. Such fresh blood has been welcomed by the film industry and the viewing public. Their works have been accepted, applauded and even rewarded by the State. These works are based on a certain thinking and which is of their own. They hold independent views and thoughts not only on how the film industry must function, but the medium as a whole should be handled. They feel that film is a powerful and strong medium and its potential has remained unutilized or under-utilized. The film makers of today may feel that their predecessors sold dreams and seldom dared to portray reality. They created an audience loyal to them by churning out love stories or such stories which had no connection with the common man's day-to-day existence and life. The stories of Kings and Queens, the stories of those wealthy and rich who never faced the pangs of hunger nor suffered because of unemployment and poverty, therefore, occupied most of the screen time. Thus, pure entertaining and escapist stuff was thrown at the viewing public without any variety and for years together. There were few noteworthy exceptions to this unwritten rule. The audience was cultivated and made to accept this work which in the opinion of today's film makers hardly did credit to the worth of the medium nor brought any laurels to the industry. Of course today's youth admire, appreciate and respect some of the yesterday icons and their work. They are aware that even during the times when the films were unreal, mere fantasies, there were film makers who presented the other side. All such film makers were respected and are noteworthy for they opened up our mind to "Bharat" and not concentrated only on "India". The poor, the lower middle class and the middle class found place and voice in their work. Yet, according to the present-day film makers, earlier work was not complete and does not deserve to be carried forward in the same way. It is such ideology which has influenced today's film making. Therefore, a direct depiction, without fun and frolic, but brazen and bold, of the reality in the society is their focal theme. They do not wish to beat around the bush and hide

problems like alcoholism, crime and terrorism prevalent in today's world. These makers are of the view that a serious, somewhat ghory and detailed depiction of the vices in and threats to the society may open up the eyes of, not only the public, but public officials and the State. It is this desire as well which drives them to present their work in the manner currently presented by some of them. There is a contrary view in the society. Men and women in administration or otherwise, teachers, professors, critics, writers, thinkers and experts in the field of science, medicine, technology, humanities etc. may feel that today's films have a temporary and short-term impact. Burning social, psychological problems and behavioural issues are not handled with enough sensitivity, maturity, compassion and conviction. At times, commerce and trade control the medium of films is the view expressed. This contrary perception of the medium must be welcomed because that is how a audience for films is developed and nurtured. Eventually, all wise men leave the fate of the film to the public. The list of the 34 films that Mr. Kadam hands over to us with their titles would indicate as to how even the Board and the statutory authorities has in the past not suppressed the prevalent manner of making and releasing films. These works depict the world of crime and expose human weaknesses without holding back anything from the viewing public. An audience which looks for pure entertainment on the week-end may not frequent the cinema halls screening such films, but that is hardly any consideration for the Board and its officials. Those looking out for a stuff which would help them escape the daily routine and problems may view different films or may view the same work differently. However, merely because there is a trend and more and more films are being made by the younger generation of film makers which pinpoint the weaknesses of all the wings of the State does not mean that we interfere with their work and intermeddle with their affairs in such a way and manner that they would be totally disheartened and may give up film making. That would not be conducive for the State is obliged to create an atmosphere congenial for the development and promotion of art and culture consistent with the Constitutional mandate as enshrined in our Preamble. The Preamble to the Constitution must guide all, including the Board. The Constitution aims at securing to all its citizens liberty of thought, expression, belief, faith and worship. All its provisions are intended to uphold these fundamental values and when it secures its citizens justice, social, economic and political, equality of status and opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation, then, not only the Board officials but even the film makers ought to realise that true democracy does not mean a licence to dictate and foist one's views and ideas on others. Equally it gives no licence to nudity, vulgarity, indecency and immorality. The film makers also need to realise that a repetitive and one-sided depiction and exposure would generate nausea and aversion. The audience expects a package. If it does not get it in that form and measure, it would walk out. At times it may not only like to know about the defects and infirmities in the working of the Police or State machinery, but would expect some solutions as well. Therefore, it is for the film makers to decide and take a

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

"censor. n. 1. Roman law. (ital.) A Roman officer who acted as a census-taker, assessor, and reviewer of public morals. 2. A person who inspects publications, films and the like for objectionable content. 3. In the armed forces, someone who reads letters and other communications and deletes material considered a security threat. - censorial, adj. - censorship."

