LIFE INSURANCE CORPN. OF INDIA AND ORS. ETC. A

*v.*

PROF. MANUBHAI D. SHAH ETC. ETC.

JULY 22, 1992

[A.M. AHMADI AND M.M. PUNCHHI, JJ.] B

*Constitution of India, 1950: Part III—Fundamental Rights—Article 19(1)(a) & 19(2).*

*Freedom of Speech and Expression—Scope of—Includes freedom to* C
*circulate and propagate views through electronics media subject to reasonable restrictions—Right extends to use the media to answer the criticism levelled against the propagated view.*

*Publication of a research paper by Executive Trustee of Consumer* D
*Education and Research Centre—Paper criticising premium policy adopted by Life Insurance Corporation—Counter prepared by a member of LIC as well as rejoinder prepared by Executive Trustee Published in a newspaper—LIC also publishing its counter in its own magazine—Refusal to publish Executive Trustee's rejoinder in its magazine on the ground that it was In - House magazine—Held refusal by LIC to publish rejoinder in its magazine was* E
*arbitrary and violative of Article 14 and 19(1)(a).*

*Freedom of expression through movies—Film—Right to telecast on television—Guidelines for film certification—Documentary film on Bhopal Gas Disaster—Film awarded national award and granted 'U' Certificate—Refusal by Doordarshan to telecast the film—Held film maker has a* F
*right to telecast the film—Refusal to telecast should be justified by law under Article 19(2)—Onus lies on the party who refuses to telecast to show that the film does not conform to requirements of law—Grounds of refusal held not justified—Doordarshan being State controlled agency cannot refuse telecast of film except on valid grounds.* G

*Article 12—State—Life Insurance Corporation is State.*

*Constitution—Interpretation of—Provisions should be construed broadly unless the context otherwise requires—Scope of provisions, particularly Fundamental Rights should not be cut down by restricted approach.* H

A *Doctrine of Fairness.*

*Doctrine of Prior Restraint.*

*Cinematograph Act, 1952: Sections 5A-5B.*

B **The respondent, the executive trustee of the Consumer Education & Research Centre Ahmedabad, after undertaking research into the working of the Life Insurance Corporation (LIC)published and circulated a study paper titled "A fraud on policy holders-a shocking story" portraying the discriminatory practice adopted by the LIC which adversely affected the**
C **interest of a large number of policy holders. The underlying idea was to point out that unduly high premiums were charged by the LIC from those taking out life insurance policies thereby denying access to insurance coverage to a vast majority of people who cannot afford to pay the high premiums. A member of the LIC prepared a counter to the respondent's study paper and published the same as an article titled 'LIC and its policy**
D **holders' in the "Hindu", a daily newspaper, challenging the conclusions reached by the respondent in his study paper. The respondent prepared a rejoinder 'Raw deal for Policy Holders' which too was published in the same newspaper.**

E **Thereafter, the LIC published its member's article which was in the nature of a counter to the respondent's study paper in its magazine 'Yogakshema'. On the respondent learning about the same, he requested that in fairness his rejoinder which was already published in the Hindu should also be published in the said magazine to present a complete picture to the reader. The LIC refused his request on the ground that their**
F **magazine was an in-house magazine circulated amongst subscribers who were policy holders, officers, employees and agents of the Corporation and it is not put up in the market for sale to the general public.**

**The respondent filed a writ petition in the Gujarat High Court which**
G **came to the conclusion that the LIC's stand that the magazine was an in-house magazine was untenable because it was available to anyone on payment of subscription; and it invited articles for publication therein from members of the public. Assuming that the magazine was an in-house magazine the corporation, which was a State within the meaning of Article 12, cannot under the guise of publication of an in-house magazine violate**
H **the fundamental right of the respondent. Accordingly, the High Court held**

that refusal by LIC to publish respondent's rejoinder was arbitrary and violative of Article 14 and 19(1)(a). Against the decision of the High Court this appeal is filed. A

In the connected appeal the respondent produced a documentary film on the Bhopal Gas Disaster titled "Beyond Genocide" which was awarded the Golden Lotus, being the best non-feature film of 1987. At the time of the presentation of awards the Central Minister for Information & Broadcasting made a declaration that the award winning short films would be telecast on Doordarshan. The respondent submitted his film to Doordarshan for telecast but Doordarshan refused to telecast the same on the grounds that (i) the film was out dated (ii) it had lost its relevance (iii) it lacked moderation and restraint (iv) it was not fair and balanced (v) political parties have raised various issues concerning the tragedy and (vi) claims for compensation by victims were sub-judice. B C

The respondent filed a writ petition challenging the refusal to telecast his film on the ground of violation of his fundamental right under Article 19(1)(a) of the Constitution and for a mandamus to Doordarshan to telecast the same. The Union of India contested the petition by stating that although a decision was taken to arrange a fixed fortnightly telecast of award winning documentaries, no decision was taken to telecast all national award winning documentaries; that the parameters applied for selection of a film for national award were not the same as applied by the Film Selection Committee of Doordarshan for selection of a film for telecast; and the respondent's film which was previewed by a duly constituted Screening Committee was not found to meet the requirements for telecast on Doordarshan. The High Court held that no restriction could be placed on the fundamental right quaranteed by Article 19(1)(a) of the Constitution save and except by law permitted by Article 19(2); that the respondent's right under Article 19(1)(a) of the Constitution obligated Doordarshan to telecast the film since the guidelines or norms on which the refusal was based were purely executive in character and not law within the meaning of Article 19(2) of the Constitution. Accordingly, it directed Doordarshan to telecast the film, "Beyond Genocide" at a time and date convenient to it keeping in view the public interest and on such terms and conditions as it would like to impose in accordance with law. D E F G

In appeal to this Court it was contended for Doordarshan, (i) that H

A sub-section (2) of Section 5B of the Cinematograph Act, 1952 empowers the Central Government to issue directions setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition and since the exemption granted to Doordarshan under Section 9 of the Act from the provisions relating to certification of films in Part II of the Act and Rules made thereunder by notification dated 16th October, 1984 is subject to the condition that while clearing programmes for telecast Doordarshan shall keep in view the film certification guidelines issued by the Central Government under Section 5B of the Act, the guidelines clearly have statutory flavour and would, therefore, fall within the protective umbrella of Article 19(2); (ii) the High Court completely misdirected itself in not appreciating that these norms were fixed keeping in mind the requirement of Section 5B of the Act which section was consistent with Article 19(2), therefore the High Court was wrong in brushing them aside as mere departmental executive directions.

