

61. **Nipun Malhotra v Sony Pictures Films India Pvt. Ltd.**

Special Leave Petition [Civil] No. 5239 of 2024

Decided On: 8 July, 2024

Court: Supreme Court of India

Coram: Dhananjay Y. Chandrachud, CJ & J.B. Pardiwala, J

J U D G M E N T

Per Dhananjaya Y Chandrachud, CJI

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Judgement

1. Leave granted.
2. The appellant is the founder of an organisation that promotes awareness about disabilities, conducts policy research and provides education to underprivileged children. The appellant is a person with arthrogryposis and is aggrieved by the manner in which persons with disabilities have been portrayed in the movie titled '*Aankh Micholi*'.
3. The appeal arises from the judgment dated 15 January 2024 of the High Court of Delhi by which a petition under article 226 was dismissed on grounds of maintainability.

A. FACTUAL BACKGROUND

4. The appellant addressed a legal notice to the first respondent, Sony Pictures, on 6 October 2023 raising objections to the trailer of their film. The appellant was particularly aggrieved by the introduction of some of the characters of the film, who were portrayed to suffer from physical impairments. Sony Pictures replied to the notice on 17 October 2023. The movie was released on 3 November 2023 with 'U' certification from the Central Board of Film Certification.
5. The appellant claims that the film violates the constitutionally protected rights of persons with disabilities; and the provisions of the Cinematograph Act, 1952¹ and the Rights of Persons with Disabilities Act 2016². The appellant claims that the Central Board of Film Certification³ has violated its statutory duty to certify films in accordance with the applicable guidelines.
6. He therefore sought directions:

[List Begins]

- (i) Mandating the inclusion of an expert on disability within the Central Board of Film Certification and its advisory panel constituted under Sections 3 and 5 of the Cinematograph Act;
- (ii) Mandating the inclusion of the expert under Section 3 of the Cinematograph Act, 1952;
- (iii) Seeking relief against the first respondent, including punitive damages; and

¹ "Cinematograph Act"

² "RPwD Act"

³ "CBFC"/"The Board"

(iv) A public apology from the first respondent. [\[End of List\]](#)

7. The appellant has highlighted instances in the trailer as well as the film where certain medical conditions have been misrepresented and derogatory terms have been used for characters who are persons with disabilities. These include [a] misrepresentation of the condition of night blindness; and [b] derogatory references to [i] a person with Alzheimer's as "*bhulakkad baap*", [ii] a hearing-impaired person as a "*soundproof system*"; and [iii] a character with speech impairment as an "*atki hui cassette*". The appellant submits that the film portrays a family of persons with various disabilities and revolves around their attempts to conceal their disabilities in a bid to come across as a 'normal family'. The female lead is a person with nyctalopia or night blindness, while the male lead is a person with hemeralopia, which is an inability to see clearly in bright light. The plot of the film revolves around the two families of the lead characters concealing their impairments, in order to arrange a matrimonial alliance.
8. The appellant has urged that the film's portrayal is derogatory to persons with disabilities generally and conveys the message that they ought to conceal their impairments in order to deserve a matrimonial partner. The appellant has further urged that the film [i] reinforces stereotypes with its misguided portrayals of persons with disabilities, thereby creating misconceptions, biases and prejudices against them; [ii] promotes the idea that persons with disability are unequal; [iii] presents them as subjects of comic relief; [iv] creates an environment of ridicule; [iv] does not generate empathy towards persons with disabilities; and [v] fails to promote inclusive and accurate representations of disabilities. In response, Sony Pictures stated that the overall message of the film was one of 'overcoming the challenge of disability'; the film sought to depict the struggles faced by persons with disabilities and their families and in an effort to overcome them. The film, they claimed in the reply, sought to dislodge the idea that disability obstructs a fulfilling life. The reply stated further that [i] the introduction of the characters in the trailer is protected by the freedom of speech and expression; [ii] the film does not pity or look down upon the characters but depicts their agency and skills; [iii] the depiction is neither derogatory nor stereotypical.

B. THE HIGH COURT

9. The High Court of Delhi noted that the appellant had not disputed the explanation offered by the first respondent that the overall message of the film was around overcoming the disability and dwelt on the strength of the characters suffering from disabilities. The Court noted that the primary challenge that the film is offensive to the sensibilities of persons with disabilities, is thus not established. Underlining that the film was granted

certification for unrestricted public exhibition by CBFC, the High Court held that the reliefs sought by the appellant were non-maintainable.

10. Summarised briefly, the High Court's findings are:

[\[List Begins\]](#)

(i) The first respondent's reply refutes the allegations made in the notice.

They contested any suggestion that the movie's intent was to offend or humiliate differently-abled persons. Instead, they elucidated the overarching message of the film as intended by its creator;

(ii) The appellant did not raise further grievances after receiving the reply and until filing the petition, indicating a lack of challenge to the film's alleged offensive nature;

(iii) There is a lack of legal justification for the reliefs sought; and

(iv) This dismissal is reinforced by the existence of guidelines issued by the Central Government under Section 5B[2] of the Act of 1952. These guidelines, including specific provisions for persons with disabilities provided a comprehensive framework for film certification. [\[End of List\]](#)

C. LEGISLATIVE FRAMEWORK

11. We have heard Mr Sanjoy Ghose, senior counsel and Mr Jai Anant Dehadrai, counsel appearing on behalf of the appellant; Mr Parag Tripathi, senior counsel appearing on behalf of Sony Pictures and Mr Tushar Mehta, Solicitor General of India who has appeared to assist the Court on its request. The issues that arise for our consideration include the impact of the provisions of the RPwD Act 2016 on the certification of films under the Cinematograph Act.

12. The appellant has alleged that the Board has violated its duties under the statute for film certification in granting a certificate to the film. The Cinematograph Act 1952, the Cinematograph [Certification] Rules 1983⁴ and the Guidelines for Certification of Films for Public Exhibition 1991⁵, constitute the framework for certification of films. These provide for certification of films for exhibition and for regulation of the exhibition of such films. Every film must obtain a prior certificate for exhibition from the Board under Section 5A of the Act. The Board is constituted under Section 3 by the Central Government and consists of a chairperson and a minimum of twelve, and a maximum of twenty-five members⁶. An application for the grant of a certificate has to be in the format prescribed in the Rules⁷.

⁴ "1983 Rules". The 1983 Rules have been superseded by the Cinematograph [Certification] Rules, 2024 ["2024 Rules"].

⁵ "Guidelines"

⁶ Cinematograph Act 1952, Section 3.

⁷ Cinematograph Act 1952, Section 4; Cinematograph [Certification] Rules 1983, Rule 21.

