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BOBBY ART INTERNATIONAL

v.

OM PAL SINGH HOON AND ORS.

MAY 1, 1996

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[A.M. AHMADI, C.J., S.P. BHARUCHA AND B.N. KRIPAL, JJ.]

*Cinematograph Act, 1952 : Section 5-B.*

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*Film—Certification of—Held : Test is Film scenes should advance the message which the film intends to convey—A film that depicts consequences of social evil can show the social evil itself which must be sufficient for the purpose of the film—Guidelines issued by Central Government under S. 5-B(2) are broad standards and should not be read as a statute—Guidelines require that human sensibilities are not offended by vulgarity, obscenity or depravity, degrading or denigrating women—Where the theme of the film is to condemn rape and degradation of and violence upon women, scenes of nudity and rape and use of expletives in aid of the theme to arouse revulsion against the perpetrators and pity for the victim, permissible—Cinematograph (Certification) Rules, 1983, R. 24—Constitution of India, 1950, Art, 19(2).*

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*Section 5-C—Film certification—Grant of Appeal against—Interference by High Court—Held: Appellate Tribunal had viewed film in true perspective and, in compliance with requirements of guidelines, granted 'A' certificate—High Court in exercise of writ jurisdiction ought not to have interfered with view of Tribunal—Constitution of India, 1950, Art, 226.*

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**"Bandit Queen" is the story of a village child exposed from an early age to the brutality and lust of man. Married off to a man old enough to be her father she was beaten and raped. The village boys made advances, which she repulsed but the village panchayat found her guilty of enticement of a village boy because he was of high caste and she had to leave the village. She was arrested and, in the police station, filthily abused. Those**

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**who stood bail for her did so to satisfy their lust. She was kidnapped and raped. During an act of brutality the rapist was shot dead and she found an ally in her rescuer. With his assistance she beat up her husband, violently. Her rescuer was shot dead by one whose advances she had spurned. She was gang-raped by the rescuer's assailant and his ac-**

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**complices and they humiliated her in the sight of the village, a hundred**

men standing in a circle around the village well and watching her being stripped naked and made to walk around the circle and then made to draw water. And not one of the villagers helped her. To avenge herself upon her persecutors, she joined a dacoits' gang and killed twenty Thakurs of the village. Ultimately, she surrendered and was in jail for a number of year. A

The film was presented for certification to the Censor Board under the Cinematograph Act 1952. The Examining Committee of the Censor Board referred it to the Revising Committee under Rule 24(1) of the Cinematographic (Certification) Rules, 1983. The Revising Committee recommended that the film be granted an 'A' certificate, subject to certain excisions and modifications. B C

Aggrieved by the decision of the Revising Committee, an appeal was filed under Section 5C of the Cinematograph Act before the Appellate Tribunal. The Tribunal comprised of a Chairman, a retired Judge of High Court, and three ladies as members. Upon the basis of a unanimous order of the Tribunal, the film was granted an 'A' certificate. Thereafter, the respondent filed a writ petition before the High Court seeking to quash the certificate granted to the film and to restrain its exhibition in India. D  
The respondent contended that though audiences were led to believe that the film depicted the character of "a former queen of ravines" also known as Phoolan Devi, the depiction was "abhorrent and unconscionable and a slur on the womanhood of India" and that the respondent and his community had been depicted in a most depraved way specially in the scene of rape by B, which scene was "suggestive of the moral depravity of the Gujjar community". A Single Judge of the High Court allowed the writ petition and quashed the certificate granted to the film. Having viewed the film, a Division Bench of the High Court examined it in regard to three aspects viz. the frontal nudity scene relating to the incident of fetching water from the well which ran for two minutes, the scene showing the naked posterior of the rapist and use of expletives. Overall, the Division Bench was of the view that the Tribunal's order was vitiated by the use of the wrong tests and dismissed the Letters Patent Appeal filed by the appellant. Hence this appeal. E F G

Allowing the appeal, this Court

HELD : 1.1. "Bandit Queen" is not a pretty story. It is the serious and sad story of a worm turning a village born female child becoming a H

A dreaded dacoit. An innocent who turns into a vicious criminal because lust and brutality have affected her psyche so. The film levels an accusing finger at members of society who had tormented the victim and driven her to become a dreaded dacoit filled with the desire to revenge. The Court should recognise the message of a serious film and apply this test to the individual scenes thereof; do they advance the message ? If they do they should be left alone, with only the caution of an 'A' certificate. Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene. [154-A-B]