Dismissing the appeals, this Court

HELD: 1. A constitutional Provision is never static, it is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. The Constitution makers employed a broad phraseology while drafting the fundamental rights so that they may be able to cater to the needs of a changing society. Therefore, constitutional provisions in general and fundamental rights in particular must be broadly construed unless the context otherwise requires. The scope and ambit of such provisions, in particular the fundamental rights, should not be cut down by too astute or too restricted an approach. [606E, 607E-F]

*Sakal Papers (P) Ltd.* v. *Union of India,* [1962] 3 S.C.R. 842 A.I.R. 1962 S.C. 305, referred to.

*Dennis* v. *United States,* 341 U.S. 494; *Joseph Burstyn, Inc.* v. *Wilson,* 343 U.S. 495 and *Mutual Film Corporation* v. *Industrial Commission of Ohio,* 236 U.S. 230, referred to.

2. The words 'freedom of speech and expression' must be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or

through any other communication channel e.g. the radio and the television. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him. [607 G-H, 608 A,E]

*Romesh Tappar* v. *The State of Madras,* [1950] S.C.R. 495; *Sakal Papers (P) Ltd.* v. *Union of India,* [1962] 3 S.C.R. 842–A.I.R. 1962 S.C. 305; *Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. etc. etc.* v. *Union of India & Ors. etc. etc.,* [1985] 2 S.C.R. 287; *Odyssey Communications Pvt. Ltd.* v. *Lokvidayan Sanghatana & Ors.,* [1988] 3 S.C.C. 410 and *S. Rangarajan* v. *P. Jagjivan Ram,* [1989] 2 S.C.C. 574, referred to.

3. No serious exception can be taken to the approach which commended to the High Court. The LIC is a State within the meaning of Article 12 of the Constitution. It is created under an Act, namely, the Life Insurance Corporation Act, 1956, which requires that it should function in the best interest of the community. The community is, therefore, entitled to know whether or not this requirement of the statute is being satisfied in the functioning of the LIC. The respondent's effort in preparing the study paper was to bring to the notice of the community that the LIC had strayed from its path by pointing out that its premium rates were unduly high when they could be low if the LIC avoided wasteful indulgences. The endeavour was to enlighten the community of the drawbacks and shortcomings of the corporation and to pin-point the areas where improvement was needed and was possible. By denying information to the consumers as well as other subscribers that LIC cannot be said to be acting in the best interest of the community. [612A, E-H, 613 A,D]

*Sukhdev Singh & Ors.* v. *Bhagatram Sardar Singh,* [1975] 1 S.C.C. 421, relied on.

4. By refusing to print and publish the rejoinder the LIC had violated the respondent's fundamental right. The rejoinder to their acticle is not in any manner prejudicial to the members of the community nor it is based on imaginery or concocted material. It does not contain any material which can be branded as offensive, in the sense that it would fall within anyone

A of the restrictive clauses of Article 19(2). That being so on the fairness doctrine the LIC was under an obligation to publish the rejoinder since it had published its counter to the study paper. [614-C, 613-D, 612A, 613-E]

5. The LIC's refusal to publish the rejoinder in its magazine financed from public funds is an attitude which can be described as both unfair and B unreasonable; unfair because fairness demanded that both view points were placed before the readers, however, limited be their number, to enable them to draw their own conclusions and unreasonable because there was no logic or proper justification for refusing publication. A monopolistic state instrumentality which survives on public funds cannot act in an C arbitrary manner on the specious plea that the magazine is an in- house one and it is a matter of its exclusive privilege to print or refuse to print the rejoinder. [613 B-D]

6. A wrong doer cannot be heard to say that its persistent refusal to print and publish the article must yield the desired result, namely to D frustrate the respondent. The Court must be careful to see that it does not, even unwittingly, aid the effort to defeat a party's right. However, in order that the reader knows and appreciates why the rejoinder has appeared after such long years it is directed that the LIC will, while publishing the rejoinder print an explanation and an apology for the delay. [614 C-D]

E

7. Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. Thus freedom to air one's views is the life line of any democratic institution and any attempt to stifle, F suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. Efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled. More so when public authorities have betrayed autocratic tendencies. [605G, 608-B, 611E]

G

*Universal Declaration of Human Rights* (1948), referred to.

8. The feedom conferred on a citizen by Article 19(1)(a) includes the freedom to communicate one's ideas or thoughts through a newspaper, a magazine or a movie. Although movie enjoys that freedom it must be H remembered that movie is a powerful mode of communication and has the

capacity to make a profound impact on the minds of the viewers and it is, therefore, essential to ensure that the meassage it conveys is not harmful to the society or even a section of the society. Censorship by prior restraint, therefore, seems justified for the protection of the society from the ill-effects that a motion picture may produce if unrestricted exhibition is allowed. Censorship is thus permitted to protect social interests enumerated in Article 19(2) and section 5B of the Cinematograph Act. But such censorship must be reasonable and must answer the test of Article 14 of the Constitution. [623 E-G]

9. Once it is recognised that a film-maker has a fundamental right under Article 19(1)(a) to exhibit his film, the party which claims that it was entitled to refuse enforcement of this right by virtue of law made under Article 19(2), the onus lies on that party to show that the film did not conform to the requirements of that law, in the present case the guidelines relied upon. [620 D-E]

10. The respondent had a right to convey his perception of the gas disaster in Bhopal through the documentary film prepared by him. The film not only won the Golden Lotus award but was also granted the 'U' Certificate by the censors. It is an appraisal of what exactly transpired in Bhopal on the date the gas leak occurred. Therefore, the respondent cannot be accused of having distorted the events subsequent to the disaster. [624 E-F]

Merely because it is critical of the State Government is no reason to deny selection and exhibition of the film. So also pendency of claims for compensation does not render the matter sub-judice so as to shut out the entire film from the community. In fact the community was keen to know what actually had happened, what is happening, what remedial measures the State authorities are taking and what are the likely consequences of the gas leak. To bring out the inadequacy of the State effort or the indifference of the officers, etc,. cannot amount to an attack on any political party if the criticism is genuine and objective and made in good faith. If the norm for appraisal was the same as applied by the censors while granting the 'U' Certificate, it is difficult to understand how Doordarshan could refuse to exhibit it. It is not that it was not sent for being telecast soon after the disaster that one could say that it is outdated or has lost relevance. [624 G-H, 625 A-B]

**In the circumstances it cannot be said that the film was not consistent with the accepted norms. Doordarshan being a State controlled agency funded by public funds could not have denied access to the screen to the respondent except on valid grounds. [625-C]**

*K.A. Abbas* **v.** *The Union of India,* **[1971] 2 S.C.R. 446;** *Ramesh* **v.** *The Union of India,* **[1988] 1 S.C.C. 668 and** *S. Rangarajan* **v.** *P. Jagjivan Ram,* **[1989] 2 S.C.C. 574, relied on.**

*New York Times Company* **v.** *The United States,* **403 U.S. 713, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1254 of 1990.