13. Once an application is made, it is assessed by an Examining Committee, which makes recommendations to the relevant authority, which could be the Chairperson of the Board or the Regional Officer concerned. The authority, acting on the Board's behalf may act on the recommendations or refer the application to the Revising Committee which includes members of the Board or of advisory panels.⁸
14. Section 5 provides for Advisory Panels⁹ consisting of persons qualified to judge the effect of the films on the public. The Advisory panels are appointed to facilitate the efficient functioning of the Board. The Board may consult the panel in respect of any application for the certification of a film. The panel has to examine the film and make its recommendations to the Board in accordance with the applicable rules.
15. Section 8 empowers the Central Government to make rules. The 1983 Certification Rules [and the 2024 Rules which superseded them] were framed under the rule making power. Under the Rules, the Regional Officer appoints an Examining Committee consisting of members of the Advisory Panel [constituted under Section 5] and an Examining Officer¹⁰. The Examining Officer submits recommendations of the Examining Committee to the authority prescribed in the Rules, based on the type and length of the content, and takes personal responsibility for compliance with every guideline.¹¹ The Chairperson of the Board can require the Regional Officer to act on behalf of the Board, in conformity with the recommendations of the Examining Committee. The Chairperson may, in the alternative, on their own motion or on a request by the applicant, refer the record to the Revising Committee under Rule 24. The Revising Committee shall examine the film and send the recommendations to the Chairperson of the Board. If the Chairperson disagrees with the decision by majority of the Revising Committee, the Board shall itself examine the film or cause the film to be examined again by another Revising Committee and the decision of the Board or a second Revising Committee, as the case may be, shall be final.¹² The certificate granted by the Board is published in the Gazette is valid for 10 years.¹³
16. The Board may sanction the film for unrestricted public exhibition ['U' certificate]; public exhibition restricted to adults ['A' certificate]; [U/A certificate]; or public exhibition restricted to members of a class, having regard to the nature, content and theme of the film ['S' certificate]. The Board may certify the film as it is, or subject to excisions or modifications or refuse to sanction the film for public exhibition altogether.
17. Section 5B provides that a film shall not be certified if in the opinion of the

⁸ Cinematograph [Certification] Rules, 1983, Rule 24.

⁹ Cinematograph Act 1952, Section 5.

¹⁰ Cinematograph [Certification] Rules, 1983, Rule 22.

¹¹ *ibid*, Rule 22 [13].

¹² *ibid*, Rule 24.

¹³ *ibid*, Rule 24.

Board, 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.” Section 5B[2] states that the Central Government may delineate principles to guide the authority granting a certificate for public exhibition of films. Accordingly, Guidelines have been framed in 1991.

I. The 1991 Guidelines

18. The appellant states that the egregious portrayal of characters with disabilities in the film necessitates judicially mandated checks and the framing of guidelines for creators of content. The Guidelines, framed under Section 5B of the Cinematograph Act, are interpreted as broad standards and require [inter alia] that the Board must ensure that scenes showing abuse of physically or mentally handicapped persons are not presented needlessly.¹⁴ The guidelines prescribe sensitive portrayal of women, children and persons with disabilities.¹⁵ The film must be examined as a whole and in line with contemporary standards of the country and the people to whom it relates.
19. This Court has laid down tests to determine challenges to the portrayal of persons, situations and characters in films. The aversion defence states that the portrayal of a social evil meant to arouse revulsion, such as scenes of sexual violence or communal tension, are meant to draw attention to these evils rather than to glorify them. They must not be barred for mere portrayal and due regard must be had to the overall message of the film, rather than standalone scenes.¹⁶ Films must remain sensitive to standards of society and alive to social changes.¹⁷ The Board is required to view the film as a whole in applying the above metrics. The decision must not be based on isolated bits and scenes in the film.¹⁸
20. Once certified, the film is presumed to have complied with the applicable Rules and Guidelines, and its effect on the public cannot ordinarily be re-assessed by the Court, having already been considered by an expert body¹⁹.
21. The certification of the film in question is not in issue before us. In that regard, as the High Court has noted, the appellant has not contested Sony Pictures’ reply to their legal notice. During the course of the hearing it was stated across the Bar that since the film has been released in the meantime, the

¹⁴ Guidelines For Certification of Films for Public Exhibition 1991, Clause 2 [iii] [b].

¹⁵ *ibid*, Clause 2 [iii] [a], [b].

¹⁶ Madhavi Goradia Divan, *Facets of Media Law*, Second Edition pg 284-285; *Bobby Art International v. Om Pal Singh Hoon*, 1996 4 SCC 1 [27-28].

¹⁷ Guidelines [supra], Clauses 1 [a] and 3 [ii]

¹⁸ *Director General, Directorate General of Doordarshan & Ors.* [2006] 8 SCC 433 [20, 34]. [supra] [38]; *S Rangarajan v P Jagjivan Ram and Ors.*, [1989] 2 SCC 574.

¹⁹ *Union of India v. KM Shankarappa* [2001] 1 SCC 582; *Prakash Jha v. Union of India* [2011] 8 SCC 372.

certification itself is not seriously in challenge. The appellant has sought the framing of guidelines and inclusion of recommendations for creators to follow while dealing with sensitive subjects such as the rights of persons with disabilities in the visual media.

II. Article 19[1][a] and The Cinematograph Act

22. A filmmaker's right to exhibit films is a part of their fundamental right to freedom of speech and expression under Article 19[1][a], which is subject to reasonable restrictions under Article 19[2]²⁰. The Cinematograph Act is an instance of reasonable restrictions on this right under the 'decency and morality' rubric of Article 19[2].²¹ Prior certification under the Act has been regarded as a valid restraint on cinematic speech because of its 'instant appeal' and the ability to stir emotions more deeply than other artistic media.²² Even so, like restraints on cinematic speech have to be narrowly construed because of their potential to imperil the significant value of free speech which is a constitutionally protected value.
23. In **KA Abbas v. Union of India**,²³ this Court underlined that restraints on cinematic expression have to be extremely narrow.²⁴ The Court held that when determining the effect of a film, the Board must view it from the vantage of an ordinary person of common sense rather than a hypersensitive person. Moreover, the Board must be alive to social change and must not adopt a conservative or orthodox approach. The limits on expression must be 'necessary', rather than merely expedient or convenient, which are relatively lower thresholds.²⁵ The Board must make a [Quote Begins] "*substantial allowance*" [Quote Ends] in favour of freedom and allow creative works to interpret both the foibles as well as the good in the society.²⁶
24. Since the Cinematograph Act provides for an elaborate procedure for certification of films by expert bodies, the approval of the statutory committees such as the Examination Committee must be given due weight. The Board has the benefit of hearing the perspective of the filmmakers, who make relevant representations before the Board. Courts are slow to interfere with

²⁰ 19. Protection of certain rights regarding freedom of speech, etc.

[1] All citizens shall have the right-[a]to freedom of speech and expression;

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

²¹ Madhavi Divan, 'Morality, Obscenity and Censorship', Supreme Court Cases [Journal], Vol 1 [2003], 1– 16; KA Abbas v. Union of India, [1970] 2 SCC 780 [40].

²² KA Abbas [supra] [20,34].

²³ 1970 2 SCC 780.

²⁴ KA Abbas [supra] [34].

²⁵ S Rangarajan [supra] [21,53].

²⁶ Ramesh v. Union of India, [1988] 1 SCC 668 [15].

the conclusions of specialised bodies, constituted under the Act.²⁷ In this narrow scope of intervention, the Court may not act like a film critic and must observe certain grounding principles. For instance, the mere mention of a subject in the film is not problematic in itself and a deeper examination of the *manner* in which the theme has been handled is required.²⁸ In **Bobby Art International v. Om Pal Singh Hoon**²⁹, this Court held that as long as the overall message of the film is not to extol a social evil, its mere depiction of a social evil is not impermissible. It was held there that the portrayal of sexual violence could not be construed as a promotion of such violence.³⁰ In **Nachiketa Walhekar v. Central Board of Film Certification**³¹, a three-judge bench speaking through one of us [Dr DY Chandrachud J] refused to stay the release of a film on the ground of its apprehended use as evidence in a pending trial. It was held that the Court will be extremely slow to restrain creative works, once the Board had approved exhibition.³²

25. Restraints on films are founded on principles of due process, social interest, limited application in cases of absolute necessity and clear purpose of the restraint.³³ Among the principles which must be borne in mind when deciding the fitness of a film for public exhibition include the following: [i] Social impact of the film is judged from the perspective of an ordinary person of reasonable intelligence and not a hypersensitive person; [iii] Social change, rather than orthodox notions or what is right and moral must be borne in mind; and [iv] The film must be judged by its overall message and not from isolated depictions of social evils.

