SUPREME COURT CHAMBER 2

STUDY GUIDE

K.A. ABBAS

VS

UNION OF INDIA

The Supreme Court

The Supreme Court of India is the apex judicial body under the Constitution of India. It is the supreme judicial authority and the highest court of India and has the power to interpret and uphold the constitution.

KEY POWERS AND FUNCTIONS:

1. **Original Jurisdiction:**

- The Supreme Court has original jurisdiction over disputes between the Union and States, between States, and in cases relating to the interpretation of the Constitution.
- It can issue writs such as habeas corpus, mandamus, quo warranto, certiorari, and prohibition to enforce fundamental rights and uphold the rule of law.

2. **Appellate Jurisdiction:**

- The Supreme Court has appellate jurisdiction over all cases decided by High Courts.
- It can hear appeals against final judgments and orders of High Courts in civil, criminal, and constitutional matters.
- In certain cases, the Supreme Court can also hear appeals from decisions of tribunals and other authorities.

3. **Advisory Jurisdiction:**

- The President of India can request the Supreme Court's opinion on any question of law or fact.
- The Supreme Court's advisory opinions are not binding, but they are often given significant weight.

4. **Constitutional Interpretation:**

- The Supreme Court has the power to interpret the Constitution and determine the validity of laws.
- Its decisions on constitutional matters are binding on all courts in India.

5. **Enforcement of Fundamental Rights:**

- The Supreme Court is the guardian of fundamental rights guaranteed under the Constitution.
- It can issue writs to protect fundamental rights and prevent their violation by the government or other authorities.

6. **Review of Administrative Actions:**

- The Supreme Court can review administrative actions of the government and its agencies.
- It can quash illegal or arbitrary actions and ensure that administrative authorities act within the scope of their powers.

7. **Curative Jurisdiction:**

- In exceptional cases, the Supreme Court can exercise its curative jurisdiction to review its own judgments.
- This is a rare power used only in exceptional circumstances to address serious errors or injustice.

BACKGROUND OF THE CASE

• The petitioner, K. A. Abbas was a filmmaker who was a member of GD Khosla Film Censorship Committee's members and directed the film called 'A Tale of Four Cities'. This film depicted the conflicting manner of living of some portion of people belonging to the four metropolitan cities in contrast to the sumptuous lives of them, including Bombay, Madras, Calcutta, and Delhi at a later period.

• The petitioner wanted the 'U' certificate, which means unrestricted permission for every Group and class of society to watch the movie, which was in disagreement with the Central Board of Film Certification's notion. Although the appellant was given an alternate option to amend and rectify certain parts of the Movie, the petitioner was not convinced to remove the censored part of the movie, finding it unreasonable, unjust, and arbitrary of the board.
The Censor Board's Examining Committee proposed that a 'U' certificate be granted only if the public viewing was restricted to an audience of just adults.

• An appeal was filed thereafter, to which the court responded with an order recommending a 'U' certificate if some scenes from the red-light area, which depicted immoral trafficking, economic exploitation, and prostitution, were cut. The petitioner filed the present petition contending that his freedom of speech and expression was denied, that the provisions of the Cinematograph Act, 1952 were unconstitutional and void and that he was denied the 'U' certificate that he was entitled to. Meanwhile, the Central Government agreed to grant the 'U' certificate without demanding any cuts to be made in the film.

• The petitioner then requested to be allowed to amend his petition in light of the altered situation, which was accepted by the court. The petitioner then contended that the provisions of the Act and the power given to various authorities and bodies under the Act were vague, arbitrary, and indefinite and also questioned the purpose of pre-censorship.

TIMELINE:

- **1952**: The Cinematograph Act 1952 was enacted, establishing a system for censorship for films in India.
- **1960**: The Central Government introduced rules under Section 5-B of the Cinematograph Act, further defining the powers of the Central Board of Film Certification (CBFC).
- **1968**: K.A. Abbas produces a documentary film called "A Tale of Four Cities" depicting the contrast between the lives of the rich and poor in four major Indian cities. The film includes scenes from the red-light district in Bombay.
- **1969**: Abbas applies to the Board of Film Censors for a 'U' Certificate (unrestricted viewing).
- **1969**: The CBFC refused to grant an unrestricted certificate to Abbas, demanding the removal of a scene deemed unsuitable for children.
- **1970:** Abbas files a writ petition before the Supreme Court, challenging the constitutionality of film censorship laws. He argues that pre-censorship violates the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution.

LAWS IN QUESTION:

Freedom of Speech and Expression

1. **Article 19(2)**

(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.

