

(2016) 09 MAD CK 0052

MADRAS HIGH COURT

Case No: Writ Petition No. 32478 of 2015 M.P. No. 1 of 2015 and O.A. No. 1306 of 2015 in
C.S. No. 971 of 2015 W.P. No. 32478 of 2015

K. Ganeshan

APPELLANT

Vs

Film Certification
Appellate Tribunal

RESPONDENT

Date of Decision: Sept. 29, 2016

Acts Referred:

- Cinematograph Act, 1952 - Section 5B
- Constitution of India, 1950 - Article 19(1)(a)

Citation: (2016) 7 MLJ 608

Hon'ble Judges: Mr. T.S. Sivagnanam, J.

Bench: Single Bench

Advocate: S. Doraisamy, Advocate, for the Petitioner in W.P. No. 32978 of 2015; Mr. S. Doraisamy, Advocate, for the 1st and 2nd Respondent in C.S. No. 971 of 2015; Mr. T.L. Thirumalaisamy CGSC, for the Respondent Nos. 1 and 2 in W.P. No. 32478 of 2015; Mr. T.L. Thi

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. T.S. Sivagnanam, J.—The Writ Petitioner, a native of Bangalore, claims to be a professional Film Director having directed six Kannada films, which were box office hits. In the Writ Petition, he challenges the order passed by the Central Board of Film Certification (CBFC), refusing to grant certification to a feature film in Tamil directed by him, titled "Porkalathil Oru Poo", portraying the life of a Journalist in Sri Lanka Ms. Isai Priya, which order was confirmed in appeal by the Film Certification Appellate Tribunal (FCAT). The third and fourth respondents in the Writ Petition are the sister and mother of the said Ms. Isai Priya. The petitioner claims to having been inspired to make the film after watching a telecast by a London based TV network

called "Channel-4" which telecasted inhuman atrocities and barbaric acts committed by the Sri Lankan Army personnel on Ms.Isai Priya, which ultimately led to her tragic demise. The petitioner claims to have gathered details of Ms.Isai Priya and her family background and that the family of Ms.Isai Priya was involved in the freedom movement of Tamil Eelam; she was married and she had a girl child, she was an Orator, Dancer, Singer and a Poet and she joined a Tamil Television Channel in Sri Lanka and worked as a News Reader. The petitioner would further state that on account of the atrocities committed by the Sri Lankan Army during 2009, which resulted in a war like situation, Ms. Isai Priya's child died due to starvation and she is said to have arranged for the clandestine exit of her family members from Sri Lanka, while she chose to remain there. According to the petitioner, since the Tamil Television Channel in which Ms.Isai Priya was working, was telecasting information about the atrocities committed by Sri Lankan Army, she was personally targeted and illegally picked up from her house, subjected to inhuman treatment and was gang raped and ultimately died. The petitioner is said to have narrated the "story", to Mr.J.C.Gurunadh Chalasani who was interested in producing the film and that is how the petitioner states that he shot the film "Porkalathil Oru Poo". The film opens with the scene showing the Hon'ble Chief Minister Dr.Selvi J. Jayalalitha and referring to a resolution passed by the Tamil Nadu State Legislative Assembly on 27.03.2013, purportedly to protect the interest of the Sri Lankan Tamils and to eschew violence against them. An application was preferred before the CBFC on 06.05.2015 for certification of the film under the provisions of the Cinematograph Act, 1952, (hereinafter referred to as the "Act"). The Examination Committee of the CBFC viewed the film on 11.05.2015 and it appears that the Regional Officer had informed the petitioner that there are objectionable materials in the film and she will not permit the film to be certified. The matter was thereafter placed before the Revising Committee, which viewed the film on 22.05.2015, after which the impugned order dated 25.05.2015, was passed, refusing certification. The reasons for refusing certification as stated in the impugned order is that the film criticise the Indian country and Sri Lankan Army and justifies Tamil Eelam by LTTE, a banned outfit; the film shows brutal gang rape, killing of LTTE Journalist Ms.Isai Priya and it contains too much of violence; the film is based on incidents of a LTTE Journalist; the map shows a separated Tamil Eelam by LTTE and the last two reels deal with brutal inhuman killing and rape. Thus, the CBFC concluded that the film violates various clauses of the Guidelines for Certification of Films for Public Exhibition namely, clauses (2)(xvi)-friendly relationship with foreign states are not strained, 2(ix)-scenes degrading or denigrating women in any manner are not presented; 2(x)-scenes involving sexual violence against women like attempt to rape, rape or any form of molestation of scenes of a similar nature and 2(xi) scenes showing sexual perversions. On appeal to the Tribunal (FCAT) under Section 5C of the Act, the film was viewed on 23.06.2015 and the petitioner was given an opportunity to putforth his submissions and he is stated to have agreed to certain cuts and also to mute certain dialogues, after which, once again the film was viewed on 06.08.2015 and

the FCAT rejected the appeal by order dated 31.08.2015, holding that the film which depicts the freedom struggle for an independent Tamil Eelam by LTTE, terrorist outfit banned by 30 countries in the world, is still replete with terrorism, violence, sexual perversions and degradation of women, which reflect adversely of the Sri Lankan Administration and Army and is therefore, likely to affect the friendly relations of India with Sri Lanka, apart from violating the guidelines mentioned in the order of the Revising Committee. The order passed by the CBFC as confirmed by the FCAT are impugned in this Writ Petition.

2. The respondents 3 and 4, sister and mother of Ms. Isai Priya, have filed C.S.No.971 of 2015, in which the first plaintiff is the fourth respondent (mother), the second plaintiff is the third respondent (sister) and Writ Petitioner, the first defendant, the second defendant is the producer of the film and the third defendant is CBFC. The suit is for grant of a decree of permanent injunction restraining the defendants 1 and 2 (Writ Petitioner and Producer) from releasing, publishing, exhibiting, publicly or privately, selling, promoting or advertising or entering into the film festivals or in any manner producing in any format film, drama, serial or any other literary or artistic expression in respect of the life of Sobha @ Isai Priya and/or her family members, their direct descendants without the consent of the plaintiffs. The plaintiffs have sought for an interlocutory relief in O.A.No.1306 of 2015, for a grant of interim injunction to restrain the Writ Petitioner and the Producer from releasing, publishing, etc., the life of Sobha @ Isai Priya and or her family members, their descendants without the consent of the plaintiffs. In this order, the respondents 3 and 4 in the Writ Petition shall be referred to as the plaintiffs.

3. The plaintiffs have filed the suit along with an application for interim relief primarily on the ground that the film produced by the Writ Petitioner is not a feature film, but a commercial venture with the sole object of making money with no personal research done by the petitioner, but purely said to have been motivated by watching a TV Channel and the movie infringes the privacy of the plaintiffs, the family members of Ms. Isai Priya and their descendants. The plaintiffs are Sri Lankan refugees, presently residing in United Kingdom having left their country i.e., during the last phase of war during 2009 as there was no scope for their life. Through the media, the plaintiffs came to know that the Writ Petitioner is propagating, publishing and advertising and depicting the real life of Ms.Sobha @ Isai Priya in the movie called "Porkalathil Oru Poo". The plaintiffs state that Ms.Isai Priya has been portrayed as a militant and the theme of the movie is entirely based on plaintiffs' family members and they are the characters in the film. That significant number of Tamils and Sri Lankans have become diasporas and living as the refugees all over the world without enjoying full human rights as defined under the International charters and conventions. Ms.Isai Priya's identity and name has been used by the petitioner for commercial purpose. It is the petitioner's own creation and imaginary commercial story and he has done so, only for the personal gain. The plaintiffs are said to have contacted the Writ Petitioner over phone and requested him not to

picturize the film, but he did not heed to their request. The plaintiffs state that they are war widows and the second plaintiff is living with three children and they fear that the release of the movie will cause irreparable injury not only to the plaintiffs, but also to the children of the second plaintiff, who have every right to live in the world in peace and in good atmosphere. While resolutions are pending before the United Nation Organisation(UNO) and the United Nations Human Rights Commission(UNHRC), the release of the movie containing false portrayal would have a serious implication on the plaintiffs' family members and would make their situation worse in the International domain and adversely affect the issues which are pending before UNO/UNHRC. Therefore, the plaintiffs would state that the movie may cause prejudice to them and their family, that the attempt of the Writ Petitioner is to exploit a human tragedy for commercial gain and it is insensitive assault on people, whose life have been crippled with collective agony of loss, defeat and hopelessness. Referring to Article 12 of the Universal Declaration of Human Rights, 1948, it is stated that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attacks upon his honour and reputation. Every one has the right to protection of the law against such interference or attacks.

4. Reference was also made to Article 17 of the International Covenant on Civil Political Rights, 1976 (ICCPR), which imposes that the State should ensure that individuals are protected by law against arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. It is stated that India having ratified the above conventions, it is a mandate cast upon the State to protect from violation of the covenants. It is further submitted that the disclosure of the identity of the rape victim is punishable in India. The plaintiffs further state that the release of the movie will besmirch, the character of the dead person, Ms.Isai Priya in which a false and fabricated story has been made out which is a sheer violation of the right to privacy and infringement on private life. The movie containing wrongful appropriation of Ms. Isai Priya and her family members for the private gain of the petitioner should not be permitted. Further, no family member would wish to see such a gory film. The plaintiffs would state that Ms. Isai Priya and her entire family members are victims of civil war and no family member would like to propagate, publish, exhibit or advertise the sexual assaults and atrocities inflicted on a family member. The portrayal of Ms.Isai Priya as done by the Writ Petitioner and Producer, will add to sense of shame to her family members and the petitioner and the producer in reckless disregard of the feelings of the plaintiffs have made the film, which will injure the right to life, liberty and dignity of the plaintiffs and their family members. Furthermore, the film would amount to violation of the Copy Right Act. In the film, the role of the first plaintiff has been made as a significant character and this will cause severe damage to the first plaintiff, who is living a life of a refugee.

