

FREEDOM OF SPEECH AND EXPRESSION AND THE OBLIGATION OF STATE TO PROTECT RIGHTS OF INDIVIDUAL

Mr. Kush Kalra*
Mr. Bhanu Tanwar**

Abstract

In today's world, new generation of film makers born in the 80s has entered the scene. We cannot expect that they will present current and live issues and problems in the same manner as the older or earlier generation. They want to chart a course of their own, uninfluenced by earlier works. A certain degree of freshness, a change of attitude and a different way of looking at the same medium by itself and without anything more should not result in bringing about disruptions or creating hurdles and obstacles in their way. To stop them abruptly and by extreme responses will not only discourage them but may kill creativity. If they are allowed to go ahead in their own way but with timely cautioning and warning, they may respond positively and take the same in proper spirit. However, to interfere with their work again and again, mindlessly will only invite extreme reactions. That would not be conducive to the growth of the medium. Eventually, it must march with the times and compete with the best of the works made locally and globally. That apart, the appeal of the social media, the advent of television which operates on a multi channel basis 24X7 resulting in large scale production and distribution of tele serials, tele dramas, telefilms presents a enormous challenge and is virtually threatening the existence or efficacy of a celluloid¹ film. A full length feature film needs to hold the audience to the seat for certain hours. Its story line, theme, script and the overall content should have that capacity and potency. Else, the audience interest will wane and vanish. Hence, filmmakers, producers, directors of today have changed their strategies.

The filmmakers of today are direct, forthright, attacking, aggressive and even brutal in their presentation. It is not only in

* Assistant Professor. Delhi Metropolitan Education, Delhi.

** Student, National Law University, Delhi.

¹ Meaning of celluloid:

1. A colorless flammable material made from nitrocellulose and camphor and used to make photographic film.

2.a. Motion-picture film.

b. The cinema; motion pictures.

the technical departments but in the story telling as well they have set their own standards. There is a marked deviation from the earlier genre² and an attempt to create a unique style on par with film making and presentation internationally. Just because they are not soft, subtle in their approach, one cannot be unduly strict and harsh. Holding up the certificates or suggesting cuts and excisions in virtually every alternate scene would not be counterproductive.

Introduction

"I may not agree with what you say, but will defend to the death, your right to say it", said the author Voltaire (Attributed to Voltaire by S.G. Tallentyre in *The Friends of Voltaire*, 1907).

India has the benefit of one of the most modern and liberal constitutions. It is reflective of its rich and diverse heritage, yet enunciating the modern principles of democracy, as distinguished from a feudal society. One of the most cherished rights under our Constitution is to speak one's mind and write what one thinks. No doubt, this is subject to reasonable restrictions, but then the ambit of what one can do is wide.

Whether the society is ready to read a particular book and absorb what it says without being offended, is a debate which has been raging for years together. Times have changed. What was not acceptable earlier became acceptable later. "Lady Chatterley's Lover" is a classical example of it. The choice to read is always with the reader. If you do not like a book, throw it away. There is no compulsion to read a book. Literary tastes may vary-what is right and acceptable to one may not be so to others. Yet, the right to write is unhindered³. If the contents seek to challenge or go against the very Constitutional values, raise racial issues, denigrate⁴ castes, contain blasphemous⁵ dialogues, carry unacceptable sexual contents or start a war against the very existence of our country, the State would, no doubt, step in.

2 Meaning of genre:

- a. A category of artistic composition, as in music or literature, marked by a distinctive style, form, or content.
- b. A realistic style of painting that depicts scenes from everyday life.

3 Meaning of unhindered: Not slowed or blocked or interfered with.

4 Meaning of denigrate:

1. To attack the character or reputation of; speak ill of; defame.
2. To disparage; belittle.

5 Meaning of blasphemy:

- The crime committed if a person insults, offends, or vilifies the deity.

