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| PROBONO INDIA |
| **Life Insurance Corporation of India, v. Prof. Manubhai D. Shah** |
| **A Case Analysis** |
| Submitted by |
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**BACKGROUND OF THE CASE**

In the landmark case of Life Insurance Corporation, the Apex Court seconded the Gujarat High Court’s decision, following which the people’s right to know was granted the status of a constitutional right. Although the judgment was basically on the facts of the case and did not particularly lay down any propositions, it was one of the first instances that the Supreme Court dealt with resolving the conflict between the freedom of speech and of press.

***Life Insurance Corporation of* *India, v. Prof. Manubhai D. Shah*** deals with appeals from two different instances.

1. The respondent, Prof. Shah, after undertaking research into the working of the Life Insurance Corporation (LIC) published and circulated a study paper titled, *“A fraud on policy holders-a shocking story”.* The paper was based on the high premium rates charged by LIC out of their life insurance policy, which was inconvenient for the insurance holders. A member of the LIC prepared a counter to the respondent's study paper, challenging the conclusions reached by Prof. Shah and published it in the *“Hindu”.*  It in his study paper. Prof Shah published a rejoinder *“Raw deal for policy Holders”* in the same newspaper. LIC published its member's article which was again a counter to the respondent's study paper in its in- house magazine, *“Yogakshema”*. The respondent thereafter requested that his paper, which was already published in the *Hindu,* should also be published in the in-house magazine of the corporation, for the sake of fairness and for giving the readers a clear and complete view of the issue at debate. The LIC refused his request on the ground that their magazine was an in-house magazine and it is not put up in the market for sale to the general public. Thereafter he filed the petition contending that the refusal to publish his rejoinder in the magazine violated his fundamental right under [Article 14](https://indiankanoon.org/doc/367586/) and [19(1) (a)](https://indiankanoon.org/doc/1378441/) of the Constitution.
2. In the joint appeal, the respondent produced a documentary film on the Bhopal gas tragedy titled "*Beyond Genocide*". It received the Golden Lotus award as the best non- feature film of the year 1987. At the time the Central Minister for Information said that the award winning short films would be telecasted on Doordarshan. However, Doordarshan refused to telecast it on the grounds that the film was out- dated and had lost relevance. Also political parties had raised various issues concerning the tragedy. The respondent subsequently filed a writ petition for violation of his fundamental right and for mandamus directing Doordarshan to do the needful.

Accordingly, the High Court of Gujarat held that the refusal by LIC to publish respondent's rejoinder was arbitrary and in violation of [Article 14](https://indiankanoon.org/doc/367586/) and Article 19(1) (a). Under [Article 19(2),](https://indiankanoon.org/doc/493243/) the party who refuses to telecast the film has the burden to proof that it does not conform to requirements of law. LIC’s and Doordarshan’s actions were held as not justifiable and that they being State controlled agencies could not refuse to publish an important rejoinder or telecast a film except on valid grounds. An appeal was filed in the Supreme Court against the High Court’s judgment.

**ISSUES**

The following are the main issues around which the case revolves:

1. Whether the freedom of speech and expression guaranteed by the Constitution of India includes within its scope the right to circulate and propagate views via electronic media, subject to reasonable restrictions.
2. Whether the above right can be extended to use the media to answer or reply to criticisms levelled against the propagated view.

**ARGUMENTS**

In the first appeal,

1. The respondent contended the following:
2. The Corporation comes within the ambit of the definition of State under Article 12. Its refusal to publish the respondent’s reply violates the fundamental right under [Art. 19(1)(a)](https://indiankanoon.org/doc/1378441/) of freedom of speech and expression, especially when the Corporation has published it’s member’s paper in the Yogakshema.
3. The respondent's right to equality under [Art. 14](https://indiankanoon.org/doc/367586/) has been violated
4. The petitioner contended that the *“Yogakshema”* is an in-house magazine and as such the Corporation has editorial privilege and absolute discretion in exercising the same. It was contended by the learned counsel for the LIC that since the rejoinder of the respondent is to Mr. Krishnan's article printed in December 1978, the same has become stale by passage of time and has lost its relevance and hence this Court should annul the High Court's directive to the LIC to print and publish the same in its magazine. It therefore denied the respondent’s claims that he had a right to circulate his opinion via that magazine.