From the Judgment and Order dated 17.6.80 of the Gujarat High Court in Special Civil Application No.2711 of 1979.

WITH

Civil Appeal No. 2643 of 1992.

From the Judgment and Order dated 27.9.90 of the Delhi High Court in Civil Writ Petition No.212 of 1989.

K.T.S. Tulsi, Additional Solicitor General, P.P. Rao, Kailash Vasdev, Ms. Alpana Kirpal, A. Subba Rao, Hemant Sharma and C.V.S. Rao for the Appellants.

P.H. Parekh, B.K. Brar, Ashok Aggarwal and P.D. Sharma for the Respondent.

The Judgment of the Court was delivered by

**AHMADI, J.** Special leave granted in SLP(C) No.339 of 1991.

These two appeals though arising out of different circumstances and concerning different parties, relate to the scope of our constitutional policy of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. The importance of the constitutional question prompted this Court to grant special leave to appeal under Article 136 of the Constitution. We may properly begin the discussion of this judgment by stating the

factual background of the two cases in the light of which we are required to examine the scope of the constitutional liberty of speech and expression. A

Civil Appeal No.1254/80 arises out of the decision of the Gujarat High Court in Special Civil Application No. 2711 of 1979 decided by a Division Bench on 17th June, 1980. The respondent, the executive trustee of the Consumer Education & Research Centre (CERC), Ahmedabad, after undertaking research into the working of the Life Insurance Corporation (LIC) published on 10th July, 1978 a study paper titled "A fraud on policy holders – a shocking story". This study paper portrayed the discriminatory practice adopted by the LIC which adversely affected the interest of a large number of policy holders. This study paper was widely circulated by the respondent. Mr. N.C. Krishnan, a member of the LIC prepared a counter to the respondent's study paper and published the same as an article in the "Hindu", a daily newspaper, challenging the conclusions reached by the respondent in his study paper. The respondent prepared a rejoinder which was published in the same newspaper. The LIC publishes a magazine called the 'Yogakshema' for informing its members, staff and agents about its activities. It is the contention of the LIC that this magazine is an in-house magazine and is not put in the market for sale to the general public. Mr. Krishnan's article which was in the nature of a counter to the respondent's study paper was published in this magazine. The respondent thereupon requested the LIC to publish his rejoinder to the said article in the said magazine but his request was spurned. The respondent thereafter met the Chairman of the LIC and requested him to revise the decision and to publish the article in the magazine but to no avail. Thereupon he filed the petition contending that the refusal to publish his rejoinder in the magazine violated his fundamental right under Article 14 and 19(1)(a) of the Constitution. The High Court came to the conclusion that the LIC's stand that the magazine was an in-house magazine was untenable for two reasons, namely (1) it was available to anyone on payment of subscription; and (2) it invited articles for publication therein from members of the public. The High Court took the view that merely because the magazine finds it circulation among officers, employees and agents of the Corporation, it does not acquire the character of an in-house magazine since the same can be purchased by any member of the public on payment of subscription and members of the public are invited to contribute articles for publication in the said magazine. It further held that assuming that the magazine was an in-house magazine as contended by the B C D E F G H

A LIC, the Corporation cannot under the guise of publication of an in-house magazine violate the fundamental right of the respondent. Taking note of the fact that the LIC was a State within the meaning of Article 12 of the Constitution and the in-house magazine was published with the aid of public funds and public money, the High Court held that in the interest of
B democracy and free society the magazine should be available to both, an admirer and a critic, for dissemination of information. In this view of the matter the High Court concluded that the LIC had violated the respondent's fundamental right under Article 19(1)(a) of the Constitution by refusing to publish his rejoinder to Mr. Krishnan's counter to his study paper. It also concluded that the refusal of the LIC was arbitrary and
C violative of Article 14 of the Constitution as well. The High Court, therefore, directed the LIC to publish in the immediate next issue of Yogakshema the respondents' rejoinder to Mr. Krishnan's reply to his study paper of 10the July, 1978. This view of the Gujarat High Court is assailed by the LIC in the first appeal.

D

In the other appeal the facts reveal that Shri Tapan Bose, Managing Trustee of the respondent trust, had produced a documentary film on the Bhopal Gas Disaster titled "Beyond Genocide". This film was awarded the Golden Lotus, being the best non-feature film of 1987. The respondent contended that at the time of the presentation of awards the Central
E Minister for Information & Broadcasting had made a declaration that the award winning short films will be telecast on Doordarshan. The respondent submitted for telecast his film to Doordarshan but Doordarshn refused to telecast the same on the ground : "the contents being outdated do not have relevance now for the telecast". The respondent represented to the Mini-
F ster for Information & Broadcasting, but to no avail. He, therefore, filed the writ petition, being Civil Writ No. 212 of 1989, challenging the refusal on the ground of violation of his fundamental right under Article 19(1)(a) of the Constitution and for a mandamus to Doordarshan to telecast the same. In the counter filed to the writ petition it was contended that
G although a decision was taken to arrange a fixed fortnightly telecast of award winning documentaries, no decision was taken to telecast all national award winning documentaries. It was emphasised that the parameters applied for selection of a film for national award were not the same as applied by the Film Selection Committee of Doordarshan for selection of a film for telecast. Emphasis was laid by Doordarshan on socially relevant
H films which were fair and balanced and the respondent's film which was