46. A more or less complete definition of this very word is to be found in Webster's Third New International Dictionary which is thus :-

"Cen.sor\\sen(t)se(r)\\n -s [censere to access, tax: akin to Skt samsati he recites, praises] 1: one of two magistrates of early Rome who acted as census takers, assessors and inspectors of morals and conduct 2: a supervisor or inspector esp. of conduct and morals: a: an official empowered to examine written or printed matter (as manuscripts of books or plays) in order to forbid publication, circulation or representation if it contains anything objectionable b: one having authority to guide and supervise students in English colleges and universities c: one of a council, since abolished, in some states of the U.S. (as Vermont and Pennsylvania) responsible for ensuring constitutional government and for inquiring into the conduct of state officials d: an officer or official charged with scrutinizing communications to intercept, suppress, or delete material harmful to his country's or organization's interests e: one who lacking official sanction but acting ostensibly in society's interests scrutinizes communications, compositions, and entertainments to discover anything immoral, profane, seditious, heretical, or otherwise offensive. 3 archaic : CRITIC; esp. : a faultfinding or severe critic 4 [G zensur censorship, fr. L censura - more at

CENSURE] : the agency which represses or veils unacceptable notions before they reach the level of consciousness."

47. In what sense the word should be understood in law, what meaning is to be ascribed to this word must therefore be left to the authorities in charge of implementing the statute. Our desire is that they should not transgress the constitutional limits. In other words, certifying films may require censoring them, but the former is the power and the latter is a permissible act which may have to be performed while exercising the same. Every such power is coupled with a duty to uphold and not suppress the Constitutional freedom of speech and expression.

48. We are concerned with some of the guidelines including the one wherein sovereignty and integrity of India should not be allowed to be called in question.

49. We are in agreement with the petitioners that the theme of the film is about menace of drugs in general and especially amongst the youth in Punjab. The petitioners have chosen a State for highlighting this menace as in their view and opinion the State of Punjab is facing that problem and tackling it now for considerable period of time. The authorities as well as police are struggling to control drug menace. Free availability and easy accessibility to drugs has taken the toll particularly by targeting younger generation of the State. Therefore, the petitioners have depicted several characters in their work of fiction. One of them is a music performer and styled as rock star. His fame is unparalleled as shown in the film and when he is charged with it, he is addicted to drugs. The consumption of drugs brings about his downfall and deterioration. How that downfall is gradual and he cannot live without drugs has been depicted in a vivid manner. At the same time, the availability and accessibility to drugs easily is highlighted by not just pointing a finger at the failure not of the authorities whether police or Government, but by overall corrupt mind. Eventually, corruption is a disease and as depicted in the film, in connivance and collusion with such officials who are appointed to control the menace that it really spreads. They have failed to discharge their duty in accordance with law, resulting in the younger generation of the State being a casualty. One police officer realises that he should work in tandem with a NGO and strive to control this menace only after his close relative falls a prey to this abuse. The characters, therefore, are chosen in such a way so that all facets of the menace are brought before the audience. It is a film for adult viewing. True it is that all adults are not mature enough to understand the impact and realise the potential of such a work. But, if the makers choose this way of depicting and highlighting the issue, then, it is not for anybody to interfere with it unless and until the creative freedom is to this extent that it fails to meet the constitutional standards and then it becomes necessary to control it. If the creative freedom as guaranteed by Article 19(1)(a) to the makers and of choosing any theme and selecting characters to indicate as to how any issue concerning the society has assumed serious proportions, then, within the four corners of the Act, the authorities must decide as to whether the work/film is fit to be certified not for universal public viewing but by the adults.

True it is that some cuts can be made. However, one finds that cuts and deletions as directed are (1) one of deletion of a sign board. Pertinently, the name and title of the film is not objected to. If the title of the film contains the word "Punjab" and if that is how the film opens and to show the availability of the packets or drugs easily, then, we do not see any justification for directing the deletion of the sign board.

