

BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL

Dated- 22.03.2019

Appeal No. 02/2019

**Present: CHIEF JUSTICE (RETD.) MANMOHAN SARIN, CHAIRPERSON,
FCAT
Ms. SHAZIA ILMI, MEMBER, FCAT**

IN THE MATTER OF:

Neelam R. Singh

...Appellant

Versus

The Central Board of Film Certificate

...Respondent

APPEAL UNDER SECTION 5C OF THE CINEMATOGRAPH ACT, 1952 (37 OF 1952) AGAINST THE DECISION OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC) IN RESPECT OF HINDI MOVIE **TARPAN**.

**FOR THE APPELLANT: Ms. Neelam R. Singh
(Director/Producer)**

**FOR THE RESPONDENT: Mr. Mahesh Kumar
(RO, CBFC Delhi)**

ORDER

Chief Justice (Retd.) Manmohan Sarin: -

1. By this order, Appeal filed by the Appellant, assailing the Order dated 29.12.2018, passed by the Revising Committee of CBFC in respect of the film titled "TARPAN" is being decided. As per the Impugned order, the Revising Committee has granted 'A' Certification to the film, subject to only two modifications/insertions as noted below:
 - i. Replace the anti-smoking warnings by the new version of ad of 30-30 seconds after the interval of the film.
 - ii. Submit an NOC from Animal Welfare Board of India(AWBI).
2. Appellant had earlier assailed Order dated 19.11.2018, of the Examining Committee of CBFC granting 'A' Certification to the film, subject to five modifications/insertions given below:

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- i. Insert anti-tobacco static message in the scene around 23:19 minutes.
- ii. Mute/replace the words 'haraami' (it can be retained during woman's resistance in the molestation scene, as requested), 'chutiyon', 'haraami ki aulad', 'haraamjada', 'randi'.
- iii. Mute/replace the words 'Baaman' wherever occurs and 'chamar' in 'chamardekhi kaanun'.
- iv. Insert these two lines along with voice-over to entire disclaimer "Film ke nirmaata kisi bhi tarike se kisi insaan ya kisi samudaay, sthaan, jaati, dharm sanstha ya vyavasaay se jude logo ko boori tarike se pesh karna ya unka apmaan karne ka irada nahi rakhte hain. Hum jaatibhed ke sakth khilaaf hai."
- v. Submit an NOC from AWBI.

The CBFC Examining Committee giving reasons for grant of 'A' Certificate, had noted:

"A" for the content depicting violence including violence against women, detailed inquiry into the mode of sexual violence. Also, strong caste- based prejudices and their linkages to violence contribute towards this recommendation."

3. The order of the Examining Committee dated 19.11.2018, was challenged by the Appellant before the Revising Committee culminating in order dated 29.12.2018, while retaining 'A' Certification required only two modifications/insertions as noted in para 1 herein before.
4. The Appellant in the present appeal has urged before us the following:
 - While making the film, they took extreme care of not hurting the sentiments of any caste or person.
 - The film does not promote any sex scenes, abusive languages and double meaning dialogues.
 - The film also does not show any visual of violence.
 - No guidelines or rules of Film Certification have been violated.
5. The Appellant is aggrieved by grant of 'A' Certification and seeks 'U/A' Certification for the film. The movie was screened and the Appeal was initially heard by us on the 2nd February, 2019. On the said date, the Appellant as also CBFC's Representative made submissions. Respondent's representative made submission to justify the Impugned Order i.e. grant of 'A' Certification. He also filed written submissions, copy of which was provided to the Appellant.
6. Appellant filed its written submissions citing and relying upon judicial pronouncements. Appellant offered to carry out modifications/excisions as may be required for grant of 'U/A' Certification to the Film. Appellant also expressed

its willingness to make such specific changes in scenes as Tribunal may direct. As regards use of some cuss words, the Appellant pleads that the usage of cuss words should be seen in the context and background in which these are spoken in the movie.