5. The Writ Petitioner has filed a counter affidavit to the Interlocutory Application stating that the sexual assault on Ms. Isai Priya and murder by the Sri Lankan Army, was reported in the English daily "The Hindu" on 02.11.2013, based upon Channel-4 telecast in which the second plaintiff has given an interview and therefore, it is not the Writ Petitioner alone who is publishing the events of killing of Ms. Isai Priya and the same has already been published through out the world and even now available the all website. The petitioner would state that he wants to project the plight of the Tamils in the hands of the Sri Lankan Army and not objected to by the plaintiffs and therefore, the question of violation of the right of privacy does not arise.

6. The CBFC while seeking to sustain the impugned orders have contended that the principles of natural justice were followed before the impugned orders were passed and the petitioner was given an opportunity which he has admitted in various paragraphs in the affidavit filed in support of the Writ Petition and the order has been passed with proper application of mind. It is submitted that there are derogatory references against Sri Lankan Army and the Army men are depicted in poor light which would strain friendly relationship between the two countries. A film, which violates the guidelines issued under Section 5B of the Act, cannot be certified for public exhibition in India. The film deals with sensitive issue of bifurcation of Sri Lanka into two parts one to be held exclusively by the Ethnic Tamils and the other by the Sinhalees. It is submitted that the CBFC has judged the film in its entirety from the point of view of its over all impact and the period depicted in the film and the contemporary standards of the country and the people to which the film relates. With regard to the other films, which were referred to by the petitioner, it is submitted that those films were certified after imposing deletions on visuals and dialogues which were found to be violative of the guidelines issued for certification of films. It is further submitted that the film depicted prolonged gang rape of the heroine by Sri Lankan Army men for about 20 minutes which is also one of the reasons for refusal of certificate for the film. In this regard, reliance was placed on the decision of the Bombay High Court in the case of Ramanlal Lalbhai Desai v. CBFC reported in AIR 1988 Bom 278. It is submitted that the freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution, is subject to "reasonable restrictions" as set out under Article 19(2) and reasonable restrictions can be put in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality etc. Due care is required to be taken while certifying a film as viewing a film in a closed cinema house motivates thought and action and assures a high degree of attention and retention as compared to the printed words. Therefore, films cannot be equated with other modes of communication and certification by prior restraint, is, therefore, not only desirable, but also necessary.

7. The Writ Petitioner, in the reply to the counter, would deny that he never bifurcated Sri Lanka into two parts in the film it is a pure imagination of the CBFC; there are no derogatory references to the Sri Lankan Army or to the Sri Lankan

Government and what has been shown in the film, is what happened during 2009 war. Though, the war crimes committed by the Sri Lankan Army was shown through out the world by several others, the petitioner's film depicts only 1% of the crime committed by the Sri Lankan Army. The film does not support the freedom struggle of LTTE, but has shown certain portions of the 2009 war. Further, it is submitted that the CBFC certified another film "Puliparvai" wherein the young son of Prabakaran, the LTTE leader was shot dead by the Sri Lankan Army and CBFC called for evidence in this regard and those film makers produced a portion from Channel-4 telecast, as evidence which was accepted by the CBFC and the film was certified, but the petitioner alone has been discriminated. The petitioner would further state that in his film there is no controversy, whereas, in other films which were based on Tamil Eelam movement, have been certified by the CBFC and therefore, the rejection is arbitrary.

8. To this reply, rejoinder has been filed by the CBFC justifying their action and contending that there can be no comparison of the present film with that of the other films, which were certified with certain cuts and deletions, as the present film depicts Sri Lankan Army in poor light which would strain the friendly relationship with the neighbouring country.

9. Mr. S. Doraisamy, learned counsel for the petitioner contended that the film does not portray the Tamil occupied area of Sri Lanka, as a separate country and there is no scenes denigrating the women nor any form of molestation or rape has been shown and on viewing the movie one would be able to decipher that acts of brutality have been committed, the heroine shouting for help and nothing more is shown in the movie. Thus, the rejection of the certification is erroneous as no provision of the guidelines have been violated. Though, it is admitted that Ms.Isai Priya's mother is shown in the film, but the second plaintiff, sister, has not been shown and the petitioner is agreeable to remove the said scene. Furthermore, there is nothing against the Indian Government nor the Sri Lankan Army. The film does not portray any vulgarity and even a child can see the film and the film is intended only to impress upon the viewers, the scarifies done by Ms.Isai Priya and what has been depicted in the film, is already in the public domain and the question of any infringement of the right of privacy does not arise. In the film "Paruthiveeran" live sex has been shown, even such film has been certified for public viewing whereas the petitioner alone has been discriminated. The plaintiffs having not raised any objection when the news was published in the media, the present attempt of the plaintiffs to stall this film is not sustainable. The petitioner is ready and willing to change the name of Ms.Isaipriya, delete the scenes depicting the plaintiffs and agreeable to issue a disclaimer. Therefore, it is submitted that the theme of the film itself is to expose the evil committed by the Army personnel and there is no violation of the guidelines in clause 2(ix), clause 2(xi) and clause 2(viii). The learned counsel referred to the following decisions in support of his contentions:-

- (i) K.A. Abbas v. The Union of India and Anr., reported in AIR 1971 SC 481;
- (ii) R. Rajagopal and Ors., v. State of T.N., and Ors., reported in (1994) 6 SCC 632;
- (iii) Bobby Art International and Ors., v. Om Pal Singh Hoon and Ors., reported in (1996) 4 SCC 1;
- (iv) Khushwant Singh and Anr., v. Maneka Gandhi reported in AIR 2002 Delhi 58;
- (v) Director General Directorate General of Doordarshan and Ors., v. Anand Patwardhan and Anr., reported in (2006) 8 SCC 433;
- (vi) THE CBFC v. Yadavalaya Films and Ors., reported in 2007 (1) CTC 1;
- (vii) The Managing Director, M/s.Makkal Tholai Thodarpuzh Kuzhuman Ltd., v. V. Muthulakshmi reported in 2007 (5) CTC 694;
- (vii) Akshaya Creations and Anr., v. V.Muthulakshmi reported in 2013 (1) MWN (Civil) 414;
- (ix) Pankaj Butalia v. Central Board of Film Certification and Ors., reported in 2015 (151) DRJ 37;
- (x) S.Tamilselvan and Ors., v. The Government of Tamil Nadu and Ors., reported in 2016 3LW 577 (DB); and the decision of the Film Certification Appellate Tribunal in the case of T.S.Subramanian v. Central Board of Film Certification dated 01.02.2016.

10. Mr. T.L. Thirumalaisamy, learned Central Government Standing counsel appearing for the FCAT and CBFC after elaborately referring to the averments set out in the counter affidavit filed by them in the Writ Petition as well as in the Injunction Application, submitted that the Sri Lankan Army has been shown in poor light; there is a prolonged gang rape scene by the Sri Lankan Army personnel for about 20 minutes and this fact has been admitted in paragraphs 12 and 13 of the Writ affidavit. The impugned orders have been passed with due application of mind after affording an opportunity of personal hearing to the petitioner, which has been admitted by the petitioner himself and there is no illegality or irregularity in the manner of passing the impugned order and this Court exercising jurisdiction under Article 226 of the Constitution would not embark upon an exercise to re-examine the factual findings recorded by the CBFC and as affirmed by the FCAT. The other films, which were certified with certain cuts and deletions cannot be compared to the present film, as the content is totally different and it clearly violates the guidelines prescribed under Section 5B of the Act. As the film deals with the bifurcation of Sri Lanka into two parts, it would definitely affect the friendly relations of India with Sri Lanka and the film being replete with terrorism, violence, sexual perversion, and degradation of women adversely reflecting on the Sri Lankan Administration and their Army was rightly refused certification.

11. Ms. Kanimozhi Mathi, learned counsel for the plaintiffs (respondents 3 and 4) reiterated the averments in the counter affidavit and contended that the plaintiffs being the mother and sister of Ms.Isai Priya, are greatly affected by the film made by the Writ Petitioner; it has invaded their right of privacy and the film being a commercial venture or in other words a "masala film" is intended only for making money should not be permitted to be exhibited to the public, as the plight of the plaintiffs' family has been exploited by the Writ Petitioner alleging that he was inspired to make the film after watching channel-4 a television channel. Not only the plaintiffs would be affected, but the children of the second plaintiff would also be affected. The movie is a clear interference with the privacy of the family. It affects their honour and reputation and these being tangible property rights, cannot be infringed by the Petitioner under the guise of making a commercial film. Removing names, deleting portions, issuing a disclaimer cannot have any effect as the very theme of the movie itself is derogatory and intended only for commercial exploitation of the sufferings of a person, whose family is now in a refugees status. The International convention of UDHR and that of the ICCPR would be grossly violated, if the film is to be certified for public exhibition. The portrayal of Ms.Isai Priya as done by the petitioner will bring shame to her family, namely, the plaintiffs and the other descendants in the family and family being victims of civil war, portrayal of one of the family members subjected to sexual assault and atrocities will grossly infringe upon the right of privacy of the family. Therefore, it is submitted that the CBFC rightly rejected the request for certifying the film and affirmed by the FCAT and the orders passed by the authorities being just and proper should not be interfered with and the petitioner and the producer should be enjoined by way of grant of an order of injunction. The learned counsel further submitted that the petitioner has not done any research on his own to say that he has gathered materials to make the film, rather it is admitted by the petitioner that he was inspired to make such a film only on watching a TV Channel programme. Therefore, the case of the petitioner is a pure commercial venture, which should not be permitted, as it would cause irreparable damage to the plaintiffs and their family members who are living as refugees. Further, the learned counsel submitted that Ms. Isai Priya has a daughter and her life will also be put to prejudice, if the movie is certified for public viewing. In support of her contention, the learned counsel referred to the decision of the Gujarat High Court in the case of Kirtibhai v. Raghuram in Application No.735 of 2014 and Civil Suit No.598 of 2014, dated 20.01.2010 and the decision of Mr.Shivaji Rao Gaikwad v. M/s.Varsha Productions, Application No.735 of 2015 in C.S.No.598 of 2014, dated 03.02.2015.