The very heart of democracy is the freedom to think and act differently. Implicit therein is a freedom to react and respond to same situations differently and distinctly. The very charm of democracy is that there are multiple views, thoughts and expressions. One cannot expect everybody to express themselves in the same manner. There is fresh blood injected in the film industry. This fresh blood is definitely enthusiastic and wants to set its foot in the industry. Such fresh blood has been welcomed by the film industry and the viewing public. Their works have been accepted, applauded⁶ and even rewarded by the State. These works are based on certain thinking and which is of their own. They hold independent views and thoughts not only on how the film industry must function, but the medium as a whole should be handled. They feel that film is a powerful and strong medium and its potential has remained unutilized or under-utilized. The film makers of today may feel that their predecessors sold dreams and seldom dared to portray reality. They created an audience loyal to them by churning out love stories or such stories which had no connection with the common man's day-to-day existence and life. The stories of Kings and Queens, the stories of those wealthy and rich who never faced the pangs of hunger nor suffered because of unemployment and poverty, therefore, occupied most of the screen time. Thus, pure entertaining and escapist stuff was thrown at the viewing public without any variety and for years together. There were few noteworthy exceptions to this unwritten rule. The audience was cultivated and made to accept this work which in the opinion of today's film makers hardly did credit to the worth of the medium nor brought any laurels to the industry. Of course today's youth admire, appreciate and respect some of the yesterday icons and their work. They are aware that even during the times when the films were unreal, mere fantasies, there were film makers who presented the other side. All such film makers were respected and are noteworthy for they opened up our mind to "Bharat" and not concentrated only on "India". The poor, the lower middle class and the middle class found place and voice in their work. Yet, according to the present-day film makers, earlier work was not complete and does not deserve to be carried forward in the same way. It is such ideology which has influenced today's film making. Therefore, a direct depiction⁷, without fun and frolic, but brazen and bold, of the reality in the society is their focal theme. They do

⁶ Meaning of applaud: To express approval, especially by clapping the hands.

⁷ Meaning of depict:

1. To represent in a picture or sculpture.
2. To represent in words; describe.

not wish to beat around the bush and hide problems like alcoholism, crime and terrorism prevalent in today's world. These makers are of the view that a serious, somewhat glory and detailed depiction of the vices in and threats to the society may open up the eyes of, not only the public, but public officials and the State. It is this desire as well which drives them to present their work in the manner currently presented by some of them. There is a contrary view in the society. Men and women in administration or otherwise, teachers, professors, critics, writers, thinkers and experts in the field of science, medicine, technology, humanities etc. may feel that today's films have a temporary and short-term impact. Burning social, psychological problems and behavioral issues are not handled with enough sensitivity, maturity, compassion and conviction. At times, commerce and trade control the medium of films is the view expressed. This contrary perception of the medium must be welcomed because that is how an audience for films is developed and nurtured. Eventually, all wise men leave the fate of the film to the public.

Freedom of speech and expression

The State is obliged to create an atmosphere congenial for the development and promotion of art and culture consistent with the Constitutional mandate as enshrined in our Preamble⁸. The Constitution aims at securing to all its citizens liberty of thought, expression, belief, faith and worship. All its provisions are intended to uphold these fundamental values and when it secures its citizens justice, social, economic and political, equality of status and opportunity and to promote among them all fraternity⁹ assuring the dignity of the individual and the unity and integrity of the Nation, then, not only the Board officials but even the film makers ought to realize that true democracy does not mean a licence to dictate and foist¹⁰ one's views and ideas on

⁸ Meaning of preamble:

1. A preliminary statement, especially:

a. The introduction to a formal document that explains its purpose.
b. A statement accompanying a law or regulation specifying its purpose or reason for enactment.

2. An introductory occurrence or fact; a preliminary.

⁹ Meaning of fraternity:

1. A body of people associated for a common purpose or interest such as a guild.

2. A group of people joined by similar backgrounds, occupations, interests, or tastes.

¹⁰ Meaning of foist:

