

\*

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 01.12.2008  
Date of decision: 23.01.2009

+ WP (C) No.18761 of 2005 & WP (C) No.23716 of 2005

MAHESH BHATT

...PETITIONER

*Through:* Mr. Sandeep Sethi, Sr. Advocate  
with Mr. C.M. Lall, Advocate.

*Versus*

UNION OF INDIA & ANR.

...RESPONDENTS

*Through:* Mr. P.P. Malhotra, ASG with  
Mr. Mukul Gupta, Mr. Shankar  
Chhabra & Mr. Chetan Chawla,  
Advocates for the UOI.

+ WP (C) No.7410 of 2006 & WP (C) No.7411 of 2006

KASTURI & SONS LTD.

...PETITIONER

*Through:* Mr. Arvind Datar, Sr. Advocate  
with Mr. Nikhil Nayyar &  
Mr. Ambuj Agrawal, Advocates.

*Versus*

UNION OF INDIA & ANR.

...RESPONDENTS

*Through:* Mr. P.P. Malhotra, ASG with  
Mr. Mukul Gupta, Mr. Shankar  
Chhabra & Mr. Chetan Chawla,  
Advocates for the UOI.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers  
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be  
reported in the Digest? Yes

SANJAY KISHAN KAUL, J.

1. "To cease smoking is the easiest thing I ever did, I ought to know because I have done it a thousand times", said Mark Twain. Smoking is a habit which has permeated ages its

harmful effects well-known. It is a habit most difficult to give up but the consequences are so damaging not only to the person indulging in it but to other people in and around him that it has formed a part of a larger debate worldwide leading to passing of necessary legislations to discourage it. The strength to give it up, however, often comes from within rather than without in the form of any legislations.

2. The subject itself has bred controversies in different forms. The impact of smoking by way of representation in films and media has formed the basis of two erudite judgements of my brother Judges who have, however, agreed to disagree on a crucial aspect of it without there being any disagreement on the harmful effects of it. It is this disagreement which has resulted in the present reference.
3. It must be taken note of at the inception itself that the two judgements to the extent they agree really do not call for any further comments. There is no dispute about the authority of the Parliament insofar as its legislative competence is concerned to enact The Cigarettes & Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply & Distribution) Act, 2003 (hereinafter referred to as the said Act). It is, however, the Rules framed thereunder in exercise of the powers conferred under the said Act which have given rise to this reference. The Rules have also had a chequered history from a more stringent stipulation to a more moderate one ostensibly on the basis of views expressed against the Rules made as impinging on the freedom of the media and

the press. The historical perspective which gave rise to the said Act can be deciphered from the preamble itself which is reproduced hereinunder:

"An Act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.

WHEREAS, the Resolution passed by the 39th World Health Assembly (WHO), in its Fourteenth Plenary meeting held on the 15th May, 1986 urged the member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco;

AND WHEREAS, the 43rd World Health Assembly in its Fourteenth Plenary meeting held on the 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

AND WHEREAS, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

AND WHEREAS, it is expedient to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by article 47 of the Constitution;

AND WHEREAS, it is expedient to prohibit the advertisement of, and to provide for regulation of trade and commerce, production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto..."

4. A reading of the aforesaid Preamble shows that the said Act is not only a child of the world opinion to discourage smoking but is also in furtherance of the constitutional mandate contained in Article 47 of the Constitution of India for improvement of public health. There is a huge amount of statistics available on the damaging effects of this habit affecting the society at large and class suits have been filed in the USA and other countries successfully. The Union of India, thus, in terms of Section 2 of the said Act found it expedient in public interest to take under its control the tobacco industry and deal with various aspects under the provisions of the said Act.
5. In an age where modes of communication and reach to public have gone through a revolution, the impact of sales promotion on encouraging the habit of smoking through advertisements could not have been ignored. The Parliament in its wisdom, thus, specifically included Section 5 for achieving the objective of prohibition of advertisements of cigarette and other tobacco products. The provision reads as under:

**“Section 5. Prohibition of advertisement of cigarettes and other tobacco products.-**

(1) No person engaged in, or purported to be engaged in, the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall-

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to-

(A) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(B) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of-

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person."

6. As to what is meant by "advertisement" is given in the definition Clause 3(a) of the said Act as under:

**"Section 3(a).** "advertisement" includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;"

7. It may also be useful to refer the provisions of Section 8 of the said Act which prescribes for the provision of a warning on the packets of cigarettes or any other tobacco products to be given and the mode and manner of such representation is prescribed in Section 9 of the said Act. Section 22 of the said Act prescribes the punishment for breach of Section 5 as under:

**"Section 22. Punishment for advertisement of cigarettes and tobacco products.-** Whoever contravenes the provision of Section 5 shall, on conviction, be punishable-

(a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and

(b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees."

8. The Cigarettes & Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply & Distribution) Rules, 2004 (hereinafter referred to as the said Rules) came to be enacted in pursuance to the powers conferred under Section 31 of the said Act. It is trite to say that persons smoking being shown in films is part of cinematographic history. The Rules proceeded to deal with the aspect of such representation

and films made in the past and in the future with various stipulations. It is making of such Rules which has formed a part of challenge in the writ petition filed by Mr. Mahesh Bhatt, a well-known Film Director, as being beyond the competency of the powers conferred under the said Act as also the constitutional mandate of Article 19 (1) (a) of the Constitution of India. The representations from the film industry and the media dealing with stringent provisions gave rise to subsequent amendments diluting the stringency of the provisions but even the provisions as they stand as per the last amendment vide notification dated 20.10.2006 are subject matter of challenge.

9. Rule 4 of the said Rules provides for prohibition of advertisement of cigarette and other tobacco products. The various sub-clauses thereafter deal with different aspects. We are concerned with validity of Rule 4 as last modified, which reads as under:-

**"4. Prohibition of advertisement of cigarettes and other tobacco products.-**

(1) The size of the board used for the advertisement of cigarettes and any other tobacco products displayed at the entrance of a warehouse or a shop where cigarettes or any other tobacco products is offered for sale shall not exceed sixty centimeters by forty-five centimeters.

(2) Each such board shall contain in an Indian language as applicable, one of the following warnings occupying the top edge of the board in a prominent manner measuring twenty centimeters by fifteen centimeters, namely:-

- i. Tobacco causes cancer, or
- ii. Tobacco kills.

(3) The health warning referred to in sub-rule (2) must be prominent, legible and in black colour with a white background.

(4) The display board shall only list the type of tobacco products available and no brand pack shot, brand name of the tobacco product or other promotional message and picture shall be displayed on the board. The display board shall not be backlit or illuminated in any manner.

(5) The owner or manager or in-charge of the affairs of a place where cigarettes and other tobacco products are sold shall not display tobacco products in such a way that they are visible so as to prevent easy access of tobacco products to persons below the age of eighteen years.

(6) No individual or a person or a character in films and television programmes shall display tobacco products or their use:

Provided that this sub-rule shall not apply to-

(a) old Indian films and old television programmes, produced prior to coming into effect of this notification, being screened in a cinema hall or theatre or aired on television;

(b) old foreign films and old television programmes, including dubbed and sub-titled "foreign films" and television programmes, being screened in cinema halls or theatres or aired on television;

(c) Indian or foreign documentaries and health spots displaying use of tobacco products made to clearly and unambiguously reflect the dangers and dire consequences of tobacco use being screened in cinema hall or theatre or aired on television;

(d) live coverage of news, current affairs, interviews, public meetings, sports events, cultural events and the like, being telecast on television whereby there is a purely incidental and completely unintentional coverage of use of tobacco products:

Provided further that the exemptions under clauses (a), (b), (c) and (d) above shall not extend to display of brands of tobacco products or tobacco product placement in any form:

Provided also that close ups of cigarette packages or tobacco products shall not be permissible and such scenes shall be edited by the producer or

distributor or broadcaster prior to screening in cinemas or theatres or airing on television.

