



INFOCHANGE

agenda

ISSUE 22 2011

The limits of freedom

Freedom of expression is increasingly under assault — on grounds of sedition, obscenity, immorality or offending public sentiment. Should this freedom be constrained? If so, when and how?



RECENT BACK ISSUES



Enclosure of the commons



Ethics of new medical technologies



Agricultural revival



Coastal communities

© Infchange News & Features, Centre for Communication and Development Studies, 2011

Infchange Agenda is a quarterly journal published by the Centre for Communication and Development Studies, a social change resource centre focusing on the research and communication of information for change

To order copies, write to:

Centre for Communication and Development Studies
301, Kanchanjunga Building, Kanchan Lane, Off Law College Road, Pune 411 004

Suggested contribution: Rs 90 (1 issue); Rs 300 (4 issues); Rs 550 (8 issues)

DDs/cheques to be made out to 'Centre for Communication and Development Studies'

Infchange Agenda content may be cited, reproduced and reprinted for purposes of education and public dissemination with due credit to the authors, the journal and the publishers

The views expressed in these articles are those of the individual authors and do not necessarily represent the standpoint of Infchange Agenda

Speaking freely <i>by Dilip Simeon</i>	2
A million tyrannies now <i>by Maseeh Rahman</i>	4
Sedition and the death of free speech <i>by Siddharth Narrain</i>	8
Freedom in security <i>by Ajai Sahni</i>	12
Reasonable restrictions and unreasonable speech <i>by Lawrence Liang</i>	15
The secret life of film censorship <i>by Shohini Ghosh</i>	19
When is 'news' better off not reported? <i>by Jyoti Punwani</i>	22
Cultural memory and the politics of intolerance <i>by Mangesh Kulkarni</i>	26
Dissent vs incitement? <i>by Gita Sahgal</i>	29
Freedom gagged: Public expression in Kashmir <i>by Sualeh Keen</i>	33
Out, dark spots: History and the state in Russia <i>by Arup Banerji</i>	38
Repression and resurgence in Tibet <i>by Tenzing Sonam</i>	41
Assaults on freedom of expression in Sri Lanka <i>by Rohini Hensman</i>	45
'Dissent is the quintessence of democracy': High Court judgment	48
The war dogma <i>by Javed Iqbal</i>	54
Virtual democracy? <i>by Ketan Tanna</i>	57
On artistic freedom <i>by Purushottam Agrawal</i>	59

This issue has been guest-edited by Dilip Simeon

Editors: Hutokshi Doctor, John Samuel

Production and layout: Gita Vasudevan, Sameer Karmarkar

Infochange team: K C Dwarkanath,
Philip Varghese, Ujwala Samarth, Vijay Narvekar, Vishnu Walje

Speaking freely

With citizens being charged with sedition for speaking their minds, with books and films being banned or censored, not just by the state but by chauvinist forces, with artists forced to flee the country for offending ‘public sentiment’, with historical enquiry stalled and history being rewritten, we are seeing increasing constraints on freedom of expression. When such practices become common in democratic systems, they inaugurate the slide towards tyranny

DILIP SIMEON

‘With force I have subdued the brains of the proud’ — Epigraph on the grave of Cardinal Inquisitor Roberto Bellarmino (1542-1621), who presided over the condemnation of Giordano Bruno, burnt at the stake for heresy in 1600

THE ESSAYS CONTAINED in this issue of *Infochange Agenda* are engagements with the question of socially accessible truth. Images and spoken (or written) words are implicitly social, and the matter of constraints and deliberate distortions in them is very old. In fact, a look at the world

around us might re-awaken thoughts of the Inquisition.

The essays are substantial, and speak for themselves. The themes tackled by their authors have been addressed by them seriously and for a long time. They range from the debate about sedition, constraints placed upon historical inquiry; the political certification of literary awards and filmed images, to the censorship of journalists’ reports. They cover experiences arising not just in India, but in neighbouring countries too; and they deal with issues generated not only by state policy, but by mass belief as well. This is as it should be, for the political control of speech and thought is not confined within national or ideological frontiers. For instance, the state manipulation of history is not merely a Russian (or Soviet) phenomenon. It reflects the widespread attempt by governments and political ideologues to control the present via doctored accounts of the past. This is why history so often appears to be a political minefield. Here, as in related matters, the only sound option is to allow historical exploration to proceed without manipulation or intimidation, enabling truth to emerge through sustained debate and dialogue, and free access to archives.