7. Respondent filed its additional Written Submissions in response to the Appellant's Written Submissions, where the Respondent remained steadfast in its position maintaining that the film was suitable only for adult viewing. The film though ostensibly projects the story of a young girl of a lower-caste being molested by a boy of an upper-caste, the entire story as it progresses, shifts focus from an individual incident to depiction of caste-based prejudices, discriminatory attitudes and their exploitation by local politicians. The focus shifts from an individual molestation/alleged rape to taking revenge for suppression and exploitation suffered by the lower-caste at the hands of the higher caste. It manifests itself in chopping the nose of the upper-caste man, projected as perfect revenge which is further glorified as 'Tarpan', being the common Indian ritual offering to one's deceased ancestors for their libation. It is the CBFC's view that non-adults with sensitive impressionable minds should not be viewing this film.
8. Having heard and noticed the contentions of the Appellant and the CBFC, let us at this stage consider, whether the Film deserves to be granted 'A' Certification as ordered by the CBFC and its Revising Committee or it can be granted 'U/A' Certification with disclaimer, cuts and excisions as may be directed. As noted earlier, the CBFC and its Examining Committee in its impugned order had granted 'A' Certification with modifications/insertions as noted in para 2 of this order. These have been reduced by Revising Committee to just two modification/insertions as noted in para 1 of the order, confined to anti-smoking warning and submission of NOC from AWBI.
9. The crux of the controversy is whether, the film deserves 'A' Certification or it can be granted 'U/A' Certification with parental caution with cuts and excisions for which the Appellant has already indicated her willingness to abide by the directions of the Tribunal.
10. For facility of reference, the case of the CBFC for 'A' Certification is being summarized. The film is based on an incident of molestation of a young girl of a lower-caste by a Brahmin upper-caste boy with the latter suspecting her of stealing from the field. However, as the film progresses it projects and manifests caste-based prejudices, discriminatory practices and attitudes, atrocities with indifference of the administrative and law enforcement agencies. It depicts exploitation by local politicians for their political and personal agendas. It is contended that the film, especially in the second part, may create a strong provocative sentiment as its narrative now shifts from an individual case of molestation/alleged rape to community and caste confrontation and

crusade for revenge. Finally, cutting the nose of the upper caste accused is shown as a perfect revenge and offering 'Tarpan' which is the Indian religious ritual offering libation to the deceased ancestors. Here, it seeks to give vent to the frustration and the long sufferings of the lower castes, which they have been enduring over the centuries.

11. Appellant on the other hand contends that the film seeks to bring out the shortcomings of the prevalent Economic and Administrative system and bureaucracy is afflicted by malpractices and prejudices of caste discrimination and how it affects the lives of those from deprived and weaker sections and the helplessness and struggle faced by those seeking justice.
12. The Appellant's case is that the film is based on a book titled 'TARPAN' written by Shivmurti. The story is nothing but a mirror of the Indian society which demands some sets of the guiding principle of social relations in order to bring a substantial change in the society. Undoubtedly, the film is based on a sensitive subject and theme which has a social purpose and objective. The film seeks to project how an ordinary case of molestation is moulded into a case of rape at the behest of local leaders and politicians to serve their own personal agenda and electoral gains. The local leaders and politicians are shown as exploiting the discrimination and prejudices to serve their own ulterior ends. This is aided by a non-responsive and insensitive attitude of the police and law enforcement agencies, resulting in the case turning out to be confrontation between the lower caste and higher caste.
13. The Respondent CBFC, has sought to urge that the scene where the brother of the girl upon instigation by the local politician, attempts to cut the nose of the upper caste boy is provocative and would tend to encourage violence and revenge. Further, the same being "described as Tarpan", giving it a religious colour and the ultimate sacrifice for the indignities, sufferings and suppression of their ancestors over the centuries.
14. In our view, considering the context and the background in which the incident of attempted chopping of nose occurs and the action of the father is being interpreted rather narrowly. Firstly, it was the upper caste boy Chander, who had taken the gun and wanted to shoot the local politician whom he held responsible for his false prosecution for alleged rape, which never happened. It was a spontaneous act on the part of the brother of the girl to hit Chander on the head to save the local politician, perceived as a savior. Thereafter, he fell to the instigation of local politician to chop the nose of Chander. The subsequent actions of the father of the girl need to be viewed in the background of a helpless father whose elder daughter had committed suicide after being raped. He was helpless and unable to get justice for her. This is now followed by the molestation of his younger daughter. His complaint to the land-owner was of no avail and the police and law enforcement agencies