2. Article 19 (4)

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

3. The Cinematograph Act, 1952

The Cinematograph Act, 1952 is an act of the Indi in a Parliament that regulates the certification of cinematograph films for exhibition and provides for the regulation of cinema exhibition in India. The Act lays down provisions for the examination and certification of films for public exhibition, the powers and functions of the Central and State Governments in relation to the certification of films, and the penalties for contravention of the provisions of the Act.

4. Section 5B Cinematography Act

(1) the 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 interest 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.
(2) 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 this Act in sanctioning films for public exhibition.

PARTIES INVOLVED:

The parties involved in the K.A. Abbas vs. Union of India case were:

1.**K.A. Abbas (Petitioner)**

2. The Union of India (Respondent)

3. The Chairman of the Central Board of Film Censors (Respondent)

KEY FACTS:

- The petitioner was a journalist, playwright, author and filmmaker. He made a quick film known as A Tale of four Cities, which represented the up to date realities of life in city (present-day Mumbai), urban centre (present-day Kolkata), city and Madras (present-day Chennai).

- The film contrasted the luxurious lives of the made with the uncleanness of impoverishment. He sought-after a U certificate from the Censor Board for unrestricted public viewing. For granting a U certificate, the Censor Board's Examining Committee counselled a certificate that restricted public viewing to AN audience of adults.

- This call was confirmed by the rewriting Committee. On appeal, the Central Government counselled a U certificate if a sceneset among the town district was removed. The scene suggestively depicted immoral trafficking, vice crime, and economic exploitation by pimps. The scene was thought to be unsuitable for children.

- The petitioner filed a judicial writ petition before the Supreme Court, argument that his right to freedom of expression was desecrated as a result of, firstly, prior-censorship itself cannot be tolerated in freedom of speech and expression, and second, if any censorship is allowed, it should get on non arbitrary grounds.

- The petitioner additionally asked for directions for a tough And quick time-limit for an alternative of the Censor Board additionally as an alternate legal proceeding mechanism to approaching the Central Government; these were granted by the government then weren't mentioned by the Supreme Court.

ARGUMENTS IN THE FAVOUR OF THE PLAINTIFF (K.A. ABBAS)

- **Violation of the right to freedom of expression:**

Abbas argued that pre-censorship infringes upon his fundamental right to freedom of speech and expression as guaranteed by Article 19(1)(a) of the Indian Constitution. He stated that any form of censorship prior to public exhibition is inherently unconstitutional.

- **Need for non-arbitrary guidelines:**

He claimed that even if some censorship were permissible, it must adhere to clear, non-arbitrary guidelines. Abbas emphasised that the existing provisions were vague, leading to arbitrary decisions by the Censor Board, which violated his rights further.

- **Discrimination against filmmakers:**

Abbas brought to light how filmmakers face unique restrictions not imposed on other media forms, such as literature or journalism, thus contradicting Article 14's guarantee of equality before the law.

- **Economic and creative investment:**

The petitioner highlighted that filmmakers invest extensive capital in their projects and should have explicit guidelines on censorship to protect their financial interests and creative expression.

ARGUMENTS IN THE FAVOUR OF THE DEFENDANT (UNION OF INDIA)

- **Justification of censorship:**

The Union countered that pre-censorship is justified under Article 19(2) of the Constitution, which allows for reasonable restrictions on the right to freedom of speech in the interest of public order, morality, and decency. They maintained that films influence public sentiment and thus require regulation.

- **Public interest and protection:**

The government contended that censorship serves a protective role in safeguarding societal values and preventing exposure to potentially harmful content, particularly for those underage.

- **Clearer legal framework:**

The Union asserted that the Cinematograph Act provides a sufficiently clear framework for censorship, which includes established guidelines intended to prevent arbitrary actions by authorities. They argued that this framework outlines artistic freedom with societal interests.

- **Role of courts in censorship:**

The government emphasised that courts play a crucial role in maintaining public interest through censorship laws, which are deemed necessary for preserving social harmony.

THOUGHT PROVOKING QUESTIONS

- How do you define "reasonable restrictions" on free speech? What criteria should be used to determine whether a restriction is justified?
- What are the potential dangers of allowing censorship in cinema? Could it lead to a contagion effect where more forms of expression are curtailed?
- To what extent should government bodies have the power to censor artistic works? Is there a risk of political or ideological bias influencing censorship decisions?
- How does this case impact future legal challenges regarding freedom of expression in India? What precedent does it set for artists and content creators?
- Should the criteria for film certification evolve with changing societal values? How can regulatory bodies stay relevant in an ever-changing cultural landscape?

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