Explanation (1).- For the purpose of this sub-rule, all films that receive Central Board of Film certification prior to the effective date of this notification shall be categorized as "old films".

Explanation (2).- For the purpose of this sub-rule, "foreign film" implies "imported" as defined in the Cinematography (Certification) Rules, 1983.

(6A) In case of old Indian and foreign films, the owner or manager of the cinema hall or theatre where the film is being screened shall ensure that anti tobacco health spots of minimum thirty seconds duration each are screened at the beginning, middle and end of the said film. The provisions of this sub-rule shall not apply to clause (c) of sub-rule 6.

(6B)(a) In case of old television programmes, it shall be mandatory for the broadcaster to ensure either placement of an anti tobacco health warning as a prominent scroll at the bottom of the television screen during the period of such display or airing of anti tobacco health spots for a period of minimum thirty seconds during the telecast of each television programme of thirty minute duration or less.

(b) In case the television programme is more than thirty minutes further airtime of thirty seconds shall be allocated for each incremental thirty minutes, for telecasting anti tobacco spots.

(c) the minimum duration of each anti tobacco spot shall be not less than fifteen seconds.

(d) The provisions of this sub-rule shall not apply to clauses (c) and (d) of sub-rule 6:

Provided that, the anti tobacco health warning scroll shall be legible and readable with font in black colour on white background with the warnings "Smoking causes cancer" or "Smoking kills" for smoking form of tobacco use and "Tobacco causes cancer" or "Tobacco kills" for chewing and other form of tobacco or such other warnings as may be specified by the Central Government, from time to time.

Provided further that, the anti tobacco health warning scrolls or health spots shall be in the same language(s) as used in the film or television programme. In case of dubbed or sub-titled films or

television programmes, the scrolls or spots shall be carried in the language of dubbing or sub-titling.

(7) Sub-rule (6) shall not apply to new Indian or foreign films and television programmes displaying use of tobacco products necessary to represent the smoking of tobacco usage of a real historical figure or for representation of a historical era or classified well known character:

Provided that in very rare cases where there is display or use of tobacco products due to compulsions of the script, they shall be supported by a strong editorial justification:

Provided further that the display of usage of tobacco products in such movies and television programmes under this sub-rule shall be subject to the following safeguards:

(a) Film and television programs depicting tobacco related scenes shall mandatorily be given 'A' Certification. Such films and television programmes may be permitted to be telecast at such timings as are likely to have least viewership from persons below the age of eighteen years.

(b) The films or television programs, which depict such scenes, would have a disclaimer by the concerned actor regarding the ill effects of use of such products. The disclaimer would be shown in the beginning, middle and end of the film.

(c) Whenever such scenes are shown in a film or television programme, an anti tobacco health warning scroll will be continuously displayed on the screen starting a minute before the scene and would be continuously displayed until one minute after the scene.

Provided also that there shall not be any display of brands of tobacco products or tobacco product placement in any form:

Provided also that close-ups of cigarette packages or tobacco products shall not be permissible and such scenes shall be edited by the producer or distributor or broadcaster prior to screening in cinemas or theatres or airing on television.

Explanation (1).- For the purpose of this sub-rule, all films and television programmes that receive Central Board of Film certification after the effective date of this notification shall be categorized as 'new'.

Explanation (2).- For the purpose of this sub-rule, representatives from Ministry of Health and Family Welfare shall also be represented in the Central Board of Film Certification.

(8) Wherever brand names or logos of tobacco products form a part of the pictures to be printed in any form or print or outdoor media or footage to be aired through any form of electronic media, it shall be mandatory for the media to crop or mask the same to ensure that the brand names and logos of the tobacco products are not visible, except in case of live or deferred live telecast of sports, cultural and other events or activities held in other countries being aired on television in India.

(9) A Steering Committee shall be constituted under the chairmanship of the Union Health Secretary with representation from among others, the Ministry of Information and Broadcasting, Ministry of Law and Justice, Advertising Standards Council of India, Press Council of India, Members of Parliament and voluntary organizations. This Committee shall take cognizance suo moto or look into specific violations under section 5 of the Act and shall also evaluate cases related to indirect advertising and promotion and pass orders thereof."

10. Sanjiv Khanna, J. in his opinion at the inception itself had referred to the scope of scrutiny by the courts of a legislation. However, it is nobody's case that the power does not vest with the Parliament to enact law unless the law is hit by any provision of the Constitution of India and insofar as the Rules made under the said Act are concerned, unless the Rules are not framed within the mandate of the provisions of the Act. The challenge to the Rules, however, is on a twin basis: (a) the impinging of the constitutional right as the Rules would amount to a gag order resulting in curtailment of the freedom of expression and the right to communicate and inform the public; (b) the Rules being beyond the powers conferred under the said Act.

11. Sanjiv Khanna, J. has come to the conclusion that the legislatures of this country possess the powers of legislation and the subject matter of the legislation in question falls within the domain of the powers conferred under Article 246 of the Constitution of India read with entry 52 of the Union list in the 7<sup>th</sup> Schedule. It is in view thereof that the conclusion was reached that the plea of lack of legislative competency is not sustainable and the opinion of Mukul Mudgal, J. concurs with the same. Thus, the legislative competency does not form a part of any difference of view.
12. Sanjiv Khanna, J. again has dealt with the aspect of the violation of Article 19 (1) (a) of the Constitution of India which obviously includes the rights to express oneself by cinematographic mediums or any print media. In this context paras 20 to 42 of the judgement have dealt in detail with this aspect. The question, however, whether the ban on smoking could come within the domain "decency or morality" as defined in the exception under Article 19 (2) of the Constitution of India has been left open. However, the challenge to the provisions of Section 5 of the said Act which makes the offence punishable has been rejected. The opinion of Mukul Mudgal, J. specifically concurs with the views expressed in paragraphs 20 to 42 of the opinion of Sanjiv Khanna, J. and in para 1 itself Mukul Mudgal, J. has expressed his differences limited to the matters expressed in paras 15 to 19 and paras 43 to 56 as also the consequent conclusion. Paras 15 to 19 of Sanjiv Khanna, J. judgement deals with the aspect as to whether the amended Rules are

ultra vires the parent statute and legislations being Cinematograph Act, 1952 and The Cable Television Networks (Regulation) Act, 1995. Paras 43 to 53 of the opinion of Sanjiv Khanna, J. are under the heading of Right to Life and Article 19 (1) (a) of the Constitution of India. In the process of discussion, the provisions of the Rules have been upheld.

13. The two opinions find common ground insofar as the challenge to a show cause notice issued which forms subject matter of challenge in the other writ petition filed by M/s. Kasturi & Sons. The controversy arose out of a photograph published in the newspaper 'The Hindu' of a driver in a formula one race where there is a logo on the jacket of the driver of a cigarette company which was construed as a commercial advertisement in the show cause notice. Sanjiv Khanna, J. while upholding the Rules struck down the show cause notice while Mukul Mudgal, J. has even struck down the Rules. Mukul Mudgal, J. has struck down Rule 4 (6) as also Rule 4 (8) of the said Rules.

