

FRAMEWORK FOR PORTRAYAL OF PERSONS WITH DISABILITY IN VISUAL MEDIA

INTRODUCTION

While hearing an appeal against the Delhi High Court’s judgement dated 15 January 2024 in *Nipun Malhotra vs. Sony Pictures Films India Private Limited & ors*, the Supreme Court bench comprising of Chief Justice of India D. Y. Chandrachud and Justice J. B. Paridwala (“**Bench**”) laid down a framework for portrayal of persons with disabilities in visual media with the intention to align the anti-discrimination and dignity affirming objectives of the Constitution of India and the rights of persons with disabilities under the Rights of Persons with Disabilities Act, 2016 (“**RPwD Act**”).

BACKGROUND

The petitioner, a person with arthrogryposis and being the founder of an organisation that promotes awareness about disabilities and disability rights, was aggrieved by the by the misguided portrayal of persons with disabilities (“**Appellant**”). He submitted that that the film ‘*Aankh Micholi*’ (“**Film**”) was violative of the constitutionally protected rights of persons with disabilities, the provisions of the Cinematograph Act, 1952 (“**Cinematograph Act**”) and the RPwD Act as it made derogatory references such as ‘*bhulakkad baap*’ for a person with Alzheimer’s, ‘*soundproof system*’ for a person with a hearing impairment and ‘*atki hui cassette*’ for a character with speech impairment. In the plea before the Delhi High Court, the Appellant stated that by virtue of the misguided and derogatory portrayal of persons with disabilities as done in the Film, stereotypes surrounding disabilities were reinforced and the idea that persons with disability are unequal and subjects of comic relief was further promoted.

In its response to the claims made by the Appellant, Sony Pictures Films India Private Limited (“**Sony**”) claimed that the overall message of the Film was one of “*overcoming the challenge of disability*”. Amongst the reliefs sought by the Appellant, the Appellant requested a direction to the Central Board for Film Certification (“**CBFC**”) to include an expert on the matter of the RPwD Act within the CBFC and on the advisory panel constituted under Sections 3 and 5 of the Cinematograph Act, to be involved in the course of film certification. The Delhi High Court dismissed the writ petition as it found no legal rationale behind the reliefs sought by the Appellant, and noted in its judgement that the Appellant did not dispute the explanation of the overall message offered by Sony.

ANALYSIS OF THE COURT

In the present appeal, the Appellant before the Supreme Court alleged that CBFC had violated its statutory duties in respect of film certification and prayed that the Supreme Court should consider the impact of the provisions of the RPwD Act on the certification of films. Upon a brief analysis of the legislative framework governing the functioning of the CBFC and the manner in which the CBFC is required to assess the grant of certification to a film for public exhibition, the Bench noted that the certification of the Film is not an issue to be considered by it. The CBFC in discharging its duties pertaining to certification of films for public exhibition is statutorily mandated to certify films pursuant to assessing them in accordance with the legislative framework for film certification, which comprises of the Cinematograph Act, the Cinematograph (Certification) Rules 2024 and the Guidelines for Certification of Films for Public Exhibition, 1991. In supplementation of this legal framework, courts have laid down tests to enable the CBFC to determine challenges to the portrayal

of persons, situations and characters in films. The Bench reiterated that once a film is certified by the CBFC, it is presumed to have complied with the applicable rules and the effect it may have on reasonable viewers cannot ordinarily be subject to re-assessment by courts.

The Appellant further sought the framing of guidelines and inclusion of recommendations for creators to follow while dealing with sensitive subjects such as rights of persons with disabilities in the visual media. The Bench delved into an assessment of the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution of India in respect of filmmaker's right to exhibit films. The Bench noted that such right to freedom of cinematic speech is subject to reasonable and 'necessary' restrictions as purported by law and precedents. It referred to its judgement in *K. A. Abbas vs. Union of India* wherein it underlined that restraints on cinematic expression must be extremely narrow and the effect a film may have on viewers has to be viewed from the vantage of an ordinary person rather than a hypersensitive person by the CBFC.

The Bench took the view that creative freedom of the filmmaker cannot include the right to denigrate those persons who are already marginalised. However, in respect of the reliefs sought by the Appellant, it was not inclined to require the CBFC to include subject matter experts on the advisory panels in the course of film certification or recommend portions of the Film to be censored. The Bench held that it was not interfere with the certification of the Film already granted by CBFC and regarded the prevalent legal framework, including the guidelines formulated under the Cinematograph Act for assessing the grant of certification to a film, as being sufficient to address the concerns raised by the Appellant.

FRAMEWORK FOR DEPICTION OF PERSONS WITH DISABILITY IN VISUAL MEDIA

While the Bench did not find significant merit in the reliefs sought by the Appellant, vide its judgement in the present appeal, it laid down a framework to provide guidance to filmmakers and industry professionals for the depiction of persons with disability in visual media. The framework includes the following considerations to be borne in mind for objective representation of persons with disability:

- i) Words that have acquire devalued meanings such as 'crippled' and 'spastic' must not be used;
- ii) Language the highlights the disability such as 'afflicted', 'suffering', and 'victim' should be avoided or flagged as it overlooks the disabling barriers;
- iii) Medical conditions must be accurately represented to avoid perpetuation of misinformation;
- iv) A balanced representation of persons with disabilities must attempt to reflect the multi-faceted lived experiences of such persons;
- v) Decision making bodies must bear in mind the 'nothing about us, without us' principle';
- vi) Training and sensitization programmes must be implemented for individuals involved in the creation of visual media content including writers, producers and actors.

CONCLUSION

It is pertinent to note that there has been increasing discourse amongst stakeholders regarding accessibility concerns in the various realms of the entertainment industry and as evident from the recent issuance of the 'Guidelines of accessibility standards in the public exhibition of feature films

in cinema theatres for persons with hearing and visual impairment’ by the Ministry of Information and Broadcasting, in March 2024. The judgement of the Supreme Court provides indicative guidelines that filmmakers and industry professionals must consider the course of any representation of persons with disabilities. While highlighting the need for a sensitive portrayal of disabilities, the judgement clarifies that negative or disparaging language if shown in a film, must only be with the intent to convey the films overall positive message. Such language or portrayal should not have the effect of perpetuating stereotypes or promoting social exclusion of persons with disabilities.

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