previewed by a duly constituted Screening Committee was not found to meet that requirement for telecast on Doordarshan. The Ministry of Information & Broadcasting had reconsidered the matter in the light of the respondent's representation but did not see any reason to depart from the view taken by the Screening Committee. The Screening Committee had founded its decision on the accepted norms for display of the documentary films on Doordarshan and since the respondent's film did not satisfy the norms for the reason that it lacked moderation and restraint in judging things and expressing opinions, it was found not suitable for telecast. It also took into consideration the fact that while most of the claims for compensation for the victims of Bhopal Disaster were sub-judice and political parties were raising certain issue, it was inexpedient and unwise to telecast the film. It was also feared that it would only end in further vitiating the atmosphere and will serve no social purpose. The High Court came to the conclusion that the respondent's right under Article 19(1)(a) of the Constitution obligated Doordarshan to telecast the film since the guidelines or norms on which the refusal was based were purely executive in character and not law within the meaning of Article 19(2) of the Constitution. It, therefore, came to the conclusion that no restriction could be placed on the fundamental right guranteed by Article 19(1)(a) of the Constitution save and except by law permitted by Article 19(2) and not by executive or non-statutory guidelines on the basis of which Doordarshan had refused to telecast the film. It took the view that these norms were for internal guidance and cannot interfere with the fundamental right guaranteed by Article 19(1)(a) of the Constitution. It, therefore, directed Doordarshan to telecast the film "Beyond Genocide" at a time and date convenient to it keeping in view the public interest and on such terms and conditions as it would like to impose in accordance with law. It is against this direction of the High Court that the second the second appeal is preferred.

Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). The People of India declared in the Preamble of the Constitution which they gave into them-

selves their resolve to secure to all citizens liberty of thought and expression. This resolve is reflected in Article 19(1)(a) which is one of the articles found in Part III of the Constitution which enumerates the Fundamental Rights. That article reads as under :

> "19(1). All citizens shall have the right-
>
> (a) to freedom of speech and expression;"

Article 19(2) which has relevance may also be reproduced :

> "19(2). Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

A constitutional provision is never static, it is ever evolving and ever chaning and, therefore, does not admit of a narrow, pedantic or syllogistic approach. If such an approach had been adopted by the American Courts, the First Amendment-(1791)- "Congress shall make no law abridging the freedom of speech, or of the press" - would have been restricted in its application to the situation then obtaining and would not have catered to the changed stituation arising on account of the transformation of the print media. It was the broad approach adopted by the court which enabled them to chart out the contours of ever expanding notions of press freedom. In *Dennis* v. *United States,* 341 U.S. 494, Justice Frankfurtur observed :

> "....The language of the First Amendment is to be read not as barren words found in a dictionary but as symbols of historic experience illuminated by the presuppositions of those who employed them."

Adopting this approach in *Joseph Burstyn. Inc.* v. *Wilson 343 U.S. 495 the Court rejected its earlier determination to the contrary in Mutual Film Corporation* v. *Industrial Commission of Ohio,* 236 U.S. 230 and concluded that expression through motion pictures is included within the protection of the First Amendment. The Court thus expanded the reach of the First

Amendment by placing a liberal construction on the language of that provision. It will thus be seen that the American Supreme Court has always placed a broad interpretation on the contitutional provisions for the obvious reason that the constitution has to serve the needs of an ever changing society.

The same trend is discernible from the decisions of the Indian Courts also. It must be appreciated that the Indian Constitution has separately enshrined the fundamental rights in Part III of the Constitution since they represent the basic values which the People of India cherished when they gave unto themselves the constitution for free India. That was with a view to ensuring that their honour, dignity and self respect will be protected in free India. They had learnt a bitter lesson from the behaviour of those in authority during the colonial rule. They were, therefore, not prepared to leave anything to chance. They, therefore, considered it of importance to protect specific basic human rights by incorporating a Bill of Rights in the Constitution in the form of Fundamental Rights. These fundamental rights were intended to serve generation after generation. They had to be stated in broad terms leaving scope for expansion by courts. Such an intention must be ascribed to the Constitution makers since they had themselves made provisions in the Constitution to bring about a socio-economic transformation. That being so, it is reasonable to infer that the Constitution makers employed a broad phraseology while drafting the fundamental rights so that they may be able to cater to the needs of a changing society. It, therefore, does not need any elaborate argument to uphold the contention that constitutional provisions in general and fundamental rights in particular must be broadly construed unless the context otherwise requires. It seems well settled from the decisions referred to at the Bar that constitutional provisions must receive a broad interpretation and the scope and ambit of such provisions, in particular the fundamental rights, should not be cut down by too astute or too restricted an approach. See *Sakal Papers (P) Ltd.* v. *Union of India,* [1962] 3 SCR 842 = AIR 1962 SC 305.

The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air

A his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the life line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set up, more so in a democratic set up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagation of ideas, there can be no doubt that the right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him. Every free citizen has an undoubted right to lay what sentiments he pleases before the public; to forbit this, except to the extent permitted by Article 19(2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(a) is subject to imposition of reasonable restrictions in the interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that subject to reasonable restrictions placed under Article 19(2) a citizen has a right a publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a).

We may now refer to the case law on the subject. In *Romesh Tappar* v. *The State of Madras,* [1950] SCR 495 this Court held that the freedom

of speech and expression includes freedom of propagation of ideas and this freedom is ensured by the freedom of circulation. It pointed out that freedom of speech and expression are the foundation of all democratic organisations and are essestial for the proper functioning of the processes of democracy. This view was reiterated in *Sakal Papers Pvt. Ltd.* (supra) wherein this Court observed that the freedom of speech and expression guaranteed by Article 19(1)(a) includes the freedom of the Press. For propagating his ideas a citizen had the right to publish them, to disseminate them and to circulate them, either by word of mouth or by writing. In *Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. etc. etc.* v. *Union of India & Ors. etc. etc.*, [1985] 2 SCR 287 this Court after pointing out that communication needs in a democratic society should be met by the extention of specific rights e.g., the right to be informed, the right to inform, the right to privacy, the right to participate in public communications, the right to communicate, etc., proceeded to observe at page 316 as follows :

> "In today's free world freedom of Press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non formal education possible in large scale particularly in the developing world where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspaper being surveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities. The authors of the article which are published in the newspapers have to be critical of the action of the Government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power."