1. To pass off as genuine, valuable, or worthy.

2. To impose (something or someone unwanted) upon another by coercion or trickery.

others. Equally it gives no licence to nudity, vulgarity, indecency and immorality. The film makers also need to realize that a repetitive and one-sided depiction and exposure would generate nausea¹¹ and aversion. The audience expects a package. If it does not get it in that form and measure, it would walk out. At times it may not only like to know about the defects and infirmities in the working of the Police or State machinery, but would expect some solutions as well. Therefore, it is for the film makers to decide and take a call on whether they need to mould themselves and their ideas in the changing times. Surely, the State and particularly the Central Board of Film Certification cannot, in the garb of alleged public interest or audience taste, try to mould, shape and control public opinion. That would be disastrous and would strike at the very root of the democracy and the fundamental freedom so dearly cherished by all. A balance and blend in right measure, of entertainment and message, may be required so that the objectives of film certification are achieved. According to it (CBFC) the objectives, particularly of ensuring that the medium of film remains responsible and sensitive to the values and standards of society, the medium of films provides clean and healthy entertainment and as far as possible, the film is of aesthetic¹² value and cinematically of a good standard may enable the Board to certify films with cuts and deletions, but it must not overlook or brush aside equally important objectives of not unduly curbing artistic expression and creative freedom and its certification being responsive to social change. Thus, the objectives of film certification cannot be applied ignoring the Constitutional guarantee or to defeat and frustrate it completely. The Board certifies films for exhibiting them to the members of public or restricted sections or classes of the same and not necessarily censors them.

If the creative freedom as guaranteed by Article 19(1)(a) to the makers and of choosing any theme and selecting characters to indicate as to how any issue concerning the society has assumed serious proportions, then, within the four corners of the Cinematograph Act, 1952, the authorities must decide as to whether the work/film is fit to be certified not for universal public viewing but by the adults. True it is that some cuts can be made.

¹¹ Meaning of nausea:

1. A feeling of sickness in the stomach characterized by an urge to vomit.
2. Strong aversion; disgust.

¹² Meaning of aesthetic:

1. Relating to the philosophy or theories of aesthetics.
2. a. Of or concerning the appreciation of beauty or good taste.
b. Attractive or appealing.

Meaning of the term "defamation":

- i. Salmond & Heuston on the *Law of Torts*, 20th Ed.¹³ define a defamatory statement as under:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right thinking member of society...

- ii. *Halsburys Laws of England*, Fourth Edition, Vol. 28, defines 'defamatory statement' as under:

A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.

- iii. Defamation, according to *Chambers Twentieth Century Dictionary*, means to take away or destroy the good fame or reputation; to speak evil of; to charge falsely or to asperse.

According to Salmond:

The wrong of defamation, consists in the publication of a false and defamatory statement concerning another person without lawful justification. The wrong has always been regarded as one in which the Court should have the advantage of the personal presence of the parties if justice is to be done. Hence, not only does an action of defamation not survive for or against the estate of a deceased person, but a statement about a deceased person is not actionable at the suit of his relative¹⁴.

- iv. *Winfield & Jolowics on Torts*¹⁵ defines defamation thus:

Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of

¹³ Bata India Ltd. v. A.M. Turaz and Ors., 2013 (53) PTC 586; Pandey Surindranath Sinha v. Bageshwari Pd., A.I.R. 1961 Pat. 164.

¹⁴ GATLEY'S LIBEL AND SLANDER, 6th ed., 1960; also ODGER'S LIBEL AND SLANDER, 6th Ed. 1929.

¹⁵ (17th Ed. 2006).

society generally; or which tends to make them shun or avoid that person.

vi. In the book *The Law of Defamation*¹⁶, the term defamation has been defined as below:

Defamation may be broadly defined as a false statement of which the tendency is to disparage the good name or reputation of another person.

vii. In *Parmiter v. Coupland*, (1840) 6 MLW 105, defamation has been described as:

A publication, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt, or ridicule.

viii. The definition of defamation by Fraser was approved by Mc Cardie, J. in *Myroft v. Sleight*, (1921) 37 TLR 646.

It says: a defamatory statement is a statement concerning any person which exposes him to hatred, ridicule or contempt or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or trade.

ix. Carter Ruck on *Libel and Slander*¹⁷ has carved out some of the tests as under:

(1) a statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, professional or trade.

(2) a false statement about a man to his discredit.

(3) would the words tend to lower the plaintiff in the estimation of right thinking members of society generally.

Concept of reputation

What constitutes reputation? The allusions would clearly exhibit the innate universal value of "reputation" and how it is a cherished constituent of life and not limited or restricted by time. The description may be different, but the crucial base is the same.

¹⁶ Richard O' Sullivan, QC and Roland Brown.