12. Heard the learned counsels appearing for the parties and perused the materials placed on record.

13. The endeavour of the Writ Petitioner is to enforce his Constitutional right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution as a film maker. The CBFC resists such a plea on the ground that such

Constitutional right is subject to reasonable restrictions under Article 19(2) and the order refusing certification of the film for public viewing would fall within the ambit of "reasonable restrictions". The plaintiffs who are the mother and the sister of the character, who is portrayed in the film make an outcry that the film is a clear invasion of their privacy; it would have far reaching impact on them and their family members, who are now refugees, having been victims of civil war in Sri Lanka during 2009. The order passed by the CBFC refusing certification is on four grounds and one of which is that the film depicts freedom struggle for an independent Tamil Eelam LTTE, the terrorist outfit banned by 30 countries in the world, is still replete with the terrorism, violence, sexual perversion and degradation of women, which reflects adversely on the Sri Lankan Administration and Army and therefore, likely to affect the friendly relations of India with Sri Lanka, apart from violating the guidelines framed under Section 5B of the Act. The film has scenes degrading and denigrating women involving sexual violence on women like rape and the scenes of similar nature and scenes showing sexual perversion, apart from a map showing separated Tamil Eelam by LTTE. Thus, CBFC has concluded that the film criticises the Indian country and Sri Lankan Army and justifying the Tamil Eelam by LTTE a banned outfit in portraying brutal gang rape scenes, killing of LTTE Journalist Ms. Isai Priya and contains too much of violence.

14. In the preceding paragraphs, the facts have been set out elaborately to give an over view as to what is the contents of the film, and what are the rival contentions raised by the parties.

15. The arguments advanced by the learned counsels could be bifurcated under two heads, firstly, whether the orders passed by the CBFC and confirmed by the Appellate Tribunal, infringes Article 19(1)(a) of the Constitution, while tested on the anvil of the precedents referred to. The other limb of the contentions is on facts, which are spelt out in the order of the CBFC, as well as by the Appellate Tribunal and the contentions of the plaintiff as to how the movie would have an impact on them and their family. Before considering the legal submissions and the scope of interference by the Writ court in such matters and what the various decisions commencing from K.A. Abbas to Prof. Perumal Murugan have stated, it would be necessary to have a brief outlay of the Cinematograph Act, 1952, the Cinematograph (Notification) Rules, 1983, (Rules) and the Guidelines for Certification of Films for Public Exhibition (Guidelines).

16. Entry 60 of List I of the Constitution deals with sanctioning of cinematograph films for exhibition. Entry 32 of List-II deals with theatres and dramatic performances; cinemas subject to the provisions of Entry 60 of list-I; sports, entertainments and amusements. Therefore, some of the sections of the Cinematograph Act, concern the Central Government and some the State Governments and other both the Central and State Governments. Thus, it is clear that the general power to legislate with regard to the Cinemas is with the State

Legislature and certain powers are reserved for the Union Legislature in Entry 60 of List-I, namely, sanctioning of films for exhibition. In other words, all the other matters relating to cinema is included in Entry 33 of List -II, including regulation of storage of film or licensing of storage.

17. The Cinematograph Act, was enacted to make provisions for certification of Cinematograph films for exhibition and for regulating exhibitions by means of Cinematograph. Section 4(1) of the Act, mandates that any person desirous to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof and the Board may, after examining or having the film examined in the prescribed manner. (i) sanction the film for unrestricted public exhibition; (ii) sanction the film for public exhibition restricted to adults; or (ia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or (iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the above mentioned clauses; or (iv) refuse to sanction the film for public exhibition. Sub-section (2) of Section 4 mandates that before action is being taken, opportunity to the applicant for representing his views in the matter should be provided by the Board. The Board means the Board of Film Certification constituted by the Central Government under Section 3 of the Act. Section 5A deals with "Certification of Films", under sub-section (1) if, after examining a film or having it examined in the prescribed manner, the Board may issue certificate such a "U" certificate "UA" certificate and "A" certificate or "S" certificate. Certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India as required under sub-section (2) of Section 5A. Section 5B deals with "Principles for guidance in certifying films", Sub-section (1) states 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. Sub -section (2) of Section 5B states that 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 the Act in sanctioning films for public exhibition. In exercise of powers under sub-section (2) of Section 5B, the Government of India issued guidelines called as the Guidelines for Certification of Films for Public Exhibition. Section 5C of the Act deals with "Appeals", against the orders refusing to grant a certificate or granting only a "A" or granting only a "S" certificate or granting only a "UA" certificate or directing the applicant to carry out any excisions or modifications and such appeal shall lie to a Tribunal constituted under Section 5D of the Act; Section 5E deals with "Suspension and revocation of certificate" Section 5F gives power of review by the Central Government on

application being made by an applicant for a certificate or any other person to whom the rights in the film have passed and is aggrieved by any order under Section 5E; Section 6 starts with a non obstinate clause, which gives suo-moto revisional powers to the Central Government to call for and examine, the record of any proceedings in relation to any film, which is pending before or has been decided by the Board or by the Tribunal, but not including any proceedings in respect of any matter, which is pending before the Tribunal; Section 7C empowers the Central Government, the Tribunal, or the Board to direct exhibition of films for examination before it or before any person or authority specified by it in this behalf. Section 8 is the rule making power. Part III of the Act deals with Regulation of Exhibition by means of Cinematograph's consisting of Sections 10 to 17, which stipulates the pre-requirements before exhibition, the licensing regime etc.

18. In exercise of the powers conferred under Section 8 of the Act, the Cinematograph (certification) Rules, 1983, have been framed (hereinafter referred to as the "Rules"). Rule 2(ix) defines feature film to mean fictionalised story film exceeding 2000 metres in line in 35mm or corresponding length in other gauges or on video. Rule 21 deals with application for examination of films, prescribing the form of application as set out in the Second Schedule to the Act. Rule 22 deals with Examining Committee its composition etc. Sub-Rule 12 of Rule 24 states that the Examining Officer shall within three working days send the recommendations of all the members of the Examining Committee to the Chairman. In terms of Rule 23, on receipt of the record referred to in Rule 22(12), the Chairman of the Board of Film Certification constituted under Section 3 of the Act, unless the provision of sub-rule (1) of Rule 24 are attracted, direct the Regional Officer, an officer appointed under Rule 9, to take further action on behalf of the Board in conformity with the recommendations of the Examining Committee either unanimously or by majority. In case of divided opinion, the Chairman of the Board shall either examine the film himself or direct the Regional Officer to take further action on behalf of the Board to give effect his decision. Rule 24, deals with Revising Committee. Rule 26 deals with "issue of certificate subject to removal of portions of film". In terms of Rule 29(1), a certificate granted by the Board under sub-section (1) of Section 5A, shall be valid for a period of 10 years from the date on which certificate is granted.

19. In terms of the Guidelines for Certification of Films for Public Exhibition (hereinafter refer to as "Guidelines") issued in exercise of powers under Section 5B(2) of the Act, the Central Government has directed that sanctioning films for public exhibition, the Board shall be guided by the principles stated therein. Guideline No.1, deals with objective of film certification, which have to be ensured, Guideline No.2, enumerates what has to be done by the Board in pursuant to the objectives under Guideline No.1, it sets out the parameters which have to be ensured by the Board of Film Certification of which the following Guidelines would be relevant for the purpose of this case:-

In pursuance of the objectives as set out under Guidelines 1, the Board shall ensure that:-

(i) anti-social activities such as violence are not glorified or justified;

(ii), (iii) (iv), (v).....

(vi) scenes tending to encourage, justify or glamorise drug addiction are not shown;

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

(viii)....

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

(x) scenes involving sexual violence against women like attempt to 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;

(xi) scenes showing sexual perversions shall be avoided and if such matters are germane to the theme, they shall be reduced to the minimum and no details are shown;

(xii), (xiii).....

(xiv) the sovereignty and integrity of India is not called in question;

(xv).....

(xvi) friendly relations with foreign States are not strained.

20. Guideline No.3, states that the Board of Film Certification shall also ensure that the film (i) is judged in its entirety from the point of view of its overall impacts, and (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. In terms of Guidelines No.6, the Board shall scrutinise the titles of the films carefully and ensure that they are not provocative, vulgar, offensive or violative of any of the guidelines.

21. The above is a broad view of the statutory provision and the guidelines framed under the statute, purportedly to act as a guidance to the Board while certifying a film for public exhibition.

22. Now, we move on to the legal submissions put forth by the learned counsels and the scope of interference of this Court in the matter of refusal to certify the subject film.

23. Claims of freedom of communication and resistance to regulation have historically formed both the theoretical basis on which much of the power of the media has been built and also the primary dynamic which determines the

relationship between the State and the media.

24. Prior restraint the formal prevention of publication appears the most severe of restrictions on communication. However, as in India in other countries as well such as Britain, a wide range of other significant restrictions exists, ranging from general laws of obscenity, blasphemy, defamation and incitement to racial hatred, through to media specific measure such as the non-statutory regime of cinema Censorship enforced by the British Board of Film Classification (BBFC), the Video Recording Act, 1984.

25. US Supreme Court in *Associated Press v. US* (1945) 326 US1 where Justice Frankfurter stated that: "In addition to being a commercial enterprise, it (the press) has a relationship to the public interest unlike that of any other enterprise for profit..... The business of the press..... is the promotion of truth regarding public matters by furnishing the basis for an understanding of them".

26. However in their (media), role as the "fourth estate", the media also claim to play a vital role in support of democracy in acting as a counterbalance to the State/Government especially in facilitating the calling to account of Government. It is obvious that the law is heavily involved in media regulation.

27. In a *K.A. Abbas* (supra), the petition was filed to declare the provision of the Cinematograph Act, as unconstitutional and for a consequential direction to quash the order passed by the Board for deletion of certain shorts from a documentary film titled "A Tale of four Cities". Before the Hon"ble Supreme Court four contentions were raised namely,

(a) that pre-censorship itself cannot be tolerated under the freedom of speech and expression;

(b) that even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action;

(c) that there, must be a reasonable time-limit fixed for the decision of the authorities censoring the film; and

(d) that the appeal should lie to a court or to an independent tribunal and not the Central Government.