1.2. The scene where she is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men, the exposure of her breasts and genitalia to those men is intended by those who strip her to demean her. The effect of so doing upon her could hardly have been better conveyed than by explicitly showing the scene. Nakedness does not always arouse the baser instinct. 'Bandit Queen' tells a powerful human story and to that story the scene of her enforced naked parade is central. It helps to explain why she became what she did : her rage and vendetta against the society that had heaped indignities upon her. The rape scene also helps to explain why she became what she did. Rape is crude and its crudity is what the rapist's bouncing bare posterior is meant to illustrate. Rape and sex are not being glorified in the film. Quite the contrary, it shows what a terrible, and terrifying, effect rape and lust can have upon the victim. It focuses on the trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist. Too much need not be made of a few swear words the like of which can be heard everyday in every city, town and village street. No adult would be tempted to use them because they are used in this film. [154-C-H; 155-A]

1.3. The judgment under appeal does not take due note of the theme of the film and the fact that it condemns rape and the degradation of and violence upon women by showing their effect upon a village child, transforming her to a cruel dacoit obsessed with wreaking vengeance upon a society that has caused her so much psychological and physical hurt, and that the scenes of nudity and rape and the use of expletives, so far as the Tribunal had permitted them, were in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim. [155-H; 156-A-B]

2. A film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. At the same time, the depiction must be just sufficient for the purpose of the film, the drawing of the line is best left to the sensibilities of the expert Tribunal. The Tribunal is a multi-member body. It is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task. The guidelines are broad standards; they cannot be read as one would read a statute. Within the breadth of their parameters the certification authorities have discretion. [155-C-D; 153-C]

3. In the present case, apart from the Chairman, three members of the Tribunal were women. It is hardly to be supposed that three women would permit a film to be screened, which denigrates women, insults Indian womanhood or is obscene or pornographic. It would appear from its order that the Tribunal took the view that it would do women some good to see the film. The Tribunal had viewed the film in true perspective and had, in compliance with the requirements of the guidelines, granted to the film an 'A' certificate subject to the conditions it stated. The High Court ought not to have entertained the first respondent's writ petition impugning the grant of the certificate based as it was principally upon the slurs allegedly cast by the film on the Gujjar community. Therefore, the "A" certificate issued to the film "Bandit Queen" upon the conditions imposed by Appellate Tribunal is restored. [155-E-H; 156-C]

*K.A. Abbas v. Union of India*, [1970]2 SCC 780; *Raj Kapur v. State*, (1980) 1 SC 43; *Samaresh Bose v. Amal Mitra*, [1985] 4 SCC 289; *State of Bihar v. Shailabala Devi*, [1952] SCR 654; *Sakal Papers (P) Ltd. v. Union of India*, [1962] 3 SCR 842 and *LIC v. Prof. Manubhai D. Shah*, [1992] 3 SCC 637, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7522 of 1996 Etc.

From the Judgment and Order dated 26.3.96 of the Delhi High Court in L.P.A. No. 43 of 1996.

- A M. Chandrasekharan, Additional Solicitor General, Soli J. Sorabjee, H.N. Salve, Dr. Rajiv Dhavan, A.H. Desai, Shridhar Chitale, Mukul Mudgal, Ms. Neeru Vaid, S. Muralidhar, Nikhil, Ms. Meenakshi, L.R. Singh, Devendra Singh, Nandan Sawhney, Indrabir S. Alag, Dr. A.K. Kaul, Rakesh C. Agrawal, K.K. Kaul, K.S. Chauhan, T.C. Sharma, B.K. Prasad, Aruneshwar Gupta, Ms. Namita Chadha, N. Ramachandran, Manish Garg, for the appearing parties.

The Judgment of the Court was delivered by

**BHARUCHA, J.** Special leave granted.

- C These appeals impugn the judgment and order of a Division Bench of the High Court of Delhi in Letters Patent appeals. The Letters Patent appeals challenged the judgment and order of a learned single Judge allowing a writ petition. The Letters Patent appeals were dismissed, subject to a direction to the Union of India (the second respondent). The writ petition was filed by the first respondent to quash the certificate of exhibition awarded to the film "Bandit Queen" and to restrain its exhibition in India.