This Court pointed out that the constitutional guarantee of the freedom of speech and expression is not so much for the benefit of the press as it is for the benefit of the public. The people have a right to be informed of the developments that take place in a democratic process and the press plays a vital role in disseminating this information. Neither the Government nor any instrumentality of the Government or any public sector undertaking run with the help of public funds can shy away from

A articles which expose weaknesses in its functioning and which is given cases pose a threat to their power by attempting to create obstacles in the information percolating to the members of the community. In *Odyssey Communications Pvt. Ltd.* v. *Lokvidayan Sanghtana & Ors.*, [1988] 3 SCC 410 a public interest litigation was commenced under Article 226 of the Constitution to restrain the authorities from telecasting the serial 'Honi Anhony' on the plea that it was likely to spread false and blind beliefs and superstition amongst the members of the public. The High Court by an interim injunction restrained the authorities from telecasting the serial which led the producer thereof to approach this Court under Article 136 of the Constitution. This Court while allowing the appeal held that the right of a citizen to exhibit films on the Doordarshan subject to the conditions imposed by the Doordarshan being a part of the fundamental right of freedom of expression could be curtailed only under circumstances set out in Article 19(2) and in no other manner. The right to exhibit the film was similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisement hoardings, etc. More recently in *S. Rangarajan* v. *P. Jagjivan Ram,* [1989] 2 SCC 574 this Court was required to consider if the Madras High Court was justified in revoking the 'U' certificate issued to a Tamil Film "Ore Oru Gramathile" for public exhibition. The fundamental point urged before this Court was based on the freedom enshrined in Article 19(1)(a). This Court after pointing out the difference in language between the U.S. First Amendment clause and Article 19(1)(a), proceeded to observe in paragraph 10 as under :

> "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 market place 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 focussing 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 sees it. In view of the scientific improvements in photography and

production the present movie is a powerful means of communication." A

This Court emphasised that the freedom of expression means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinion. Concluding the discussion this Court observed in paragraph 53 as under : B

> "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." C D

From the above resume of the case law it is evident that this Court has always placed a broad interpretation on the value and content of Article 19(1)(a), making it subject only to the restrictions permissible under Article 19(2). Efforts by intolerant authorities to curb or suffocate this freedom have always been firmly repelled. More so when public authorities have betrayed autocratic tendencies. E

The question then is whether the respondent of the first appeal could as a matter of right insist that the LIC print his rejoinder in their magazine. The LIC denied this right on the ground that their magazine was an in-house magazine circulated amongst subscribers who were policy holders, officers, employees and agents of the corporation. The High Court rejected this contention on two grounds in the main, viz., (i) it is available to anyone on payment of subscription and (ii) members of the public are invited to contribute articles for publication. Even on the assumption that it is an in-house magazine the High Court observed 'under the pretext and guise of publishing a house magazine, the Corporation cannot violate the fundamental rights of the petitioner if he has any'. According to the High Court a house magazine cannot claim any privilege against the fundamental F G H

A rights of a citizen. No serious exception can be taken to this approach whcih commended to the High Court. In the first place it must be remembered that it is not the case of the LIC that the respondent's study paper contains any material which can be branded as offensive, in the sense that it would fall within anyone of the restrictive clauses of Article 19(2). The B study paper is a research document containing satistical information to support the conclusions reached by the author. The underlying idea is to point out that unduly high premiums are charged by the LIC from those taking out life insurance policies thereby denying access to insurance coverage to a vast majority of people who cannot afford to pay the high premiums. The forwarding letter of 10th July, 1978 would show that copies C of the study paper were circulated to a few informed citizens with a request to disseminate the contents thereof through articles, speeches, etc. Mr. N.C. Krishnan wrote a counter 'LIC and its policy holders' which appeared in the Hindu of 6th November, 1978. This article begins by adverting to the study paper circulated by the respondent. The respondent prepared a D rejoinder 'Raw deal for Policy holders' which too was published in the Hindu of 4th December, 1978. The LIC then printed and published the article of Mr. Krishnan in its magazine Yogakshema (December 1978 issue). On the respondent learning about the same, he requested that in fairness his rejoinder which was already published in the Hindu should also be published in the said magazine to present a complete picture to the E reader. The LIC refused to accede to this request and hence this litigation.

There is no dispute that the LIC is a State within the meaning of Article 12 of the Constitution, vide *Sukhdev Singh & others* v. *Bhagatram Sardar Singh,* [1975] 1 SCC 421. It is created under an Act, namely, the F Life Insurance Corporation Act, 1956, and is charged with the duty 'to carry on Life Insurance business, whether in or outside India'. It is further charged with the duty to so exercise its powers under the Act as 'to secure that life insurance business is developed to the best advantage of the cummunity' [Section 6(1)]. It is, therefore, obvious that the LIC must function in the best interest of the cummunity. The cummunity is, therefore, G entitled to know whether or not this requirement of the statute is being satisfied in the functioning of the LIC. The respondent's effort in preparing the study paper was to bring to the notice of the community that the LIC had strayed from its path by pointing out that premium rates were unduly high when they could be low if the LIC avoided wasteful indulgences. The H endeavour was to enlighten the community of the drawbacks and shortcom-

ings of the corporation and to pin-point the areas where improvement was needed and was possible. With a view to stimulating a debate a study paper was prepared and circulated to which Mr. Krishnan, a member of LIC, countered. Since Mr. Krishnan had tried to demolish some of the points raised by the respondent in his study paper, the respondent had published a rejoinder in the Hindu. However, the LIC refused to publish it in their magazine financed from public funds. Such an attitude on the part of the LIC can be described as both unfair and unreasonable; unfair because fairness demanded that both view points were placed before the readers, however limited be their number, to enable them to draw their own conclusions and unreasonable because there was no logic or proper justification for refusing publication. A monopolistic state instrumentality which survives on public funds cannot act in an arbitrary manner on the specious plea that the magazine is an in-house one and it is a matter of its exclusive privilege to print or refuse to print the rejoinder. It is difficult to understand why the LIC should feel shy of printing the rejoinder if it has nothing to fear. By denying information to the consumers as well as other subscribers the LIC cannot be said to be acting in the best interest of the community. It is not the case of the LIC that the rejoinder to Mr. Krishnan's article is in any manner prejudicial to the members of the community or that it is based on imaginery or concocted material. That being so on the fairness doctrine the LIC was under an obligation to publish the rejoinder since it had published Mr. Krishnan's counter to the study paper. The respondent's fundamental right of speech and expression clearly entitled him to insist that his views on the subject should reach those who read the magazine so that they have a complete picture before them and not a one sided or distorted one.