50. With the assistance of the learned counsel appearing for both sides, not only have we perused the petition and the Annexures thereto, but we have also perused the script, which was handed over by Mr. Sethna. We are guided by the principles laid down by the Hon"ble Supreme Court of India and therefore, we have read the script minutely and carefully. We have read it word by word so as to consider whether, as claimed by the petitioners, the same highlights the drug menace or encourages or supports the consumption of drugs as is urged by the respondents. We do not find anything in the script which would suggest that the sovereignty and integrity of India is called in question by a sign board reflecting the name of one of the States of this country or by reference to that State or its cities. Eventually, not only just a rock star, but how the common public and the youth at large are in the grip of drugs and their menace throughout is being highlighted. A popular rock star is chosen in this depiction so that the appeal and message of the film reaches and catches the youth. The chain of distribution of drugs in some details is projected in order to show how even a girl, who has recently attained adulthood, a one time hockey player and migrated from the State of Bihar gets addicted to drugs. The downfall is projected to such an extent that on account of addiction to drug there is no control over ones senses. Once such characters are depicted and the theme chosen being as referred above, then, their trails, mannerisms are highlighted naturally. Those in State police service and outside it are shown to be also involved in distribution and sale of drugs. Sometimes, those in service having come in close contact with criminals and addicts particularly those belonging to the lower strata of the society or some villagers speak a language and use a tone as shown in this film which may best reveal their corrupt mind. The makers have pointed out that they do not support the use of such language. One must not forget that this is a fictional work. The story has no connection with any real life incident or personality is clarified. It is purely a fictional character of a rock star and equally those involved in procuring and distributing drugs. To generate a feeling of hatred and develop a strong dislike for villains and hooligans, their supporters filmmakers put abusive and vulgar words in their mouth. The idea is that a viewer can distinguish and differentiate between a protagonist or hero and others or identify the good and civil. Such disdainful characters are created to impress upon the audience the ultimate message. In this backdrop, the underlying theme being to project the menace of drugs that the story is woven in such a way that till the drug menace hits a near or dear one, even a police official does not realise the seriousness of the same. Then, there is another character of a doctor, who is also a social worker who together with the tainted police official tries to prevent the

drug menace spreading further. Together they try to reach to the root of the problem and find out the sources from where drugs are procured. Some characters are thus part of the State machinery and police. Once again, fictional characters are created to show unrestricted and unchecked movement of drugs and in that context, some of them are speaking in a tone and language not associated with a cultured and refined person. Those bound in law to stop the free entry of prohibited drugs and substances are shown as colluding with drug peddlers, traffickers and addicts. Thus, they are all depicted as mean and fallen guys and responsible for the menace of drugs in the State. To bring home this aspect effectively all fictional characters are swearing and abusing each other. As observed above, it is not to glorify them but to generate hatred amongst viewers that this atmosphere is created. It is not to corrupt the viewers mind but to demonstrate as to how neglect and apathy of State machinery is also a factor and reason enough for the menace that such scenes are inserted. However, we do not think that stray sentences and which have been picked up from the scene and particularly the dialogues delivered by the characters create a negative impact by tending to encourage justify or glamorise drug addiction. The board has failed to note the total impact which should be seen and judged bearing in mind the underlying theme or story of the film. It is in these circumstances that we find that cut no. 3 from song no. 1 of the two words cannot be justified on the touchstone of guideline no. 2(vii). The same would be the conclusion with regard to cut no. 4. The human sensibilities are not offended by vulgarity, obscenity or depravity. Such scenes and dialogues have to be viewed in totality. The story must be read and considered in its entirety. It is not safe to select a few words, sentences, dialogues and scenes and then to arrive at the conclusion reached by the board. If the strata of the society and habituated to indulge freely in vulgar abuses are shown as indulging in the same without in the slightest manner glorifying them or their language, then, we do not see anything objectionable in the words.