- E The film deals with the life of Phoolan Devi. It is based upon a true story. Still a child, Phoolan Devi was married off to a man old enough to be her father. She was beaten and raped by him. She was tormented by the boys of the village; and beaten by them when she foiled the advances of one of them. A village Panchayat called after the incident blamed Phoolan Devi for attempting to entice the boy, who belonged to a higher caste. Consequent upon the decision of the village panchayat, Phoolan Devi had to leave the village. She was then arrested by the police and subjected to indignity and humiliation in the police station. Upon the intervention of some persons she was released on bail; their intervention was not due to compassion but to satisfy their carnal appetite. Phoolan Devi was thereafter kidnapped by dacoits and sexually brutalised by their leader, a man named Babu Gujjar. Another member of the gang, Vikram Mallah, shot Babu Gujjar dead in a fit of rage while he was assaulting Phoolan Devi. Phoolan Devi was attracted by Vikram Mallah and threw her lot in with him. Along with Vikram Mallah she accosted her husband, tied him to a tree and took her revenge by brutally beating him. One Shri Ram, the leader of a gang of Thakurs, who had been released from jail, made advances to Phoolan Devi and was spurned. He killed Vikram Mallah. Having lost Vikram

Mallah's protection, Phoolan Devi was Gang-raped by Sri Ram, Lalaram and others. She was stripped naked, paraded and made to fetch water from the village well under the gaze of the villagers, but no one came to her rescue. To avenge herself upon her persecutors, she joined a dacoits' gang headed by Baba Mustkin. In avenging herself upon Sri Ram, she humiliated and killed twenty Thakurs of the village of Behmai. Ultimately, she surrendered and was in jail for a number of years. A  
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(We have not viewed the film. The story thereof as set out above come from the judgment under appeal.)

The film is based on a book written by Mala Sen called "India's Bandit Queen". The book has been in the market since the year 1991 without objection. C

On 17th August, 1994, the film was presented for certification to the Censor Board under the Cinematograph Act, 1952. The Examining Committee of the Censor Board referred it to the Revising Committee under Rule 24(1) of the Cinematographic (Certification) Rules, 1983. On 19th July, 1995, the Revising Committee recommended that the film be granted an 'A' certificate, subject to certain excisions and modifications. (An 'A' certification implies that the film may be viewed only by adults). D

Aggrieved by the decision of the Revising Committee, an appeal was filed under Section 5C of the Cinematographic Act before the Appellate Tribunal. It is constituted by virtue of the provisions of Section 5D of the Cinematograph Act and consists of a Chairman and members who —"are qualified to judge the effect of films on the the public". In the present case the Tribunal was chaired by Lentin, J., a retired Judge of the Bombay High Court, and three ladies, Smt. Sara Mohammad, Dr. Sarayu V. Doshi & Smt. Reena Kumari, were its members. E  
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The Tribunal's order states that the film "portrays the trials and tribulations and the various humiliations (mental and physical) heaped on her (Phoolan Devi) from childhood onwards, which out of desperation and misery drove her to dacoity and the revenge which she takes on her tormentors and those who had humiliated and tortured and had physically abused her. G

3.1. The tone and tenor of the dialogues in this film reflect the H

A nuances locally and habitually used and spoken in the villages and in the ravines of the Chambal, not bereft of expletives used for force and effect by way of normal and common parlance in those parts; these expletives are not intended to be taken literally. There is nothing sensual or sexual about these expletives used as they are in ordinary and habitual course as part of the language in those parts and express as they do emotions such as anger, rage, frustration and the like, and represent as they do the color of the various locales in this film."