#### Scope of Section 3 (a) of the said Act

14. Section 3 of the said Act is the defining Section and clause (a) defines the "advertisement". This is the most crucial section which has a direct impact on the controversy in question. It would be, thus, necessary to dissect this clause and see its impact to come to a conclusion whether the Rules framed were within the competence conferred under the said Act.
15. Learned senior counsel for the petitioner emphasized that the Preamble to the Act itself makes it clear that what is

sought to be prohibited is an advertisement of cigarettes and other tobacco products. The second aspect dealing with the regulation of trade and commerce would have no application to the facts of the present case. Thus, one would have to advert to the definition of an advertisement as contained in the Act to come to the conclusion as to whether the act complained of could really form a part of the definition of an advertisement. It may be noticed that the definition of an advertisement is an inclusive one, thus, it starts with stating that advertisement includes. As to what it seeks to include is as under:

- i. A visual representation by way of notice, circular, label, wrapper or other document;
- ii. Also includes any announcement made orally or by means of producing or transmitting light, sound, smoke or gas.

16. In order for an act to fall within the mischief of Section 5 of the said Act, it must, thus, amount to an advertisement and the expression advertisement is an inclusive one which in turn includes what is stated hereinabove. In my considered view, there is, thus, little doubt that the word advertisement has to be understood in its general connotation and context and would also include whatever is specified within the sub-clause (a) of Section 3 of the said Act.

17. In the aforesaid context a reference may be made to the Black's Law Dictionary (6<sup>th</sup> Edition) which defines the expression "Advertise" and "Advertisement" as under:

**"Advertise.** To advise, announce, apprise, command, give notice of, inform, make known, publish. To call a matter to the public attention by

any means whatsoever. Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business and includes, without limitation because of enumeration, statements and representations made in a newspaper or other publication or on radio or television or contained in any notice, handbill, sign, catalogue, or letter, or printed on or contained in any tag or label attached to or accompanying any merchandise. As distinguished from other forms of communication means to call a matter to the public attention. *Freeman v. Greenbriar Homes, Inc.*, Tex.App. – Dallas, 715 S.W. 2d 398, 397. False and deceptive advertising is regulated by the Federal Trade Commission and similar state agencies. See *also* Printers Ink Statute.

*Comparative advertising.* Advertising that specifically compares the advertised brand with other brands of the same products.

*Competitive advertising.* Advertising that contains basically little information and is used only to allow a producer to maintain a share of the market for that product.

*Informative advertising.* Advertising that gives information about the suitability and quality of products. To be contrasted with competitive advertising.

**Advertisement.** Notice given in a manner designed to attract public attention. *Edwards v. Lubbock County*, Tex.Civ.App., 33 S.W. 2d 482, 484. Information communicated to the public, or to an individual concerned, as by handbills, newspaper, television, billboards, radio. *First Nat. Corporation v. Perrine*, 99 Mont. 454, 43, P.2d 1073, 1077."

18. The New Webster Dictionary of the English language also defines these two expressions as under:

**advertise.** To inform and give notice; to call attention to; to make public, especially by printed or broadcast notice; make known the desirability of in order to sell.

**advertisement.** A notice or message intended to make the advantages and desirable qualities of a product or service known to the public, especially a paid notice, printed in a newspaper or magazine or broadcast by radio or television; the act of advertising."

19. If the expression "Advertise" is examined in terms of the aforesaid two definitions it is abundantly clear that announcement or publication or notice is with the object of calling the matter to public attention in connection with solicitation of business. Such solicitation of business through representations could be in the form of publications in newspaper, television, hand bills, etc. The essential ingredient, thus, is propagation of the act of smoking connected with advancement of business interest.
20. The prohibition contained in Section 5 of the said Act is to an advertisement. The word used in Section 5 of the said Act is not "representation" but an "advertisement". Section 3 (a) of the said Act thereafter defines an "Advertisement" to include what is specified in that clause. The words used in Section 3 (a) of the said Act stipulate that the inclusive definition would imply an inclusion of a visible representation by way of notice, circular, label or wrapper or other documents. Thus, the forms of visible representations are clearly set out and are restricted to the four kinds of such representations mentioned thereafter. If this definition is read in its correct perspective it is obvious that the expression "other document" has to be read *ejusdem generis* with the earlier four expressions which are all in the form of a written representation on paper.
21. The definition does not end at this as it specifies what it also includes further. Thus, not only such representation on paper but also announcements made orally or by any means of producing or transmitting light, sound, smoke or gas.

Once again, there is really no doubt as to what this latter part of the definition seeks to include. However, it must be an "Advertisement" as understood in the common parlance with the mode and manner of dissemination being specified in this additional inclusive part. If the habit of smoking is sought to be propagated by making announcements or through light or by producing or transmitting light (e.g. laser beams) or sound or smoke or gas (e.g. smoke signals) the same would also fall within the definition of an Advertisement.

22. The object is obviously clear that encouragement of smoking by making such representations in different modes specified in Clause (a) of Section 3 of the said Act would fall within the definition of an Advertisement. Learned Additional Solicitor General did seek to advance the argument that the mere act of a person's smoking in a film *per se* would be covered by the definition of an Advertisement since the word used is "Smoke". I deem it appropriate to reject this contention at this stage itself as that is not what the definition states. It is not mere smoke emanating which gives cause but a representation in the form of smoke or gas. If the argument of the learned Additional Solicitor General is to be accepted then even a bonfire emanating smoke would be covered within this definition leading to absurdities.
23. In my considered view, it is, thus, abundantly clear that a reading of Section 5 read with Section 3 (a) of the said Act provides the canvass for what is prohibited under the said Act and nothing more nothing less. The act complained of

must be in an advertisement within the definition of Section 3 (a) for it to fall within the mischief of Section 5 of the said Act.

Challenge to sub-rules, 6, 6A, 6B, 8 & 9 of Rule 4 of the said Rules

24. The discussion in the opinion of Sanjiv Khanna, J. in paras 15 to 19 proceed on the assumption that there can be more than one legislative enactment dealing with the same subject matter. Thus, despite what is provided in the Cinematograph Act, 1952 and The Cable Television Networks (Regulation) Act, 1995 the conclusion has been reached that the said Act being a more comprehensive piece of legislation dealing with the aspects of advertisement relating to tobacco and tobacco products, the Act and the Rules are legally competent. No repugnancy has been found between the two Acts or the Rules made thereunder. This aspect, in fact, has to be dealt with along with the test under Article 19 of the Constitution of India because the right under Article 19 (1) (a) of the Constitution of India had been kept on the highest pedestal. Any restriction on the freedom of speech and expression should be considered in the narrowest of compass and must strictly pass the test under Article 19 (2) of the Constitution of India. The Supreme Court in Union of India v. Motion Picture Assn.<sup>1</sup>, observed as under:

“13. Undoubtedly, free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing viewpoints, debating and forming one’s own views and expressing them, are the basic indicia of a free society. This freedom alone makes it possible for

---

<sup>1</sup> (1999) 6 SCC 150

people to formulate their own views and opinions on a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. Restraints on this right, therefore, have been jealously watched by the courts. Article 19(2) spells out the various grounds on which this right to free speech and expression can be restrained. Thus in *Express Newspapers (P) Ltd. v. Union of India* this Court stressed that:

*"[F]reedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of government which proceeds on the theory that the problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. ... This right is one of the pillars of individual liberty — freedom of speech, which our Constitution has always unfailingly guarded. ... however precious and cherished the freedom of speech is under Article 19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Article 19(2)."*

In *S. Rangarajan v. P. Jagjivan Ram* this Court again observed:

*"36. The democracy is a Government by the people via open discussion. The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community. ... The democracy can neither work nor prosper unless people go out to share their views."*

The importance of freedom of speech and expression including freedom of the press has been repeatedly stressed by this Court in a number of decisions [see in this connection *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, *K.A. Abbas v. Union of India*, *LIC of India v. Prof. Manubhai D. Shah*].