In the second appeal,

1. The respondent proceeded with challenging the decision of Doordarshan to not telecast the documentary and claiming a mandamus directing the broadcasting channel to do the same, as he had previously appealed for in the High Court.
2. The petitioner’s arguments can be briefed into the following points.
3. Section 5B, sub- section 2 of the Cinematograph Act empowers the Central government to issue guidelines and set principles to guide the competent authority to grant certificates, sanctioning films for public exhibition under the Act. Under [Section 5B](https://indiankanoon.org/doc/441329/) of the Act, the guidelines clearly have given certain statutory power to Doordarshan and would, therefore, fall within the protective umbrella of [Article 19(2)](https://indiankanoon.org/doc/493243/).
4. The Counsel contended that the High Court was misdirected in not appreciating that these norms were in consensus with the requirement of [Section 5B](https://indiankanoon.org/doc/441329/) of the Act and was consistent with [Article 19(2](https://indiankanoon.org/doc/493243/)).

**HELD**

The judgment pronounced by the Supreme Court in the impugned case can be summarised as follows:-

1. Constitutional provisions in general, and for that matter, fundamental rights in particular must be construed broadly and its scope must not be restricted by a narrow interruption.
2. On broad interpretation, the freedom of speech and expression includes within its scope the freedom to propagate and circulate one’s views and opinions, by direct speech, by writing and even by electronic media.
3. Every citizen has a right to air his opinions, as granted by Article 19(1) (a). The same is subject to reasonable restrictions under Article 19 (2).
4. This right extends to reply to any criticism levelled against such expressed opinion. The Court referred to the cases of *Romesh Thappar v. The State of Madras[[1]](#footnote-1)*, [*Sakal Papers (P) Ltd. v. Union of India*](https://indiankanoon.org/doc/243002/)[[2]](#footnote-2), *Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. etc. etc. v. Union of India & Ors[[3]](#footnote-3).*, [*Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana & Ors*](https://indiankanoon.org/doc/1241147/)[[4]](#footnote-4)*.,* to name a few.
5. LIC was created under the Life Insurance Corporation Act, 1956. It was held to be a State within the meaning of Article 12 and therefore its purpose was to serve the community. The respondent’s paper was to let the community know of the shortcomings of the Corporation and that there is scope for improvement.
6. that LIC cannot be said to be acting in the best interest of the community by denying the whole information. The cases of [*Sukhdev Singh & Ors v. Bhagatram Sardar Singh*](https://indiankanoon.org/doc/974148/)[[5]](#footnote-5) was relied on.
7. LIC must have been sporting enough to publish the rejoinder and present both point of views to the readers. The Doctrine of Fairness demands that it should have been let upon the judgment of the readers to have their own inference.
8. Although movies enjoy the freedom to be publicly exhibited and circulated, they are a powerful mode of communication as they can have profound impacts on the viewers. Thus, unrestricted exhibition cannot be permitted. Censorship is thus necessary to protect social interests under Article 19(2) and Section 5B of the Cinematograph Act.
9. The Court held that the film maker had the right to broadcast his film under Article 19(1) (a). The film was an exact appraisal of the Bhopal gas tragedy and what followed the gas leak. Not only had it received the Golden Lotus award but was also granted an ‘U’ certificate. Therefore, the respondent cannot be accused of distorting the events.
10. Under Article 19(2), the burden lies upon the petitioner to prove that the film did not conform to the requirements law, which, in the present case, are the guidelines.
11. Doordarshan is financed by public funds and is a State controlled agency. It cannot deny the respondent access to the screen except on valid grounds. The reasons listed by Doordarshan were found to be unsustainable.