The Tribunal accepted the argument of the appellant before it in respect of certain scenes where excisions or modifications had been required. We shall restrict ourselves to the Tribunal's findings on the scenes which are presently in dispute, and to observations relating to the film as a whole. A scene of policemen hitting Phoolan Devi with the butt of a gun had been ordered to be deleted; the Tribunal said that the deletion "would negate the very impact of this film in its endeavor to depict the maltreatment and cruelty heaped upon the victim by the perpetrators, which resulted in the former turning her face against, and seeking revenge on, the perpetrators of her humiliation and degradation. Deletion or even reduction of this sequence would have a deleterious effect on the powerful sequences which follow, as it would also leave the average audience bewildered as to the intensity of the bitterness the victim rightly feels towards her tormentors." Another scene dealt with the rape of Phoolan Devi by Babu Gujjar. The sequence was in three parts and the appellant had volunteered to reduce the first two sequences "to the bare cinematic necessity;" the Tribunal did not accept this, having ascertained what was meant. It directed that the second of the three sequences be deleted altogether, and that there be a reduction by 30% of the first sequence and by 20% of the third sequence, with the qualification that the visuals of the man's bare posterior in the first and third sequences be reduced to a flash. Exception was taken before the Tribunal to the direction to reduce by 70% the sequence of Phoolan Devi torturing her husband. The Tribunal found that the sequence brought to the fore the ferocity of Phoolan Devi's hatred and revulsion towards the man who drove her to being the hunted dacoit she became. Phoolan Devi's pent-up, anger, emotions and revulsion were demonstrated in the scene. It was a powerful scene the reduction of which would negate its impact. Much emphasis was laid before us upon the fact that Phoolan Devi is shown naked being paraded in the village after being humiliated. The Tribunal observed that these visuals could but create

sympathy towards the unfortunate woman in particular and revulsion against the perpetrators of crimes against women in general. The sequence was an integral part of the story. It was not sensual or sexual, and was intended to, as indeed it did, create revulsion in the minds of the average audience towards the tormentors and oppressors of women. "To delete or even to reduce these climactic visuals", the Tribunal said, "would be a sacrilege". It added, "4.9.1. While recommending the deletion of the visuals aforesaid, perhaps the Revising Committee momentarily forgot "Schindler's List" which was passed by the Board without a cut and despite prolonged sequences of frontal nudity of men and women depicted therein, and rightly so because the scenes of frontal nudity in that film were intended to create a feeling of revulsion and a sense of horror that such crimes could indeed be committed. Likewise in the present film." The Tribunal permitted certain words of abuse in the vernacular to be retained because of the context in which they were spoken and the persons by whom they were spoken : "spoken as they are as colloquially and as part of their daily life, it would be unfair on our part to castigate the use of these words which we would otherwise have done".

Upon the basis of this unanimous order of the Tribunal, the film was granted an 'A' certificate.

On 31st August, 1995, the film was screened, with English sub-titles, at the Siri Fort Auditorium on the occasion of the 27th International Film Festival of India with the permission of the Ministry of Information and Broadcasting. From 25th January, 1996, onwards, the censored film was open to public viewing at various cinema theatres in the country.

On 27th January, 1996, the first respondent filed the writ petition before the Delhi High Court seeking to quash the certificate granted to the film and to restrain its exhibition in India. The first respondent stated in the writ petition that he was a Hindu and a Gujjar by caste. He was the President of the Gujjar Gaurav Sansthan and involved in the welfare of the Gujjar community. He had seen the film when it was exhibited at the International Film Festival; he had felt aggrieved and his fundamental rights had been violated. Though audiences were led to believe that the film depicted the character of "a former queen of ravines" also known as Phoolan Devi, the depiction was "abhorrent and unconscionable and a slur on the womanhood of India". The petitioner and his community had been



A depicted in a most depraved way specially in the scene of rape by Babu Gujjar, which scene was "suggestive of the moral depravity of the Gujjar community". The film depicted the petitioner and his community as rapists and the use of the name Babu Gujjar for the principal villain lowered the reputation of the Gujjar community and the petitioner. It lowered the respect of the petitioner in the eyes of society and his friends. The scene of rape was obscene and horrendous and cast a slur on the face of the Gujjar community. The film went beyond the limits of decency and lowered the prestige and position of the woman in general and the community of Mahallas in particular. The first respondent had been discriminated against and Articles 14, 19 and 21 of the Constitution had been violated.

C The learned Single Judge allowed the writ petition and quashed the certificate granted to the film. He directed the Censor Board to consider the grant of an 'A' certificate to it after excisions and modifications in accordance with his order had been made. Till a fresh certificate was granted the screening of the film was injuncted.