28. The first question which was considered by the Hon"ble Supreme Court was whether pre-censorship by itself offends the freedom of speech and expression under Article 19(1) and (2) of the Constitution. After elaborately setting out the scheme of the Act the general principles were said down as hereunder:-

"1. No picture shall be certified for public exhibition which will lower the moral standards of those who see it. Hence, the sympathy of the audience shall not be thrown on the side of crime, wrong-doing, evil or sin.

2. Standards of life, having regard to the standards of the country and the people to which the story relates, shall not be so portrayed as to deprave the morality of the audience.

3. The prevailing laws shall not be so ridiculed as to create sympathy for violation of such laws."

29. After noting the various instructions given by the Central Government, it was pointed out that the control is both thematic and episodic, i.e, if the theme offends the rules and either with or without excision of the offending parts, the film remains still offensive, the certificate is refused. If the excisions can remove its offensiveness, the film is granted "A" certificate. Certifiable films are classified according to their suitability for adults or young people and these are the essential working of Censorship of motion pictures in our country. That the rules of Censorship is more strict in some places than in others, but censorship is universal. Quoting from a paper entitled "Creative Expression", which reads thus:-

"21....But even if we believe that a novelist or a painter or a musician should be free to write, paint and compose music without the interference of the State machinery, I doubt if anyone will advocate the same freedom to be extended to the commercial exploitation of a powerful medium of expression and entertainment like the cinema. One can imagine the results if an unbridled commercial cinema is allowed to cater to the lowest common denominator of popular taste, specially in a country which, after two centuries of political and cultural domination, is still suffering from a confusion and debasement of cultural values.

Freedom of expression cannot, and should not, be interpreted as a licence for the cine magnates to make money by pandering to, and thereby propagating, shoddy and vulgar taste"

30. A note of caution was added by the Hon"ble Supreme Court stating that it has been almost universally recognised that treatment of motion pictures must be different from that of other forms of art and expression. For the reason that the art of the cameraman, with trick photography three dimensional representation has made the cinema picture more true to life than even the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great, since their immaturity makes them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or/imitate what they have seen. Therefore, it was held that classification of films into two categories of "U" films and "A" films is a reasonable classification. Explaining as to why a motion picture must be regarded differently, the Hon"ble Supreme Court made a following observations:-

22....It is also for this reason that motion pictures must be regarded differently from other forms of speech and expression. A person reading a book or other writing or

hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore the treatment of the latter on a different footing is also a valid classification.

31. The Hon"ble Supreme Court then referred to the decision, in *Ranjit D. Udeshi v. State of Maharashtra* reported in AIR 1965 SC 881, and quoted a few paragraphs of which the following would be relevant:-

"Speaking in terms of the Constitution it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions. or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292, Indian Penal Code, manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality".

Justifying the need for Censorship in India, it was observed as follows:-

43. With this preliminary discussion we say that censorship in India (and pre-censorship is not different in quality) has full justification in the field of the exhibition of cinema films. We need not generalise about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interests of society. If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate ,power is being abused. We hold, therefore, that censorship of films including prior restraint is justified under our Constitution.

32. Mentioning about the general principles set out in the Guidelines, it was observed that the general principles which are stated in the Guidelines seek to do no more than restate the permissible restrictions as stated in clause (2) of Article 19 of the Constitution and Section 5B(1) of the Act and they cannot be said to be vague. Further, the following observations were made as regards the effect of a feature film in paragraph 52:-

52. Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor"s scissors but how the theme is handled by the producer. It must, however, be remembered that the, cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the *Kamasutra* but a documentary from them as a practical sexual guide would be abhorrent.

33. In *R. Rajagopal and Ors.*, (supra), the question was concerning the freedom of press vis-a-vis the right to privacy of the citizens of this country and also the parameters of the right of the press to criticise and comment on the acts and conduct of public officials. The petitioner was a publisher of the magazine *Nakkheeran*, which published the autobiography of *Auto Shankar*, who was convicted for murder and sentenced to death. The prisoner is said to have written a letter, calling upon the petitioner/publisher to stop publishing the serial in his magazine, this led to various other actions by the authorities and ultimately, the publisher was before the Hon'ble Supreme Court. The first question, which was considered by the Hon'ble Supreme Court was whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed under Article 19(1)(a) entitles the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances? What are the remedies open to a citizen of this country in case of infringement of his right to privacy and further in case of such writing amounts to defamation? and while deciding the question, the following findings were rendered.

9....The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterise as a fundamental right, we do not think that the right is absolute.

The European Convention on Human Rights, which came into force on 3-9-1953, represents a valiant attempt to tackle the new problem. Article 8 Of the Convention is worth citing:

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 well-being 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."

34. While dealing with Article 19(1)(a) of the Constitution and as to how far the principles emerging from the American and English decisions are relevant under our constitutional system, it was pointed out as follows:-

21....So far as the freedom of press is concerned, it flows from the freedom of speech and expression guaranteed by Article 19(1)(a). But the said right is subject to reasonable restrictions placed thereon by an existing law or a law made after the commencement of the Constitution in the interests of or in relation to the several

matters set out therein. Decency and defamation are two of the grounds mentioned in clause (2). Law of torts providing for damages for invasion of the right to privacy and defamation and Sections 499/500IPC are the existing laws saved under clause (2). But what is called for today in the present times is a proper balancing of the freedom of press and said laws consistent with the democratic way of life ordained by the Constitution. Over the last few decades, press and electronic media have emerged as major factors in our nation's life. They are still expanding and in the process becoming more inquisitive. Our system of Government demands as do the systems of Government of the United States of America and United Kingdom constant vigilance over exercise of governmental power by the press and the media among others. It is essential for a good Government. At the same time, we must remember that our society may not share the degree of public awareness obtaining in United Kingdom or United States.

35. While deciding the question as to whether the State or its official have the authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials as the case may be, it was pointed out that :-

22.....This cannot be done either by the State or by its officials. In other words, neither the Government nor the officials who apprehend that they may be defamed, have the right to impose a prior restraint upon the publication of the alleged autobiography of Auto Shankar. The remedy of public officials/public figures, if any, will arise only after the publication and will be governed by the principles indicated herein.

36. Ultimately in paragraph 26 of the judgment, the broad principles flowing for the discussion in the judgment were summarised as under:-

26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

37. In Bobby Art International and Ors., (supra), the appeal arose out of a judgment of a Division Bench of the High Court of Delhi, dismissing a Writ Petition filed to quash the certificate of exhibition awarded to the film "Bandit Queen". The said film deals with life of Phoolan Devi and it is based on a true story. The Writ Petition was filed before the Delhi High Court by a person belonging to Gujjar caste as he felt offended as to how his community people have been portrayed in the film. Thus, the

person, who approached the Court was neither the Producer nor the Director or the person about whom the film was made, but appears to be a member of a general public belonging to a particular community. After referring to the Guidelines, it was submitted that the film has to be seen as to whole and if it is seen it does not offend either Section 5B(1) or the Guidelines and this submission was supported by the Union of India. After referring to the judgments in K.A. Abbas (supra), Raj Kapoor v. State reported in (1980) 1 SCC 43, Samaresh Bose v. Amal Mitra reported in (1985) 4 SCC 289; State of Bihar v. Shailabala Devi reported in AIR 1952 SC 329, and the decision of the Constitution Bench in the case of Sakal Papers (P) Ltd., v. Union of India, reported in AIR 1962 SC 305, it was held as follows:-

22. 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 changes. 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 woman 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.

38. In Khushwant Singh (supra), the well known author published his autobiography as a book titled "Truth, Love and a Little Malice", and the book is stated to contain a chapter under the heading "Gandhis and Anands". Smt. Maneka Gandhi, filed a Suit for injunction and damages against Mr. Khushwant Singh, claiming that the suit has been filed in order to protect the fair name and respect of her family, in the plaint, she invoked her right to privacy and claimed that the right to privacy is implicit in the right to life and liberty guaranteed to a citizen of the country under Article 21 of the Constitution of India. Therefore, prayed to restrain from publishing the book or any part of the book. Speaking on behalf of the Hon'ble Division Bench of the Delhi High Court, our Chief Justice, Hon'ble Mr. Justice Sanjay Kishan Kaul, after referring to the decision in the case of Autosankar, referred as R. Rajagopal and Ors., case, (supra), held as follows:-

62.....The Supreme Court while considering these aspects clearly opined that there were two aspects of the right of privacy. The first aspect was the general law of privacy which afforded tortious action for damages from unlawful invasion of privacy. In the present case we are not concerned with the same as the suit for damages is yet to be tried. The second aspect, as per the Supreme Court, was the constitutional recognition given to the right of privacy which protects personal privacy against unlawful governmental action. This also is not the situation in the present case as we are concerned with the inter se rights of the two citizens and not

a governmental action. It was in the context of the first aspect that the Supreme Court had given the illustration of the life story written - whether laudatory or otherwise and published without the consent of the person concerned. The learned counsel for the respondent Mr. Raj Panjwani, sought to draw strength from this aspect i.e., the lack of consent of the respondent to publish her life story in the autobiography written by appellant no.1. However, this will give rise to tortuous action for damages as per the Supreme Court since this is the aspect which is concerned with the first aspect dealt with by the Supreme Court in respect of the invasion of privacy.

67. We are unable to accept the contention advanced on behalf of the respondent by Mr. Raj Panjwani that if the statements relate to private lives of persons, nothing more is to be said and the material must be enjoined from being published unless it is with the consent of the person whom the subject matter relates to. Such pre-censorship cannot be countenanced in the Scheme of our constitutional framework. There is also some force in the submission of the learned counsel for the appellant that the prior publication having occurred much prior to the suit being filed, the principle denying the relief for interlocutory injunction where the plaintiff has been dilatory in making the application, as observed in the *Indian Express Newspaper's* case (supra) would also apply to the present case.