¹⁷ Manisha Koirala v. Shashi Lal Nair and Ors., 2003 (2) Bom. CR 136.

Vision of ancients on reputation

i. In *Bhagawat Gita*, it has been said:

The English translation of aforequoted *shloka* is:

Non-violence in thought, word and deed, truthfulness and geniality of speech, absence of anger even on provocation, disclaiming doership in respect of actions, quietude or composure of mind. Abstaining from malicious gossip, compassion towards all creatures, absence of attachment to the objects of senses even during their contact with the senses, mildness, a sense of shame in transgressing against the scriptures or usage, and abstaining from frivolous pursuits.

ii. In *Subhashitratbhandagaram*, it has been described:

Sa jeevtiyashoyashyakirtiyashyasajeevti,
Ayashokirtisanyuktojeevannipemritoopamma

Translated into English it is as follows:

One who possesses fame alone does live. One who has good praise does alone live. Who has no fame and negative praise is equal to one who is dead while alive.

iii. The English translation of *Surah 49 Aayaat 11* of the *Holy Quran* reads as follows:

Let not some men among you laugh at others: it may be that the (latter) are better than the (former): nor defame nor be sarcastic to each other, nor call each other by (offensive) nicknames, ill-seeming is a name connoting wickedness, (to be used of one) after he has believed: and those who do not desist are (indeed) doing wrong.

iv. Proverb 15 of the *Holy Bible* reads as under:

A soft answer turns away wrath, but a harsh word stirs up anger. The tongue of the wise dispenses knowledge, but the mouths of fools pour out folly. The eyes of the LORD are in every place, keeping watch on the evil and the good. A gentle tongue is a tree of life, but perverseness in it breaks the spirit.

Though the aforesaid sayings have different contexts, yet they lay stress on the reputation, individual honour and also the need of gentleness of behavior on the part of each one.

Thoughts of the creative writers and thinkers on reputation

William Shakespeare in *Othello* expressed his creative thoughts on character by the following expression:

Good name in man and woman, my dear lord,
is the immediate jewel of their souls
Who steals my purse steals trash; 'tis something, nothing;
'T was mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.

The said author in *Richard II*, while enhancing the worth of individual reputation, achieved his creative heights, and the result in the ultimate is the following passage:

The purest Treasure mortal times afford
Is spotless reputation; that away,
Men are but gilded loam or painted clay.
A jewel in a ten-times-barr'd-up chest
Is a bold spirit in a loyal breast.
Mine honour is my life, both grow in one;
Take honour from me and my life is done.

The famous Greek philosopher and thinker Socrates taught:

Regard your good name as the richest jewel you can possibly be possessed of-for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous¹⁸ task to rekindle it again. The way to gain a good reputation is to endeavour to be what you desire to appear.

The philosopher in Aristotle inspired him to speak:

Be studious to preserve your reputation; if that be once lost, you are like a cancelled writing, of no value, and at best you do but survive your own funeral.

While speaking about reputation, William Hazlitt had to say:

A man's reputation is not in his own keeping, but lies at the mercy of the profligacy¹⁹of others. Calumny requires no proof.

¹⁸ Meaning of arduous:

1. Demanding great effort or labor; difficult.
2. Testing severely the powers of endurance; strenuous.

¹⁹ Meaning of profligacy:

The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.

The international covenants²⁰ and reputation

Various international covenants have stressed on the significance of reputation and honour in a person's life. The Universal Declaration on Human Rights, 1948 has explicit provisions for both, the right to free speech and right to reputation. Article 12 of the said Declaration provides that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The International Covenant on Civil and Political Rights (ICCPR) contains similar provisions. Article 19 of the Covenant expressly subjects the right of expression to the rights and reputation of others. It reads thus:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or imprint, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (order public), or of public health or morals.

1. Given to or characterized by licentiousness or dissipation.

2. Given to or characterized by reckless waste; wildly extravagant.

²⁰ Meaning of covenant:

- a. A condition in a contract such as a deed or lease, nonperformance or violation of which gives rise to a cause of action for breach.
- b. A contract.

Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provide:

Article 8. Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10. Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, maybe subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Reference to international covenants has a definitive purpose. They reflect the purpose and concern and recognize reputation as an inseparable right of an individual. They juxtapose²¹ the right to freedom of speech and expression and the right of reputation thereby accepting restrictions, albeit²² as per law and necessity. That apart, they explicate that the individual honour and reputation is of great value to human existence being attached to

²¹ Meaning of juxtapose:

To place side by side, especially for comparison or contrast.

²² Meaning of albeit:

Even though; although; notwithstanding.

dignity and all constitute an inalienable part of a complete human being. To put it differently, sans these values, no person or individual can conceive the idea of a real person, for absence of these aspects in life makes a person a non-person and an individual to be an entity only in existence perceived without individuality.

Judiciary and freedom of speech and expression:

In *S. Rangarajan v. P. Jagjevan Ram and Ors.*²³, while interpreting Article 19(2) High Court borrowed from the American test of clear and present danger and observed:

"Our commitment to 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."

Public decency and morality is outside the purview of the protection of free speech and expression, and thus a balance should be maintained between freedom of speech and expression and public decency and morality but the former must never come in the way of the latter and should not substantially transgress the latter.

Freedom of expression & duty of the State to protect rights:

- 1) *S. Rangarajan v. P. Jagjivan Ram*²⁴, the case related to the revocation²⁵ of the 'U Certificate'²⁶ granted to the film 'Ore OruGramathile'²⁷, which was an anti-reservation film. There were protests against this film.

²³ (1989) 2 S.C.C. 574.

²⁴ (1989) 2 S.C.C. 574.

²⁵ Meaning of revocation:
The act or an instance of revoking.

²⁶ U (Unrestricted Public Exhibition).
Films with the U certification are fit for public exhibition, and are often family friendly. These films can contain universal themes like education, family, drama, romance, sci-fi, and action etc. Now, these films can also contain some mild violence, but it should not be prolonged. It may also contain very mild sexual scenes (without any traces of nudity or sexual detail).

²⁷ *Ore OruGramathile* is a 1989 Tamil Indian feature film directed by K. Jyothi Pandian. The film stars Lakshmi and Nizhalgal Ravi in the lead roles. The film was banned for criticizing caste based reservations. The Supreme Court of India later allowed its release.

It was held therein that the effect of the so called offending words must be judged from the standards of reasonable, strong minded, firm and courageous men and not those of weak and vacillating minds. It was further held that the State cannot plead its inability to handle the problem of hostile audience. It is its obligatory duty to prevent it and protect the freedom of expression.

- 2) *Prakash Jha Productions v. Union of India*²⁸, case involved the suspension of the Hindi film *Aarakshan* by the State of Uttar Pradesh even after the Censor Certificate was issued on grounds that it would cause a 'law and order' issue.

The Supreme Court held that the film was to be allowed to be screened. 'Law and order' maintenance was the duty of the State. The Court held that it is the duty of the State to maintain law and order and therefore, the State shall maintain it effectively and potentially.

- 3) *Srishti School of Art, Design & Technology v. Chairperson, Central Board of Film Certification*²⁹, in this case, the makers of the documentary called *Had Anhad* were asked to carry out cuts, which the petitioner protested against.

It was held that the cuts proposed were violative of the petitioner's right to free speech and expression and was allowed.

The Court observed that the Indian Constitution provides a democratic space to voice views unacceptable to others but for the reason it is unacceptable, it cannot be prevented from being expressed.

It was thus held that a book must be read as a whole and the context must not be ignored and it is reasonable to see what would be the reaction of a common reader.

- 4) *LYCA Productions Pvt. Ltd. v. Government of Tamil Nadu*³⁰, in this case, the producers of the popular Tamil commercial feature film *Kathiwere Sri Lankans* and the film was objected to owing to the nationality of its producers. They were forced to sign an agreement to remove their names from the movie hoardings, which the police attempted to enforce against them.

²⁸ (2011) 8 S.C.C 372.

²⁹ 2011 (123) D.R.J.

³⁰ 2014 S.C.C. Online Mad. 1448.