D The Division Bench, in the judgment under appeal, upheld the view taken by the learned single Judge. Having viewed the film, it examined it in regard to three aspects. The first dealt with the frontal nudity scene. The scene, the Division Bench said, ran for a full two minutes. The heroine was stripped totally naked in the gaze of about a hundred villagers standing in the circle at a distance around a well and she was paraded nude from head to toe all along the circle, with her front, including her private parts, exposed. The Division Bench noted the findings of the Tribunal in regard to this scene (which have been referred to above) and held, "in the face of a finding by the Appellate Tribunal of the scene creating *revulsion*, the only inference could have been that the scene of total frontal nudity from top to toes was 'indecent' within Section 5-B and Article 19(2)". The scene also offended the guidelines in para 2(ix), para 2(xi) and para 2(vii). The second aspect that was considered by the Division Bench was that which showed the naked posterior of Babu Gujjar in the rape scene. As noticed by the Division Bench by stop watch, this scene ran for about 20 seconds. It showed sexual intercourse by the man and his physical movement, with his posterior exposed. The High Court took that the view that the direction of the Tribunal that the posterior should be shown as a flash was inconsistent with retention of 70% and 80% of the first and third sequences as directed by the Tribunal. The scene of violent rape was disgusting and revolting and

it denigrated and degraded women. The third aspect that the High Court A  
concerned itself with was the use of expletives and it concluded that they  
should be deleted. Over-all, the Division Bench was of the view that the  
Tribunal's order was vitiated by the use of the wrong tests.

Section 5-B of the Cinematograph Act, which echoes Article 19(2), B  
states that 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, inter alia, decency. Under the provisions of  
sub-section (2) of Section 5-B the Central Government is empowered to  
issue directions setting out the principles which shall guide the authority  
competent to grant certificates in sanctioning films for public exhibition. C

The guidelines earlier issued were revised in 1991. Clause (1) thereof  
reads thus :

"1. The objectives of film certification will be to ensure that -

(a) the medium of film remains responsible and sensitive to the D  
values and standards of society;

(b) artistic expression and creative freedom are not unduly curbed;

(c) certification is responsive to social change; E

(d) the medium of film provides clean and healthy entertainments;  
and

(e) as far as possible, the film is of aesthetic value and cinematically F  
of a good standard."

Clause (2) states that the Board of Film Censors shall ensure that -

"(vii) human sensibilities are not offended by vulgarity, obscenity  
or depravity; G

xxx xxx xxx

(ix) scenes degrading or denigrating women in any manner are not  
presented;

(ix) scenes involving sexual violence against women like attempt to H

A rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown;

xxx

xxx

xxx"

B Clause (3) reads thus :

"The Board of Film Certification shall also ensure that the film -

(i) is judged in its entirety from the point of view of the overall impact; and

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(ii) is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates, provided that the film does not deprave the morality of the audience."

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Learned counsel for the appellants submitted that the film had been scrutinised by the Tribunal, which was an expert body constituted for that purpose, and it had passed the test of such scrutiny. It was emphasised that three members of the four-member Tribunal were ladies and they had not found anything offensive in the film as certified for adult viewing. The

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guidelines, it was submitted, required the film to be seen as a whole and, seen as a whole, the film did not offend either Section 5-B(i) or the guidelines. The submission of learned counsel for the appellants was supported by the learned Additional Solicitor General, appearing for the Union of India. Dr. Koul, learned counsel for the first respondent, submitted that the machinery under the Cinematograph Act was only for those

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who had some concern with the making of the film and that citizen who were offended by it were free to approach the High Court under Article 226. There were compelling reasons for the High Court to pass the order that it did for the film was abhorrent. What had also to be considered were the individual episodes and the episodes depicting full frontal nudity, rape

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and the use of swear words offended the requirements of sub-clauses (vii), (ix) and (x) of the guidelines. The film violated the freedom of speech and expression of the first respondent.