39. The reasons for refusing to induct or gag the publication was set out in paragraph 78 of the judgment:-

78. The previews of the proposed autobiography stated to be an authorised version were published in the 31st October, 1995 issue of *India Today*. The ex-parte injunction was granted soon thereafter and was subsequently confirmed. Almost six years have passed. The book could have been published possibly soon after the October edition of *India Today* in 1995. The appellant has been prevented from writing and publishing his thoughts, views, personal interaction and his perspective of life in his proposed autobiography for almost six years at this late stage of his life. In our considered view this cannot be countenanced. The balance of convenience lies in non grant of injunction. Sufficient damages has already been caused. The injunction must be vacated forthwith. The three cardinal principle of balance of convenience, prima facie case and irreparable loss and injury are not satisfied in the facts of the present case. The balance of convenience is in favor of applicant rather than gag order. As discussed above well established principles weigh in favor of the right of publication and there is no question of any irreparable loss or injury since respondent herself has also claimed damages which will be the remedy in case she is able to establish defamation and the appellant is unable to defend the same as per well established principles of law.

40. In *Anand Patwardhan* (supra), the appellant was the Doordarshan, which decided not to telecast the documentary film made by the respondent Anand Patwardhan titled, "Father, Son and Holy War". The documentary was certified by

the Censor Board partly giving a "U", certificate and partly a "A" certificate. The film is the third part of a trilogy of documentary films against communal violence that the author made from mid 1980's to the mid 1990's. The questions which fell for consideration were whether any film producer has a right to insist that his film must be shown on Doordarshan; whether the High Court was justified in directing the screening of the film certified as U/A, notwithstanding the fact that Doordarshan does not telecast adult film; whether the policy of Doordarshan can be said to violate Article 19(1)(a) of the Constitution; and whether or not it is open to the High Court to substitute its opinion for that of the competent authority as to whether a film is fit for being telecast on public medium such as Doordarshan While deciding the questions, the following findings were rendered:-

34. The catchword here is "reasonable restriction" which corresponds to the societal norms of decency. In the present matter, the documentary film Father, Son and Holy War depicts social vices that are eating into the very foundation of our Constitution. Communal riots, caste and class issues and violence against women are issues that require every citizen's attention for a feasible solution. Only the citizens especially the youth of our Nation who are correctly informed can arrive at a correct solution. This documentary film in our considered opinion showcases a real picture of crime and violence against women and members of various religious groups perpetrated by politically motivated leaders for political, social and personal gains.

38. Hence, in our view, the correct approach to be taken here is to look at the documentary film as a whole and not in bits, as any message that is purported to be conveyed by way of a film cannot be conveyed just by watching certain bits of the film. In the present situation the documentary film is seeking to portray certain evils prevalent in our society and is not seeking to cater to the prurient interests in any person. Therefore, we have no hesitation in saying that this documentary film if judged in its entirety has a theme and message to convey and the view taken by the appellants that the film is not suitable for telecast is erroneous.

41. In this film too, scenes must be seen in the context of the message of exploitation of women through insecurities created in men and the film must be evaluated in its entirety.

44. In our opinion, the respondent has a right to convey his perception on the oppression of women, flawed understanding of manhood and evils of communal violence through the documentary film produced by him. As already noticed, this film has won awards for best investigative film and best film on social issues at the national level. The documentary film has won several awards at the international level as well. The freedom of expression, which is legitimate and constitutionally protected, cannot be held to ransom on a mere fall of a hat. The film in its entirety has a serious message to convey and is relevant in the present context. Doordarshan being a State controlled agency funded by public funds could not have denied access to screen the respondent's documentary except on specified valid

grounds.

41. In *THE Cbfc v. Yadavalaya Films and Ors.*, (supra), the matter pertained to a feature film titled "Kutra Pathirikai", for which certification was refused, initially by the Examining Committee. On appeal to the Tribunal, direction was issued to grant "A" certificate subject to such cuts/deletions as mentioned in the order. The Producer accepted the cuts and submitted a fresh print, but the Board instead of considering the film for grant of certificate as directed by the Tribunal, chose to challenge the order of the Tribunal by filing a Writ Petition before this Court. The same was allowed and the order of the Tribunal was set aside with a direction to revoke the certificate. Questioning the said order, appeal was preferred and the Hon'ble Supreme Court modified the order of the High Court and directed the Tribunal to reconsider the matter. The Chairman of the Board went against the Producer as the film tends to glorify the banned organisation LTTE and intends to create a sympathy to LTTE. Aggrieved by the majority view of the Tribunal, once again the Producer approached this Court stating that the film only depicts the historical event of the assassination of the former Prime Minister Rajiv Gandhi with the theme that the persons involved in terrorism perished and could not succeed. The Writ Court remanded the matter back to the Tribunal with the direction that all the five members should consider the film. Consequent upon that the film was once again screened and the members of the Board differed in their views and the Chairperson passed an order stating that it is open to both parties to take such steps as are open to them in law. Once again, the Producer approached this Court questioning the order rejecting his appeal. The learned Single Judge on viewing the film opined that it should be granted "A" certificate subject to certain cuts and deletions and the film depicts more or less factually correct ghastly incident. The learned Single directed to cut and delete the sequence relating to the attempt made by the outfit on the Chief Minister of Tamil Nadu Ms.J.Jayalalithaa and the scene showing a character Ramakrishnan saving her life and if the cuts and deletions are made, the Board was directed to issue "A" certificate to enable the producer to release the film for public viewing. The said order was put to challenge before the Division Bench. After noting all the decisions, which have been referred to in the preceding paragraphs, it was held as follows:-

18. The film "Kutra Pathirikai" is an intermingling of fact and fiction. The former being the events leading to the assassination of the late Prime Minister Rajiv Gandhi, the assassination itself and its aftermath. The producer has attempted to place before the public the true account of what has passed into history. He has done no more and no less than what has already been done by different organs of the media, national and international. The producer tells his audience without embellishment what in a democracy is the right of the audience and the general public viz., the right to be informed and the right to know, which are vital in a democratic set up. Each and every piece of evidence depicted in this film is a matter of public record and public knowledge. The overall impression that this film would

create in a normal and average mind would be a revulsion and abhorrence of the assassination coupled with the resolve that history such as this shall not repeat itself. The fact that film depicts the assassination of former Prime Minister by itself cannot and should not be a ground for rejection, more so, when the entire investigation and the trial of the case is over. The protection of the Constitution does not extend only to fictional depictions of artistic themes. Artists, film makers and play writers are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents which according to them represents a balanced portrayal of social reality. The choice is entirely of the film maker. Critical appraisal is the corner-stone of democracy and the power of the film as a medium of expression lies in its ability to contribute to the appraisal.

19. The objection of the Board that the film supports the banned organisation is completely baseless and imaginary. On the other hand, the film clearly depicts the cruel and inhuman behaviour of the activists of the banned organization. It also shows that the assassination of Rajiv Gandhi is approved by none. Further, the film gives a clear and unambiguous message that terrorism does not pay, that the arms of law and order machinery are too strong and that those who kill have ultimately to meet with death. There has been shown nothing in the film from which it could be inferred that the LTTE has been glorified or attracts the sympathy of the public.

22. In our opinion, it is doubtful whether these appeals are maintainable, in view of the decision of the Supreme Court in *Union of India v. K.M. Shankarappa* 2001 (1) SCC 582. It is rather unfortunate that the certification of the film has been delayed for more than 12 years without any acceptable and reasonable ground. In our opinion, there is nothing objectionable even in the last sequence in the film showing the attempt on the life of the former Chief Minister of Tamil Nadu by the LTTE Organisation. It has to be stated that the film ends with the message "no more violence". Consequently, we modify the order of the learned single Judge to that extent and direct the Censor Board to grant "A" certificate to the present edited version of the film within a period of four weeks from today.

42. In *V.Muthulakshmi (supra)*, the Court was deciding a revision petition filed under Article 227 of the Constitution of India, granting an order of interim injunction against the telecasting the tele-serial about "Veerappan". The first respondent before the Court was the wife of Veerappan, who was the plaintiff and her case rested on her right to privacy. The Court took note of the decision in *R. Rajagopal and Ors., (Auto Sankar) case*, and held as follows:-

17....As long as right to privacy in right to life is maintained and once this has become public, the question of continuation of that right does not arise and absolutely, there is no difficulty in accepting the same. As far as the present case is concerned, it is admitted that publications have been made in the past 20 years about the life and story of Veerappan and therefore question of retaining privacy is still in controversy. In any event, this matter is to be decided by the Trial Court.

18....In any event, it is true that the petitioner and the daughters have got right to privacy to be maintained but I do not understand as to how the right to privacy of the petitioner and her children are going to be affected especially in the circumstances when the Trial Court while deciding about the interlocutory application has in fact safeguarded the interest of the plaintiff and her daughters and further this Court while admitting the revision has also recorded the undertaking given by the learned senior counsel for the revision petitioner categorically stating that right to privacy of the plaintiff and her daughters will not be affected and there will not be humiliation to the plaintiff and her daughters.

43. In *Akshaya Creactions* (supra), the plaintiff filed the suit for an injunction to restrain the defendants from any manner exhibiting, releasing or exploiting the film named "Vanayutham" in Tamil and "Attakasa" in Kannada or in any other name, in any other language, portraying the life of the plaintiff's husband late Veerappan. The Court after referring to the decision in *R.Rajagopal and Ors., (Auto Sankar)* case, and taking note of the undertaking given by the Producer, made the following observations:-

29. Therefore, having regard to the law laid down by the Hon"ble Supreme Court in the aforesaid judgment, and having regard to the undertaking given by the learned Senior Counsel for the revision petitioners, that the revision petitioners would delete those scenes, as stated above, I am of the opinion that the right of privacy of the first respondent is in no way affected and there is no right of privacy available to the first respondent, as the Film is taken on the basis of the Police records and the first respondent has no cause of action, restraining the revision petitioners from exhibiting, exploiting the said Film.

35. In the result, the Civil Revision Petitions are allowed, subject to the deletion of Scene Nos.8, 14, viz., the scene showing the marriage of Muthulakshmi with Veerappan and the escape of first respondent from the Task Force and arrest of the first respondent by the Police, and the undertaking of the learned Senior Counsel for the revision petitioners that the revision petitioners would delete all the scenes, wherein, the character of the first respondent is portrayed in the Film and would also delete the offending scenes, viz., scene Nos 2 and 3, as stated supra, is recorded.