D. THE CONTEXT OF SPEECH

26. We are dealing with cinematic speech. In a slightly different context of anti-hate speech and group-defamation laws, Professor Ronald Dworkin argued that freedom of speech and expression extended even to hate speech. While he conceded the need to protect certain groups from violence and discrimination, he believed society could adopt laws to offer such protection. He regarded hate speech as protected speech and necessary, so that anti-discrimination laws could gain political legitimacy and enforceability among their opponents. His argument was that **[Quote Begins]** *“if we want legitimate laws against violence or discrimination, we must let their opponents speak”*.³⁴ John Stuart Mill on the other hand, argued that such speech served a public-

²⁷ Ramesh [Supra] [19].

²⁸ KA Abbas [supra] [50]; See also Ramesh [supra] [17].

²⁹ 1996 4 SCC 1.

³⁰ Bobby Art International [supra] [29-33].

³¹ [2018] 1 SCC 778.

³² Nachiketa Walhekar [supra] [2,4]; See also, Viacom 18 vs Union of India 2018 1 SCC 761 [16].

³³ KA Abbas [supra] [40].

³⁴ Ronald Dworkin, Foreword, in Hare and Weinstein, eds., *Extreme Speech and Democracy*, v–ix.as cited in Jeremy Waldron, *The Harm in Hate Speech*, Harvard University Press Cambridge, Massachusetts London, England [2012], Pg 175.

education function by promoting public debate, and to sustain constant questioning of the truth³⁵. Disagreeing with Dworkin's legitimacy argument as well as Mill's public debate argument, Jeremy Waldron argued in *The Harm in Hate Speech* that on certain issues, society is past the point where it needs to debate fundamental aspects of issues such as race. Waldron argued that if hate speech were to be allowed because of its ability to sustain a public debate, such debate would come at the cost of the dignity of racial minorities, who have had to bear humiliating attacks on their objective social standing due to such speech.³⁶ This affront to one's dignity and objective treatment by society, rather than the more subjective notion of the 'effect on one's feelings' by way of such speech must be curbed.³⁷

27. Even though Waldron was writing in a different context, he highlights the importance of the 'context' of speech as paramount in deciding the validity of restraints on it. Derogatory speech and stereotypes usually target the marginalised. The impact of the speech on human dignity; the identity of the speaker and the target; and the linguistic connotations of the speech may be considered in deciding issues around stereotypical speech. The standard of the 'overall message' of a film, in some ways, furthers this emphasis on the importance of context and manner of portrayal in visual media.³⁸

I. Disabling imagery: stereotypical portrayal of persons with disabilities in the media.

28. Media portrayals of persons with disabilities have been historically oppressive. Consistent with the understanding that disability was 'anomalous' in a normative framework of ability, persons with disabilities were represented in disparaging ways. They were portrayed as evil, as objects of pity, violence, curiosity and ridicule, as burdens on society, sexually abnormal, and overall, as people incapable of community participation³⁹. Such disabling imagery formed "*the bedrock on which the attitudes towards, assumptions about and expectations of disabled persons are based*"⁴⁰. Such portrayal perpetuated

³⁵ John Stuart Mill, *On Liberty* [Penguin Books, 1982] [99, 106] as cited in Jeremy Waldron, *The Harm in Hate Speech*, Pgs 194, 197.

³⁶ Jeremy Waldron [supra], Pg 195.

³⁷ Jeremy Waldron [supra], Pgs 107, 197 "I think we do need to ask whether we are past the stage where society is in such need of a robust debate about fundamental matters of race that we ought to bear the costs of what amount to attacks on the dignity of minority groups. Think of what those costs may involve. Are we really in need of such robust debate on racial ontology that we have no choice but to require individuals and families within minority groups to bear the costs of such humiliating attacks on their social standing?"

³⁸ Bobby Art International [supra].

³⁹ Colin Barnes, *Disabling Imagery and the Media, An Exploration of the Principles for Media Representation of Disabled People*, The British Council Of Organisations Of Disabled People, Part Two :Commonly Recurring Media Stereotypes [1992] Pg 7 <<https://disability-studies.leeds.ac.uk/wpcontent/uploads/sites/40/library/Barnes-disabling-imagery.pdf>>; Angharad E. Beckett, *Citizenship and Vulnerability: Disability and Issues of Social and Political Engagement*, Palgrave Macmillan [2006]

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⁴⁰ *ibid.*

stigmatising views about disability as a vulnerability or a 'suffering'.⁴¹ Recurrent negative portrayals as illustrated above and frequent use of patronising and offensive language such as "victim", "differently abled", or "unfortunate" to describe individuals continue to perpetuate negative attitudes towards persons with disabilities.

29. The problem with such portrayal is that it channels attention on the medical aspects of impairment rather than the social aspects that actually disable a person. This impacts persons with disabilities as individuals as well, subjecting them to stigma and social exclusion.⁴²
30. As Allan Sutherland wrote, [Quote Begins] "*stereotyped views frequently act as self-fulfilling prophecies, forcing the person with a disability into a role that can then be used to justify the original treatment.*"⁴³ [Quote Ends] They shape and strengthen the already existing negative assumptions about their abilities⁴⁴. This resultantly exacerbates systemic inequalities, and inhibits their dignified participation in the public sphere for education or employment.⁴⁵
31. Humour is a powerful medium of speech that can reinforce attitudes and influence behaviour towards groups. Pejorative jokes may reinforce stereotypical assumptions about disabilities, validating abusive attitudes and practices toward persons with disabilities.⁴⁶ Humour, however, also has a complex dual role for persons with disabilities. It could be "both liberating and stigmatising" depending on the *context* of the joke and who is telling it.⁴⁷ We shall advert to this dual role later.

II. Stereotyping as an anti-thesis to dignity and non-discrimination.

32. This Court is cognisant of the impact of stereotypes on discrimination and the enjoyment of fundamental rights. We have traced safeguards against stereotyping to the anti-discrimination code under Article 15, the right to dignity and to equality.

⁴¹ Beckett [ibid] at Pg 109.

⁴² Colin Barnes et al., Exploring Disability. A Sociological Introduction, Cambridge, Polity Press, [1999] Pg 10.

⁴³ Allan Sutherland, Disabled we Stand, London: Souvenir Press [1981] < <https://disabilitystudies.leeds.ac.uk/wp-content/uploads/sites/40/library/Sutherland-CHAPTER6.pdf>>

⁴⁴ Beckett [supra] Pg 3

⁴⁵ ibid Pg 109.

⁴⁶ Teresa Milbrodt, Today I Had an Eye Appointment, and I'm Still Blind": Crip Humor, Storytelling, and Narrative Positioning of the Disabled Self, Disability Studies Quarterly, University of Missouri, Columbia, Volume 38 [2018] [11] < <https://dsq-sds.org/index.php/dsq/article/view/6163/4902> >

⁴⁷ Tom Shakespeare, Joking a part, Body and Society, [1999] Volume 5[4], 47-55 as cited in Kinda Abujbarah, Laughing Back: A Phenomenological Study of Disability Humor Using Culturally Responsive Methodologies [Doctoral Dissertation] [2019] < https://web.archive.org/web/20200506223854id_/https://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1008&context=education_dissertations > [39-40]; See Union of India v. National Federation of the Blind, [2013] 10 SCC 772 [Justice P Sathasivam, 50].