The decision of this Court most relevant to the appeals before us was delivered by a Constitution Bench in *K.A. Abbas v. The Union of India &*  
H *Anr.*, [1970] 2 S.C.C. 780. It related to a documentary film entitled "A Tale

of Four Cities". The appellants contended in a petition under Article 32 that he was entitled to a certificate for unrestricted public exhibition thereof. What Hidayatullah, C.J., speaking for the Court, said needs to be reproduced :

"49. We may now illustrate our meaning how even the items mentioned in the directions may figure in films subject either to their artistic merit or their social value over-weighing their offending character. The task of the censor is extremely delicate and his duties cannot be subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationships as banned in toto and for ever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as, it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censor's scissors. Thus audiences in India can be expected to view with equanimity the story of Oedipus son of Latius who committed patricide and incest with his mother. When

- A the seer Tiresias exposed him, his sister Jocasta committed suicide by hanging herself and Oedipus put out his own eyes. No one after viewing these episodes would think that patricide or incest with one's own mother is permissible or suicide in such circumstances or tearing out one's own eyes is a natural consequence. And yet if
- B one goes by the letter of the directions the film cannot be shown. Similarly, scenes depicting leprosy as a theme in a story or in a documentary are not necessarily outside the protection. If that were so Verrier Elwyn's *Phulmat of the Hills* or the same episode in Henryson's *Testament of Cressaid* (from where Verrier Elwyn borrowed the idea) would never see the light of the day. Again
- C carnage and bloodshed may have historical value and the depiction of such scenes as the Sack of Delhi by Nadirshah may be permissible, if handled delicately and as part of an artistic portrayal of the confrontation with Mohammad Shah Rangila. If Nadir Shah made *golaothes* of skulls, must we leave them out of the story
- D because people must be made to view a historical theme without true history? Rape in all its nakedness may be objectionable but Voltaire's *Candide* would be meaningless without Cunegonde's episode with the soldier and the story of Lucrece could never be depicted on the screen.
- E 50. Therefore it is not the elements of rape, leprosy, sexual immorality with should attract the censor's scissors but how the theme is handled by the producer. It must, however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour
- F and with sound and movement would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the *Kamasutra* but a documentary from them as a practical sexual would be abhorrent.
- G 51. We have said all this to show that the items mentioned in the directions are not by themselves defective. We have adhered to the 43 points of T.P. O'Connor framed in 1918 and have made a comprehensive list of what may not be shown. Parliament has left this task to the Central Government and, in our opinion, this could
- H be done. But Parliament has not legislated enough, or has the

Central Government filled in the gap. Neither has separated the artistic and the socially valuable from that which is deliberately indecent, obscene, horrifying or corrupting. They have not indicated the need of society and the freedom of the individual. They have thought more of the depraved and less of the ordinary moral man. In their desire to keep films from the abnormal, they have excluded the normal. They have attempted to bring down the public motion picture to the level of home movies." A B

In *Raj Kapoor & Ors. v. State of Ors.*, [1980] 1 S.C.C. 43, this Court was dealing with a *pro bono* public prosecution against the producer, actors and others connected with a film called "Satyam, Sivam, Sundaram" on the ground of prurience, moral depravity and shocking erosion of public decency. A petition to quash the proceedings was moved and procedural complications brought the matter to this Court. One of the questions considered was : when can a film to be publicly exhibited be castigated as prurient and obscene and violative of norms against venereal depravity. Krishna Iyer, J., speaking for the Court, said, D

"Art, morals and law's manacles on aesthetics are a sensitive subject where jurisprudence meets other social sciences and never goes alone to bark and bite because State-made strait-jacket is an inhibitive prescription for a free country unless enlightened society actively participates in the administration of justice to aesthetics. E

9. The world's greatest paintings, sculptures, songs and dances, India's lustrous heritage, the Konaraks and Khajurahos, lofty epics, luscious in patches, may be asphyxiated by law, if prudes and prigs and State moralists prescribe paradigms and prescribe heterodoxies..... F

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

A magistrate shall not brush aside what another tribunal has, for similar purpose, found. May be, even a rebuttable presumption arises in favour of the statutory certificate but could be negated by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed.

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

In *Samresh Bose and Anr. v. Anil Mitra and Anr.*, [1985] 4 S.C.C. 289, this Court was concerned with a normal entitled "Prajapati"; it was published in Sarodiya Desh, which was read by Bengalis of both sexes and almost of all ages all over India. A complaint was longed that the novel was obscene and had the tendency to corrupt the morals of its readers. This Court said :