44. In *Pankaj Butalia* (supra), the petitioner producer of a film filed a Writ Petition before the High Court of Delhi asserting his constitutional right of freedom of speech and expression of a documentarian and his ilk, conferred under Article 19(1)(a) of the Constitution, as he was aggrieved by the order of the Tribunal, which directed insertion of a disclaimer and four deletions/excisions from the subject film. While deciding the correctness of the order passed by the Tribunal, it was observed as follows:-

29.3 Therefore, if the orders of the censoring authorities, as in this case, fail to apply the test which the courts have evolved, which is, that : in deciding as to whether a deletion is to be ordered or not, the censors, should view it from the perspective of a reasonable, strong minded, firm and courageous men and not from the point of view of weak and vacillating minds, nor of those who scent danger in every hostile point of view - the court would be constrained to intervene in the matter and right the wrong, which resulted in trampling upon the constitutional right of freedom of speech and expression conferred upon the aggrieved party.

45. In the order passed by the Film Certification Appellate Tribunal in F.No.2/14/2015-FCAT (T.S.Subramanian v. CBFC, Chennai), the Tribunal was considering the correctness of the order passed by the Revising Committee, refusing certification on the ground that the film revolves post war effects in Sri Lanka glorifying the bad effects, suppressing Tamils by Sri Lankan Army and the picture will affect the neighbouring country relationship. It also refers to a real political leaders of Sri Lanka and also refers to LTTE, which is a banned organisation in India and it is one sided version of Tamils. The Appellate Tribunal observed that the film only depicts the life's of mainly the women and other persons after the war ended in 2009 and this does not in any manner glorify either the LTTE or any terrorist activity nor is there any glorification of LTTE leader Prabhakaran. The Appellate Tribunal further directed the Producer should give a disclaimer stating that the film is only a fictional representation of a real story and it does not in any manner support or glorify a terrorist organisation or any acts of terrorism committed by it and the Producer should also morph the LTTE flag and photograph of Prabhakaran wherever they are shown in the film. Further, the Appellate Tribunal noted that in case the film would have glorified the suppression of Tamils by Sri Lankan Army, the Public Performance Board of Sri Lanka would not have approved the film for screening during the Jaffna International Cinema Festival. Further, the Appellate Tribunal recorded the willingness of the appellant to carry out the morphing and deletions and reducing the length of the scene, where three young girls are shown taking drugs.

46. In the case of Kirtibhai v. Raghuram (supra), the appeal before the Division Bench of the Gujarat High Court at Ahmedabad, was to set aside an order passed by the City Civil Court on a prayer made by the plaintiff to restrain the defendants from making, releasing, publishing, exhibiting public ally or privately or entering into film festival or in any manner producing any film, drama or serial in respect of the life of Shri Jalaram Bapa and/or his family members and their direct descendants without the consent of the plaintiff till the disposal of the Suit and the following portions of the decisions would be relevant:-

18.....According to the plaintiff right of privacy flows from Article 21 of Constitution of India and same is part of right to life. It is the case on behalf of the appellants herein original defendants that plaintiff has no locus standi to maintain the Suit for

declaration and injunction. However, it is the specific case on behalf of the plaintiff that he is direct descendant of late Jalaram Bapa. It is the case on behalf of the plaintiff that his forefather Hariram was adopted by late Jalaram Bapa and the actual evidence of adoption may be difficult since, it is a very old event and even before the death of late Jalaram Bapa in 1881, such adoption is amply corroborated by various documents which refer to Hariram Jalaram. Number of documents are produced in the nature of sale deed and even public records where the name of Hariram appears. It is the case on behalf of the plaintiff that even otherwise Hariram was no stranger to late Jalaram Bapa as he was grandson of daughter of late Jalaram Bapa.

20. As stated above, plaintiff has based his action on two distinct rights i.e. right of privacy and right of publicity, which according to the plaintiff right of privacy flows from Article 21 of the Constitution of India and is part of right to life. According to the plaintiff said right of privacy is recognised by the Hon'ble Supreme Court as part of right of life in the case of R.Rajgopal (supra). It is the case on behalf of the plaintiff that they honestly and bonafidely believe that there should be no portray of life of late Jalaram Bapa in the shape of drama or film or any other artistic or literary expression as there is no authentic record of the acts and deeds of late Jalaram Bapa kept during his life and/or surviving today on the basis of which such portrayal can be made and in absence of any authentic record of the actions of late Jalaram Bapa and in absence of any autobiography or authorised biography of late Jalaram Bapa being available. It is the case on behalf of the plaintiff that life of late Jalaram Bapa, though devoted to charitable activities is still a private/personal affair for his direct descendant and legal heirs including the plaintiff and the same cannot be misappropriated by any third party including the defendants for the purpose of making a film or otherwise and thereby derive commercial/monetary advantage without the consent of plaintiff. It is the case on behalf of the plaintiff that earlier also when efforts were made, same was objected and there was arbitration/laved.

21. On the other hand it is the case on behalf of the defendants that there are number of voluminous material/evidence on the record relating to the life of late Jalaram Bapa freely available for information and knowledge of the public at large...

21(iv)... It is the case on behalf of the defendants that learned Jalaram Bapa was public figure who acquired status of saint, after hundred years or more books, articles etc., there cannot be violation of right to privacy as sought to be contended on behalf of the plaintiff.

22.... it appears to the Court that there are very serious triable issues which are required to be considered and dealt with at the time of trial on leading appropriate evidence and on appreciation of evidence. There are many contentious issues which are required to be considered such as locus standi of the plaintiff to institute the Suit for injunction; whether plaintiff has right of privacy as alleged; whether documentary evidence on record relied upon by the defendants can be said to be public record on the life of late Jalaram Bapa of Virpur; whether there are any

authentic record available on the life late Jalaram Bapa of Virpur or with respect to incidents/miracles as mentioned in the book "Bhakt Shriomani". All the aforesaid aspects are required to be considered in detail on leading appropriate evidence and therefore, in the meantime if injunction as prayed for is not granted, there will be irreparable loss caused to the plaintiff and his family members and/or heirs of late of Jalaram Bapa of Virpur...

25. Considering aforesaid facts and circumstances of the case, contentious issues which are to be considered and dealt with at the time of trial on leading appropriate evidence and on appreciation of evidence orally as well as documentary, question of granting injunction during the pendency of Suit in application under Order 39, Rule 1 and 2 is required to be considered. It cannot be disputed that while considering grant of injunction under Order 39, Rule 1 and 2 of CPC, the Court is required to consider prima facie case; balance of convenience and irreparable loss. In the present case, it appears to the Court that if injunction as prayed for is not granted, there will be irreparable loss caused to the plaintiff, which cannot be compensated in terms of money. If injunction is not granted, defendants shall make, publishe and release film on the life of late Jalaram Bapa and if Suit is allowed in that case whatever damages to be caused same cannot be compensated in terms of money.

47. In Mr. Shivaji Rao Gaikwad v. M/s.Varsja Productions (supra), an application for injunction to restrain the respondent/defendant from making a film titled "Main Hoon Rajinikanth" was considered. The contention raised by the plaintiff was that his "right of personality" or in other words "personality right" was infringed. While deciding the said issue, it was held as follows:-

21.1.....In ICC Development (International) Ltd., v. Arvee Enterprises and another 2003 (26) PTC 245 it has been held as follows_ "The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality taint, signature, voice, etc., An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organisation of the event. Any effort to take away the right of publicity from the individuals, to the organiser (non-human entity) of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolised.

48. In the recent decision of the Hon"ble First Bench of this Court in the case of Prof. Perumal Murugan, (supra), in a batch of cases, the various actions both on the part of the public as well as on the part of the State in seeking to banning a book titled "Madhorubagan" authored by Professor Perumal Murugan was subject in issue and while discussing with the freedom of "speech and expression", it was held as follows:-

179. The aforesaid case arose in a different context viz. criminal defamation and the Supreme Court, while distinguishing it with the concept of freedom of expression in the fictional realm, referred to the judgments in *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana*, (1988) 3 S.C.C. 410 and *Bobby Art International* (cited supra) and observed thus :-

"the right of expression with regard to fictional characters through any medium relating to creation of a fiction would be somewhat dissimilar for it may not have reference to an individual or a personality. Right of expression in such cases is different, and is to be guided by provisions of any enactment subject to constitutional scrutiny. The right of freedom of expression in a poem, play or a novel pertaining to fictional characters stands on a different footing than defamation.

...A person in reality is defamed contrary to a fictional character being spoken of by another character or through any other mode of narrative.

...Freedom of speech and expression is a highly treasured value under the Constitution and voice of dissent or disagreement has to be respected and regarded and not to be scuttled as unpalatable criticism. Emphasis has been laid on the fact that dissonant and discordant expressions are to be treated as view-points with objectivity and such expression of views and ideas being necessary for growth of democracy are to be zealously protected..."

The Supreme Court expanded the jurisprudence on the concepts of constitutional fraternity vis-à-vis fundamental duties as constituting the core principles of our Constitution, whereby the sense of respect and dignity that is to be offered to another and his views, his beliefs and his practices are termed as a constitutional norm; fraternity thereby assuring the dignity of the individual and the collective unity of the nation. In the words of the Supreme Court,

"The right to censure and criticize another legitimately does in no way affect the sense of brotherliness as envisaged by the Constitution. Brother may, nay, must be critical of the fellow siblings in an endeavour to promote and advance the potentials of their brethren. The right to censure and criticize does not conflict with the constitutional objective to promote fraternity. Brotherliness does not abrogate or rescind the concept of criticism. However, the thin line of legitimate criticism must be tread with caution, as the right to fault finding and disagreement as protected under 19(1)(a) does not confer a right to defame another. The dignity of an individual is an extremely prize asset."

Thus, whenever free speech and expression is sought to be given wings and let loose against the backdrop of ones creativity, it must carry on its flight within the domain of constitutional morals, forever remembering that while individual opinions and forms of expression are critical to advancement and multifaceted national development, equally important is the safeguarding of the dignity and respectability of another and his cherished beliefs, for the latter must never be

compromised on account of the freedom guaranteed under 19(1)(a), as the victim in such circumstances will be no less than the constitutional heartbeat of fraternity. The national brotherhood.