33. For instance, in **Anuj Garg v. Hotel Association of India**,⁴⁸ this Court struck down a law that barred women's employment in premises where liquor was consumed. Such an indirectly discriminatory law was held to be inflicted by "incurable fixations of stereotype morality and conceptions of sexual role".⁴⁹ In **Navtej Singh Johar v. Union of India**,⁵⁰ this Court found that Section 377 of the Indian Penal Code was discriminatory and premised on stereotypes about binary genders and the role of sex. It singled out a class of people on a basis proscribed under Article 15[1]⁵¹. A provision that was based on and perpetuated stereotypes deprived certain individuals of their right to equal participation as citizens and equal enjoyment of life.⁵² In **Indian Young Lawyers Association v. State of Kerala**⁵³, a Constitution Bench of which one of us was a part [Dr DY Chandrachud], found that stereotypes about sex undercut dignity. The paternalistic notion that women were a weaker sex was found to be contrary to the dignity of women [inter alia] and as such, impermissible.⁵⁴ The Constitution envisions dignity, liberty and equality as imperatives for a dignified society. The [Quote Begins] "*dehumanising effect of stereotypes*" [Quote Ends] has been recognised by this Court in upholding the rights of those at the receiving end of these prejudicial notions and biases.⁵⁵

III. The Framework of the RPwD Act, 2016

34. The Rights of Persons with Disabilities Act, 2016, inspired by the Social Model of Disability, marks a significant legislative step forward. This model, which gained prominence after the American Civil Rights Movement, uses the term "person with disability" instead of "disabled person," emphasizing the individuality of people rather than their disabilities. According to the Social model, disability arises not from a person's impairments but from the artificial barriers imposed by society and the environment.
35. The RPwD Act defines a person with a disability as someone with a long-term physical, mental, intellectual, or sensory impairment that, in interaction with societal barriers, hinders their full and effective participation in society on an equal basis with others⁵⁶.
36. For the first time, the 2001 Census counted people with disabilities. This inclusion marked a step towards recognizing persons with disabilities as a distinct group deserving of rights tailored to their needs. Earlier efforts, such

⁴⁸ [2008] 3 SCC 1

⁴⁹ Anuj Garg [supra].[46].

⁵⁰ [2018] 10 SCC 1

⁵¹ Navtej Singh Johar v. Union of India [2018] 10 SCC 1 [Justice Chandrachud, 460].

⁵² *ibid* [608].

⁵³ [2019] 11 SCC 1

⁵⁴ *ibid*, [Justice Chandrachud, 297].

⁵⁵ Indian Young Lawyers Association [supra] [300].

⁵⁶ The Rights of Persons with Disabilities Act, 2016, s. 2[S].

[s] "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

as the Mental Health Act of 1987 and the establishment of the Rehabilitation Council of India in 1986, laid the groundwork for these advancements. The 1995 Persons with Disabilities Act further propelled the Disability Rights Movement by addressing early detection, education, employment, affirmative action, non-discrimination, and barrier-free access.⁵⁷

37. Years of advocacy culminated in the enactment of the RPwD Act 2016, aligning Indian law with the UN Convention on the Rights of Persons with Disabilities⁵⁸. The Act embodies principles of dignity, individual autonomy [freedom to make personal choices], non-discrimination, and effective participation. The CRPD asserts that disability arises from the interaction between impairments and social attitudes, creating barriers to full and equal participation in society.
38. The RPwD Act represents a fundamental shift from viewing disability through a charity lens to a human rights perspective. Its core aim is to empower persons with disabilities by upholding their inherent dignity and autonomy. The Act broadly underscores principles of non-discrimination, full and effective participation in society, and the inclusion of all individuals, emphasizing the respect for differences and the acceptance of disabilities as an integral part of human diversity. It enshrines equality of opportunity, accessibility, gender equality, and the recognition of the evolving capacities of children with disabilities, ensuring their right to maintain their identities.
39. Section 3[1] of the RPwD Act mandates that the appropriate government ensure persons with disabilities enjoy the right to equality, life with dignity, and respect for their integrity on par with others.⁵⁹ The Act comprehensively prohibits discrimination against persons with disabilities in various spheres, including employment, education, access to public places, and provision of goods and services. It asserts that no person with a disability shall be deprived of any right or benefit available to others. This legislative framework reinforces the commitment of the Act to fostering a society that respects and upholds the rights of all individuals, regardless of disability status, thereby promoting inclusivity and societal harmony.

⁵⁷ The Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995.

⁵⁸ "CRPD"

⁵⁹ 59 Section 3. Equality and non-discrimination.—

[1] The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

[2] The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

[3] No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

[4] No person shall be deprived of his or her personal liberty only on the ground of disability. 8 [5] The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

IV. International Jurisprudence

40. The human rights approach to disability has evolved over the latter half of the 20th century, incorporating disability into a broader paradigm of rights that began with the United Nations' Universal Declaration of Human Rights of 1948. This declaration acknowledged that all individuals have civil, political, economic, social, cultural, and development rights, despite their differences.⁶⁰ From this viewpoint, disability is seen as a variation in human characteristics, enriching the diversity of societal contributions and requiring mechanisms to ensure individuals can realize their potential.⁶¹
41. This rights-based perspective views people with disabilities as subjects rather than objects, shifting from seeing them as problems to recognizing them as rights holders. Since the mid-1970s, this perspective has manifested in four ways at the UN level: through non-binding declarations and resolutions, in the interpretation of general human rights treaties, in the drafting of thematic human rights treaties, and in the ongoing work of specialized agencies. The CRPD aims to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, emphasizing respect for their inherent dignity. The Convention does not create new rights but expresses existing rights in a way that addresses the needs of PWDs.
42. A Committee monitors the implementation of the Convention. Countries that ratify it, including India [in 2007], must report regularly on their progress. The 2030 Agenda for Sustainable Development also pledges to [Quote Begins] "leave no one behind," [Quote Ends] asserting that persons with disabilities must be both beneficiaries and agents of change.

1. *Equality and Non-Discrimination*

43. Equality and non-discrimination are fundamental to all human rights treaties. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on various grounds, forming the basis for Article 5 of the CRPD.⁶² Thematic UN

⁶⁰ The Universal Declaration of Human Rights of 1948.

⁶¹ See The Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, From Exclusion to Equality: Realizing the rights of persons with disabilities [2007]. <https://www.un.org/disabilities/documents/toolaction/ipuhb.pdf>

⁶² Article 5 - Equality And Non-Discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with

human rights conventions aim to establish equality and eliminate discrimination, with provisions specifically addressing these principles. The CRPD builds on the experiences of other conventions, evolving the UN's approach to equality and non-discrimination.

44. The CRPD Committee routinely observes several forms of discrimination against persons with disabilities, including violations in accessing the built environment, transportation, information, and communications; negative portrayals and harmful stereotypes in the media; deprivation of the right to legal capacity; barriers to accessing justice, education, and employment; and restrictions on participating in cultural life, recreation, leisure, and sports.⁶³ Despite the adoption and ratification of the CRPD by many countries, disability-based discrimination persists due to continued reliance on charity and medical paradigms. In light of the foregoing considerations, it is evident that there exist outdated approaches to addressing disability, which fail to acknowledge individuals with disabilities as full rights holders.⁶⁴ These approaches, characterized by a desire to [Quote Begins] "care for and protect" [Quote Ends] persons with disabilities or to [Quote Begins] "fix" [Quote Ends] or [Quote Begins] "cure" [Quote Ends] them, are fundamentally incompatible with the principles of equality and non-discrimination enshrined in the CRPD.
45. The General Comment on Article 5 of the CRPD states that state parties should take proactive measures to address discriminatory portrayals of persons with disabilities in the media.⁶⁵ Such portrayals, rooted in charity, welfare, and medical paradigms, perpetuate harmful stereotypes and undermine the dignity and autonomy of individuals with disabilities. States must therefore implement measures to encourage the media to portray persons with disabilities in a manner consistent with the CRPD, thereby combating negative views that depict them as dependent or lacking autonomy.
46. The human rights approach to disability has been highlighted in many international cases. In **Glor v. Switzerland**⁶⁶, the European Court of Human Rights declared a European and worldwide consensus on protecting persons with disabilities against discrimination, referencing the CRPD. In this case, the applicant, deemed unfit for military service due to diabetes, was still taxed for not performing military service.⁶⁷ The court held that Switzerland had unlawfully discriminated against him. In **Bacher v. Austria**⁶⁸, the applicant,

disabilities shall not be considered discrimination under the terms of the present Convention.