"A vulgar writing is not necessarily obscene. Vulgarity arouses a

feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing, and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. We may observe that characters like Sukhen, Shikha, the father and the brothers of Sukhen, the business executives and others portrayed in the book are not just figments of the author's imagination. Such characters are often to be seen in real life in the society. The author who is a powerful writer has used his skill in focussing the attention of the readers on such characters in society and to describe the situation more eloquently has had used unconventional and slang words so that in the light of the author's understanding, the appropriate emphasis is there on the problems. If we place ourselves in the position of the author and judge the novel from his point of view, we find that the author intends to expose various evils and ills pervading the society and to pose with particular emphasis the problems which ail and afflict the society in various spheres. He has used his own technique, skill and choice of words which may in his opinion, serve properly the purpose of the novel. If we place ourselves in the position of readers, who are likely to read this book, - and we must not forget that in this class of readers there will probably be readers of both sexes and of all ages between teenagers and the aged, - we feel that the readers as a class will read the book with a sense of shock, and disgust and we do not think that any reader on reading this book would become depraved, debased and encouraged to lasciviousness. It is quite possible that they come across such characters and such situations in life and have faced them or may have to face them in life. On a very anxious consideration and after carefully applying our judicial mind making an objective assessment of the novel we do not think that it can be said with an assurance that the novel is obscene merely because slang and unconventional words have been used in the book in which there have been emphasis on sex and description of female bodies and there are the narrations of feelings, thoughts and actions in vulgar language. Some portions of the book may appear to be vulgar and readers of cultured and refined taste may feel shocked and disgusted. Equally in some portions, the words used and description given may not appear to be in proper taste. In some places there may have been an exhibition of bad taste leaving it to the readers of experience and maturity to draw

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A the necessary inference but certainly not sufficient to bring home to the adolescents any suggestion which is depraving or lascivious. We have to bear in mind that the author has written this novel which came to be published in the Sarodiya Desh for all classes of readers and it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. It a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and "will have to read books which are purely religious".

C In *The State of Bihar v. Shailabala Devi*, [1952] S.C.R. 654, Mahajan, J. said that a writing had to be considered as a whole and in a fair and free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word here and there, and an endeavour had to be made to gather the general effect which the whole composition would have on the mind of the public. Mukherjee, J., concurring with Mahajan, J., observed that the writing had to be looked at as a whole without laying stress on isolated passages or particular expressions used here and there and that the Court had to take into consideration what effect the writing was likely to produce on the minds of the readers for whom the publication was intended. Account had also to be taken of the place, circumstances and occasion of the publication, as a clear appreciation of the background in which the words were used was of very great assistance in enabling the court to view them in their proper perspective.

F In *Sakal Papers (P) Ltd. and Ors. v., Union of India*, [1962] 3 S.C.R. 842, a Constitution Bench held that the only restrictions which can be imposed on the rights of an individual under Article 19(1)(a) were those which clause (2) of Article 19 permitted and no other. This was reiterated in *Life Insurance Corporation of India v. Prof. Manubhai D. Shah*, [1992] 3 S.C.C. 637.

G The guidelines aforementioned have been carefully drawn. They require the authorities concerned with film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that "artistic expression and creative freedom are not unduly curbed". The film must be "judged in its entirety from the point of view of its over-all impact". It must also be judged in the light of the

period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. Clause 2 requires that human sensibilities are not offended by vulgarity, obscenity or depravity, that scenes degrading or denigrating women are not presented and scenes of sexual violence against women are avoided, but if such scenes are germane to the theme, they be reduced to a minimum and not particularised. A B

The guidelines are broad standards. They cannot be read as one would read a statute. Within the breadth of their parameters the certification authorities have discretion. The specific sub-clauses of clause 2 of the guidelines cannot outweigh the sweep of clause 1 and 3 and, indeed of sub-clause (ix) of Clause (2). Where the theme is of social relevance, it must be allowed to prevail. Such a theme does not offend human sensibilities nor extol the degradation or denigration of women. It is to this end that sub-clause (ix) of clause 2 permits scenes of sexual violence against women, reduced to a minimum and without details, if relevant to the theme. What that minimum and lack of details should be is left to the good sense of the certification authorities, to be determined in the light of the relevance of the social theme of the film. C D E