High Court held agreement not valid and cannot be enforced. It was observed that the letter of undertaking cannot be relied upon by the Police, which cannot grant a seal of approval to such letters of undertaking, as the same tant amounts to the creation of a super-censor Board. It was further observed that the police should not permit attempts of such blackmails to succeed, which if allowed, would automatically lead to extortion and the surrender of power of governance and the rule of law to a few intolerant people.

- 5) *Ajay Gautam v. Union of India*³¹, the movie *PK*³² was sought to be banned on the grounds that it hurt the religious sentiments of the Hindus and violated the rights of the Hindus under Article 19(2).

Holding that no one is captive audience and it is a conscious choice of a viewer, who is free to avoid watching the film, the case was dismissed.

- 6) *S. Khushboo v. Kanniammal*³³, this case pertained to the quashing of cases filed against the petitioner³⁴ for remarks made by her on pre-marital sex.

High Court observed that a culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalize the author.

- 7) *Sony Pictures v. State*³⁵, in this case, the ban imposed by the State of Tamil Nadu on the English film *The Da Vinci Code* was challenged.

A learned single Judge of High Court observed that when the State has a duty to prevent all threats of demonstrations and

³¹ 2015 S.C.C. Online Del. 6479.

³² *PK* is a 2014 Indian satirical science fiction comedy film. The film was directed by Rajkumar Hirani, produced by Hirani and Vidhu Vinod Chopra, and written by Hirani and Abhijat Joshi. The film stars Aamir Khan in the title role with Anushka Sharma, Sushant Singh Rajput, Boman Irani, Saurabh Shukla, and Sanjay Dutt in supporting roles. It tells the story of an alien who comes to Earth on a research mission. He befriends a television journalist and questions religious dogmas and superstitions.

³³ 2010 (5) S.C.C. 600.

³⁴ Meaning of petitioner:

A person who presents a petition.

³⁵ 2006 3 L.W. 728.

processions which amount to intimidating the right of freedom of expression, it cannot plead its inability to handle breach of peace if and when it arises. The order imposing the ban on the film was thus quashed.

Right of the freedom of speech and expression and reasonable restriction:

To appreciate the range and depth of the said right, it is essential to understand the anatomy of Articles 19(1)(a) and 19(2) of the Constitution. Be it noted here that Article 19(2) was amended by the 1st Amendment to the Constitution on 18th June, 1951 w.e.f. 26.01.1950. Article 19(1)(a) has remained its original form. It reads as under:

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

.....

Article 19(2) prior to the amendment was couched in the following words:

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the state from making any law relating to, libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

After the amendment, the new incarnation³⁶ is as follows:

(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, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said Sub-clause in the interests of 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.

Freedom of speech and expression in a spirited democracy is a highly treasured value. Authors, philosophers and thinkers have considered it as a prized asset to the individuality and overall

³⁶ Meaning of incarnation:

1. The act of manifesting or state of being manifested in bodily form, esp. hum an form.
2. A bodily form assumed by a god, etc.

progression of a thinking society, as it permits argument, allows dissent to have a respectable place, and honours contrary stances. There are proponents who have set it on a higher pedestal than life and not hesitated to barter death for it. Some have condemned compelled silence to ruthless treatment. William Douglas has denounced Regulation of free speech like regulating diseased cattle and impure butter. The Court has in many an authority having realized its precious nature and seemly glorified sanctity has put it in a meticulously structured pyramid. Freedom of speech is treated as the thought of the freest who has not mortgaged his ideas, may be wild, to the artificially cultivated social norms; and transgression thereof is not perceived as a folly. Needless to emphasise, freedom of speech has to be allowed specious castle, but the question is should it be so specious or regarded as so righteous that it would make reputation of another individual or a group or a collection of persons absolutely ephemeral, so as to hold that criminal prosecution on account of defamation negates and violates right to free speech and expression of opinion.

Bury in his work *History of Freedom of Thought* (1913) has observed that freedom of expression is "a supreme condition of mental and moral progress" [p. 239]. In the words of American Supreme Court, it is "absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities". (*See Speiser v. Randall*, (1958) 257 U.S. 513 (530)). In *Yates v. U.S.*, (1958) 354 US 298 (344) the court held that "the only kind of security system that can preserve a free Government-one that leaves the way wide open for people to favor discuss, advocate, or incite causes and doctrines however obnoxious and antagonistic such views may be to the rest of us." In *Stromberg v. California*, (1931) 283 U.S. 359 (369) the Court remarked "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means... is a fundamental principle of our constitutional system." In *Palko v. Connecticut*, (1937) 302 US 319 the right to freedom of speech and expression has been described as the "touchstone of individual liberty" and "the indispensable condition of nearly every form of freedom".