182. We do believe that a clear distinction has to be carved out between situations involving the right to expression of an individual or a body of individuals as opposed to a routine law and order tension, where the State intervenes to diffuse the situation. Even in matters of this nature, the State may endeavour to diffuse the situation, but not permit proponents of free speech, authors and artistes, as the case may be, to be put under pressure by surrounding circumstances. On the other hand, the endeavour should be to preserve the rights of expression through other modes. There is thus a requirement of mixing care with caution so that such endeavors do not result in malicious proceedings merely based on a perspective of another set of people, who may have different mores.

49. In the preceding paragraphs, the legal position, as elucidated in the various decisions, has been set out and the broad legal principles deducible there-from are summarised hereunder:

(a) Freedom of Press flows from the Freedom of Speech and Expression guaranteed by Article 19(1)(a) of the Constitution, which right is subject to reasonable restrictions placed thereon by an existing law or a law made after the commencement of the Constitution in the interest of or in relation to the several matters set out therein; What is called for today in the present times is a proper balancing of freedom of press and the said laws consistent with the democratic way of life ordained by the Constitution; We must remember that our society may not share the degree of public awareness obtaining in United Kingdom or United States; The Right to Privacy is implicit in the right to life and the liberty guaranteed to the citizens of this country by Article 21. It is a "Right to be let alone" A citizen has a right to safeguard the privacy of his own, his family, marriage, motherhood, child-bearing etc., and none can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned. Two aspects of the right to privacy, namely, the Constitution recognised right given to the privacy, which protects personal privacy against unlawful governmental action and the next - the general law of privacy, which afforded tortious action for damages for unlawful invasion of privacy; Motion pictures must be regarded differently from other forms of speech and expression. A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore, the treatment of the latter, on a different footing is a valid classification; Obscenity which is offensive to modesty or decency cannot claim constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it; The expression of free opinions to change political or social conditions is subject to reasonable restrictions which may

be thought necessary in the interest of the general public and one such is the interest of public decency and morality; That censorship and pre-censorship in India has full justification in the field of the exhibition of cinema films; The censorship imposed on making and exhibition of films is in the interest of the society; Censorship of films including prior restraint is justified under our Constitution; The guidelines framed by the Central Government under Section 5B(2) of the Act seeks to do no more than restate the permissible restrictions as stated in the Article 19(2) of the Constitution and cannot be said to be vague; It is not the elements of rape, leprosy, sexual immortality which should attract the censor's scissors, but how the theme is handled by the producer; Cinematograph is a powerful medium and its appeal is different; Horrors of war as depicted in the famous etchings of Goya, do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do;

(b) The Right to Privacy, in any event, will necessarily have to go through a process of case-by-case development Act. Even assuming that the Right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterise as a fundamental right, and that the right is not absolute; As long as Right to Privacy in right to life is maintained and once this has become public, the question of continuation of that right does not arise.

(c) The European Convention on Human Rights, states that everyone has the right to respect for his private and family life, his home and his correspondence; the Guidelines framed under Section 5B of the Act have been carefully drawn; require the authorities concerned with film certification to be responsive to the values and standards of society and take note of social changes; required to ensure that artistic expression and creative freedom or not unduly curbed; film must be judged in its entirety from the point of view of its overall impact; must also be judged in the light of period depicted and the contemporary standards of the people to whom it relates; it must not deprave the morality of the audience; requires that the human sensibilities are not offended by vulgarity, obscenity; scenes degrading or denigrating women are not presented; scenes involving sexual violence against women are avoided, but if such scenes are germane to the theme, they be reduced to a minimum and not particularised; The catchword is "reasonable restriction" corresponds to the societal norms of decency; Critical appraisal is the corner-stone of democracy and the power of the film as a medium of expression lies in its ability to contribute to the appraisal; The censorship should view the film from the perspective of a reasonable, strong minded, firm and courageous men and not from the point of view of weak and vacillating minds, nor of those who sense danger in every hostile point of view; The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality taint, signature, voice, etc.; An individual may acquire the right of publicity by virtue of his association with an event, sport, movie,

etc. Any effort to take away the right of publicity from the individuals, to the organiser (non-human entity) of the event would be violative of Articles 19 and 21 of the Constitution of India; the right of publicity vests in an individual and he alone is entitled to profit from it; the right of expression with regard to fictional characters through any medium relating to creation of a fiction would be somewhat dissimilar for it may not have reference to an individual or a personality and the Right of expression in such cases is different, and is to be guided by the provisions of any enactment subject to constitutional scrutiny; Right of freedom of expression in a poem, play or a novel pertaining to fictional characters stands on a different footing than defamation; Freedom of speech and expression is a highly treasured value under the Constitution and voice of dissent or disagreement has to be respected and regarded and not to be scuttled as unpalatable criticism; The right to censure and criticize does not conflict with the constitutional objective to promote fraternity; However, the thin line of legitimate criticism must be tread with caution, as the right to fault finding and disagreement as protected under 19(1)(a) does not confer a right to defame another; The dignity of an individual is an extremely prize asset.

50. Further, 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. Obscenity test cannot be on the standard of an ordinary or hypersensitive human not a person who sees only obscenity even in a work of beauty and art, because his attention is arrested. The Judge has to first place himself in the position of the author in order to appreciate what the author really wishes to convey and thereafter place himself in the position of the reader of every group in whose hands the book is likely to fall and then arrive at a dispassionate conclusion. 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. 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. When there is propagation of ideas, opinions and information or public interests or profits, the interests of society may tilt the scales in favour of free speech and expression. Obscenity without a preponderating social purpose or profit cannot have the Constitutional protection of free speech or expression. Obscenity is treating with sex in a manner appealing to the carnal side of human nature and such a treating with sex is offensive to modesty and decency. No freedom is absolute and thus, even the right of freedom and expression is circumscribed by Article 19(2) of the Constitution of India. A common test of obscenity which can be followed is that (a) a book when read as a whole appears lascivious or raises lustful thoughts or desire; and (b) when the book contains no literary, artistic, political or scientific value.

51. The facts of the present case has to be tested on the anvil of the legal principles set out herein before called out from the decisions referred.

52. The undisputed facts are the facts which have been admitted by the petitioner, are that he was inspired to make the film after having watched a telecast by a TV Channel called Channel-4. He is stated to have gathered details about Ms. Isai Priya and her family narrated the same to the Producer, who is said to have been impressed and he proceeded to make the film. Thus on the petitioner's own admission, it is clear that he had conducted no research or taken any independent efforts to verify the facts and ascertain particulars etc. That apart, it is not the petitioner's case that the character portrayed in the film is a fictional character, but he would assert that it is Ms.Isai Priya herself, who has been portrayed in the film, not stopping with that her other family members one of whom is her mother, the first plaintiff have been portrayed in the film. Thus, the film is not based on any fiction, but it was based on a life of a person, who is no more, but has left behind a family who are away from their motherland.

53. As pointed out by the Hon"ble Supreme Court in the cases Odyssey Communications Pvt. Ltd. and Bobby Art International (supra), the right of expression with regard to fictional characters through any medium relating to creation of fiction would be dissimilar for it may not have reference to an individual or a personality. Thus, if the film was based upon fictional characters or based upon folklore or other issues, which are fiction, the same would be on a different pedestal when compared to a film based on a true character who has left behind the family.

54. Thus, the film having been made based on an individual's life, undoubtedly, would have a serious impact on the right to privacy of the individual and their family and kith and kin. If the portrayal pertained to an indefinite body of persons or is an outcome of a research done based on a fictional theme or based on a hearsay, it would have been a different matter. Therefore, in the light of the candid admission made by the petitioner, this Court has no hesitation to hold that the film depicts the life of a person, who has left behind a family and undoubtedly would invade the right to privacy of the character depicted in the film as well as her family members.

55. As noticed above, the motion pictures must be regarded differently from other forms of speech and expression as a person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture (K.A.Abbas).

56. As pointed out in R. Rajagopal,(supra), the right to privacy will necessarily have to go through a process of case-by-case development. Everyone has the right to respect for his private and family life, his home and his correspondence. This right to privacy being implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21 is a very sacred right and the plaintiffs would be well justified in putting forth a case to safeguard their right to privacy. While

summarising the various decisions on the point in the case of R.Rajagopal,(supra), the Hon"ble Supreme Court pointed out that a citizen has a right to safeguard the privacy of his own, his family, motherhood, child-bearing among other matters and none can publish anything concerning the above matters, without his consent whether truthful or otherwise and whether laudatory or critical and if he does so, he would be violating the Right to Privacy of the person concerned. The explanation given by the petitioner is that he had made the film with an intention to create a sense of respect to the character portrayed in the film and as to how atrocities were meted out to her when she asserted her right to freedom of expression and speech. The Hon"ble Supreme Court pointed out that none can publish anything concerning the matters pertaining to the family, marriage, motherhood etc., of a person whether truthful or otherwise and whether laudatory or critical. Thus, the plaintiffs have made out a prima facie case for grant of injunction.

57. While on this issue, it would be worthwhile to point out that the petitioner does not dispute the fact that he has portrayed the character of Ms.Isai Priya, the daughter of first plaintiff and depicted the first plaintiff with direct reference to the character, apart from creating scenes to show as if the first plaintiff had encouraged militancy in the minds of her daughter or rather was proud and supportive to her daughter"s action. The plaintiffs" specific case is that the film has been made as purely a commercial venture with no research done by using the identity of Ms. Isai Priya, as well as her family members and for commercial purpose an imaginary commercial story is made for personal gain. The fact that the first plaintiff and the second plaintiff are away from Sri Lanka in a foreign land as refugees has not been denied by the petitioner. The stand taken by them that their children are also living in the foreign land, has also not been disputed. Thus, the plaintiffs" have prima facie established that the film, if allowed to be exhibited would cause serious prejudice and hardship to the plaintiffs and the to other family members of Ms.Isai Priya, who have left the country, when there was a war situation there, and they are stated to be living in a refugees status and if such is the case, undoubtedly, the release of the film, a commercial venture with a sole object of personal gain would cause irreparable hardship to the plaintiffs and kith and kin of Ms.Isai Priya. That apart, the plaintiffs" contention is that Ms.Isai Priya and her entire family are victims of civil war and none of them would like to propagate, publish, exhibit or advertise the sexual assaults and atrocities on her family members. The fact that the petitioner has no answer for all these allegations also would strengthen the case of the plaintiffs for grant of an interim relief.

