

**ONSLAUGHTS ON FREE
SPEECH IN INDIA BY MEANS
OF UNWARRANTED FILM
BANS**

(Second edition)

By

Karmanye Thadani

Subhajoyti Banerjee

Achintya Arora

Rajat Arora

© **Karmany Thadani, 2013**

No part of this publication may be reproduced
or transmitted, in any form or by any means,
without the prior written permission of the main author.

His contact details are as follows -

Phone number- (+91) 9810234328

E-mail Address - karmanyethadani@hotmail.com,
karmanyethadani@gmail.com

Facebook profile - <https://www.facebook.com/karmanyethadani>

Dedicated to

Men like Socrates, Jesus and Imam Hussain who sacrificed their lives for the cause of exercising their inalienable right to express themselves,

The founding fathers of the Indian constitution, many of whom fought to overthrow colonial rule so that we, Indians, could enjoy civil liberties in a truly free and democratic environment,

The Supreme Court of India which has indeed justified the concept of separation of powers with checks and balances by upholding civil liberties whenever they have been stifled for populist ends by the political executive

and

India's film industries that have entertained us and raised socio-political issues of immense importance to our nation!

I disapprove of what you say, but I will defend to the death your right to say it.

- Evelyn Beatrice Hall (attributed to the French thinker Voltaire in the biography of Voltaire written by Hall)

If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation.

- Supreme Court of India (in the case of *S. Rangarajan vs. P. Jagjivan Ram*)

India is a paradise for those who take offense because the first reaction of the state is to appease those who claim to have been offended. And the police, who are so often reluctant to press charges against politicians accused of murder or men accused of rape are quick to arrive at the doorsteps of intellectuals, movie stars and other public figures who have allegedly offended people by words, actions or photographs.

- Manu Joseph (an eminent Indian journalist)

This is an era of various segments of society claiming the right to be offended and obliging the rest of us to pay attention to their sense of offence. It is a nationwide phenomenon and I have to say that it worries me very greatly. One of the greatest strengths of our civilization has been the ability to watch culture evolve through the expression of heretical views.

- Shashi Tharoor (an eminent Indian writer and politician, and former Under Secretary General of the United Nations)

We are becoming increasingly quick to take offence. At this rate we will have to go back to the days of the British rule where the establishment was so touchy about perceived criticism that the only films made were mythological.

- Theodore Baskaran (Indian film historian)

ABOUT THE AUTHORS

Hailing from New Delhi, **Karmanye Thadani** finished his five-year integrated BA, LLB (Hons.) course from the prestigious Gujarat National Law University (GNLU), Koba (near Ahmedabad), India, in 2012. He has, since then, worked as a research associate at the Centre for Civil Society (CCS) based in New Delhi, which happens to be one of India's leading public policy think-tanks. Currently, he is working on a book he is co-authoring on Sino-Indian relations and he is also involved in making a television serial on the life of the great Indian nationalist leader Maulana Azad. He has pursued a summer course on international human rights law at Oxford University and another one on qualitative research methodology at LSE. He has several publications in journals (including the prestigious Journal of Intellectual Property Rights, abbreviated as JIPR) and paper presentations (including in prestigious conferences, both national and international) to his credit. He has areas of interest varying from theology to public policy to human rights to international relations and he also writes on diverse topics on various online portals, and these articles can be accessed here - <http://www.youthkiawaaz.com/topic/karmanyethadani/>, <http://theindianeconomist.com/author/karmanye-thadani/>, <http://www.gnlu.ac.in/stream.pdf>, <http://www.legalserviceindia.com/article/1163-International-Criminal-Court-and-Universal-jurisdiction.html>, <http://moderatekashmir.blogspot.in/2013/09/why-christopher-sneddons-research-is.html>, <http://spontaneousorder.in/should-minority-schools-be-exempted-from-the-right-to-education-rte-act-norms/>, <http://spontaneousorder.in/a-bamboo-controversy-yet-again/> and <http://azadi.me/milton-friedman-economic-freedom-democracy> (the last one mentioned here is in Hindi, an Indian language). A Hindu by faith, he has also written a book aimed at addressing and dispelling anti-Muslim prejudices, especially in the Indian context (it can be downloaded for free from here - <http://www.free-ebooks.net/ebook/Anti-Muslim-Prejudices-in-the-Indian-Context-Addressing-and-Dispelling-them>), which has been downloaded by hundreds of people, and he also intends

to write a book on communalism and sexism in certain sections of the Muslim community, especially in the Indian context, to cover the other side of the picture.