For the above reasons we do not find any infirmity in the view taken by the High Court on the LIC's obligation to print the rejoinder in its magazine. We must clarify that we should not be understood as laying down an absolute proposition that merely because the LIC is a State and is running a magazine with public funds it is under an obligation to print any matter that any informed citizen may forward for publication. The view that we are taking is in the peculiar facts of the case.

It was contended by the learned counsel for the LIC that since the rejoinder of the respondent is to Mr. Krishnan's article printed in December 1978, the same has become stale by passage of time and has lost its

A relevance and hence this Court should annul the High Court's directive to the LIC to print and publish the same in its magazine. Counsel for the respondent submitted that the issue raised by the respondent regarding high premium rates is still live as the situation has not improved from what it was in 1978. It may be that the statistical information in the rejoinder may be outdated but, contends the learned counsel, the issue that the LIC is charging unduly high premium rates by refusing to prune its avoidable expenses, is still relevant. He submits that if the court accedes to the submission of the learned counsel for the LIC it would result in placing a premium on the recalcitrant attitude of the LIC. We see force in this submission. By refusing to print and publish the rejoinder the LIC had violated the respondent's fundamental right. A wrong doer cannot be heard to say that its persistent refusal to print and publish the article must yield the desired result, namely to frustrate the respondent. The Court must be careful to see that it does not, even unwittingly, aid the effort to defeat a party's right. Besides, if the respondent thinks that the issue is live and relevant and desires its publication, we thing we must accept his assessment. However, in order that the reader knows and appreciates why the rejoinder has appeared after such long years we direct that the LIC will, while publishing the rejoinder as directed by the High Court, print an explanation and an apology for the delay. With this modification, the LIC's appeal must fail.

That takes us to the appeal involving Doordarshan's refusal to telecast the documentary "Beyond Genocide" based on the Bhopal Gas Disaster. There is no dispute that this film won the Golden Lotus award as the best non-feature film of 1987. Yet, as the judgment of the High Court reveals, Doordarshan refused to telecast it on the ground that "the contents being outdated do not have relevance now for the telecast". It was emphasised that since the parameters applied for selection of a film for national award were different from those applied by the Film Selection Committee of Doordarshan when it comes to selecting a film for telecast, the mere fact that a film has won a national award is not sufficient for all national award winning films are not *ipso facto* fit for telecast on television. It was said that unless a film is socially relevant and fair and balanced it is not cleared for telecast. The film in question did not satsify this broad norm since it was found lacking in moderation and restraint and hence it was not clearred for telecast. Lastly it was said that since claims for compensation of the victims of the tragedy were pending and political parties were raising

various issues, it was though inexpedient to screen the film. It is, however, admitted in paragraph 2 of the Special Leave Petition: "The documentary is an appraisal of what exactly transpired in Bhopal on the date the gas leak occurred". Admittedly the said film was granted a 'U'certificate by the Central Board of Film Certification under section 5A of the Cinematograph Act, 1952 (hereinafter called 'the Act'). A B

In the High Court Doordarshan had by way of an additional affidavit contended that before refusing to telecast the film, its selection committee had examined the film with a view to finding out if it conformed to the norms laid down for selection of a documentary film for telecast. These norms on which reliance was placed have been extracted in the judgment of the High Court and read as under: C

"(i) Criticism of friendly countries;

(ii) Attack on religions and communities;

D

(iii) Anything obscene and defamatory;

(iv) Incitement of violence of anything against maintenance of law and order;

(v) Anything amounting to contempt of court; E

(vi) Attack on a political party by name;

(vii) Hostial criticism of any State or Centre."

The High Court observes that these guidelines were purely departmental/executive instructions or notings on the file for internal guidance which cannot curtail the freedom conferred by Article 19(1)(a) and not being 'law' could not claim the protection of Article 19(2) of the Constitution. The learned Additional Solicitor General submitted that the High Court had completely misdirected itself in not appreciating that these norms were fixed keeping in mind the requirement of Section 5B of the Act which section was consistent with Article 19(2) extracted earlier. We may now examine the scheme of the Act. F G

The Act was enacted to provide for the certification of cinematograph films for exhibition and for regulating their exhibition. Section 3 of H

A the Act empowers the Central Government to constitute a Board consisting of a Chairman, five whole time members and six honorary members, three of whom must be persons engaged or employed in the film industry, for the purpose of sanctioning films for public exhibition. Section 3B empowers the Board so constituted to consitute by speical or general order an Examining Committee for the examination of any film or class of films and a Revising Committee for reconsidering, if necessary, the recommendations of the Examining Committee. Any person desiring to exhibit any film has to make an application as provided by Section 4 to the Board in the prescribed manner for a certificate and the Board may after examination of the film saction the film for unrestricted public exhibition or sanction the film for public exhibition restricted to adults or to direct the applicant to carry out such excisions and modifications in the film as it thinks necessary before sanctioning it for unrestricted public exhibition or for public exhibition restricted to adults or refuse to sanction the film for public exhibition. Section 4A provides for the examination of films by the Examining Committee and in the case of difference of opinions amongst the members of the Examining Committee for further examination by the Revising Committee. Section 5A provides for certification of films. If after examination the Board consider that the film is suitable for unrestricted public exhibition or that although not suitable for such exhibition, it is suitable for public exhibition restricted to adults, it is required to issue a 'U' certificate in the case of the former and an 'A' certificate in the case of the latter. Section 5B provides for laying down principles for guidance in the matter of certification of films. This section to the extent relevant for our purpose reads as under :

> "5B. Principles for guidance in certifying films - (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.
>
> (2) Subject to the provisions contained in sub-section (1)..... the Central Government may issue such directions as it may think fit setting out the principles which shall guide the

authority competent to grant certificates under this Act in sanctioning films for public exhibition.....". A