14. In *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal* this Court, after citing Article 10 of the European Convention on Human Rights, went on to state:

*"The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since*

*it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc."*

*(emphasis supplied)*

It is the plea of the respondents that the Act and the Rules are also protected in the interest of public order, morality, decency and incitement for committing an offence.

25. An important aspect which has to be kept in mind is that the requirements of art and literature including cinematographic films have to be dealt with on a separate pedestal. This is so as what is often represented is not what must exist in an ideal world but the ground realities which are far removed from an ideal position. Prostitution may not be desirable but it does exist. It is accordingly shown in films. The same would be the position of a lot of other habits or social evils. The Supreme Court in S. Rangarajan v. P. Jagjivan Ram<sup>2</sup> observed as under:

"10. Movie doubtless enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movie and other modes of communication. The movie cannot function in a free marketplace like the newspaper, magazine or advertisement. Movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The behavior of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act and speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have an impact in the minds of spectators. In some cases, it will have a complete and immediate influence on, and appeal for everyone who

---

<sup>2</sup> (1989) 2 SCC 574

sees it. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It is said: "as an instrument of education it has unusual power to impart information, to influence specific attitudes towards objects of social value, to affect emotions either in gross or in microscopic proportions, to affect health in a minor degree through sleep disturbance, and the affect profoundly the patterns of conduct of children." (See Reader in Public Opinion and Communication, Second Edition by Bernard Berelson and Morris Janowitz, p. 390.) The authors of this book have demonstrated (at pp. 391 to 401) by scientific tests the potential of the motion pictures in formation of opinion by spectators and also on their attitudes. These tests have also shown that the effect of motion pictures is cumulative. It is proved that even though one movie relating to a social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behavior. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free marketplace just as does the newspapers or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary."

.....  
"20. Recently, Sabyasachi Mukharji, J., in Ramesh v. Union of India which is popularly called "Tamas" case laid down the standard of judging the effect of the words or expression used in the movie. The learned Judge quoting with approval of the observation of Vivian Bose, J., as he then was, in the Nagpur High Court in the case of Bhagwati Charan Shukla v. Provincial Government said:

... That the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This in our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law, "the man on the top of a Clampham omnibus".

.....  
21. We affirm and reiterate this principle. The standard to be applied by the Board or courts for judging the film should be that of an ordinary man of common sense and

prudence and not that of an out of the ordinary or hypersensitive man. We, however, wish to add a word more. The Censors Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country. The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. Our country has had the distinction of giving birth to a galaxy of great sages and thinkers. The great thinkers and sages through their life and conduct provided principles for people to follow the path of right conduct. There have been continuous efforts at rediscovery and reiteration of those principles. Adi-guru Shankaracharya, Ramanujacharya, Madhwacharya. Chaitanya Maha Prabhu, Swami Ram Krishan Paramhansa, Guru Nanak, Sant Kabir and Mahatma Gandhi, have all enlightened our path. If one prefers to go yet further back, he will find "Tirukkural the ethical code from Tiruvalluvar teaching which is "a general human morality and wisdom". Besides, we have the concept of "Dharam" (righteousness in every respect) a unique contribution of Indian civilization to humanity of the world. These are the bedrock of our civilization and should not be allowed to be shaken by unethical standards. We do not, however, mean that the censors should have an orthodox or conservative outlook. Far from it, they must be responsive to social change and they must go with the current climate. All we wish to state is that the censors may display more sensitivity to movies which will have a markedly deleterious effect to lower the moral standards of those who see it. Krishna Iyer, J., in Raj Kapoor v. Laxman in words meaningful expressed similar thought. The learned Judge said:

*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."*

.....

"45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the

expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

.....

"53. We end here as we began on this topic. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."

26. There is considerable literature on the extent to which restrictions can be placed on the media. Any form of censorship is an inroad on freedom of expression apart from the fact that censorship is highly subjective and can be essentially mindless. The Supreme Court had an occasion to consider the revocation of certificate granted by the Censor Board by the Madras High Court for a film 'Ore Oru Gramathile'. The Supreme Court while reversing the judgement of the High Court approved the observations of the European Court of Human Rights that:

..."freedom of expression protects not merely ideas that are accepted but those that offend, shock or disturb the State or any sector of the population. Such are the demands of the pluralism, tolerance and broadmindedness without which there is no democratic society."<sup>3</sup>

27. In a recent judgement dealing with the aspect of obscenity, Maqbool Fida Husain Vs. Raj Kumar Pandey<sup>4</sup> it was emphasized that Art being a vehicle for personal expression,

---

<sup>3</sup> Soli J. Sorabjee, The right to offend.

<sup>4</sup> 2008 (6) AD (Delhi) 533

an aesthetic work of art has the vigour to connect to an individual sensorily, emotionally, mentally and spiritually. Pablo Picasso, a renowned artist said, "Art is never chaste. It ought to be forbidden to ignorant innocents, never allowed into contact with those not sufficiently prepared. Yes, art is dangerous. Where it is chaste, it is not art."

28. The aforesaid observations in a true sense even apply to a film which is also a creation of the Director. A much larger interplay is required to be given in these tools of communication where at times hard ground realities are thrown at the public to wake them from their slumber.
29. The courts have, however, accepted prior restraint in the case of motion pictures as its treatment is different from that of other forms of art and expression arising from its instant appeal. The impact which a visual makes is far more instantaneous and to a greater extent than reading about the same topic. This is the very basis of having a Censor Board though pre-censorship in other forms have been frowned upon.<sup>5</sup>
30. The opinion of Mukul Mudgal, J. is based on the powers conferred under Section 31 of the said Act to make Rules which reads as under:

**"Section 31. "Power of the Central Government to make rules:-** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-

---

<sup>5</sup> Soli J. Sorabjee, Freedom of the Media – Constitution and the Court, The University of Melbourne-May 22<sup>nd</sup> 2000.

- (a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (o) of section 3;
- (b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;
- (c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;
- (d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under Section 10;
- (e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;
- (f) provide for any other matter which is required to be, or may be prescribed.

1. Every rule made under this Act and every notification made under Section 30 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything

previously done under that rule or notification.”

31. It is on the reading of the aforesaid provision that Mukul Mudgal, J. has come to the conclusion that there is nothing contained in Section 31 of the said Act which directly or indirectly empowers making of Rules in respect of television serials and films.
32. The aspect of what constitutes an “advertisement” within the meaning of Section 3 (a) has already been dealt with hereinbefore as also the Preamble. It is in this context that the observations have been made that matters relating to cinema or television are totally outside the purview of the said Act as it does not form part of reference under the said Act. A legislative intent in that behalf ought to have found a clear expression in the said Act.
33. The learned Judge has not stopped at that and has even dealt with the matter on the assumption that if the same was intra vires of Section 31 of the said Act, Article 19 (1) (a) of the Constitution of India would come as a road-block and there is nothing in Article 19 (2) of the Constitution of India to protect such a legislation.
34. The aspects of the ill-effects of smoking have been dealt with and anything which advances the act of consumption of tobacco or smoking has found prohibition in terms of notification dated 06.12.1991 of the Ministry of Information & Broadcasting in exercise of powers conferred under sub-Section (2) of Section 5B of the Cinematograph Act, 1952. Thus, the Board of Film Certification is to be guided by the

various principles set out therein and it is duty bound to ensure that “(vi-a) Scenes tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown.” The discouragement of any promotion of smoking activity, thus, forms the very basis of consideration while grant of a certificate by the Board of Film Certification.