⁶³ OHCHR, General Comment 6 on Article 5: Equality and Non Discrimination, [CRPD/C/GC/6, 26 April 2018], Para 2. See <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>

⁶⁴ Ibid. Para 3.

⁶⁵ Ibid, Para 44.

⁶⁶ *Glor v Switzerland*, 13444/04, para 53.

⁶⁷ Ibid.

⁶⁸ *Bacher v Austria* [026/2014], Views CRPD/C/19/D/26/2014, para 3.3.

with autism and Down Syndrome, faced accessibility issues when a wooden roof crucial for accessing his home was destroyed. The CRPD Committee noted that states must ensure equal access for Persons with Disabilities to public goods, products, and services in a manner that respects dignity.⁶⁹

47. The human rights approach to disability, reflected in the CRPD, represents a significant evolution in international human rights law. It emphasizes the need to treat persons with disabilities as rights holders, ensuring their full participation and inclusion in society.

2. Awareness-raising

48. Article 8 of the CRPD mandates measures for raising awareness about disability rights,⁷⁰ including:

[List Begins]

- i. Raising awareness at all levels of society, starting from families, to instill respect for disability rights and dignity;
- ii. Fighting stereotypes and prejudices against persons with disabilities in various life domains, regardless of sex or age; and
- iii. Promoting recognition of the abilities and valuable contributions of persons with disabilities. [End of List]

49. Awareness-raising campaigns targeting both the public and private sectors are essential for combating stereotypes, prejudices, and harmful practices relating to persons with disabilities.⁷¹ These campaigns should address misconceptions that individuals with disabilities, such as autistic persons, deaf persons, blind persons, and persons with psychosocial disabilities, are less likely to interact with colleagues or be more productive due to fewer distractions. It is crucial to identify and eliminate value systems like ableism

⁶⁹ Ibid. Para 9.9.

⁷⁰ Article 8 – Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

a] To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

b] To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

c] To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

a] Initiating and maintaining effective public awareness campaigns designed:

i. To nurture receptiveness to the rights of persons with disabilities;

ii. To promote positive perceptions and greater social awareness towards persons with disabilities;

iii. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

b] Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

c] Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

d] Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

⁷¹ OHCHR, Monitoring the Convention on the Rights of Person with Disabilities: Guidance for Human Rights Monitors Professional Training Series No. 17 [2010].

https://www.ohchr.org/sites/default/files/Documents/Publications/Disabilities_training_17EN.pdf

that underpin legislation, policies, and practices leading to inequality and discrimination.

50. Article 4.3 is significant for raising awareness.⁷² The CRPD Committee recommends that States parties implement systematic awareness-raising programs with the participation of Disabled Persons' Organizations⁷³ and Organizations of Persons with Disabilities.⁷⁴ This is articulated in the General Comment 7 on Articles 4.3 and 33.3 which talk about the participation of persons with disabilities in the implementation and monitoring of the Convention⁷⁵. The Comment states that these programs should include media campaigns that portray positive images of persons with disabilities, especially those with albinism, psychosocial and/or intellectual disabilities, and deaf-blind persons, as human rights holders.⁷⁶
51. Stereotypes, ableism, and misconceptions that prevent independent living for persons with disabilities must be eradicated, promoting a positive image of their contributions to society. Training programs for public-sector officials must align with the principles of the CRPD and the human rights model of disability to overcome entrenched gender and disability stereotypes. Awareness-raising should involve authorities, civil servants, professionals, the media, the general public, and persons with disabilities and their families, and should be carried out in close cooperation with representative organizations of persons with disabilities.
52. The CRPD requires member states to "*closely consult with*" and "*actively involve*" persons with disabilities through their organizations in the development and implementation of awareness-raising campaigns.⁷⁷ This is crucial for shifting the perception of persons with disabilities from "*objects of charity*" to "*rights holders*." While awareness creation is not a right per se, the Convention obliges States parties to raise awareness about the rights of persons with disabilities. Establishing a right is different from ensuring its realization, which is why State parties must provide an enabling environment for persons with disabilities to fully enjoy their rights. The media's power to shape attitudes and create awareness is a vital component of this enabling environment.
53. The CRPD emphasizes respect for difference and acceptance of persons with

⁷² Art 4 [2] CRPD states that: "With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present convention that are immediately applicable according to international law."

⁷³ "DPO"

⁷⁴ "OPDs"

⁷⁵ See OHCHR, General Comment 7 on Article 4.3 and Article 33.3- the participation of persons with disabilities in the implementation and monitoring of the Convention, [CRPD/C/GC/7, 09 November 2018].

⁷⁶ Ibid.

⁷⁷ Ibid.

disabilities as part of human diversity. It aims to prevent discrimination rather than disability, shifting the focus from a medical approach to a rights-based approach. This perspective should also guide public service campaigns related to public safety and health, ensuring they respect diversity and combat discrimination.

54. The World Programme of Action Concerning Disabled Persons⁷⁸, adopted in 1982, promotes disability from a human rights perspective and provides recommendations for national, regional, and international action.⁷⁹ It encourages developing media guidelines in consultation with disability organizations, training in self-advocacy for persons with disabilities, and informed education and training within the media sector to improve disability portrayal.⁸⁰ The guidelines should promote sensitive and accurate portrayals of persons with disabilities across various media forms, not just news media.
55. In line with the WPA, the United Nations developed guidelines for the inclusion and portrayal of disabled people in the media, culminating in the booklet titled "Improving Communications about People with Disabilities."⁸¹ These guidelines, designed to be adaptable across different media and countries, aim to improve public perception of persons with disabilities. They cover topics such as inclusion in mainstream programming, portrayal and depiction issues, the use of language, and participation of persons with disabilities in media production.⁸²
56. While the guidelines from the WPA provide effective measures for improving media portrayal, they are outdated in some respects, particularly their medical-based understanding of disability. For instance, they include recommendations on preventing and treating impairments, which may contradict the CRPD's principle of respecting disability as part of human diversity. However, the guidelines' promotion, availability, and monitoring mechanisms remain valuable for encouraging accurate and positive media representations of persons with disabilities.

V. Indian jurisprudence aligns with the human rights approach.

57. The foundation of laws for persons with disabilities has been traced to the guarantee of dignity as a core human right, recognised by the Constitution under Article 21⁸³. The Scheme of the 2016 Act, as opposed to the preceding 1995 Act, is not constrained by the availability of resources, but recognises

⁷⁸ "WPA"

⁷⁹ The UN General Assembly adopted the WPA, and declared at the same time the United Nations Decade of Disabled Persons, 1983-1992. See also Paul Harpur, 'From Disability to ability: changing the phrasing of the debate' [2012] 27 [3] Disability & Society 325, 327.

⁸⁰ Ibid.

⁸¹ United Nations, Improving Communications about People with Disabilities [Recommendations of a United Nations Seminar, 8-10 June 1982, Vienna], p. 5.

⁸² Ibid.