51. As far as cut no. 5 is concerned, we find that some abusive words and expletives are allowed to be retained, but what has been directed is, other abusive words and specifically referred and incorporated in the description, should be deleted from everywhere, including the background, wherever it occurs. Such a blanket deletion without reference to the theme and the subject of the film is bound to interfere with the creative freedom of the petitioners. It is clear that the petitioners have, through these dialogues and spoken by certain characters conveyed that the bulk of the drug menace emanates from those who are in regular contact with supplying the contraband/drugs. One finds that ordinarily this is the language of such characters. Such dialogues by themselves and read out of context, cannot be directed to be deleted. It is pertinent to note that the dialogues are not directed to be deleted. Such of the dialogues, which contain these abusive words are permitted to be retained, but the abuses are directed to be deleted. One does not, therefore, find any nexus with the deletion of these words but by allowing the retention of the dialogues. Sometimes, the

spoken words together with the scene and seen in their entirety can effectively bring home the underlying message. We have not found any material to support the deletion or cut no.5 in the backdrop of guideline no. 2(ix). The guideline ensures that scenes degrading or denigrating women in any manner are not presented. The guideline speaks of scenes and that is applied to direct deletion of certain abusive words from dialogues. One fails to understand as to how for justifying such deletions the board can at random pick any guideline from the set of guidelines and without appreciating or unmindful of the objective of the same. None can say with certainty and confidence that the scene will be effective and its impact stronger had these words not been freely used in the dialogues. The language, including some coined and code words so also abuses, of drug affected, addicted and the crime world is not that of the entire viewing public. We must credit the viewers with minimal intelligence and adults can differentiate and distinguish the fictional characters from those in real life. A close resemblance with the real ones to such negative characters on the screen is not a common or everyday affair for ordinary normal human being. None can claim expertise merely because he or she had an occasion to mingle with or treat drug addicts and patients of drug abuse or overdose. To proclaim that none of them ever reacts violently, abusively or uses cuss words under the influence of intoxicants and drugs, is always silent even during withdrawal symptoms and therefore, such words be deleted reflects ignorance of creative and artistic work involving fictional characters. In real life, some such persons may not react as above but no generalisation is possible given the complexity of the problem.

52. In the above context, Mr. Kadam has rightly relied upon a judgment of the Hon"ble Supreme Court of India in the case of Bobby Art International and Ors. v. Om Pal Singh Hoon and Ors., (1996)4 SCC 1. The Hon"ble Supreme Court of India, in that decision, has held that the film must be judged in its entirety from the point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. The Supreme Court further held that the guidelines are broad standards. They cannot be read as one would read a statute. Within the breadth of their parameters the certification authorities have discretion. The specific sub-clauses of clause 2 of the guidelines cannot overweigh the sweep of clauses (1) and (3) and, indeed, of sub-clause (ix) of clause (2). Where the theme is of social relevance, it must be allowed to prevail. Such a theme does not offend human sensibilities nor extol the degradation or denigration of women.

53. What we have to note is the other argument of Mr. Kadam. That is based on the additional documents. In that, reliance is placed on a list of films containing cuss words. This list comprises of 34 films certified by the board. They may be for universal or adult exhibition or universal exhibition with certain omissions.

54. However, we find merit in the arguments of Mr. Sethna that every work should be viewed independently. We are also in agreement with Mr. Sethna that

merely because in the dialogues of some movies such words have been allowed to be retained and there are no cuts or deletion ordered, that course must necessarily follow and be applied to other work or film. There cannot be a general rule laid down and everything must depend upon a individual work and facts and circumstances of each case. It is, therefore, not proper to hold that merely because in some films such words or abuses or expletives have not been deleted and permitted to be retained, that course must be followed. Every film will have to be seen independently and viewed as such. Its story, its theme, backdrop and the setting in which it is made, the message it seeks to convey and the entertainment value etc. would all have to be judged by applying the parameters of section 5B and the guidelines. Therefore, we are not in agreement with Mr. Kadam that because in 34 films such words have been allowed to be retained, we must follow that course for the present film as well.