35. Artistic expression and creative freedom have been held by the Apex Court to be valuable rights. In fact, the opinion of Mukul Mudgal, J. has given a wider amplitude to the expression “decency” and “morality” to include public health and thus, the challenge under Article 19 (2) of the Constitution of India has been rejected. The Rules have, however, been struck down on the ground that Section 31 of the said Act does not contemplate such a jurisdiction to frame the Rules. Simultaneously it has been observed that even if the Rules were within the powers conferred under Section 31 of the said Act, for safeguarding public health which in turn was included under Article 19 (2) of the Constitution of India they have still to satisfy the test of reasonableness to be protected under Article 19 (2) of the Constitution of India. A blanket restriction put on the smoking scenes on television was, thus, held to be unreasonable and in violation of Article 19 (1) (a) of the Constitution of India. The Supreme Court in Dharam Dutt v. Union of India<sup>6</sup> observed as under:

“21. The Constitution Bench in *State of Madras v. V.G. Row* laid down twin tests on which the constitutional validity of a legislation under Article 19

---

<sup>6</sup> (2004) 1 SCC 712

is to be tested. The first test is the test of reasonableness which is common to all the clauses under Article 19(1); and the second test is to ask for the answer to the question, whether the restriction sought to be imposed on the fundamental right, falls within clauses (2) to (6) respectively qua sub-clauses (a) to (g) of Article 19(1). The test of reasonableness, according to the Constitution Bench, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint, and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable. Under the second test, the Constitution Bench, called upon to deal with the legislation impugned before it by reference to Articles 19(1)(c) and 19(4) of the Constitution, held the impugned legislation to be unconstitutional and void because it curtailed the fundamental right to form associations or unions and fell outside the limits of authorized restrictions under clause (4) of Article 19.

22. Article 19(1) of the Constitution came up for the consideration of a seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India*. Dealing with the scope and purport of Article 19(1) the Bench held:

*[E]ven if a right is not specifically named in Article 19(1), it may still be a fundamental right covered by some clause of that article, if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. It is not enough that a right claimed by the petitioner flows or emanates from a named fundamental right or that its existence is necessary in order to make the exercise of the named fundamental right meaningful and effective. Every activity which*

*facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may not be possible otherwise to effectively exercise that fundamental right. What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right. If this be the correct test, the right to go abroad cannot in all circumstances be regarded as included in freedom of speech and expression.*

*(emphasis supplied)*

.....  
 35. The scheme of Article 19 shows that a group of rights are listed as clauses (a) to (g) and are recognized as fundamental rights conferred on citizens. All the rights do not stand on a common pedestal but have varying dimensions and underlying philosophies. This is clear from the drafting of clauses (2) to (6) of Article 19. The framers of the Constitution could have made a common draft of restrictions which were permissible to be imposed on the operation of the fundamental rights listed in clause (1), but that has not been done. The common thread that runs throughout clauses (2) to (6) is that the operation of any existing law or the enactment by the State of any law which imposes reasonable restrictions to achieve certain objects, is saved; however, the quality and content of such law would be different by reference to each of sub-clauses (a) to (g) of clause (1) of Article 19 as can be tabulated hereunder:

---

Article 19	
Clause (1) Nature of Right	Clauses (2) to (6) Permissible Restrictions  By existing law or by law made by State imposing reasonable restrictions, in the Interests of
(a) Freedom of speech and expression	(i) the sovereignty and integrity of India  (ii) the security of the State  (iii) friendly relations with Foreran States  (iv) public order, decency or morality  (v) in relation to contempt of court, defamation or

	incitement to an offence
(b) right to assemble peaceably and without arms	(i) the sovereignty and integrity of India
	(ii) public order
(c) right of form associations or unions	(i) the sovereignty and Integrity of India
	(ii) public order or morality
(d) & (e) right to move freely and/or to reside and settle through out the territory of India	(i) the general public (ii) the protection of the Interests of Schedules Tribe
(g) right to practise any profession, or to carry on any occupation, trade or business	The general public and in particular any law relation to (i) the professional or technical qualifications necessary for practising of any profession or carrying on any occupation, trade or business  (ii) the carrying on by the state, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

---

36. Article 19 confers fundamental rights on citizens. The rights conferred by Article 19(1) are not available to and cannot be claimed by any person who is not and cannot be a citizen of India. A statutory right — as distinguished from a fundamental right — conferred on persons or citizens is capable of being deprived of or taken away by legislation. The fundamental rights cannot be taken away by any legislation; a legislation can only impose reasonable restrictions on the exercise of the right. Out of the several rights enumerated in clause (1) of Article 19, the right at sub-clause (a) is not merely a right of speech and expression but a right to freedom of speech and expression. The enumeration of other rights is not by reference to freedom. In the words of the then Chief Justice Patanjali Sastri in *State of W.B. v. Subodh Gopal Bose* these rights are great and basic rights which are recognized and guaranteed as the natural rights, inherent in the status of a citizen of a free country. Yet, there cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraints, the rights and freedoms may tend to become the synonyms of anarchy and disorder. The

founding fathers of the Constitution, therefore, conditioned the enumerated rights and freedoms reasonably and such reasonable restrictions are found to be enumerated in clauses (2) to (6) of Article 19 excepting for sub-clauses (i) and (ii) of clause (6), the laws falling within which descriptions are immune from attack on the exercise of legislative power within their ambit (see H.C. Narayanappa v. State of Mysore).

37. The Court, confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 of the Constitution, shall first ask what is the sweep of the fundamental right guaranteed by the relevant sub-clause out of sub-clauses (a) to (g) of clause (1). If the right canvassed falls within the sweep and expanse of any of the sub-clauses of clause (1), then the next question to be asked would be, whether the impugned law imposes a reasonable restriction falling within the scope of clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct or expansion or incidence of that right, then the validity thereof is not to be tested by reference to clauses (2) to (6). The test which it would be required to satisfy for its constitutional validity is one of reasonableness, as propounded in the case of V.G. Row or if it comes into conflict with any other provision of the Constitution."

36. An important aspect examined is that there is no absolute ban on smoking in the country. Any film made in the future would, thus, while representing an act of smoking *per se* would only be reflecting on something which exists and is permissible.
37. I find myself in full agreement with the view expressed by Mukul Mudgal, J. This is not to say that smoking is a habit which has to be encouraged which was defined by James I of England, "A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs, and in the black, stinking fume thereof nearest resembling the horrible Stygian smoke of the pit that is bottomless." A

cinematographic film or a television serial depicts life in all its hues often adding spice to make it interesting. The fact remains is that in the absence of any ban on smoking, the act of smoking is seen though in restricted areas. To *per se* depict such an act without glamorizing it or promoting any particular product cannot be prohibited as it would bar a representation of how life is. The escape route of editorial justification would itself not suffice to give it the benefit of protection under Article 19 (2) of the Constitution of India. It is only in case of such protection would any nature of restriction be permissible as artistic expression and creative freedom are fully guaranteed under Article 19 (1) (a) of the Constitution of India. The consequences are not merely a bar under the said Act but even criminal prosecution. The Supreme Court in Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal<sup>7</sup> observed as under:

"43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression

---

<sup>7</sup> (1995) 2 SCC 161

includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

44. This fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution.

45. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19(2)."