58. The petitioner would state that the news about Ms. Isai Priya is already in the public domain and the petitioner is not the first person, who is propagating the same and therefore, there is no ground for prior restraint by the CBFC or to grant an injunction against releasing the film.

59. The submission of the learned counsel for the plaintiffs in this regard would merit acceptance for the reason that the incident is alleged to have taken place somewhere during 2009 and during the relevant point of time, there was a civil war within Sri Lanka between ethnic sinhalese and Sri Lankan Tamils. It is the contention of the plaintiffs that the news clippings and the video footages claimed to be that of Ms.Isai Priya, were released during the point of time, when the Sri Lankan Army was in entire control of the Press. Therefore, at this distant point of time, the petitioner cannot take advantage of the said situation and claim that it is in public domain. Therefore, the plaintiffs' case is that they have sufficient material to show that the way, the petitioner has portrayed Ms.Isai Priya is gory and it is a reckless attempt and a clear hit on the plaintiffs right to life, liberty and dignity.

60. In the aforementioned decisions, which dealt with prior restraint, what was pointed out is that the film should be judged in its entirety from the point of view of its over all impact. One other important aspect, while doing so, is that it must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates. This aspect would be very crucial for the reason that the incident which is sought to be portrayed in the film, is said to have occurred some time during 2009 and more than seven years have passed by, and what is required to be seen is whether the film, if made during 2009 and sought to be released by the petitioner, what would be its impact, how should it be judged. The only answer to the said question would be that at the relevant point of time i.e., during 2009, if this film had been made, undoubtedly, it would have met the same fate, as it has been done now. Thus, what was not permissible in 2009, would it become acceptable in 2016?

61. As pointed out in Prof. Perumal Murugan (supra), 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 and what was not acceptable earlier became acceptable later. This proposition may not apply to the facts of the present case. As per the stand taken by the CBFC, that the film depicts the Sri Lankan Army personnel in poor light, it blames the Indian Government, it glorifies LTTE, it shows Sri Lanka in two parts, one held by the Sri Lankan Tamil and the other by the Sinhalese. It is common knowledge that though the war like situation, which was then in existence in Sri Lanka is no longer so, press reports state that normalcy has been restored, but still a group of organisations have been agitating that what was promised had not been met. That apart, LTTE has been banned by thirty countries including India. The challenge to the ban orders by third parties, have also been unsuccessful. The ban is in force as on today. Therefore, by efflux of time, things have not changed and if the film could not be acceptable in 2009, in the considered views of this Court, things are no different now for it to be given a different look. By way of corollary, if an argument is put forth that may be if the film was made in 2009, it might have met the same fate, but as things are different after seven years, there should be no restraint on the film. This argument would also not be

acceptable for, if according to the film maker normalcy has been restored, then the purpose of portraying a character as a person who is depicted as a militant against the State expressing strong criticism about the laws, which are in force in the said country, criticising their defence forces and portraying them in poor light would undoubtedly cast a serious impact on the relationship between the two countries. Therefore, the corollary argument, if put forth, also should be rejected.

62. With regard to the question as to whether the plaintiffs would be put to irreparable hardship, if the film is permitted to be released, the answer should lean in favour of the plaintiffs, since if the film is permitted to be released or in any manner propagated, it would result in the claim made by the plaintiffs in the Suit infructuous. The purpose of grant of interim relief is to preserve status quo, so that when the main relief is considered, the same does not become academic or infructuous.

63. Thus, the Court finds that the plaintiffs have made out a prima facie case for injunction and the other facts which have been put forth by the petitioner saying that he has not depicted Ms.Isai Priya, or her family in poor light nor it has criticised the Sri Lankan Government or their Army or the Indian Government etc., are all factual issues and triable issues. Thus, the three cardinal principles required to be satisfied for grant of an interim injunction namely, prima facie case, balance of convenience and irreparable hardship has been established by the plaintiffs.

64. Having come to the conclusion that the plaintiffs are entitled for an order of interim injunction as prayed for, yet another hurdle which the petitioner should be able to tackle is the rejection of an application for certification. In the preceding paragraphs, this Court has mentioned about what motivated the petitioner to make the film. It is evidently clear that the film is a pure commercial venture based on a life of a character, who though no more, has left behind a large family, who have moved out from their home land and are residing in a foreign country, stated to be as refugees. Thus, the petitioner can claim no credit to himself that he had done certain research and then decided to make the film. Admittedly, the film is not a documentary. The petitioner's defence is that he has not portrayed the character in bad light, but has ventured to make the film to bring to light the atrocities meted out to woman and not with any other intention to denigrate the character of a woman or to criticise the foreign country's policies or their army. The provision of the Cinematograph Act provide for a procedural hierarchy which the film goes through before it is accepted for certification or rejected. It has in-built mechanism which provides for reviewing the film at multiple levels. The petitioner has not made any concrete allegations of malafide against any particular member of the Board, the Review Committee or the Appellate Tribunal. The few utterances here and there in the affidavit and dropping names would not by itself constitute allegations of malafide. The multiple tiers of authorities who have viewed the film, heard the petitioner, have recorded a definite conclusion that in the film, there are derogatory

references against the Sri Lankan Army and the Army men are depicted in poor light, which would strain the relationship between the two countries. The film deals with sensitive issue of bifurcation of Sri Lanka in two parts and the film having been judged from the point of view of its overall impact and the period depicted and the contemporary standards of a country and the people to which the film relates held that it is not fit for public viewing. It is further recorded that the film depicts prolonged gang rape of the heroine by Sri Lankan Army men for over 20 minutes and the scenes definitely defy public order, decency, morality etc.

65. Section 5B(2) of the Act, authorises the Central Government to issue directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition and these guidelines were held to be in tune with the reasonable restrictions provided under Article 19(2) of the Constitution. Thus, the picture cannot be certified if it lowers from the moral standards of those to see it or if it creates in the mind of the audience a sympathy towards crime, towards wrong doing or evil. That apart, due regard should be had to the standards of the country and the people to which the story relates, and it shall not be so portrayed so as to deprave the morality of the audience. The prevailing laws shall not be ridiculed as to create sympathy for violation of such laws.

66. The case on hand undoubtedly depicts the standards of a different country, which has got their own set of laws and therefore, the CBFC is justified in assessing the film, bearing in mind these benchmarks. Contention was raised stating that there were other films which were certified by the CBFC and couple of them pursuant to the orders passed by this Court.

67. As pointed out earlier the censorship of a film has to be on a case to case basis and there cannot be a uniform policy for deciding as to whether a film is fit for public exhibition. However, the distinguishing feature in the present case is that it pertains to a life of a person, whose family are the plaintiffs and it is stated that there is direct reference to the first plaintiff's, daughter Ms. Isai Priya, other family members etc. This has not been denied by the petitioner, but raises a faint plea that he is willing to delete those scenes, but what appears from the stand taken by the parties in the case is that the very foundation or the basis of the movie pertains to the daughter of the first plaintiff and the film concerns her family, motherhood, child etc., and it would be irrelevant to consider whether it is truthful or otherwise or whether the attempt of the petitioner was laudatory. By doing so, the petitioner has violated the Right to Privacy of the character depicted in the film and her family members. This aspect of the matter was not subject in issue in the film "Kutra Pathirikai", or for that matter, the claim made by V. Muthulakshmi, wife of Veerappan. Those cases are clearly distinguishable on facts. That apart in the instant case, the plaintiffs have invoked the Right of publicity claiming that personality rights have been infringed. This is also a matter for trial. Likewise, the decision in the

case of Anand Patwardhan(supra), is also distinguishable on facts, as the film was a documentary and it was the third part of trilogy depicting communal violence, which occurred in mid 1980"s and mid 1990"s. The film maker had done extensive research before he made the documentary, and it had won the award as the best investigative film and the Court found that the said documentary, in its entirety, has a serious message to convey and is relevant in the present context. However, nothing could be said of the film made by the petitioner, as he has done no research and on his own showing, viewing a TV Channel was the only motivated and he can draw no inspiration from Anand Patwardhan (supra).

68. The FCAT, which viewed the film, on the first show was of the view that the film is not fit for public exhibition, and it afforded an opportunity to the petitioner. It appears that the petitioner made certain corrections, the film was viewed once and the Tribunal was of the view that the film being replete with violence, it depicts the freedom struggle for an independent Tamil Eelam by LTTE terrorist out-fit and on review, after opportunity to the petitioner, it was still found to be replete with terrorism, violence, sexual preservations and degradation of woman, which reflect adversely on the Sri Lankan Administration and their Army and therefore, likely to affect the friendly relationship with India and Sri Lanka, apart from violating the guidelines framed under Section 5B of the Act.

69. For all the above reasons, this Court finds no grounds to interfere with the decision taken by the CBFC, as confirmed by the FCAT, refusing certification of the petitioner"s film. Accordingly, the Writ petition fails and is dismissed.

70. In the result, :-

(i) Writ Petition challenging the orders passed by the CBFC dated 25.05.2015, as confirmed by the FCAT, dated 31.08.2015, is dismissed and the impugned orders are held to be valid and proper and the prayer sought for by the petitioner to direct the respondents to issue certificate to the Tamil film "Porkalathil Oru Poo", for public exhibition is rejected.

(ii) For the reasons assigned, it is held that the plaintiffs have made out a case for grant of an order of interim injunction and accordingly, O.A.No.1306 of 2015 in C.S.No.971 of 2015, is allowed restraining the first and second respondents from releasing, publishing, exhibiting, publicly or privately selling, promoting or advertising or entering into films festivals or in any manner producing in any format film, drama, serial or any other literary or artistic expression in respect of the life of Shoba @ Isaipriya and/or her family members their direct respondents without the consent of the plaintiffs till the disposal of the suit.

(iii) No costs. Consequently, connected Miscellaneous Petition is closed.