were unremoved till the local politician took over and turned a molestation into rape complaint. Finally, at his ripe age, he was faced with the prospect of his young son being prosecuted and convicted for the criminal offence. He therefore, decided to take the blame upon himself to save his son's future who had a full life ahead of him. He was finding solace in the penance by him for his son's act considering the persecution and atrocities suffered by their ancestors. Considered in the above background, this cannot be said to be encouraging violence rather, it is an effective projection of ground realities. The Appellant as noted has already given consent for any disclaimer as may be found suitable by the Tribunal to be inserted.

15. Appellant submits that there have been a number of films produced and certified, which deal with the subject of caste prejudices and atrocities committed on the lower caste and harijans, these are:

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| • Shudra: The Rising 2012 | U/A Certificate |
| • Ankur (The Seedling), 1974 | U Certificate |
| • Sujata, 1959 | U Certificate |
| • Khaap, 2011 | U/A Certificate |
| • Dhadak, 2018 | U/A Certificate |

16. The film 'Shudra: The Rising', while portraying the subjugation of the lower class condemned to virtual slavery and bestial existence, showed the imposition of discriminatory practices such as shudras being required to walk with a bell around their ankles, a long leaf behind their back and a handi around their neck. It depicted an elderly dalit dying for not being allowed water from the well reserved exclusively for the higher castes. A young boy is harshly punished with cutting of his tongue because on hearing the chanting of mantras, he was tempted to and heard reciting them outside the temple. The punishment was meted out to the young child while the helpless parents watched. Rape and subjugation of a young shudra woman by the upper caste chieftain was portrayed in the film. The film showed violence/atrocities on the Dalits, yet it was granted 'U/A' Certification.

17. While it is true that each case is required to be considered on its own merits and the earlier grant or non-refusal is not strictly binding on this Tribunal. Nevertheless, a cardinal principle of law is uniformity and consistency in decision making, which brings certainty to law. Even otherwise, we are of the view, that the film viewed as a whole deserves to be granted 'U/A' Certification with parental caution and with a disclaimer to be prominently shown, apart from the two modifications/insertions as per the impugned order dated 29.12.2018:

18. Following disclaimer in English and Hindi be prominently displayed with voice-over in Hindi at the beginning of the movie.

DISCLAIMER

"The film seeks to portray the discrimination and prejudices suffered by the weaker sections and the lower castes in the society at the hands of the upper castes. The indifference and apathy of the law enforcement agencies to the plight of the weaker sections and those without means coupled with existing malpractices and corruption. The film producer is opposed to any discrimination on grounds of religion, caste or creed. It reiterates its commitment to abolition of untouchability and to our constitutional values of social justice, and equal opportunity for all . The film is a work of fiction and none of the characters are intended to have any resemblance with any living or dead person. The film is not intended to hurt the sentiments of any class or section of society. "

18. In view of the foregoing discussion, the appeal is allowed. The impugned order dated 29th December, 2018 is set aside. CBFC is directed to grant 'U/A' Certification with parental caution subject to the Appellant incorporating and prominently displaying the above disclaimer with voice-over in Hindi as reproduced hereinabove together with the modifications/insertions as per the impugned order dated 29.12.2018 in respect of the film "Tarpan".



**MS. SHAZIA ILMI
MEMBER, FCAT**



**CHIEF JUSTICE (RETD.) MANMOHAN SARIN
CHAIRPERSON, FCAT**