Section 5C provides for the constitution of appellate tribunals, whereas Section 5D provides for appeals against the Board's decision refusing to grant the certificate or granting only 'A' Certificate or directing the applicant to carry out any excisions or modifications. In addition thereto revisional powers have been conferred on the Central Government to call for the record of any proceeding in relation to any film at any stage where it is not made the subject matter of appeal, to enquire into the matter and make such order in relation thereto as it thinks fit and where necessary give a direction that the exhibition of the film should suspended for a period not exceeding two months. Sub-section (5) of section 6 lays down that the Central Government may, if satisfied in relation to any film in respect of which an order has been made by an appellate tribunal under Section 5B that it is necessary so to do in the interests of (i) the sovereignty and integrity of India or (ii) the security of the State or (iii) friendly relations with foreign States or (iv) public order or decency or morality, make such enquiry into the matter as it deems necessary and pass such order in relation thereto as it thinks fit. Thereupon the Board must dispose of the matter in conformity with such order. Section 7 lays down the penalties for contravention of the requirements of Part II of the Act. Section 8 confers power to make rules and Section 9 empowers the Central Government to exempt the exhibition or export of any film or class of films from any of the provisions of the said part or of any rules made thereunder subject to such conditions and restrictions, if any, as it may impose. Part III of the Act deals with the regulation of exhibitions by means of Cinematograph with which we are not concerned. This in brief is the scheme of the statute. B C D E F

In exercise of power conferred by sub-section (2) of Section 5D of the Act the Central Government issued a notification dated 7th January, 1978 laying down the principles which should guide the authorities in sanctioning the films for public exhibition. These guidelines came to be enlarged by a subsequent notification dated 11th August, 1989. The guidelines laid down by these two notifications require the Board of Film Certification to ensure that : G

"(i) Anti-social activities such as violence are not glorified or H

A justified:

(ii) The *modus-operandi* of criminals or other visuals or words likely to incite the commission of any offence are not depicted:

(iia) Scenes showing involvement of children in violence, either
B as victims or as perpetrators, or showing child abuse or abuse of physically and mentally handicapped persons are not presented in a manner which is needlessly prolonged or exploitative in nature;

(iii) Pointless or avoidable scenes of violence, curelty and
C horror are not shown;

(iiia) Scenes which have the effect of justifying or glorifying drinking and drug addiction are not shown;

D (iv) Human sensibilities are not offended by vulgarity, obscenity and depravity;

(iva) Visuals or words depicting women in any ignorable servility to man or glorifying such servility as a praiseworthy quality in women are not presented;

E

(ivb) Scenes involving sexual violence against women like attempt to rape, gangrape, murder or any other form of molestation or scences of a similar nature shall be avoided and if for any reason such things are found to be inevitable for the sequence of a theme, they shall be properly scruitinised so as
F to ensure that they do not create any adverse impression on viewers and the duration of the scenes shall be reduced to the shortest span;

(v) Visuals or words contemptuous of racial, religious or other
G groups are not presented;

(va) Visuals or words which promote communal obscurantist, antiscientific and anti-national attitudes are not presented;

(vi) The sovereignty and integrity of India is not called in
H question;

(vii) The security of the State is not jeopardised or endangered; A

(viii) Friendly relations with foreign States are not strained;

(ix) Public order is not endangered;

(x) Visuals or words involving defamation or contempt of court are not presented." B

In follwing these guidelines or principles the Board of Film Certification has been cautioned to ensure that the film is judged in its entirely from the point of view of its overall impact and is judged in the light of contemporary standards of the courtry and the people to which the film relates. Pursuant to the issuance of these guidelines the Central Government issued a futher notification dated 16th October, 1984 in exercise of power under Section 9 of the Act exempting all Doordarshan programmes from the provisions relating to certification of films in Part II of the Act and the Rules made thereunder subject to the condition that while clearing programmes for telecast, the Director General, Doordarshan or the concerned director, Doordarshan Kendra shall keep in view the film certification guidelines issued by the Central Government to the Board of Film Certification under sub-section (2) of Section 5B of the Act. C D

It may be stated at the outset that the refusal to telecast was not based on the ground that the list of award winning films was long and on the basis of *inter-se* priority amongst such films and the time allocated for telecasting such films, it was not possible to telecast the film. The grounds for refusal that can be culled out from the pleadings were (i) the film is out dated (ii) it has lost its relevance (iii) it lacks moderation and restraint (iv) it is not fair and balanced (v) political parties have been raising various issues concerning the tragedy and (vi) claims for compesation by victims are sub-judice. In addition to these grounds which can be culled out from the judgment of the High Court, it is found from the affidavit filed in the present proceedings that the film was not found fit for telecast as it was likely to create commotion to the already charged atmosphere and because the film criticised the action of the State Government, which was not permissible under the Guidelines. The last two grounds were not before the High Court giving the impression that Doordarshan is shifting its stand. We will however not brush them aside on such technical considerations. We may however point out that Doordarshan has not placed any material E F G H

A suggesting why it things that the film does not conform to the above stated norms.

Mr. Tulsi, the learned counsel for Doordarshan, submitted that sub-section (2) of section 5B empowers the Central Government to issue directions setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition and since the exemption granted to Doordarshan under Section 9 of the Act from the provisions relating to certification of films in Part II of the Act and Rules made thereunder by notification dated 16th October, 1984 is subject to the condition that while clearing programmes for telecast Doordarshan shall keep in view the film certification guidelines issued by the Central Government under Section 5B of the Act, the guidelines clearly have statutory flavour and would, therefore, fall within the protective umbrella of Article 19(2) and the High Court was wrong in brushing them aside as mere departmental/executive directions or notings on a file not having the force of law. We will so assume for the purposes of this appeal. However, once it is recognised that a film-maker has a fundamental right under Article 19(1)(a) to exhibit his film, the party which claims that it was entitled to refuse enforcement of this right by virtue of law made under Article 19(2), the onus lies on that party to show that the film did not conform to the requirements of that law, in the present case the guidelines relied upon. Two question, therefore, arise (i) whether the film-maker had a fundamental right to have his film telecast on Doordarshan and (ii) if yes, whether Doordarshan has successfully shown that it was entitled to refuse telecast as the guidelines were breached?

