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CRITICAL ANALYSIS OF KA ABBAS VS UNION OF INDIA AIR 1970 SC

AUTHORED BY – PRAGYA MISHRA¹

ABSTRACT

Right to express one's own view through words, arts, literature, films, etc. has been safeguarded under article 19 (1)(a)² of the constitution.

In the KA ABBAS VS UNION OF INDIA³ the director made a documentary film “A Tale of Four cities” in which some scenes of red-light area of Bombay were shown.

The court imposed prior censorship on the ground of reasonable restriction under article 19(2)⁴ and section 5A and section 5B of the act⁵

The author wants to point out that why censorship not imposed on OTT platform where one can easily access anything, and most of the content on OTT platform were abusive language, violence as well as scenes which a prudent man cannot feel comfortable while watching with family.

KEYWORDS: Freedom, Speech and Expression , Censorship, OTT , Reasonable Restriction

INTRODUCTION

Freedom of Speech and Expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode.

Freedom of speech and expression is indispensable in a democracy. In Romesh Thapper

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² constitution of India ,1950, art. 19 1 (a)

³ AIR 1970 SC

⁴ constitution of India ,1950

⁵ cinematograph act , 1952

v state of Madras ⁶, Patanjali Sastri, J rightly observed

‘Freedom of speech and of the Press lay at the foundation of all democratic organisation, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible’

1. Article 19(1)(a) talks about that all citizens shall have the right to freedom of speech and expression. However, this right is not absolute, it is subjected to reasonable restriction on following ground. These are -

- **Security of state**
- **Friendly relations with Foreign states**
- **Public order**
- **Decency and morality**
- **Content of court**
- **Defamation**
- **Incitement to offence**
- **Integrity and Sovereignty of India**

FACTS OF CASE:

K.A. Abbas made a documentary film called “*A Tale of Four cities*” which attempted to portray the contrast between the life of rich and poor in four principal cities of the country. The film included certain shots of red light district in Bombay.

The Censor Board of Film certificate refused to grant ‘u’ certificate as it found some scenes offensive.

ISSUES:

- Whether Pre – Censorship offend Freedom of speech and expression .
- Even the legitimate restraint must be exercised within definite principles and there should be no scope of arbitrariness.

HELD:

1. Censorship of Films including Prior – restraint held justifiable.

⁶ AIR 1950 SC 124

2. It almost universally recognised that motion pictures must be considered different from other forms of art and expression.
3. The motion picture is able to stir up emotions more deeply than any other product of art. It directly impact the children and adolescents .

So , Basically Film was considered different from other forms of art and expression as it is able to 'stir up Emotions more deeply than any other product of art'

LAWS RELATED TO CENSORSHIP:

There is Cinematograph act 1952 made for examining and grantifying certificate for Public Exhibition.

Section 3⁷ – BOARD OF FILM CENSORS

There is a Board of Film certification which shall consist of chairman and not less than 12 and not more than 25 other members for the purpose of Sanctioning films for Public Exhibition.

Section .5A⁸ - Certification of films

The Board if found that film is suitable for unrestricted public exhibition (U)or suitable for public exhibition restricted to adult may grant (U) or (A) certificate respectively.

Section 5B⁹ – Principles for guidance in certifying Films

(1) A film shall not be certified for public exhibition if competent authority find that the film or any part of it is against interest of Sovereignty and Integrity of India, Security of state, Friendly relation with foreign states, Public order, Decency or morality or involves Defamation or Contempt of court or is likely to incite commission of any offence.

(2) A central Government may issue directions for guiding competent authority in granting certificates.

Landmark Judgements Related to Censorship -

⁷ CINEMATROGRAH ACT 1952

⁸ cinematograph act , 1952

⁹ cinematograph act , 1952

- *In a case¹⁰, The censor board harass the film maker in order to get “ U”certificate which is gross violation of article 19(1)(a)*
- **BANDIT QUEEN CASE¹¹** -*In This film The phoolan Devi life story was portrayed. Also, rape scenes were questioned along with image of Gujjar community harmed with some particular scenes in movie.*

Held- *The supreme court granted ‘A’ Certificate to Film and held that film cannot be strictly restricted only on ground of obscenity, nudity as it also tries to portray reality of life story of Phoolan Devi.*

WHY CENSORSHIP NOT IMPOSED UPON OTT PLATFORMS

OTT (over the top) which streams the audio and visual content via internet. During covid – times, OTT Platforms emerge largely. The craze for Netflix, Amazon –prime series increased massively among youths.

However, one thing to be noted is that there is no regulatory body to govern OTT platform. And one can easily access any series by just popping- up.

Most of content over OTT Platforms contains abusive language, violence etc.

Thus, Film can easily get censored or we can say prior censorship but OTT platforms are available easily without any regulatory bodies.

Conclusion

There is a need of censorship over OTT Platforms so that vulnerable sections will be safeguarded, moral and social standards will be maintainable.

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Acts

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¹⁰ Anand Patwardhan vs Central Board of Film Certification, 2003

¹¹ Bobby art international vs om pal singh hoon, AIR 1996

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