The significance of freedom of speech has been accentuated in *Ramlila Maidan* incident³⁷, whereby the court observed that the

³⁷ (2012) 5 S.C.C. 1.

freedom of speech is the bulwark of a democratic Government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succor and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like.

Article 19(2) envisages "reasonable restriction". The said issue many a time has been deliberated by this Court. The concept of reasonable restriction has been weighed in numerous scales keeping in view the strength of the right and the effort to scuttle such a right. In *Chintaman Rao v. State of M.P.*³⁸, Supreme Court, opined as under:

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) (g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality.

Conclusion

In today's world, new generation of film makers born in the 80s has entered the scene. We cannot expect that they will present current and live issues and problems in the same manner as the older or earlier generation. They want to chart a course of their own, uninfluenced by earlier works. A certain degree of freshness, a change of attitude and a different way of looking at the same medium by itself and without anything more should not result in bringing about disruptions or creating hurdles and obstacles in their way. To stop them abruptly and by extreme responses will not only discourage them but may kill creativity. If they are allowed to go ahead in their own way but with timely cautioning and warning, they may respond positively and take the same in proper spirit. However, to interfere with their work again and

³⁸ A.I.R. 1951 S.C. 118.

again, mindlessly will only invite extreme reactions. That would not be conducive to the growth of the medium. Eventually, it must march with the times and compete with the best of the works made locally and globally. That apart, the appeal of the social media, the advent of television which operates on a multi channel basis 24X7 resulting in large scale production and distribution of teleserials, teledramas, telefilms presents a enormous challenge and is virtually threatening the existence or efficacy of a celluloid³⁹ film. A full length feature film needs to hold the audience to the seat for certain hours. Its story line, theme, script and the overall content should have that capacity and potency. Else, the audience interest will wane and vanish. Hence, filmmakers, producers, directors of today have changed their strategies.

The filmmakers of today are direct, forthright, attacking, aggressive and even brutal in their presentation. It is not only in the technical departments but in the story telling as well they have set their own standards. There is a marked deviation from the earlier genre⁴⁰ and an attempt to create a unique style on par with film making and presentation internationally. Just because they are not soft, subtle in their approach, one cannot be unduly strict and harsh. Holding up the certificates or suggesting cuts and excisions in virtually every alternate scene would not be counterproductive.

Suggestions

"(i) There is bound to be a presumption in favour of free speech and expression as envisaged under Article 19(1)(a) of the Constitution of India unless a court of law finds it otherwise as falling within the domain of a reasonable restriction under Article 19(2) of the Constitution of India. This presumption must be kept in mind if there are complaints against publications, art, drama, film, song, poem, cartoons or any other creative expressions.

³⁹ Meaning of celluloid:

1. A colorless flammable material made from nitrocellulose and camphor and used to make photographic film.
2. a. Motion-picture film.
b. The cinema; motion pictures.

⁴⁰ Meaning of genre:

- a. A category of artistic composition, as in music or literature, marked by a distinctive style, form, or content.
- b. A realistic style of painting that depicts scenes from everyday life.

- (ii) The State's responsibility to maintain law and order would not permit any compulsion on the artistes concerned to withdraw from his/her stand and non-State players cannot be allowed to determine what is permissible and what is not.
- (iii) It is high time the Government constitutes an expert body to deal with situations arising from such conflicts of views, such expert body to consist of qualified persons in the branch of creative literature and art so that an independent opinion is forthcoming, keeping in mind the law evolved by the judiciary. In such matters of art and culture, the issue cannot be left to the police authorities or the local administration alone, especially when there is a spurt in such conflicts.
- (iv) The State has to ensure proper police protection where such authors and artistes come under attack from a section of the society.
- (v) Regular programmes need to be conducted for sensitizing officials over matters dealing with such conflicts of artistic and literary appreciation."