Subhajyoti Banerjee, hailing from Durgapur, West Bengal, India, is also a product of GNLU, having graduated in 2013, and is the director and co-founder of the Alternate Dispute Resolution (ADR) Law Review, an online journal dealing with alternate dispute resolution.

Achintya Arora, hailing from Merut, Uttar Pradesh, India, is a BCom, LLB (Hons.) student of GNLU and has presented a research paper on the human rights implications of cloning in Kirori Mal College, Delhi. He has interned in India's National Human Rights Commission and National Commission for Women, as also the leading law firm Dua Associates. He is co-authoring a book on Sino-Indian relations with Karmanye and two other people.

Rajat Arora, hailing from Sri Ganganagar, Rajasthan, India, is a BA, LLB (Hons.) student of GNLU. He has interned in the Centre for Equity Studies and in Daikin Air-Conditioning India Pvt. Ltd.

ACKNOWLEDGEMENTS

We would firstly like to thank Lambert Academic Publishing (LAP), particularly Mr. Yedisen Ramasamy, for having brought out the previous version of this book. Our gratitude is also due to our parents, siblings, teachers and peers, especially Ashwin Madhavan, Shubhang Setlur, Joyeeta Chatterjee, Bhanushree Rathore, Toms Kurian, Devaditya Chakravarti and Duttatreya Pandey, for their constant encouragement and support. We are also very grateful to the staff of the library and computer laboratory of our university, namely Gujarat National Law University (GNLU), Koba (near Ahmedabad), India, as also the staff of Om Cyber Café in Gandhinagar, India, for all their help and cooperation.

FOREWORD

It was back in July 2011 in the lecture halls of New College, University of Oxford, where I first met Karmanye as a classmate in the summer school on International Human Rights Law. At first glance, one would have mistaken him as a casual student; however, his contributions inside and outside the classroom brought to light not just his intellectual capacity but the quest for a just and free society.

And now, I am delighted to see him along with his three friends working together to defend freedom of speech and expression through this publication. Lack or denial of freedom of speech and expression is among the many threats faced in today's world. Of course, issues of this nature are much graver in totalitarian regimes than in democratic India (though, of course, India has a host of many other very serious human rights issues); yet, as Indians who are lawyers/law students, the authors of this book do raise a valid concern.

As a human rights activist myself, working on an international platform, I feel just as strongly about human rights violations in any and every part of the world, but given my Indian background, I do have a keen interest in the developments taking place in the country I hail from. I grew up in Mumbai, which is the city of Bollywood, India's leading film industry and one which has gained some international popularity, has reflected the changing schisms in the Indian society. The industry has indeed, at times consciously or subconsciously, reinforced female objectification, discrimination, muscle power etc. Bollywood, if taken as an entity per se, is no saint and surely has to take moral responsibility for its own depictions. But on the other hand, on very many occasions, Bollywood films have challenged social norms and stereotypes, and acted as a unifying force, promoting humanistic attitudes.

That said, the responsibility for ensuring that Bollywood films do not have an adverse effect on India's constitutional values rests with the censor board. Many a time, political leaders and party workers have resorted to illegal methods to stifle film-makers' right to

freedom of speech and expression for their own vested interests. This is unacceptable, and unfortunately, not only have they used illegal methods of blackmail and intimidation, they have also used loopholes in the law to use, what may seem, 'legal' methods to this end, by officially banning films. Fortunately, India's apex court, given its long-standing commitment to human rights, has made necessary positive interventions to undo such actions by the political class. This publication focuses on how these loopholes in the law can be plugged to uphold the right to freedom of speech and expression enshrined in the Indian constitution (in accordance with the international human rights conventions to which India is a signatory), which is emblematic of the heterodoxy and tolerance of the grand, pluralistic Indian civilization, its very many social evils (and indeed, no civilization is free of them) notwithstanding.

This publication will be of use to activists, artists and human rights defenders who struggle on a daily basis in order to defend the freedom of speech and expression. It will also, hopefully, make an interesting read for all those passionate about cinema and/or with a legal background.

Savio Carvalho

Director, Demand Dignity & Economic, Social and Cultural Rights (ESCR) Programme

Amnesty International, International Secretariat.