The Supreme Court in LIC v. Manubhai D. Shah (Prof.)<sup>8</sup>

observed as under:

"23. 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. It must, therefore, be so exercised as not to jeopardise the right of another or clash with the paramount interest of the State or the community at large. In India, therefore, our Constitution recognises the need to place reasonable restrictions on grounds specified by Article 19(2) and Section 5-B of the Act on the exercise of the right of speech and expression. It is for this reason that this Court has recognised the need for prior restraint and our laws have assigned a specific role to the censors as such is the need in a rapidly changing societal structure. But since permissible restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article

---

<sup>8</sup> (1992) 3 SCC 637

19(1)(a), such restrictions are bound to be viewed as anathema, in that, they are in the nature of curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities that seek to impose them. The burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law."

38. The tendency to put restriction on cinematographic and artistic freedom is often found the easiest path. It is in view thereof that any such curb has always been strongly commented against by the Supreme Court. It is in this context that the observations in K.A. Abbas v. Union of India<sup>9</sup>, have been referred to by Mukul Mudgal, J., which read as under:

".....Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most deprived amongst is determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favor of freedom thus leaving a cast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in toto and for ever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal for and the line is to be drawn where the average moral man beings to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the deprived 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....."

The Supreme Court in K.A. Abbas Vs. Union of India (Supra)

further observed as under:

---

<sup>9</sup> (1970) 2 SCC 780 para 49

"50. 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."

39. A cinematographic film must reflect the realities of life. Smoking is a reality of life. It may be undesirable but it exists. It is not banned by any law. To shift the burden on the Director to justify such an act of smoking in the category of very rare cases where there is display or use of tobacco products due to compulsions of the script and they shall be supported by a strong editorial justification would be wholly unreasonable and violative of Article 19 (1) (a) of the Constitution of India. The bar has been rightly extended in terms of Cinematograph Act, 1952 to scenes tending to encourage, justify or glamorize consumption of tobacco or smoking and not mere depiction of the act of smoking as it exists. A Director has to reflect real life positions where smoking exists. In certain persons and trades the habit of smoking is found to a greater degree. The undesirability of the act of smoking has nothing to do with the right of the Director as an artist to express what he so desires. It is not as if cinematographic films are to be filmed only with moral lectures as they are often reflective of the negative aspects of our society. It is in this context that the observations of Mukul Mudgal, J. are to the effect that even gambling,

kidnapping, deceiving and such depictions cannot be legitimately prohibited to promote a moral and idealistic society. In fact, what can be more reprehensible than an act of rape. There is yet no bar in showing such acts in cinematographic films even though such an act in society would entail the severest of punishment. The object of discouraging smoking can hardly be commented against. It, however, does appear that while making the Rules apart from the aspect of legislative competence under Section 31 of the said Act the Rules have gone overboard ignoring the constitutional mandate under Article 19 (1) (a) of the Constitution of India. The Supreme Court in K.A. Abbas Vs. Union of India (Supra) observed as under:

"20. Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. The art of the cameraman, with trick photography, vistavision and three-dimensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or imitate what they have seen. Therefore classification of films into two categories of 'U' films and 'A' films is a reasonable classification. It is also for this reason that motion pictures must be regarded differently from other forms of speech and expression. A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore the treatment of the latter on a different footing is also a valid classification."

40. A very informative and though provoking article of Simon Chapman<sup>10</sup> has raised the issue of treatment of smoking in movies. In the Indian context it has been observed that regulation of movies with smoking scenes has had gained traction in a small number of nations, particularly India, and the author has cautioned that banning smoking from movies constitutes a fundamental threat to freedom of expression, inviting unavoidable ridicule for the inconsistencies and "airbrushing of reality" that its adoption would unleash. It is in that context that the author observed:

"This is likely to alienate many ordinary and influential people who would otherwise be strongly supportive of comprehensive and tough tobacco control. I conclude that nations should pass or amend laws to require "no product placement" disclosures; global efforts should be increased to expose the extent and consequences of smoking in movies; and whistleblowers should be encouraged to expose instances of tobacco industry inducements to the movie industry so that prosecutions can arise where possible. Efforts should continue to persuade directors to be more judicious in their use of gratuitous smoking where this is unnecessary to the verisimilitude of their productions. And finally, smoking should become one element taken into account in film classification, but as occurs now with film rating classification in relation to other adult elements, it should be considered in overall context on a case-by-case basis rather than triggering automatic upward classification."

41. The author has dealt with the aspect of paid product placement and observed that Some tobacco control advocates see a movie cigarette and conclude "tobacco industry!" Sometimes it may well be, but often it is not, anymore than every time we see a car in a movie we should

---

<sup>10</sup> Simon Chapman, What should be done about smoking in movies?

feel obliged to conclude "automobile industry!" People smoke, just as people drive, drink and eat.

42. The importance of the visual media and movies has been emphasized by the author as its scope is far wider than being simple means of mass communication of desirable and healthy role models to young people. As discussed above many movies depict social problems, people behaving badly and the seamy side of life. The author observed:

"The role of cinema and literature is not simply to promote overtly pro-social or health "oughts" but to have people also reflect on what "is" in society or in screenwriters' imaginations. This includes a long list of disturbing, anti-social, dangerous and unhealthy realities. Numbered among these are domestic violence, animal cruelty, the exploitation of minorities, injustice, and neglect. Whether for educational purpose, entertainment or the broader purpose of artistic expression, filmmakers have often depicted highly socially undesirable activities such as racial hatred and vilification (for example, Schindler's List, Mississippi Burning), genocide (Hotel Rwanda), gang violence (Romper Stomper, Clockwork Orange) and crime (choose from literally thousands). It would be ridiculously simplistic to assume that by showing something most would regard as undesirable, a filmmaker's purpose was always to endorse such activity. People learn in ways far more complex than being fed a continuous diet of wholesome role models. Many would deeply resent a view of movies that saw them as the equivalent of religious or moral instruction, to be controlled by those inhabiting the same values.

Moreover, hundreds of millions of people around the world smoke. It would be unprecedented for cinema to have to "pretend" that this reality was not the case by never showing smoking in any movie, thereby implying that it was as heinous as (for example) child pornography, but less of a problem than the commonplace murder, mayhem and violence seen in countless films. It would invite ridicule from many people within and beyond the health sector, who would see such a proscription on showing or mentioning smoking as an affront to freedom of speech. It is undoubtedly for this reason that the only nation that has sought to actually ban all smoking from movies (India) met with principled

and successful resistance, including from many within the Indian civil society and arts communities.

'Smoke Free Movies' concession that exceptions should be allowed for "real historical figures" who smoked (such as Churchill or Mao Tse-Tung) in R-rating is notable here. It acknowledges that cinema should not "airbrush " historical reality. What is left unexplained here, though, is why it is permissible for children to see known historical smokers smoking, but not smokers set in a period such as the 1950s when the reality of social life was that smoking was widespread and unrestricted. Or indeed, why it would not equally be airbrushing of reality to show smoking in a movie set today depicting a group of people from a social or cultural group where smoking was the norm and therefore an accurate aspect of their lives?"