55. It is true as suggested by Mr. Sethna that film makers should avoid free use of such words and expletives throughout the film and the dialogues. However, we cannot, in the context of a story or a serious theme such as the one before us, permit wholesale cuts and deletions of these words. By passage of time, film makers will realise that their works will not be seen or will not be appreciated only because of such contents. It is better that they realise this by experiment and experience. One should not compel them to use a particular word or choose a better word. Considering the vocabulary that they have chosen, it is better that it is left to be judged by the audience. Eventually, the audience taste would be known to them and in a better manner. They would decide for themselves that their theme, story and contents to be effective need not contain such expletives and abuses. There is no need to insert or incorporate them in every dialogue and place them in the mouth of every character. Then, they will realise that even in lower strata or sections of the society, it is not as if the common, normal or refined language is not spoken at all. The Indian village and its typical setting will be understood by them and they would learn from their experience. The board would have been well advised to insist on such clarification by the makers themselves. The literary and lyrical content in the dialogue and songs was the hallmark of some great Indian films. Rural India is the backdrop in which this was achieved and may have to be emulated and followed by today's filmmakers.

56. During the course of arguments, Mr. Kadam has tendered before us a disclaimer. He would submit that this can be inserted in the disclaimer as is originally inserted. This addition would show that the characters in the film do not support or propagate the use of drugs or narcotics or their promotion in any manner. The film does not intend to offend, outrage or insult any city, State, religion, person, class or community. All the characters and incidents in this film are imaginary, resemblance to any person dead or alive is purely coincidental.

57. Though these words are not specifically inserted, what we find that by these additions in the disclaimer and considering the work as a whole, these cuts and which are directed to be made need not be upheld.

58. Similar would be the case with regard to the deletions in cut no. 6. The cut/deletion as described, does not in any manner suggest that guideline no. 2(xiv) and section 5B or mandate thereof is violated. These are general expressions and words. They do not refer to any particular political party or outfit. They only describe in general terms a political worker or the representative of the public, whether at the State or parliamentary level. They make only a general reference to the term election. We do not find that the film viewed as a whole and the work considered in its entirety, it is targeted at a particular State or the reference is to the people of that State. It is common ground that in several States elections are around the corner. In 2017, elections may be scheduled in several States. The State of Punjab may be one of them. However, the film is not made keeping in mind such elections nor does it propagate or contains a propaganda as far as certain political views or is aimed at any particular political outfit. Once there is a general comment on the workings of the machinery, then, we do not see any justification for the deletion and the cut.

59. Similarly, cut nos. 7 and 8 are directed bearing in mind two guidelines, namely, 2(vi) and 2(vii). We do not think that guideline no. 2(vi) has any application. Some closeup shots of the drugs being injected does not mean that the scenes by themselves or the theme as a whole tends to encourage, justify or glamorise drug addiction. If the film is considered in the above manner, merely one shot of the drugs being injected will not violate the guidelines or the mandate of section 5B. The board could have ensured otherwise than by directing the deletion of the shot the compliance with guideline no. 2(vi). That has been sufficiently taken care of by the original disclaimer and the addition thereto submitted by Mr. Kadam.

60. Similarly, with regard to cut no. 7, we do not find that in the song no. 3, there are visuals as claimed. It is a single passing shot and which cannot in any manner be termed as promoting vulgarity, obscenity or depraving human sensibility, to such an extent as would justify its deletion. Once the impact of the song has to be considered in its entirety and not just by the one visual, then, we do not see any justification for deletion of a visual from song no. 3. The same is understood by the board as depicting a Sardar or a Sikh. That by itself does not mean that the work or the film in any manner depicts the entire Sikh community in bad light or ridicules it as vulgar, obscene. This is not a deletion which could have been directed given the contents and backdrop of the film. Eventually, the board must understand that it is a fictional work.