⁸³ Jeeja Ghosh v. Union of India [2016] 7 SCC 761 [37, 38].

positive obligations of the State to materialise these rights housed in its various provisions.⁸⁴

58. This Court has held in **Vikash Kumar v. Union Public Service Commission**⁸⁵ that while not specifically mentioned in the Constitution, persons with disabilities are equally entitled to the rights enumerated therein. We recognised that the RPwD Act provisions create a protective ambit which encompasses equality, non-discrimination and dignity. Section 3 of the Act casts an affirmative obligation on the government to enable the exercise of rights including the right to equality and dignity, which vest in persons with disabilities with equal rigour as others.⁸⁶ This Court underlined the positive obligation of both State and private parties to provide support to persons with disabilities to facilitate their full and effective participation in society. The RPwD Act, we noted, was more than an anti-discrimination legislation. It emphasized creation of an *environment conducive* to the above-mentioned rights including substantive equality and opportunity to participate in society.⁸⁷ This ruling reinforced the obligation of the State and of private entities to support full participation in society, aligning with the CRPD's human rights model of disability.
59. This approach was further demonstrated in **Ravindra Kumar Dhariwal v. Union of India**⁸⁸, where this Court addressed the discrimination faced by a Central Reserve Police Force Assistant Commandant who developed a mental disability during service. The Court emphasized '*dignity*' and '*equality*' under Section 3 of the RPWD Act, highlighting the State's positive duty to protect the rights of persons with disabilities.
60. Recent rulings reflect the judiciary's evolving role in not only safeguarding individual rights but also in addressing the complex intersections of disability, gender and mental health, enriching the discourse on equality. This perspective rejects a one-size-fits-all approach, acknowledging that disability is a nuanced, individualized concept shaped by factors such as mental impairment and personal circumstances. The legal framework stresses the need to prevent stigmatization and discrimination against individuals with disabilities, recognizing the profound impact on their sense of identity and dignity.
61. The 2016 Act came much after the 1991 Guidelines. The Guidelines include the Board's duty to protect against 'needlessly' abusive and ridiculing scenes about persons with disabilities. In view of the instant appeal of visual media, this guideline furthers the goal of creating an environment conducive to

⁸⁴ Rajive Raturi v. Union of India, [2018] 2 SCC 413

⁸⁵ 2021 5 SCC 370.

⁸⁶ Vikash Kumar [supra] [41-44].

⁸⁷ Vikash Kumar [supra] [52, 53, 60].

⁸⁸ [2016] 7 SCC 761.

inclusive and substantive equality in the context of their historically oppressive social treatment. The certificate entails a presumption that the film complies with the Guidelines. In this instance, the film was granted a 'U' – certificate and it implies that it does not needlessly portray persons with disabilities in a manner contrary to the guidelines and statutes governing the field.

E. SPEECH MUST NOT PREJUDICE THE MARGINALISED AND DISENFRANCHISE THEM FURTHER.

62. Article 19[1][a] has been termed as “*perhaps the most precious of all the freedoms guaranteed by our Constitution*”.⁸⁹ Speech and expression form a crucial part of the democratic give and take⁹⁰ and serve as a corrective check on public policy.⁹¹ Overall, they promote the discursive health of democracy⁹². Social debate must be enriched by diverse voices and wide participation from across the social spectrum.⁹³ Unfortunately, normative stereotypes about gender, identity, sexual orientation and disability have hitherto deprived certain groups of such participation. In **Indibly Creative** [supra], we held that while satirical speech effectively exposed social absurdities, hypocrisies and contradictions, even such expression was subject to Article 19[2]. This Court had remarked that if such expression, which is otherwise acceptable because it promotes discourse, targets the society’s marginalised, it may “*confirm and strengthen people’s prejudices against the group in question, which only marginalises and disenfranchises them more*”.⁹⁴ Such expression, it was held, may not enjoy the complete protection of Article 19[1][a].

F. CAVEAT: DISABILITY HUMOUR V. DISABLING HUMOUR.

63. In the context of historically oppressive representation of persons with disabilities, speech that entrenches stereotypes is opposed to the dignity of such individuals. However, not all speech that uses stereotypes commonly employed against persons with disabilities is abhorrent by reason of such use alone. As stated in the preceding sections, the context, intention and the overall message must be considered before such use may be termed as prejudicial, and the protection of free speech lifted.

64. Humour and disabilities are viewed as uneasy companions. This is primarily because of the historical use of humour to mock disability, make jokes at the expense of persons with disabilities and to use them for comic relief.⁹⁵

⁸⁹ Sakal Papers [P] Ltd v. Union of India [1962] 3 SCR 842 [Justice Mudholkar, 41].

⁹⁰ S Rangrajan [supra] [36, 40-43].

⁹¹ Maneka Gandhi v. Union of India, [1978] 1 SCC 248 [Bhagwati J, 29].

⁹² Prakash Jha v. Union of India [2011] 8 SCC 372 [8, 22-27].

⁹³ Maneka Gandhi [supra], Indibly Creative [supra] [22, 28]

⁹⁴ Indibly Creative Private Limited v. Government of West Bengal 2020 12 SCC 436. [23]

⁹⁵ Allison Hobgood and David Wood, Disability Humour and the Meanings of Impairment in Early Modern England, Hobgood, Recovering Disability in Early Modern England. The Ohio State University Press, 2013 [58] <https://muse.jhu.edu/pub/30/oa_monograph/chapter/897500>

Also, the medical model treats disability as a personal ‘tragedy’ which is by definition, incompatible with humour.⁹⁶ This understanding is now obsolete under the social model which views disability as a function of social barriers that disable such individuals.⁹⁷ The social model says that stereotypes stem from a lack of familiarity with disability. This lack arises due to inadequate representation and participation of persons with disabilities in dominant discourse.⁹⁸

65. Despite the history and the obsolescence of the medical model, humour is not universally denounced in the context of disability. It is now being increasingly used as a sophisticated literary medium for engagement with the society by persons with disabilities. It familiarises the society with the lived experiences of persons with disability, thereby dispelling prejudicial myths, and sensitising people.⁹⁹ Challenging notions of ‘otherness’ or ‘inferiority’ associated with persons with disability, humour creates an equal space.¹⁰⁰ Comics with disabilities use self-deprecating humour to critique the social order and counter stereotypical images¹⁰¹. They bring stereotypes to the fore and rely on them in order to dispel them.¹⁰² Humour is a reclamation of the public discourse by persons with disabilities who are pushing back against the dominant, ableist narratives around disability.¹⁰³
66. We must therefore, distinguish ‘*disabling humour*’ that demeans and disparages persons with disability from ‘*disability humour*’ which challenges conventional wisdom about disability. While disability humour attempts to better understand and explain disability, disabling humour denigrates it.¹⁰⁴ The two cannot be equated in their impact on dignity and on stereotypes about persons with disabilities¹⁰⁵.

⁹⁶ Shawn Bingham and Sara Green, Aesthetic as Analysis: Synthesizing theories of humor and disability through stand-up comedy, *Humanity & Society*, Volume 40[3], 1, 6 [2016]

<<https://journals.sagepub.com/doi/10.1177/0160597615621594> >

⁹⁷ Mike Oliver, The social model of disability: Thirty years on, *Disability & Society*, 28[7], 1024-1026,

<<https://www.tandfonline.com/doi/full/10.1080/09687599.2013.818773> >

⁹⁸ Kinda Abujbarah [supra] [29].

⁹⁹ *ibid.*

¹⁰⁰ Bingham and Green [supra] [31].

¹⁰¹ Teresa Milbrodt, Today I Had an Eye Appointment, and I'm Still Blind": Crip Humor, Storytelling, and Narrative Positioning of the Disabled Self, *Disability Studies Quarterly*, University of Missouri – Columbia Vol. 38 No. 2

[2018] < <https://dsq-sds.org/index.php/dsq/article/view/6163/4902> >

¹⁰² Kinda Abujbarah [supra] [43].