A citation from Hannah Arendt that I often use for the sheer impression it made on me, reads as follows: “Is it the essence of truth to be powerless and of power to be deceitful? And what reality does truth possess, if it is powerless in the public realm?” To my mind, this meditation lies at the heart of the question of freedom of speech and expression. Censorship and propaganda are mirror images of each other. Censorship is a passive form of propaganda and propaganda an active form of censorship (readers wishing to examine this proposition could read George Orwell’s essay on euphemism, for which a link is provided below).

There are other questions, about the responsibility of the state and of citizens. Where may we draw the line between freedom of speech, hate speech and the incitement to murder? How ought the media to treat the reportage of hate-inspired acts, and the reproduction of images likely to inflame people’s feelings? How do we deal with deceit and deliberate misinformation? These questions also relate to the violent conflict that surrounds us. If truth is the first

Article 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Tomaso Marcolla/www.posterfortomorrow.org

casualty of war, it follows that a condition of perpetual warfare ('hot' or 'cold', involving internal or external enemies) implies an all-round assault on truth. Modern warfare is characterised by ideological manipulation, on the assumption that public opinion is part of the battleground. The media lends itself to the political realm as a means of mobilising sentiment. Ideologies tend to mix reason with faith; and their adoption by the mass media strengthens the belief that truth is a purely relative thing, "a mobile army of metaphors". Media aside, a crass manifestation of commercialised venom is available for travellers to the Wagah border, where assembled crowds from India and Pakistan hurl patriotic slogans at each other every evening — egged on by tour operators making a fast buck (incidentally, this was not the case some 20 years ago, when I visited the border along with some friends. There was a friendly and convivial atmosphere then).

Must we resign ourselves to the belief that truth is just a line of vision, one perspective among many, that everything is an interpretation? Has truth been abolished by politics? I believe not. There are indeed many interpretations of things and events, but in order to interpret anything, we must assume there is an object to interpret in the first place. To hold that all truth is class truth; or that everything worth knowing is already evident, in accordance with some established tradition; or in line with the interests of the Nation, the Community or some such permanently unquestionable entity, is to set the stage for an obliteration of language. The tendency to replace meaningful conversation by polemic and sentimental brow-beating is apparent in the political domain, where clichés and holy cows are regularly fielded in order to manufacture animus rather than clarity. In such a situation, speech becomes equivalent to silence, because no one hears anyone. We cannot hope to engage with the crucial issues of our time if we continue to treat the pursuit of truth with such disdain. We need to remind ourselves that the "violation of truth poisons everything gained by the violation", that for individuals as well as for public institutions beginning with the state, the assault on truthful communication is self-destructive. Dictators have learnt this to their cost, and when such practices become common in democratic systems, they inaugurate the slide towards tyranny.

Truth and freedom go together. Questions of sensitive reportage of, say, communal violence may be approached via the practice of restraint, without intending to deceive and distort. It is possible to consider these matters as part of an ethic of responsibility, without succumbing to a dictatorial or nihilist contempt for truth.

The authors of the essays contained in this issue have each in their own way made significant efforts to answer these profound questions. I'm grateful to *Infochange Agenda* for inviting me to edit this issue, and I hope these articles prove as thought-provoking for its readers as they were for

me. There is a lot more that could be said on the theme of free public expression, but I'm confident that readers will find a great deal here to pursue their interests further. My heartfelt thanks are due to the contributors, and regards to all readers of *Infochange Agenda*.