In the United States prior restraint is generally regarded to be at serious odds with the First Amendment and carries a heavy presumption against its constitutionality and the authorities imposing the same have to discharge a heavy burden on demonstrating its justification (See *New York Times Company* v. *The United States,* 403 U.S. 713. Traditionally prior restraints, regardless of their from, are frowned upon as threats to freedom of expression since they contain within themselves forces which if released have the potential for imposing arbitrary and at times irrational decisions. Since the function of any Board of Film Censors is to censor it, it immediately conflicts with the Article 19(1)(a) and has to be justified as falling within permissible restraint under Article 19(2) of the Constitution. A similar question came up before this Court in *K.A. Abbas* v. *The Union of*

*India,* [1971] 2 SCR 446 wherein Chief Justice Hidayatullah exhaustively dealt with the question of prior restraint in the context of the provisions of the Constitution and the Act. The learned Chief Justice after setting out the various provisions to which we have already adverted posed the question; 'How far can these restrictions go and how are these to be imposed'? The documentary film 'A tale of four cities' made by K.A. Abbas portrayed the contrast between the luxurious life of the rich and the squalor and poverty of the poor in the four principal cities of the country and included therein shots from the red light district of Bombay showing scantily dressed women soliciting customers by standing near the doors and windows. The Board of Film Censors granted 'A' certificate to the film and refused the 'U' certificate sought by Abbas. This was on the ground that the film dealt with relations between sexes in such a manner as to depict immoral traffic in women and because the film contained incidents unsuitable for young persons. Abbas challenged the Board's decision on the ground (i) that pre-censorship cannot be tolerated as it was in violation of the freedom of speech and expression and (ii) even if it is considered legitimate it must be exercised on well-defined principles leaving no room for arbitrary decisions. This Court held that censorship in India had full justification in the field of exhibition of films since it was in the interest of society and if the legitimate power in abused it can be struck down. While dealing with the grounds on which the 'U' certificate was refused, the learned Chief Justice observed :

> "The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary of him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in toto and for ever from human thought and must give scope for talent to put them before

A society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man moral man begins to feel embarrased or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth."

In *Ramesh* v. *The Union of India,* [1988] 1 SCC 668 petition was filed to restrain the screening of the serial 'Tamas' on the ground that it violated Articles 21 and 25 of the Constitution and Section 5B of the Act. Based on the novel of Bhisma Sahni this serial depicted the events that took place in Lahore immediately before the partition of the country. Two Judges of the Bombay High Court saw the serial and rejected the contention that it propagates the cult of violence. This Court after referring to the observations of Hidayatullah, CJ. in K.A. Abbas proceeded to state as under :

"It is no doubt true that the motion picture is a powerful instrument with a much stronger impact on the visual and aural sense of the spectators than any other medium of communication; likewise, it is also true that the television, the range of which has vastly developed in our country in the past few years, now reaches out to the remotest corners of the country catering to the not so sophisticated, literary or educated masses of people living in distant villages. But the argument overlooks that the potency of the motion picture is as much for good as for evil. If some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, an equally deep strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish interests, scenes depicting mutual respect and tolerance, scenes showing comradship, help and kindness which transcend the barriers of religion. Unfortunately, modern developments both in the field of cinema as well as in the field of national and international politics have rendered it inevitable for people

to face realities of internecine conflicts, *inter alia*, in the name of religion. Even contemporary news bulletins very often carry scenes of pitched battle or violence. What is necessary sometimes is to penetrate behind the scenes and analyse the causes of such conflicts. The attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and foment conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value."

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

As already pointed out earlier this Court in *S. Rangarajan's* case (supra) emphasised that the freedom conferred on a citizen by Article 19(1)(a) includes the freedom to communicate one's ideas or thoughts through a newspaper, a magazine or a movie. Although movie enjoys that freedom it must be remembered that movie is a powerful mode of communication and has the capacity to make a profound impact on the minds of the viewers and it is, therefore, essential to ensure that the message it conveys is not harmful to the society or even a section of the society. Censorship by prior restraint, therefore, seems justified for the protection of the society from the ill-effects that a motion picture may produce if unrestricted exhibition is allowed. Censorship is thus permitted to protect social interests enumerated in Article 19(2) and section 5B of the Act. But such censorship must be reasonable and must answer the test of Article 14 of the Constitution. In this decision the fundamental difference between the U.S. First Amendment and the freedom conferred by 19(1)(a), subject to Article 19(2) has been highlighted and we need not dwell on the same.

Every right has a corresponding duty or obligation and so has the fundamental right of speech and expression. The freedom conferred by

A 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 to direct conflict with the
B 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 5B of the Act on the exercise of the right of speech and expression. It is for this reason that this Court has recognised
C 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 19(1)(a), such restrictions are bound to be viewed as anathema, in that, they are in the
D 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.

E From the above discussion it follows that unquestionably the respondent had a right to convey his perception of the gas disaster in Bhopal through the documentary film prepared by him. This film not only won the Golden Lotus award but was also granted the 'U' certificate by the censors. Even according to the petitioners 'the documentary is an appraisal of what
F exactly transpired in Bhopal on the date the gas leak occurred'. The petitioners, therefore, concede that the film faithfully brings out the events that took place at Bhopal on that fateful night. Therefore, the respondent cannot be accused of having distorted the events subsequent to the disaster. How then can it be alleged that it is not fair and balanced or lacks in
G moderation and restraint? It is nowhere stated which part of the film lacks moderation and/or restraint nor is it shown how the film can be described as not fair and balanced. Merely because it is critical of the State Government, perhaps because of its incapacity to cope with unprecedented situation, is no reason to deny selection and publication of the film. So also pendency of claims for compensation does not render the matter sub-
H judice so as to shut out the entire film from the community. In fact the

community was keen to know what actually had happened, what is happening, what remedial measures the State Authorities are taking and what are the likely consequences of the gas leak. To bring out the inadequacy of the State effort or the indifference of the officers, etc., cannot amount to an attack on any political party if the criticism is genuine and objective and made in good faith. If the norms for appraisal was the same as applied by the censors while granting the 'U' certificate, it is difficult to understand how Doordarshan could refuse to exhibit it. It is not that it was not sent for being telecast soon after the disaster that one could say that it is outdated or has lost relevance. It is even today of relevance and the press has been writing about it periodically. The learned Additional Solicitor General was not able to point out how it could be said that the film was not consistent with the accepted norms setout earlier. Doordarshan being a State controlled agency funded by public funds could not have denied access to the screen to the respondent except on valid grounds. We, therefore, see no reason to interfere with the High Court order.

In the result both the appeals fail and are dismissed with costs.

T.N.A. Appeals dismissed.