61. We do not find any reason to uphold cut nos. 10 and 11 either. One line from the dialogue, which we have perused carefully could not have been singled out and read in isolation for directing such deletion. The script has been perused by us. This line is part of dialogues involving three characters. So is the position with regard to the other cuts as well. This line in cut no. 10 does not suggest as argued before us by Mr. Sethna that all lands in the State of Punjab are termed as uncultivable or barren. In fact, the dialogue is referring to the prestige of

the State. The character says that it cannot be allowed to be tarnished or spoiled. It is one of those characters whose name is involved in the drug scandal and he utters these derogatory words. The sentences prior to this line and the whole scene depicts as to how the youth of Punjab are affected by the drug menace and if alternate house is engulfed by the same, then, the fate of the children of such a household is suggestively commented upon. The line cannot be read as an adverse remark on the State's agricultural land. The part played by this State in the green revolution and its other achievements hardly stand undermined by such a stray comment. Punjab is even today known for hardworking farmers. The State of Punjab is also known for its culture. Its religious backdrop and devoted population so also contribution in the field of sports etc. is not going to be diminished much less the State as a whole insulted by such a stray line or sentence in a dialogue. Punjab is also known for its freedom fighters and warriors. Their sacrifice is remembered even now.

62. Just as the board even we would have been happy if the language in some dialogues or parts thereof had been a little refined, Better words could have been coined by the makers. However, given the ordinary and dictionary meaning of the words "cuss", "expletive" "abuse" and "swear", we do not think that a single sentence or a line as picked up can fit into this description. The feeling that the dialogues generate would be one of aversion and disgust. Once the film is a representation of a menace of drugs, one will have to apply a test, as has been applied by the Hon'ble Supreme Court in the case of *Devidas Ramchandra Tulzapurkar v. State of Maharashtra*, AIR 2015 SC 2612. That is of contemporary community standards test (see paras 26, 59 and 60).

63. In today's world, new generation of film makers born in the 80s has entered the scene. We cannot expect that they will present current and live issues and problems in the same manner as the older or earlier generation. They want to chart a course of their own, uninfluenced by earlier works. A certain degree of freshness, a change of attitude and a different way of looking at the same medium by itself and without anything more should not result in bringing about disruptions or creating hurdles and obstacles in their way. To stop them abruptly and by extreme responses will not only discourage them but may kill creativity. If they are allowed to go ahead in their own way but with timely cautioning and warning, they may respond positively and take the same in proper spirit. However, to interfere with their work again and again, mindlessly will only invite extreme reactions. That would not be conducive to the growth of the medium. Eventually, it must march with the times and compete with the best of the works made locally and globally. That apart, the appeal of the social media, the advent of television which operates on a multi channel basis 24X7 resulting in large scale production and distribution of teleserials, teledramas, telefilms presents an enormous challenge and is virtually threatening the existence or efficacy of a celluloid film. A full length feature film needs to hold the audience to the seat for certain hours. Its story line, theme, script and the overall content should have that capacity and potency. Else, the audience interest will wane and vanish.

Hence, filmmakers, producers, directors of today have changed their strategies.

64. Therefore, we have no doubt in our mind that they will adapt and change themselves by maintaining a balance. For a healthy growth of the medium and to subserve the larger public interest, even they have a duty to perform. As the Hon'ble Supreme Court has held, every right has a corresponding duty. Article 51A of the Constitution of India which sets out the fundamental duties of citizens will guide them and equally the board.

65. What we have found is that the filmmakers of today are direct, forthright, attacking, aggressive and even brutal in their presentation. It is not only in the technical departments but in the story telling as well they have set their own standards. There is a marked deviation from the earlier genre and an attempt to create a unique style on par with film making and presentation internationally. Just because they are not soft, subtle in their approach, one cannot be unduly strict and harsh. Holding up the certificates or suggesting cuts and excisions in virtually every alternate scene would be counter productive. We feel this much is enough for those manning the board and equally the filmmakers.

66. What we have found from cut no. 9, on which some debate was raised that the board was justified in directing the deletion of a shot of a character urinating in front of a group. Mr. Kadam, after taking instructions from the petitioners, makes a statement before us, which we record as an undertaking given to this court that the petitioners would themselves delete the shot of urination in front of the crowd. The order and decision of the board to this extent, therefore, is not challenged by the petitioners.