Some useful links on censorship and intellectual freedom

- Index on Censorship, current edition: The Net Effect: As digital technology transforms the culture of activism and access to information — from revolution in Egypt to reporting on the secret services in Russia, Index on Censorship assesses the ways and means of using new media to get the word out, and asks if the United States is Internet freedom's best friend. <http://www.indexoncensorship.org/category/current-edition/>
- Pakistan's blasphemy law is a tool for persecution and reflects the grip of religious extremism. <http://www.indexoncensorship.org/2011/03/speak-no-evil-the-grip-of-religious-extremism-on-pakistans-political-culture/>
- The controversy regarding the NDA government's alleged attempt to tamper with Mahatma Gandhi's Collected Works. http://www.gandhiserve.org/cwmg/cwmg_controversy.html
- Extract from George Orwell on Politics and the English Language, 1946: "In our time, political speech and writing are largely the defence of the indefensible. Things like the continuance of British rule in India, the Russian purges and deportations, the dropping of the atom bombs on Japan, can indeed be defended, but only by arguments which are too brutal for most people to face, and which do not square with the professed aims of the political parties. Thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness. Defenceless villages are bombarded from the air, the inhabitants driven out into the countryside, the cattle machine-gunned, the huts set on fire with incendiary bullets: this is called pacification. Millions of peasants are robbed of their farms and sent trudging along the roads with no more than they can carry: this is called transfer of population or rectification of frontiers. People are imprisoned for years without trial, or shot in the back of the neck or sent to die of scurvy in Arctic lumber camps: this is called elimination of unreliable elements. Such phraseology is needed if one wants to name things without calling up mental pictures of them." Read more at: <http://www.mtholyoke.edu/acad/intrel/orwell46.htm>

Dilip Simeon is a Delhi-based historian and writer. He is also associated with the Aman Public Charitable Trust, which works to understand and reduce violent social conflict. His first novel Revolution Highway was published by Penguin India in September 2010

A million tyrannies now

The communal campaigns variously targeting newspapers, magazines, TV channels, books, art, cinema and music — the entire panoply of cultural production — today constitute the biggest threat to freedom and democracy in India. And ironically, this new censorship is as much the creation of democracy and development as it is simultaneously antithetical to it. For, the more free speech advocates confront it, and the more the media report this confrontation, the worse it becomes

MASEEH
RAHMAN

FOR JOURNALISTS IN INDIA, the only experience of nationwide state-enforced press censorship came with the internal Emergency promulgated by Prime Minister Indira Gandhi on June 25, 1975. I had just taken over as editor of the magazine *Onlooker* in Mumbai, and my first issue was ready to go to press. It was my maiden job as editor. Having cut my teeth as a newspaper reporter, I immediately got down to transforming *Onlooker* into a hardnosed news and features magazine.

The cover story for my first issue was to be on Jayaprakash Narayan's 'Total Revolution' campaign seeking to overthrow the government through street mobilisation. The issue was to carry other critical features, such as a lengthy interview with Atal Bihari Vajpayee, then a leading figure in JP's movement, and an insider's expose of the Indian Foreign Service.

The timing couldn't have been worse. When I reached my office on the morning of June 26, I was told that the Maharashtra government had called a meeting of editors. Seated in a bland committee room, we were informed by a dour bureaucrat that we were no longer free to publish what we liked. A new office of chief censor was to be set up, and this worthy would henceforth decide what the people should read.

The whole idea seemed so strange that as we shuffled out of the room some of us sidled up to Sham Lal, the formidable editor of *The Times of India*, seeking a pointer for the morrow. A senior editor mustered up the courage to ask him what he planned to write in his next editorial. "I'll be writing on potato cultivation in Lahaul," Sham Lal, arguably the most influential editor in the country, replied tersely.

The bad news sank in — the world had suddenly changed.

Throughout the 21-month Emergency, the *TOI* never once fell out of line. The only note of dissent came from a single, much-celebrated item anonymously placed in the paper's 'Deaths' column by an outside journalist, Ashok Mahadevan:

O'Cracy, D E M, beloved husband of T Ruth, loving father of L I Bertie, brother of Faith, Hope and Justicia, died on June 25.

The *TOI* submitted to a police inquiry, and Mahadevan shaved his beard to escape detection.

Lessons of the Emergency

A year earlier, Mrs Gandhi had already shown her desire to control the print media by setting up a committee to inquire into the ownership pattern of newspapers. This was clearly a ruse to hit back at newspaper owners who opposed her. Distrust of the press was ingrained in her Congress Party, particularly amongst left-wing leaders. It was also a family trait — both her husband Feroze Gandhi and her father Jawaharlal Nehru, who probably coined the memorable term 'the Jute Press', were very critical of "monopoly ownership" in the media.

