

## NIPUN MALHOTRA V. SONY PICTURES FILMS INDIA PRIVATE LIMITED & ORS: A CRITICAL ANALYSIS

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### INTRODUCTION

The Supreme Court of India's judgment in the case of *Nipun Malhotra v. Sony Pictures Films India Private Limited & Ors*<sup>1</sup> represents a landmark decision in the realm of disability rights and media representation in India. This case, which garnered significant public attention, addresses the sensitive issue of how persons with disabilities (PwDs) are portrayed in visual media, emphasizing the distinction between 'disability humour' and 'disabling humour'<sup>2</sup>. This blog critically examines the nuances of the judgment, its implications for media creators, and its broader impact on societal attitudes toward disability.

### BACKGROUND OF THE CASE

The controversy began with the release of the trailer for the film *Aankh Micholi*, produced by Sony Pictures Films India Private Limited. Nipun Malhotra, a well-known disability rights activist and founder of the Nipman Foundation, challenged the film's portrayal of PwDs. Malhotra argued that the film perpetuated harmful stereotypes and violated the dignity of individuals with disabilities. Importantly, Malhotra's plea did not seek a ban on the film but called for guidelines to ensure sensitive and respectful representation of PwDs in accordance with the Rights of Persons with Disabilities Act, 2016 (RPwD Act)<sup>3</sup>.

### KEY ISSUES ADDRESSED

#### 1. Distinction Between Disability Humour and Disabling Humour:

The Supreme Court highlighted the critical difference between 'disability humour' and 'disabling humour'. Disability humour, when executed sensitively, can challenge societal

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<sup>1</sup> *Nipun Malhotra v. Sony Pictures Films India Private Ltd & Ors* [2024] SC

<sup>2</sup> Live Law, 'Disabling Humour' Disparaging Persons With Disability Must Be Distinguished From 'Disability Humour' : Supreme Court, <https://www.livelaw.in/disabling-humour-disparaging-persons-with-disability-must-be-distinguished-from-disability-humour-supreme-court-231103> accessed 11 July 2024

<sup>3</sup> Live Law, Read all Latest Updates on and about Nipun Malhotra v. Sony Pictures Films India Private Ltd, <https://www.livelaw.in/tags/nipun-malhotra-v-sony-pictures-films-india-private-ltd> accessed 11 July 2024 one

stereotypes and foster understanding. Conversely, disabling humour demeans and marginalizes PwDs, reinforcing negative stereotypes and societal barriers<sup>4</sup>. This distinction is grounded in the modern social model of disability, which views disability as a result of societal barriers rather than an individual's medical condition.

## 2. Guidelines for Media Representation:

The judgment established comprehensive guidelines for media creators to follow when portraying PwDs. These guidelines aim to cultivate an inclusive and respectful narrative, avoiding language and imagery that reinforce negative stereotypes or trivialize the lived experiences of PwDs. For instance, derogatory terms like 'cripple' or 'spastic' must be avoided. Instead, creators are encouraged to research and accurately represent medical conditions to prevent misinformation and the perpetuation of prejudicial myths.<sup>5</sup>

## 3. Inclusive Composition of Advisory Panels:

Malhotra also advocated for the inclusion of PwDs in the advisory panels constituted under the Cinematograph Act, 1952. These panels play a crucial role in reviewing and certifying films for public exhibition. The Court acknowledged the importance of such representation, noting that it would ensure the sensitivities and perspectives of PwDs are considered in the certification process. However, it left the specifics of implementing this recommendation to the discretion of the Central Board of Film Certification (CBFC)<sup>6</sup>.

## LEGAL IMPLICATIONS

The judgment reiterates the constitutional mandate to protect the dignity of all individuals, including PwDs, under Articles 14, 19, and 21 of the Indian Constitution. The Court's interpretation aligns with the principles enshrined in the RPwD Act, which aims to promote

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<sup>4</sup> Live Law, 'Disabling Humour' Disparaging Persons With Disability Must Be Distinguished From 'Disability Humour' : Supreme Court, <https://www.livelaw.in/disabling-humour-disparaging-persons-with-disability-must-be-distinguished-from-disability-humour-supreme-court-231103> accessed 11 July 2024.

<sup>5</sup> Live Law, Read all Latest Updates on and about Nipun Malhotra v. Sony Pictures Films India Private Ltd, <https://www.livelaw.in/tags/nipun-malhotra-v-sony-pictures-films-india-private-ltd> accessed 11 July 2024 one

<sup>6</sup> Live Law, Read all Latest Updates on and about Nipun Malhotra v. Sony Pictures Films India Private Ltd, <https://www.livelaw.in/tags/nipun-malhotra-v-sony-pictures-films-india-private-ltd> accessed 11 July 2024

and protect the rights of PwDs and ensure their full and effective participation in society on an equal basis with others<sup>7</sup>.