67. What is left for us now is to consider the disclaimer and the cut no. 12.

68. We are really surprised that the parties should have invited us to decide the issue of disclaimer. Eventually, it is a disclaimer. It means rejection, renunciation and repudiation of that with which the work or film is associated. As long as that is conveyed and is evident, the content of this disclaimer need not detain us. That is communicated with sufficient clarity. With some give and take and additions or insertions or deletions, the disclaimers could have been taken to their logical end. Once it is crystal clear that the petitioners do not support the consumption of drugs, they do not in any manner desire to encourage the free flow or movement of drugs, then, the disclaimer originally proposed and at page 111 of the paper book could have been approved with some minor deletions.

69. After hearing both sides on this point and considering the deletions suggested by the board so also the insertions now proposed by the petitioners, we are of the view that in the original disclaimer, the reference to a particular country should be deleted. We direct the deletion thereof accordingly. Barring this deletion, the original disclaimer with the insertions now additionally proposed, the film can be permitted to be released. The decision of the board on cut no. 12 is thus modified accordingly.

70. Before parting, we would invite the attention of all concerned to what has been held by the Hon^{ble} Supreme Court of India in two decisions reported in the same volume in the case of Raj Kapoor and Ors. v. State (Delhi Administration) and Ors., AIR 1980 SC 258. and Raj Kapoor v. Laxman, AIR 1980 SC 605. The Hon^{ble} Supreme Court of India has held as under:-

(AIR 1980 SC 258)

"14. I am satisfied that the Film Censor Board, acting under Section 5-A, is specially entrusted to screen off the silver screen pictures which offensively invade or deprave public morals through over-sex. There is no doubt - and counsel on both sides agree - that a certificate by a high-powered Board of Censors with specialised composition and statutory mandate is not a piece of utter in-consequence. It is relevant material, important in its impact, though not infallible in its verdict. ?..

15. I am not persuaded that once a certificate under the Cinematograph Act is issued the Penal Code, pro tanto will hang limp. The court will examine the film and judge whether its public display, in the given time and clime, so breaches public morals or depraves basic decency as to offend the penal provisions. Statutory expressions are not petrified by time but must be up dated by changing ethos even as popular ethics are not absolutes but abide and evolve as community consciousness enlivens and escalates. Surely, the satwa of society must rise progressively if mankind is to move towards its timeless destiny and this can be guaranteed only if the ultimate value-vision is rooted in the unchanging basics, Truth-Goodness-Beauty, Satyam, Shivam, Sundaram. The relation between Reality and Relativity must haunt the Court's evaluation of obscenity, expressed in society's pervasive humanity, not law's penal prescriptions. Social scientists and spiritual scientists will broadly agree that man lives not alone by mystic squints ascetic chants and austere abnegation but by luscious love of Beauty, sensuous joy of companionship and moderate non-denial of normal demands of the flesh. Extremes and excesses boomerang although some crazy artists and film directors do practise Oscar Wilde's observation: "Moderation is a fatal thing. Nothing succeeds like excess"."

(AIR 1980 SC 605)

" Sublime titles of cinematograph films may enchant or entice and only after entry into the theatre the intrinsic worth of the picture because-the-picture dawns on the viewer. The experience may transform because the picture is great or the audience may lose lucre and culture in the bargain. Mere titles may not, therefore, attest the noxious or noble content of the film. Sometimes the same film may produce contrary impacts and what one regards as lecherous another man may consider elevating. ?..

7. Indeed, the Penal Code is general, the Cinematograph Act is special. The scheme of the latter is deliberately drawn up to meet the explosively expanding cinema menace if it were not strictly policed. No doubt, the cinema is a great