¹⁰³ Bingham and Green [supra] [3].

¹⁰⁴ Bingham and Green [supra] for differences between theories of humour based on how they treat disability- the

¹⁰⁵ See Robin Smith and Mara Shapon-Shevin, Disability Humor, Insults, and Inclusive Practice Social Advocacy and Systems Change, 1[2], 2008-2009 <<https://sites.cortland.edu/sasc/wp-content/uploads/sites/12/2012/12/Disability-Humor-Final.pdf> > Smith et al provide a set of questions one must ask when evaluating humour vis-à-vis disability:

- In the presence of a person with this disability, would you be comfortable sharing this joke? Hearing this joke?
- Does this joke laugh AT or WITH?
- Is there a cost? Is it exploitive? Who benefits?
- Does this joke make you feel empathy, closeness, understanding.
- Does it tell you "they" are irrevocably different, make you feel more distant from "them", give the impression they are somehow less than human, provide/reinforce incorrect information about the disability, make you likely to be tense or awkward in the presence of a person with this disability?

G. THE PRESENT CASE

67. The appellant had invoked the writ jurisdiction of the High Court on the ground that the exercise of the second respondent's fundamental right to freedom of speech and expression, contravened the appellant's rights under Articles 14, 15 and 21 by reinforcement of stereotypes by the film.
68. Both these rights are fundamental rights under Article 19[1][a] and Article 21 respectively. The High Court noted at paragraph 8 of the judgment that since the appellant had not contested the second respondent's claim that the overall message of the film was about resilience of persons with disability, the primary challenge that the film offended the sensibilities was not established. The countervailing right of freedom of speech and expression of the filmmaker as stated in the previous sections was not weighed against the rights claimed by the appellant. The High Court could have found that the two rights – the freedom of speech and expression of the filmmaker on the one hand and the rights of persons with disabilities need not be balanced because the rights in question [dignity, non-discrimination and equality] do not include the right to curb the filmmakers' rights to exhibit a film duly certified for such exhibition¹⁰⁶. In the alternative, the High Court could have undertaken a balancing of the two rights according to the single or the double proportionality test- depending on whether it felt one of the rights took precedence over the other.¹⁰⁷
69. The High Court rightly does not engage in this discussion perhaps because the appellant expressed satisfaction with a direction for inclusion of expert members to the Board and the Advisory Panel and because the certification of the film was not in issue. Therefore, limiting its inquiry to whether such relief could be granted, the High Court decided against the appellant.
70. In line with the observation in **Indibly** [supra], we are of the view that the freedom under Article 19[1][a], that is the creative freedom of the filmmaker cannot include the freedom to lampoon, stereotype, misrepresent or disparage those already marginalised. There is a difference between a film that is set in the backdrop of communal violence and which cannot eschew depiction of violence from portrayal that outright extols such violence.¹⁰⁸ Similarly, if the overall message of the work infringes the rights of persons with disabilities, it is not protected speech, obviating the need for any balancing. However, in appropriate cases, if stereotypical/disparaging portrayal is justified by the overall message of the film, the filmmaker's right to retain such portrayal will have to be balanced against the fundamental and

¹⁰⁶ In Re Noise Pollution, [2005] 5 SCC 733.

¹⁰⁷ Central Public Information Officer, Supreme Court of India v. Subash Chandra Agarwal, Civil Appeal No. 10044 of 2010.

¹⁰⁸ F.A. Picture International v. Central Board of Film Certification, 2004 SCC OnLine Bom 961 [12] as cited in Indibly [supra] [35].

statutory rights of those portrayed.

71. The appellant seeks guidelines against filmmakers, regarding the provisions of the RPwD Act and the composition of the Board and the Advisory panel under the Cinematograph Act and recommendations to beep certain parts of the present film as well.

72. Regarding specific recommendations, our views are summarised as follows:

72.1. We endorse slow interference with the determination of an expert body under the Cinematograph Act, particularly to allow the exhibition of a film. It is for the Board to draw the line between permissible and impermissible portrayal of social ills through visual media, and ensure that the Guidelines are meant to be read as broad standards for the same.¹⁰⁹ The certification in the present case implies that the Board found that the overall message of the film was in accordance with the guidelines and the RPwD Act.¹¹⁰ We are not inclined to interfere with this finding by recommending beeping out parts of the film, especially considering the inclusion of a disclaimer in the film.

72.2. The recommendation that Sony Pictures make an awareness film according to Section 7 [d] of the RPwD Act cannot be granted.¹¹¹ Section 7[d] is directed towards the appropriate government. While we have underlined that the principle of reasonable accommodation includes positive obligations of private parties to support persons with disabilities and facilitate their full participation, we cannot agree that Section 7[d] includes such an obligation against private persons. Even otherwise, such a direction would amount to compelled speech. Such compelled speech has been allowed by this Court under Article 19[1] of the Constitution, albeit in a very different context from the present. A must-carry provision under the Cinematograph Act, mandated exhibition of short educational films as a licensing pre-condition for exhibitors. The provision was upheld by this Court in **Union of India v. Motion Pictures Association**¹¹². The provision related to exhibition of a pre-produced educational short film alongside other films and it applied to exhibitors. The recommendation sought in the present case is for creation of a whole different film on the ground of a statutory mandate of spreading awareness which is not even directed towards a private entity such as Sony Pictures. The positive obligation mentioned in **Vikash Kumar** [supra] cannot be so extended to compel speech in the manner suggested by the appellant.

72.3. On inclusion of subject matter experts to the Board and advisory panels, we believe that the field is sufficiently occupied by the Cinematograph Act and

¹⁰⁹ Bobby Art International [supra] [23].

¹¹⁰ See Raj Kapoor [supra].

¹¹¹ Section 7[d]- appropriate Government shall take protective measures against all forms of abuse, violence and exploitation and shall [inter alia] create awareness and make available information among the public.

¹¹² [1999] 6 SCC 150 [Justice Sujata Manohar, 13-15].

the certification Rules of 1983 and 2024 does not merit our interference. Under the 1983 Rules, the Board may take steps to assess public reactions to films¹¹³. The Examining Committee is supposed to include women as its members¹¹⁴. The 1983 Rules and the 2024 Rules envisage consultation with a subject matter expert: the Examining Committee's final report is forwarded to the Chairperson in 10 days, unless the Committee feels that expert opinion is necessary. In that case, it may submit a provisional report and seek expert opinion before submitting the final report.¹¹⁵ The 2024 Certification Rules go a step further and provide that a Regional Officer may invite subject matter experts for the examination of the film by the Examination Committee or Revising Committee¹¹⁶.

72.4. Courts have also placed adequate thrust on the fitness of these expert committees to assess legal requirements beyond the Cinematograph Act, even with their existing composition.¹¹⁷ In **Raj Kapoor v. State**¹¹⁸, a two-judge bench of this Court noted that the certificate, which represented the judgment of an expert body selected for judging the fitness of a film for public exhibition, also included consideration of the ingredients of other laws such as the Indian Penal Code¹¹⁹. Similarly, in **Prakash Jha** [supra]¹²⁰, this Court rejected a film ban founded on public order. The Court noted that the film dealt with a sensitive subject of reservations but it had been duly cleared by examining committees comprising legal and subject matter experts and members belonging to the Scheduled Castes/Scheduled Tribes and Other Backward Class communities, who had approved the screening of the film.