The precedents of[*K.A. Abbas v. The Union of India*](https://indiankanoon.org/doc/1719619/)[[6]](#footnote-6), *[Ramesh v. The Union of India](https://indiankanoon.org/doc/1110593/)*[[7]](#footnote-7), and [*S. Rangarajan v. P. Jagivan Ram*](https://indiankanoon.org/doc/341773/)[[8]](#footnote-8) were referred to.

**ARTICLE 19(1)(a)**

*“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” –* John Milton (1608- 1674).

Part III of the Indian Constitution constitutes of the Fundamental Rights guaranteed to the people. These are basic human rights and natural law. Among these rights, the right guaranteed by Article 19(1) (a), is considered to be the cornerstone of democracy. Justice K.K. Mathew has observed as follows:

*“As the freedom of expression concering public affairs is indispensable to the operation of the democratic system, it is a necessary implication from the provisions of the Constitution establishing it*.*”*

Article 19(1) (a) of the Constitution of India states that, *“all citizens shall have the right to freedom of speech and expression”*. This right is exclusive only to citizens of India. The Preamble to the Constitution solemnly resolves to secure to all its citizens the liberty of thought and expression. This right is not absolute and is subject to reasonable restrictions as enumerated under Article 19(2). Freedom of speech is also guaranteed by various international conventions like U**niversal Declaration of Human Rights , European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights,** etc.

In the wise words of Sir Abraham Lincoln, the democracy is Government by the people, for the people and of the people. However, it won’t be possible if they are ignorant of the issues, the arguments for and against different solutions and the facts underlying those arguments. Thus, it is the people who are the sovereign in a democracy. In Maneka Gandhi v. Union of India*[[9]](#footnote-9)***,** the significance of the freedom of speech & expression has been emphasized in these words:

*“*Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.*”*

In the case in discussion, by LIC’s refusal to publish Prof. Shah’s rejoinder and Doordarshan’s refusal to telecast *“Beyond Genocide”*, are in the nature of violation of the freedom of speech and expression. **Right to information** is an integral part of freedom of speech and expression. People have the right to receive information about the nation, regarding issues that concern them or the country at large, without which they will be unaware, ill- informed and thus unable to express their point of view. In *Union of India v. Assn. for Democratic Reforms[[10]](#footnote-10)*, it was held: *“One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.”*

**“FREEDOM OF PRESS”**

Article 19 does not explicitly provide for freedom of press or freedom of media. Over the course of years, judicial wisdom and creativity has broadly interpreted and widened the scope of ‘Freedom of Speech and Expression’. Media is considered to be the fourth pillar of democracy, the other three being- Legislature, Executive and Judiciary. “**The scope of the “freedom of speech and expression” includes the right to receive and disseminate information. It includes the right to communicate, to publish and to circulate information through any medium including print media, audio, television broadcast or electronic media.** This position was reiterated by the Court in ***Govt. of India v. Cricket Association of Bengal.****[[11]](#footnote-11)* **Freedom of press also includes freedom against pre-censorship.”**

In *Romesh Thappar v. State of Madras*, the Supreme Court held that freedom of speech and expression includes the freedom to propagate ideas, further ensured by the freedom to circulate publications. The Court’s verdict read:

*“Freedom of Speech and of Press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of Government, is possible.”*

In *Sakal Papers Ltd. v. Union of India* and *Bennett Coleman and Co. v. Union of India[[12]](#footnote-12),* the Court struck down the validity of the Newspaper Control Order which fixed the maximum number of pages of a newspaper. The Government justified such restriction saying that it would help the smaller newspapers to grow. However, the Court found this justification to be unsustainable and unreasonable in light of Article 19(2) and restrictive of the freedom of speech and expression guaranteed by Article 19(1) (a).