instrument for public good is geared to social ends and can be a public curse if directed to anti-social objectives. The freedom of expression, the right to be equally treated and the guarantee of fair hearing before heavy investments in films are destroyed belong to Indian citizens under the Constitution. But all freedom is a promise, not a menace and, therefore, is subject to socially necessary restraints permitted by the Constitution. Having regard to the instant appeal of the motion picture, its versatility, realism, and its co-ordination of the visual and aural senses, what with the art of the cameraman with trick photography, vistavision and three dimensional representation, the celluloid art has greater capabilities of stirring up emotions and making powerful mental impact so much so the treatment of this form of art on a different footing with precensorship may well be regarded as a valid classification, as was held in K.A. Abbas ((1971) 2 SCR 446). Maybe, art cannot be imprisoned by the bureaucrat and aesthetics can be robbed of the glory and grace and free expression of the human spirit if governmental palate is to prescribe the permit for exhibition of artistic production in any department, more so in cinema pictures. So it is that a special legislation viz. the Act of 1952 sets up a Board of Censors of high calibre and expertise, provides hearings, appeals and ultimate judicial review, precensorship and conditional exhibitions and wealth of other policing strategies. In short, a special machinery and processual justice and a host of wholesome restrictions to protect State and society are woven into the fabric of the Act.

9. The position that emerges is this. Jurisprudentially viewed, an act may be an offence, definitionally speaking; but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province, Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by law or is bona fide believed by mistake of fact to be so justified. If, as here, the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition, the producer and connected agencies do enter the statutory harbour and are protected because S. 79 exonerates them at least in view of their bona fide belief that the certificate is justificatory. Thus the trial court when it hears the case may be appropriately apprised of the certificate under the Act and, in the light of our observations, it fills the bill under S. 79 it is right for the court to discharge the accused as the charge is groundless. In the present case, the prosecution is unsustainable because S. 79 is exculpatory when read with S. 5A of the Act and the certificate issued thereunder. We quash the prosecution.

10. Two things deserve mention before we close. Prosecutions like this may well be symptomatic of public dissatisfaction with the Board of Censors not screening vicious films. The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated, the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within. Corruption at that level must be stamped out. And the Board, alive to its public

duty, shall not play to the gallery; nor shall it restrain aesthetic expression and progressive art through obsolete norms and grandma inhibitions when the word is wheeling forward to glimpse the beauty of creation in its myriad manifestations and liberal horizons. A happy balance is to

"..... 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 on corruption; on the other hand, they should assess the strength of the literary, sociological and 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." [Calder and Boyars Ltd., 1969-1 QB 15 at p. 172]

11. Going to the basics, freedom of expression is fundamental. The censor is not the moral tailor setting his own fashions but a statutory gendarme policing films under Art. 19(2) from the angle of public order, decency or morality. These concepts are themselves dynamic and cannot be whittled down to stifle expression nor licentiously enlarged to promote a riot of sensual display."

71. We feel that even after decades, this would serve as reminder to the board and those implementing the provisions of the Cinematograph Act, 1952.

72. A final word as to how a very small issue and event of regular happening has consumed nearly two days of our precious judicial time. We think that this could have been avoided by both sides. They ought to have realised that this court's time is too precious for such a litigation, when other deserving litigants are awaiting justice. Some of them having been deprived of their life and liberty. This is hardly a cause which should be brought before the highest court of the State. We hope this is the last occasion on which we have to deal with such a case.

73. As a result of the above discussion, the writ petition succeeds in part. Barring the cut at Sr. No. 9 and the modification in the disclaimer, the decision of the board as appearing at pages 65B and 65C is quashed and set aside. The film be certified accordingly as restricted in its exhibition to the adult audience. Respondent no. 1 shall issue the "A" certificate within a period of 48 hours from today.

74. At this stage, Mr. Sethna appearing for the respondents prays for stay of this order. The request is vehemently opposed by Mr. Kadam. Mr. Kadam submits that enormous investment and efforts have gone in not only making of the film and promoting it, but arranging for its exhibition. Now that all arrangements are in place, considerable prejudice would be caused in the event this order is stayed.

75. Having heard both sides on this point, we are of the view that there is substance in the contention of Mr. Kadam. We are not inclined to stay the effect of this order, as prayed by Mr. Sethna. The request is refused.

76. The original script and the file be returned to Mr. Sethna.

77. The petitioners' advocate are at liberty to communicate this order by private notice to the respondents.

78. All concerned to act upon an authenticated copy of this order.