TABLE OF CONTENTS

Abstract	15
I. Introduction: Right to Freedom of Speech and Expression	17
A. Position in International Law and under the Indian Constitution	17
B. Significance of the Right.....	20
C. Reasonable Restrictions	21
D. Judicial Pronouncements.....	26
II. Law of Censorship in India	29
III. Political Disregard for the Censor board	34
A. S. Rangarajan vs. P. Jagjivan Ram	35
i). Facts of the case	35
ii). Contentions	35
iii). Judgment	36
B. Other Landmark Cases	39
C. The Da Vinci Code	42
D. Aarakshan	46
E. Vaswaroopam	50
IV. The Mudgal Committee Report	57
V. Conclusions and Recommendations	68

ABSTRACT

India is well known for being the world's largest democracy. However, the underlying civil liberties that are quintessential to a democratic framework have time and again suffered grave onslaughts for petty vote-bank politics, and judicial intervention has been necessary to safeguard them.

This is typically seen when films cleared for screening by the Central Board of Film Certification (popularly referred to as the censor board) are prohibited to be screened by state governments context refers to a provincial government, as against the central government). This is particularly unfortunate, considering that India is well known globally for its very robust film industry (India is known to be the country that produces the largest number of films in the world, which are in diverse Indian languages and English), and Indian films have huge global audiences not only among Indians resident abroad or citizens of other countries who are of Indian origin but even people with really no connection with India per se, and this is particularly true of several South Asian, South-East Asian and African countries.

The book shall examine the right to freedom of speech and expression in general, and then particularly in the Indian context, as well as the reasonable restrictions it can be subjected to. It shall further throw light on the censorship law for films in India and delve into what leads the ruling governments to not go by the decision of the Central Board of Film Certification and to prohibit the screening of films. It shall also critically analyze such decisions and examine the stand of the Hon'ble Supreme Court on the same. Finally, it gives some suggestions and recommendations.

Of course, however, onslaughts to the freedom of speech and expression in India have not been only with respect of cinema, as was visible in the case of Salman Rushdie being made to abstain from visiting the country in spite of his lawfully acquired visa, when there was nothing to suggest that he was going to say anything outraging religious sentiments in the Jaipur Literary Festival, but that was not actually a restriction on him by law, and this book shall focus on the issue of cinema.

A uniform mode of citation has been adopted throughout the text. While most of the content is easy to understand for any reader, certain portions do require a background in law, such as to know the meanings of terms like ‘tort’ and ‘principles of natural justice’, and that apart, the book will be easier for someone with an understanding of Indian ground realities. Certain passages of the text heavily borrow from sources mentioned in the footnotes.

The research methodology is doctrinal, i.e. based on available materials and not on field-work. We, the authors have, however, seen five of the films we have focused on, namely *The Da Vinci Code*, *Aarankshan*, *Vishwaroopam*, *Madras Café* and *Ocean of Tears*.

I. INTRODUCTION: RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

The right to freedom of speech and expression is a quintessential feature of any democratic framework. It can assume diverse forms, be it in the verbal form or in that of writing, printing, pictures, cinema or any other mode.

The importance of this right has been recognized since ancient times. Buddhism and Jainism uphold this right in their own ways when they deal with guidelines on appropriate speech. The Hindu epic, the Ramayan, mentions that Ram banished Sita due to the condemnation by the *praja* shows that at least philosophically, it was believed that people had the right to free speech. The classic Indian text, the *Natya Shastra*, emphasizes the right to freedom of expression very clearly, in which “Indra declared that the stage would be a space where everything could be said and nothing could be prohibited”¹.

It is evident from the famous funeral address given by Pericles as back as in 431 B.C. that Athenians did not consider public discussion merely something to be put up with; rather they believed that the best interest of the city could not be served without a full discussion of the issues before the assembly.²

¹ Salman Rushdie’s full speech at India Today Conclave 2012, available at <http://conclave.intoday.in/conclave2012/speechtranscript.php?id=3429&issueid=38>

² Nayeem Akhtar, Freedom Of Speech And Expression vis-à-vis Censorship, available at <http://www.slideshare.net/mf23/freedom-of-speech-and-expression-vis-a-vis-censorship>

Thank You for previewing this eBook

You can read the full version of this eBook in different formats:

- HTML (Free /Available to everyone)
- PDF / TXT (Available to V.I.P. members. Free Standard members can access up to 5 PDF/TXT eBooks per month each month)
- Epub & Mobipocket (Exclusive to V.I.P. members)

To download this full book, simply select the format you desire below