**Right to broadcast** also falls within the ambit of Article 19(1) (a). With the advancement of technology, it includes all means of expression and communication. In *Odyssey Communications (P) Ltd .v. Lokvidayan Sanghatana*, the Supreme Court held that the right of a citizen to exhibit films on the State channel.

**DOCTRINE OF FAIRNESS**

The fairness doctrine imposes responsibilities on a broadcaster to broadcast matters which are of public importance. It should be adequate and should fairly reflect all perspectives, even the opposing ones.

However, on broad interpretation, this doctrine seems to be deeply integrated in our Constitution. The purpose of the fundamental rights is that every individual gets a fair chance to exercise their basic human rights, have a fair representation in the society and a fair sense of self-fulfilment. The Preamble to the Constitution is a gist of the intentions of the Constituent Assembly. It uses the words: *“equality of status and of opportunity, which not only ensures fairness in social and economical activities of the people but also acts as shield to individuals’ liberty against the arbitrary action which is the base for principles of Natural Justice.”*

Article 19(1)(a) gives the citizens of India a fair chance to voice their opinion on public platform. By refusing to publish Prof. Manubhai D. Shah’s rejoinder in the *Yogakshema,* LIC has acted in violation of the doctrine of fairness. The rejoinder was neither prejudicial nor crafted out of the Professor’s imagination. It was also not found to fulfil any of the restrictive clauses under 19(2).

**DOCTRINE OF PRIOR RESTRAINT**

Prior restraint essentially means pre-censorship, i.e., a speech or expression is restricted before it occurs. The freedom of speech and expression, which also includes the freedom of press in its context, guarantees freedom against prior restraint. There is no provision in the Indian Constitution permitting or prescribing censorship. The stigma of pre-censorship affects the heart and soul of freedom of the press. Article 21 of the Japanese Constitution and Article 5 of the German Constitution prohibit pre-censorship. Article 13(2) of the American Convention of Human Rights, 1969, states that freedom of expression *“shall not be subject to prior censorship.”* Prior restraint is not defined in our Constitution but it has been held unconstitutional by the Supreme Court of India in cases like *Ramesh Thappar v. State of Madras*, *Brij Bhushan v. State of Delhi*, etc. The Court held that: *“Freedom of expression – in particular, freedom of the press – guarantees popular participation in the decision and actions of government, and popular participation is the essence of our democracy…”*

Viewing pre-censorship from a different perspective, it is permissible to some extent. Prior to release, every film has to go through scrutiny by the CBFC. Before granting permission for release, they usually suggest some corrections to the film maker, which the board finds to be unsuitable to be publicly exhibited at large, for instance, too vulgar language, violent scenes, scenes which would hurt communal sentiments, and so on. Such pre-censorships are permissible to the extent that it does not prevent the entire idea behind the film to be presented, which again should be accordance to the restrictions listed in the Cinematograph Act, 1952. In Bobby Art International v. Om Pal Singh Hoon, it was held that a film must be judged in its entirety. Prior censorship is of essence in the impugned case. However, the justifications provided by LIC and Doordarshan cannot be sustained on solid grounds.

**U.S AND INDIA**

The U.S and India have almost similar freedom of speech provisions in their respective Constitutions.

The Article 19(1) (a) of The Indian constitution corroborates with that of the First Amendment of the United States Constitution which says, “*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”.*

 However, two notable features of the U.S. Constitution are:

* freedom of press is mentioned specifically
* No restrictions are mentioned on the freedom of speech.

In the case of  ***Express Newspapers (Private) Ltd. v. Union of India[[13]](#footnote-13)***, Justice Bhagwati stated:

*“The fundamental right to the freedom of speech and expression enshrined in our constitution is based on (the provisions in) Amendment I of the Constitution of the United States and it would be therefore legitimate and proper to refer to those decisions of the Supreme Court of the United States of America in order to appreciate the true nature, scope and extent of this right in spite of the warning administered by this court against use of American and other cases.”*”

The difference between the freedom of speech in the U.S and India is the degree to which it is allowed. This difference can be explained by the restriction clause in the Indian Constitution and the diversity of the respective communities. India has progressed from an authoritarian system of control and is now attempting a legislative model of control, quite similar to that of the United States.