43. The author while dealing with the health hazard of smoking dealt with other habits which are also health threatening in the following terms:

"Smoking causes massive health problems, but in that it is not unique. Globally, large-scale health and social problems flow from many activities that also often appear in movies. These include crime, physical inactivity, over-eating, excessive use of alcohol, unsafe sex, speeding and dangerous driving, gambling, risk taking such as extreme sport and adventure, motor cycle use and helmet-less cycling. For example, by the same reasoning that movies showing smoking might normalise or glamorise tobacco use, it could be argued that film should never show positive scenes of gluttony or actors enthusiastically eating fast food because of the obesity epidemic and millions of overweight and obese children struggling to control their weight. Countless comedy scripts would need to go back to the drawing board. Scenes of people drinking alcohol might be excised from children's movies—particularly if those drinking seemed to be enjoying it—because this might seed inappropriate ideas about alcohol in tender minds. All car chases and speeding scenes of course would be restricted to adult movies."

44. The author also finds that it is not as if all scenes promote smoking, in fact, some scenes showing acts of smoking were, in fact, in the overall context be sending a contrary

signal. It is this reason why under the guidelines of censorship it is the aspect of promotion of the smoking habit which is to be discouraged and not mere representation of smoking. In this behalf illustrations have been given from certain serials and films by the author as under:

“Consider two examples. An on-going story line from the immensely popular American TV series Friends (51 million watched the final episode in the US alone Friends. 2008, available from <http://en.wikipedia.org/wiki/Friends>) featured the character Chandler’s attempts to quit smoking. Scenes included showing him smoking but the overall narrative was anti-smoking, despite scenes and lines often talking about the attractions of smoking. Any rule relegating any smoking to R would see children deprived of the benefit of seeing such memorable indictments of smoking. Those who want to banish such scenes from young eyes can thereby score some own-goals.

In *In Her Shoes*, starring Cameron Diaz, Toni Collette and Shirley MacLaine, Diaz plays the insect thin, dyslexic, rudderless younger sister of Collette’s character. They have had an emotional roller-coaster of a childhood, and the film takes us through an emotional resolution as they become re-acquainted with their estranged grandmother (MacLaine). At one stage, Diaz reaches for a cigarette. The sagacious MacLaine says “you shouldn’t smoke. You have a history of lung cancer in your family”. MacLaine takes the cigarette away, as a grandmother can.”

45. The widespread practice of “product placement”, by which a company either pays to have its product included in a film or provides the product free of charge in exchange for exposure, has been dealt with in a different manner. Thus, if a product placement constitutes “commercial speech” then it enjoys a lesser degree of protection under the First Amendment of the US Constitution than other speech and the Congress can constitutionally regulate it. The fundamental aspect is, however, to keep in mind that the

“commercial speech” should be created only when a manufacturer places the product in the film for an economic purpose and not a mere exposure of the brand name in a film, which is not rooted in an economic motive.<sup>11</sup>

46. One further aspect which has been emphasized by the petitioners is arising from the constitution of Steering Committee under sub-rule (9) of Rule 4 of the said Rules as it is alleged to confer an unguided and unbridled power. This provision has been made even though they are penal provisions under the said Act to take care of the consequences of breach. The learned Additional Solicitor General has clarified in this behalf that the object of the Steering Committee is to provide any interface prior to screening in cinemas or theatres or airing on television and not to replace the mechanism under the Act. Thus, it is a prelude to a criminal prosecution if the advice is not adhered to and not an additional measure.
47. A question which incidentally arose was as to whether the legislation could be justified on grounds of decency or morality. Sanjiv Khanna, J. referred to the observations of the Supreme Court in Ramesh Yeshwant Prabhoo (Dr) Vs. Prabhakar Kashinath Kunte,<sup>12</sup> where the twin heads of decency and morality were discussed. The Supreme Court observed that the two words do not require a narrow or pedantic meaning to be given to these words and that the requirement is for conformity to current standards of

---

<sup>11</sup> William Benjamin Lackey, Can Lois Lane Smoke Marlboros?: An Examination of the Constitutionality of Regulating Product Placement in Movies, 1993 U Chi Legal F 275

<sup>12</sup> (1996) 1 SCC 130

behavior or propriety since the ground of challenge to an election was that appeal for votes had been made on grounds of religion of the candidate. It was observed that in a secular polity the requirement of correct behavior or propriety prohibits the same. It was in this context that Sanjiv Khanna, J. observed that consumption of tobacco smoking is unhealthy and not immoral and the term decency even in its more expansive scope would not include smoking or use of tobacco. However, no final view was expressed in this behalf in view of the findings on the interplay between Article 19 (1) (a) and Article 21 of the Constitution of India.

48. On the other hand, Mukul Mudgal, J. has expressed a view that public health would be included in the ambit of morality and decency as enshrined in Article 19 (2) of the Constitution of India by giving the provisions of the Constitution of India a dynamic interpretation. However, he was of the view that any sort of blanket restriction on smoking in all serials and films could not be justified as reasonable and thus was violative of the right of freedom of speech and expression as enshrined in Article 19 (2) of the Constitution of India.
49. The opinion of Mukul Mudgal, J., though at first blush, may sound to be appealing, it cannot be disputed that it gives an extremely wide interpretation to the meaning of morality and decency. The term morality can be used as descriptive to refer to a code of conduct giving specified conditions. Smoking is not banned and thus the societal behavior does not require a prohibition of the act. It may be undesirable but is permitted under certain circumstances. In this

context, it would be useful to refer to the observations made in Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal (supra) in the context of “public order”. It was observed that public order was not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Since smoking can affect the concerned person or other persons in the vicinity, at best, one could have taken a line that it is not in the interest of public safety. However, in that eventuality, it would not be protected within the ambit of Article 19 (2) of the Constitution of India in view of the aforesaid observations.

50. I am not really required to go into greater details in this context as it is not germane to the controversy in question in view of the ultimate silence of Sanjiv Khanna, J. and thus leave this question open to be determined in an appropriate case.
51. The mischievous consequences which can follow from such unbridled Rules are illustrated by what has transpired in the second case. The gateways provided for the electronic media under sub-rule (8) of Rule 4 of the said Rules are different from the ones from the print media. Thus, in a Formula One race the electronic media can show a live footage where the winner may be wearing a tobacco brand but the print media cannot show the photograph of a winner in the same form. Such a distinction and the consequent restriction on the print media would be wholly unsustainable

under Articles 14 & 19 (1) (a) of the Constitution of India as observed in the judgement of Mukul Mudgal, J. The freedom of speech and expression and consequently the freedom of the press have been fiercely guarded by the courts in this country. Any encroachment on the freedom of the press has been struck down. A reference can also be made to the observations of the Supreme Court in Sakal Papers (P) Ltd. v. Union of India<sup>13</sup>, and Bennett Coleman & Co. v. Union of India<sup>14</sup> as under:

**Sakal Papers (P) Ltd. v. Union of India**

"28. It must be borne in mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. Bearing this principle in mind it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under clause (2) of Article 19. The first decision of this Court in which this was recognized is Romesh Thapar case. There, this Court hold that freedom of speech and expression includes freedom of propagation of ideas and that this freedom is ensured by the freedom of circulation. In that case this Court has also pointed out that freedom of speech and expression are the foundation of all democratic organisations and are essential for the proper functioning of the processes of democracy. There and in other cases this Court pointed out that very narrow and stringent limits have been set to permissible legislative abridgment of the right of freedom of speech and expression. In State of Madras v.V.G. Row the question of the

---

<sup>13</sup> (1962) 3 SCR 842

<sup>14</sup> (1972) 2 SCC 788

reasonableness of restrictions which could be imposed upon a fundamental right has been considered. This Court has pointed out that the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and scope of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at that time should all enter into the judicial verdict. In *Dwarkadas Shrinivas v. Sholapur Spinning & Weaving Co. Ltd.* this Court has pointed out that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. The correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restriction. In *Virendra v. State of Punjab* this Court has observed at p. 319 as follows:

*“It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own or the views of its correspondents relating to or concerning what may be the burning topic of the day.”*

.....  
36. It may well be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the same grounds as are set out in clause (6) of Article 19. Therefore, the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the

plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. All the greater reason, therefore for holding that the State cannot directly restrict one freedom by placing an otherwise permissible restriction on another freedom.