The Supreme Court emphasized that media representations that degrade or stereotype PwDs violate their right to live with dignity. By providing explicit guidelines, the Court seeks to prevent further marginalization and promote a more inclusive and respectful portrayal of PwDs. This decision sets a precedent that upholds the constitutional values of equality and non-discrimination, reinforcing the legal framework that protects the rights of PwDs.

### **BROADER IMPACT ON SOCIETY**

The significance of this judgment extends beyond the legal realm. It highlights the evolving understanding of disability in contemporary society, moving away from the archaic medical model towards a more inclusive social model. By recognizing the potential of disability humour to challenge stereotypes and foster inclusivity, the Court has opened up new avenues for positive representation of PwDs in media<sup>8</sup>.

Moreover, the guidelines established by the Court can serve as a benchmark for other forms of media, including television, digital content, and advertising, to ensure they contribute to an inclusive and respectful portrayal of PwDs. This judgment calls for a shift in societal attitudes, encouraging individuals and institutions to recognize the dignity and worth of PwDs and to challenge the stereotypes that have long marginalized them.

The Court's guidelines also provide a framework for media creators to engage in more thoughtful and informed storytelling. By conducting thorough research and consulting with PwDs, creators can produce content that accurately represents the experiences and challenges faced by PwDs, fostering empathy and understanding among audiences. This approach not only enhances the quality of media but also promotes a more inclusive society where diversity is celebrated and respected.

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<sup>7</sup> Live Law, 'Disabling Humour' Disparaging Persons With Disability Must Be Distinguished From 'Disability Humour' : Supreme Court, <https://www.livelaw.in/disabling-humour-disparaging-persons-with-disability-must-be-distinguished-from-disability-humour-supreme-court-231103> accessed 11 July 2024.

<sup>8</sup> Live Law, Read all Latest Updates on and about Nipun Malhotra v. Sony Pictures Films India Private Ltd, <https://www.livelaw.in/tags/nipun-malhotra-v-sony-pictures-films-india-private-ltd> accessed 11 July 2024

## CHALLENGES AND CRITICISMS

While the judgment is a significant step forward, it is not without its challenges and criticisms. One of the primary concerns is the implementation of the guidelines. Ensuring compliance across the diverse and expansive media landscape in India can be daunting. The CBFC and other regulatory bodies must be vigilant and proactive in enforcing these guidelines to effect meaningful change.

Another concern is the potential for censorship. Critics argue that strict guidelines could stifle creative freedom and lead to self-censorship among media creators. It is essential to strike a balance between protecting the rights of PwDs and allowing artistic expression. The guidelines should be viewed as a tool for fostering sensitivity and inclusivity rather than as a means of censorship.

Furthermore, there is a need for continuous dialogue and collaboration between media creators, disability rights activists, and regulatory bodies. By working together, stakeholders can ensure that the guidelines are effectively implemented and that the portrayal of PwDs in media is continually evolving to reflect the diverse and dynamic experiences of individuals with disabilities.<sup>9</sup>

## CONCLUSION

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The *Nipun Malhotra v. Sony Pictures Films India Private Limited & Ors*<sup>10</sup> judgment is a landmark in the ongoing struggle for disability rights and inclusive representation in India. By distinguishing between disability humour and disabling humour, the Supreme Court has provided a nuanced framework for media creators to follow, ensuring that the dignity of PwDs is upheld. This judgment not only reinforces the legal protections available to PwDs but also encourages a societal shift towards greater inclusivity and respect for diversity.

As India continues to grapple with issues of representation and inclusivity, this judgment serves as a reminder of the power of media to shape perceptions and influence social attitudes. It is a call to action for all stakeholders to work towards a society where everyone, regardless of their abilities, is treated with dignity and respect.

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<sup>9</sup> Nipun Malhotra, 'Inclusive Media: The Need for Sensitive Representation of PwDs', JSTOR <https://www.jstor.org/stable/10.2307/26351384> accessed 11 July 2024.

<sup>10</sup> *Nipun Malhotra v. Sony Pictures Films India Private Ltd & Ors* [2024] SC

The broader impact of this judgment lies in its potential to inspire similar legal and societal changes in other areas where marginalized communities are misrepresented or underrepresented. By setting a precedent for respectful and accurate portrayal, the Supreme Court has paved the way for a more inclusive and equitable society. This judgment is not just about the rights of PwDs but about the fundamental values of respect, dignity, and equality that form the cornerstone of a just and humane society.