The First Amendment rejected the concept of a "bad idea," and considered the remedy for “bad speech” to be "more speech, and not enforced silence.” It is part of our culture that people are "free to speak their mind" without fear of oppression.

However in India, the constitutional provisions were constructed keeping in mind the moral standard of the society that has to be preserved and maintained.

**CENSORSHIP**

The Cinematograph Act, 1952, provides for a Central Board of Film Certification (CBFC). This is the regulatory board in India that runs through the films proposed to be released in the country, checks if the content is objectionable and suitable for the viewers, and accordingly issues certification to the film to be exhibited. Section 5(B) (1) lays the grounds for not certifying a film for public exhibition. This is in accordance with the reasonable exceptions specified in Article 19(2) of the Indian Constitution. *K.A. Abbas v. Union of India* was one of the first cases the Court had to deal with regarding censorship. Chief Justice Hidayatullah held that that censorship of films, including pre-censorship was constitutionally lawful as long as unjustified restriction on freedom of expression by the Board is not exercised. In the case of S. Rangrajan v. Jagjivan Ram, Supreme Court faced a similar question, and was of the view that: “If the exhibition of the film could not be validly restricted under ***Article 19(2)***, risk of procession and demonstration was not a valid ground to suppress the same.”

The film, *“Beyond Genocide”*, which received the Golden Lotus award for the best non-featured film, received a “U” certificate by the CBFC. This certificate means Unrestricted Public Exhibition and no age restrictions are applied for the same. The said film was based on the Bhopal Gas Tragedy and what followed it. Doordarshan refused to feature this film and contended in Court that the theme was outdated and had lost relevance. Even today, in 2020, Beyond Genocide, made by Tapan Bose and Suhasini Mullay, still moves the viewer, which means the contention put forward by Doordarshan in 1992, stands irrelevant. Doordarshan put up another contention that the film would stir political controversy. Not telecasting a film because it is critical of the government is no contention at all. Freedom of speech and expression itself bestows the right to criticize the government. It is the only check on government actions in a democracy. Even the Union of India, in its appeal in the High Court judgment conceded the narration of events to be factual.

**OVERVIEW OF THE JUDGMENT**

1. The Court had rightfully held that in both the appeals, LIC and Doordarshan had respectively breached the freedom of speech and expression of the respondents.
2. LIC and Doordarshan, respectively, come within the definition of State under Article 12.
3. LIC argued that the *Yogakshema* was an in-house magazine and not a public forum. Anyone can get access to the in- house magazine by subscribing to it. The underlying idea of the study paper of Prof. Shah was the unduly high premium rates charged by LIC which affected the interests of a large number of life insurance holders. Whoever reads the magazine containing the counter written by the LIC member would just look into it from one perspective. The counter was initially written in reply to the Professor’s paper, and it is unfair that LIC should publish the counter but not the paper which it was the counter for. Not only does it breaches the customer’s right to information by giving half-hearted information, but also the Professor’s right to express his concerns and criticize the policies adversely affecting the public.
4. Doordarshan by refusing to telecast the film violated the film maker’s right of broadcasting. Doordarshan is but a mere department of the Union Government and not a statutory body. Therefore by no means could it have rejected to feature a film which received a U certificate by the CBCF. The theme of the film was duly relevant since it was one of the biggest mishaps of 1984. Just because it was not released immediately after the incident, the incident cannot be said to have lost relevance by the year 1992.

**SUGGESTIONS**

After a critical breakdown of the case, I was able to come down to certain suggestions which are as follows:-

1. A more divisive method should be followed when it comes to cases that infringe one of the fundamental rights of a citizen
2. An improved strategy to tackle issues related to censorship.
3. Amendments in the censorship policies
4. A practical approach to press freedom and divisive methods to counter the exploitation of press freedom in the country

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