.... ....  
41. Its object thus is to regulate something which, as already stated, is directly related to the circulation of a newspaper. Since circulation of a newspaper is a part of the right of freedom of speech the Act must be regarded as one directed against the freedom of speech. It has selected the fact or thing which is an essential and basic attribute of the conception of the freedom of speech viz. the right to circulate one's views to all whom one can reach or care to reach for the imposition of a restriction. It seeks to achieve its object of enabling what are termed the smaller newspapers to secure larger circulation by provisions which without disguise are aimed at restricting the circulation of what are termed the larger papers with better financial strength. The impugned law far from being one, which merely interferes with the right of freedom of speech incidentally, does so directly though it seeks to achieve the end by purporting to regulate the business aspect of a newspaper. Such a course is not permissible and the courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved. No doubt, the law in question was made upon the recommendation of the Press Commission but since its object is to affect directly the right of circulation of newspapers which would necessarily undermine their power to influence public opinion it cannot but be regarded as a dangerous weapon which is capable of being used against democracy itself.

.... ....  
44. The legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible; for even if the end is desirable and permissible, the means employed must not transgress the limits laid down by the Constitution, if they directly impinge on any of the fundamental rights guaranteed by the Constitution it is no answer when the constitutionality of the measure is challenged that apart from the fundamental right infringed the provision is otherwise legal.

.... ....

46. To repeat, the only restrictions which may be imposed on the rights of an individual under Article 19(1)(a) are those which Clause (2) of Article 19 permits and no other."

**Bennett Coleman & Co. v. Union of India**

"39. Mr Palkhivala said that the tests of pith and substance of the subject-matter and of direct and of incidental effect of the legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. In our view this is a sound and correct approach to interpretation of legislative measures and State action in relation to fundamental rights. The true test is whether the effect of the impugned action is to take away or abridge fundamental rights. If it be assumed that the direct object of the law or action has to be direct abridgement of the right of free speech by the impugned law or action it is to be related to the directness of effect and not to the directness of the subject-matter of the impeached law or action. The action may have a direct effect on a fundamental right although its direct subject-matter may be different. A law dealing directly with the Defence of India or defamation may yet have a direct effect on the freedom of speech. Article 19(2) could not have such law if the restriction is unreasonable even if it is related to matters mentioned therein. Therefore, the word "direct" would go to the quality or character of the effect and not to the subject-matter. The object of the law or executive action is irrelevant when it establishes the petitioners contention about infringement of fundamental right. In the present case, the object of the newspaper restrictions has nothing to do with the availability of newsprint or foreign exchange because these restrictions come into operation after the grant of quota. Therefore the restrictions are to control the number of pages or circulation of dailies or newspapers. These restrictions are clearly outside the ambit of Article 19(2) of the Constitution. It, therefore, confirms that the right of freedom of speech and expression is abridged by these restrictions.

.....  
41. This Court in the Bank Nationalisation case laid down two tests. First it is not the object of the authority making the law impairing the right of the citizen nor the form of action that determines the invasion of the right. Secondly, it is the effect of the law and the action upon the right which attracts the jurisdiction of the court to grant relief. The direct operation of the Act upon the rights forms the real test.

.... ....  
79. Mr Palkhivala said the policy worked admirably in the past because adjustability between pages and circulation was permitted. In our view the Newsprint Control has now been subverted to newspaper control. The growth of circulation does not mean that there should not be growth in pages. A newspaper expands with the news and views. A newspaper reaches different sections. It has to be left to the newspapers as to how they will adjust their newsprint. At one stage the Additional Solicitor General said that if a certain quantity of steel was allotted the Government could insist as to how it was going to be used. It was said that the out-put could be controlled. In our view, newsprint does not stand on the same footing as steel. It has been said that freedom of the press indispensable to proper working of popular Government. Patanjali Sastri, J., speaking for this Court in Romesh Thappar case said that "Thus, every narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression, and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible". It is appropriate to refer to what William Blackstone said in his commentaries:

*"Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity."*

52. The European Parliament in 2003 passed certain directives banning tobacco advertising in print media on radio & over the Internet. Such directives also prohibited tobacco censorship of cross-border events or activities. As a consequence of this some queries arose which were dealt with by the concerned department of the European Parliament since one of the queries answered is germane to the present controversy and the same is being reproduced hereunder:

"8.Does the Directive oblige Member States to prohibit photographs of Formula 1 cars appearing in print media if tobacco logos are visible on the cars?

This may depend on the situation. Authentic news photos from events organized in a third country are not prohibited. However, if photos of F1 cars are used for advertising purposes, even for other products, the photos may have a direct or indirect effect of promoting tobacco products. The tobacco industry should not be allowed to circumvent the ban."

53. The aforesaid, thus, shows that mere reproduction as a news item of Formula 1 race even in Europe is not perceived as an *ipso facto* advertisement of tobacco, if tobacco logos are visible.
54. Another aspect, which has to be decided, is that whether reports of events by a newspaper can be restricted by Rule 4(8). I find myself in disagreement with Sanjiv Khanna J. on the aspect that Rule 4(8) does not prevent the press from publishing news and disseminating ideas. The coverage of news is of paramount importance in any free and democratic society. I am of the considered view that the restriction placed upon the newspapers in terms of Rule 4 (8) is violative of both Articles 14 & 19(1)(a) of the Constitution, as it seeks to create a distinction between the electronic and print media, which is an unreasonable classification in terms of Article 14 of the Constitution. Thus, the Rule is also violative of Articles 14 & 19(1)(a) as it imposes an unreasonable restriction upon the press.
55. John Stuart Mill, famous philosopher said, "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not

sufficient warrant." The Constitution guarantees the right to freedom of speech and expression to all citizens, which is the most important of all fundamental rights. The Rules, will, as they are, clearly impinge the valuable rights granted under Article 19 (1) (a) of the Constitution of India apart from the fact that they are outside the ambit of the authority conferred under the said Act. Directors of films should not have multifarious authorities breathing down their necks when indulging in creative art. The concept of censorship itself is a deviation and due care has been taken to incorporate the discouragement of any propagation or advertisement of smoking by incorporating the relevant provisions in the guidelines of the Censor Board. Nothing more is required or permissible in law under the Act or the Constitution.

56. In view of the aforesaid, Rule 4(6), 4(6A), 4(6B) & 4(8) are held to be ultra vires the parent Act as well as violative of Article 19(1)(a) of the Constitution and are accordingly struck down being unconstitutional.
57. The writ petitions are accordingly allowed leaving the parties to bear their own costs.

JANJUARY 23, 2009  
*b'nesh*

SANJAY KISHAN KAUL, J.