'Bandit Queen' is the story of a village child exposed from an early age to the brutality and lust of man. Married off to a man old enough to be her father she is beaten and raped. The village boys make advances which she repulses; but the village panchayat finds her guilty of enticement of a village boy because he is of high caste and she to leave the village. She is arrested and, in the police station, filthily abused. Those who stand bail for her do so to satisfy their lust. She is kidnapped and raped. During an act of brutality the rapist is shot dead and she finds an ally in her rescuer. With his assistance she beats up her husband, violently. Her rescuer is shot dead by one whose advances she had spurned. She is gang-raped by the rescuer's assailant and his accomplices and they humiliate her in the sight of the village : a hundred men stand in a circle around the village well and watch the humiliation, her being stripped naked and walked around the circles and then made to draw water. And not one of the villagers helps her. She burns with anger, shame and the urge for vengeance. She gets it, and kills many Thakurs too. F G H

A It is not a pretty story. There are no syrupy songs or pirouetting round trees. It is the serious and sad story of a worm turning : a village born female child becoming a dreaded dacoit. An innocent who turns into a vicious criminal because lust and brutality have affected her psyche so. The film levels an accusing finger at members of society who had tormented Phoolan Devi and driven her to become a dreaded dacoit filled with the desire to revenge.

B It is in this light that the individual scenes have to be viewed.

C First, the scene where she is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men. The exposure of her breasts and genitalia to those men is intended by those who strip her to demean her. The effect of so doing upon her could hardly been better conveyed than by explicitly showing the scene. The object of doing so was to titillate the cinema-goer's lust but to arouse in him sympathy for the victim and disgust for the perpetrators. The revulsion that Tribunal referred to was not at Phoolan Devi's nudity but at the sadism and heartlessness of those who had stripped her naked to rob her of every shred of dignity. Nakedness does not always arouse the baser instinct. The reference by the Tribunal to the film 'Schindler's List' was apt. There is a scene in it of rows of naked men and women, shown frontally, being led into the gas chambers of a Nazi concentration camp. Not only are they about to die but they have been stripped in their last moments of the basic dignity of human beings. Tears are a likely reaction; pity, horror and a fellow feeling of shame are certain, except in the pervert who might be aroused. We do not censor to protect the pervert or to assuage the susceptibilities of the over-sensitive. 'Bandit Queen' tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did : rage and vendetta against the society that had heaped indignities upon her.

G The rape scene also helps to explain why Phoolan Devi became what she did. Rape is crude and its crudity is what the rapist's bouncing bare posterior is meant to illustrate. Rape and sex are not being glorified in the film. Quite the contrary. It shows what a terrible, and terrifying, effect rape an lust can have upon the victim. It focuses on the trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist.

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Too much need not, we think, be made of a few swear words the like of which can be heard every day in every city, town and village street. No adult would be tempted to use them because they are used in this film. A

In sum, we should recognise the message of a serious film and apply this test to the individual scenes thereof : do they advance the message ? If they do they should be left alone, with only the caution of an 'A' certificate, Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene. B

A film that illustrates the consequences of a social evil necessarily must that social evil. The guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. At the same time, the depiction must be just sufficient for the purpose of the film. The drawing of the line is best left to the sensibilities of the export Tribunal. The Tribunal is a multi-member body. It is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task. C D

In the present case, apart from the Chairman, three members of the Tribunal were women. It is hardly to be supposed that three women would permit a film to be screened which denigrates women, insults Indian womanhood or is obscene or pornographic. It would appear from its order that the Tribunal took the view that it would do women some good to see the film. E F

We are of the opinion that the Tribunal had viewed the film in true perspective and had, in compliance with the requirements of the guidelines, granted to the film an "A" certificate subject to the conditions it stated. We think that the High Court ought not to have entertained the 1st respondent's writ petition impugning the grant of the certificate based as it was principally upon the slurs allegedly cast by the film on the Gujjar community. We find that the judgment under appeal does not take due note of the theme of the film and the fact that it condemns rape and the degradation of and violence upon women by showing their effect upon a H

- A village child, transforming her to a cruel dacoit obsessed with wreaking vengeance upon a society that has caused her so much psychological and physical hurt, an that the scenes of nudity and rape and the use of expletives, so far as the Tribunal had permitted them, were in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim.

The appeals are allowed. The judgment and order under appeal is set aside. The 1st respondent's writ petition is dismissed. The "A" certificate issued to film "Bandit Queen" upon the conditions imposed by the Appellate Tribunal is restored.

- C The 1st respondent shall pay to each appellant the costs of his appeal.

V.S.S.

Appeals allowed.