72.5. The Board must decide whether a disparaging portrayal stood redeemed by the overall message or not. No doubt this entails a complex balancing of interests as we noted at the outset. It would be ideal if the statutory bodies included subject matter experts. We believe the 2024 Rules are a welcome acknowledgment of this principle and consultations with subject matter experts on disability would certainly better inform the perspective of the Board. The policy underlying the Act and the Rules already accounts for expert consultation. This Court cannot interfere merely because it could be better or that a better alternative is available, when the legality of such policy is not in question.¹²¹ The Court cannot read additional requirements into unambiguous

¹¹³ 1983 Rules, Rule 11; 2024 Rules, Rule 12.

¹¹⁴ 1983 Rules, Rule 22.

¹¹⁵ 1983 Rules, Rules 41 [4] [c], [d].

¹¹⁶ 1983 Rules, Rules 41 [4] [c], [d].

¹¹⁷ S. Rangarajan [supra] [52].

¹¹⁸ [1980] 1 SCC 43.

¹¹⁹ Raj Kapoor [supra] [Justice Pathak, 26] – “Regard must be had by the court to the fact that the certificate represented the judgment of a body of persons particularly selected under the statute for the purpose of adjudging the suitability of films for public exhibition and that judgment extends to a consideration of the principal ingredients which go to constitute offences under Sections 292 and 293 of the Indian Penal Code.” [emphasis supplied]. Also see [Justice Krishna Iyer, 14]

¹²⁰ Prakash Jha Productions v. Union of India, [2011] 8 SCC 372 [13, 26].

¹²¹ See Directorate of Film Festivals v Gaurav Ashwin Jain 2007 [4] SCC 737.

provisions.¹²² It is beyond the remit of constitutional courts to specify the qualifications or expertise that the constituents of these bodies must possess or to direct that such a requirement be legislatively included into the statute.¹²³

72.6. The appellant has sought formulation of guidelines to restrict content that contravenes the Constitution and the RPwD Act 2016. We have stated above that the guidelines under the Act are quite extensive and cover the field. Such directions are issued to fill legislative gaps.¹²⁴ If allowed, such guidelines would be akin to reading the provisions of one statute that is, the RPwD Act 2016 into another statute, that is the Cinematograph Act, even though the latter does not suffer from a vacuum on the issue, and the statutory expert body is presumed to have account for the effect of the former anyway¹²⁵. Courts cannot trench into policy-making.¹²⁶ The High Court was therefore, justified in not granting the abovementioned reliefs and we cannot make recommendations to that effect.

73. Since the issue involves the fundamental rights of persons with disabilities, we take this opportunity to provide a framework of the portrayal of persons with disabilities in visual media that aligns with the anti-discrimination and dignity-affirming objectives of the Constitution as well as the RPwD Act. We are cognisant that Article 19[2] of the Constitution is exhaustive of the limitations that can be applied on the freedom guaranteed under Article 19[1][a]¹²⁷. The framework we wish to lay down is in line with our findings in **Vikash Kumar** [supra] where we emphasised that the fundamental rights under Part III of the Constitution apply with equal rigour to persons with disabilities.

74. The language of our discourse ought to be inclusive rather than alienating. We noted in **Vikash Kumar** [supra], that insensitive language was contrary to the dignity of persons with disabilities.¹²⁸ As long as the overall message of the film justifies the depiction of disparaging language being used against persons with disabilities, it cannot be subjected to restrictions beyond those placed in Article 19[2]. However, language that disparages persons with disabilities, marginalises them further and supplements the disabling barriers in their social participation, without the redeeming quality of the overall message of such portrayal must be approached with caution. Such representation is problematic not because it offends subjective feelings but rather, because it impairs the objective societal treatment of the affected groups by society.¹²⁹ We believe that representation of persons with disabilities must regard the objective social context of their representation

¹²² Padma Sundara Rao v. State of Tamil Nadu, [2002] 3 SCC 533 [12. 14].

¹²³ State of Punjab v. Salil Sabhlok, [2013] 5 SCC 1 [33, 36].

¹²⁴ P. Ramachandra Rao v. State of Karnataka, [2002] 4 SCC 578 [25, 26].

¹²⁵ See Raj Kapoor [supra].

¹²⁶ Census Commissioner v. R Krishnamurthy, [2015] 2 SCC 796 [24-26].

¹²⁷ See Indibly [supra].

¹²⁸ Vikash Kumar [supra] [84].

¹²⁹ Jeremy Waldron [supra].

and not marginalise persons with disability: [List Begins]

- (i) Words cultivate institutional discrimination. Terms such as “cripple” and “spastic” have come to acquire devalued meanings in societal perceptions about persons with disabilities. They contribute to the negative self-image and perpetuate discriminatory attitudes and practices in society;
- (ii) Language that individualises the impairment and overlooks the disabling social barriers [e.g. terms such as “afflicted”, “suffering”, and “victim”] should be avoided or adequately flagged as contrary to the social model¹³⁰;
- (iii) Creators must check for accurate representation of a medical condition as much as possible. The misleading portrayal of what a condition such as night blindness entails may perpetuate misinformation about the condition, and entrench stereotypes about persons with such impairments, aggravating the disability;
- (iv) Persons with disabilities are under-represented. Average people are unaware of the barriers persons with disabilities face. Visual media must reflect their lived experiences. Their portrayal must capture the multitudes of their lived realities, and should not be a uni-dimensional, ableist characterisation;
- (v) Visual media should strive to depict the diverse realities of persons with disabilities, showcasing not only their challenges but also their successes, talents, and contributions to society. This balanced representation can help dispel stereotypes and promote a more inclusive understanding of disability. Such portrayals should reflect the multifaceted lives of persons with disabilities, emphasizing their roles as active community members who contribute meaningfully across various spheres of life. By highlighting their achievements and everyday experiences, media can shift the narrative from one of limitation to one of potential and agency;
- (vi) They should neither be lampooned based on myths [such as, ‘blind people bump into objects in their path’] nor presented as ‘super cripples’ on the other extreme. This stereotype implies that persons with disabilities have extraordinary heroic abilities that merit their dignified treatment. For instance, the notion that visually impaired persons have enhanced spatial senses may not apply to everyone uniformly. It also implies that those who do not have such enhanced superpowers to compensate for the visual impairment are somehow less than ideal;
- (vii) Decision-making bodies must bear in mind the values of participation. The ‘nothing about us, without us’ principle is based on the promotion of participation of persons with disabilities and equalisation of opportunities. It must be put to practice in constituting statutory committees and inviting expert opinions for assessing the overall message of films and their impact on dignity of individuals under the Cinematograph Act and Rules;¹³¹

¹³⁰ See Vikash Kumar [supra] [84-86].

¹³¹ "Nothing about Us, Without Us", International Day of Disabled Persons: Themes and Observances of Previous Years, United Nations [2004] <

<https://www.un.org/esa/socdev/enable/iddp2004.htm#:~:text=The%20motto%20%E2%80%9CNothing%20>

- (viii) The CPRD also requires consultation with and involvement of persons with disabilities in the implementation of measures to encourage portrayal that is consistent with it.¹³² Collaboration with disability advocacy groups can provide invaluable insights and guidance on respectful and accurate portrayals, ensuring that content aligns with the lived experiences of persons with disabilities; and
- (ix) Training and sensitization programs should be implemented for individuals involved in creating visual media content, including writers, directors, producers, and actors. These programs should emphasize the impact of their portrayals on public perceptions and the lived experiences of persons with disabilities. Topics should include the principles of the social model of disability, the importance of respectful language, and the need for accurate and empathetic representation. Regular workshops and collaboration with disability advocacy groups can foster a deeper understanding and commitment to responsible portrayal. [\[End of List\]](#)

- 75. The appeal shall stand disposed of in the above terms. There shall be no order as to costs.
- 76. Pending application[s], if any, stand disposed of.