The Emergency showed how these easy labels could be so misleading. The erudite Sham Lal and the *TOI* group accepted press censorship without a whimper. So did the suave Aron Purie, owner of *India Today* magazine, which began publication during the Emergency. But amongst those who defied Gandhi were the boorish Ramnath Goenka of *The Indian Express* and the megalomaniacal Cushrow Irani of *The Statesman*.

The other surprise was Bhabhatosh Datta, venerable chairman of Mrs Gandhi's press ownership inquiry, which was known simply as 'The Fact Finding Committee', a name straight out of Kafka or George Orwell. Datta, a retired economics professor from Kolkata's Presidency College, submitted his report in 1976 at the height of the Emergency. But much to everyone's surprise, he refused to play Mrs Gandhi's tune — the report in fact concluded that the pattern of ownership of the Indian media suggested good competition rather than monopoly ownership. So the first lesson of press censorship was: the most powerful need not be the most resistant to state repression.

But if the responses to the Emergency were uneven (while some journalists went to jail, a majority did what L K Advani later accused them of: "When asked to bend, you crawled"), my experience soon showed that even the exercise of press censorship by officials could be erratic and irrational.

Onlooker was put under total pre-censorship. In other

words, every article had to be cleared by the censor before publication. As an ingénue editor, I would struggle to find meaningful stories that could escape Big Brother's red pencil. One such was a long interview I did with the historian B N Pande on communal violence.

Pande was in the habit of studying places that had been engulfed by Hindu-Muslim conflagrations. His interview was full of interesting anecdotes and observations. For instance, after the 1969 Ahmedabad riots, he found that a marauding Hindu mob had burned down all the Hindu shops at the edge of a shantytown, but the Muslim homes within the colony were left untouched. Puzzled, he asked the Hindus what had happened. They told him that an armed mob had come from outside and asked them to point out Muslim homes in the basti, and when they refused had threatened to set fire to their shops. They had stood firm, provoking the mob to go on an arson spree. Pande asked the Hindus why they hadn't protected their livelihood by simply pointing out the Muslim homes. "We're all from the same village in Rajasthan," the now impoverished Hindus told Pande. "What face would we have shown back home if we had betrayed our Muslim brethren?"

Pande's story spoke of the courage and decency of ordinary

Indians. But to my utter surprise, the interview came back heavily censored, including the above-mentioned incident. The chief censor in Maharashtra was Binod Rao, a retired newspaper editor. I went to ask him why the Pande interview had been so brutally hacked. He read it with a pained expression, and finally confided: "The official who censored these pages belongs to the RSS. I can't over-rule him completely, but I'll restore most of his cuts."

I thought it was ironical that while the RSS had been banned and many of its workers jailed during the Emergency, an RSS man was sitting in the chief censor's office deciding what Indians should read. Was this what the French philosopher Foucault meant when he characterised censorship as not just a repressive but also a productive act — in this case propagating a hate-filled vision of India?

So the second lesson of press censorship was: when a state turns autocratic and repressive, it helps various tyrannical ideologies to bloom. As the sociologist Shiv Vishvanathan said so well, the Emergency was "a pilot plant, a large-scale trial for totalitarianisms and emergencies that came later".

Neither Mrs Gandhi nor the RSS were responsible for the abrupt end to my first tenure as editor. *Onlooker* was owned



by the Karnanis, a Kolkata business family with interests in jute and coal and whose name also adorned a Park Street mansion notorious for its brothels.

In my perennial quest for a little light in the dark shadow of the censor, I had carried a cover story on the success of the primary education system in China. It was very well researched and written by two Indian Marxists who had travelled to China and come back with excellent colour photographs, a rarity in the 1970s. In the gloom of the Emergency, the story seemed to carry important lessons for India — it's another matter that it probably still does 35 years later!

But the Karnanis, with their Kolkata roots, detected a Naxalite conspiracy in the story on China. It wasn't long before I was sacked from the *Onlooker*.

That was my third lesson: censorship often begins at home, even before the state steps in. The owner, no matter what his background, will seek to impose his prejudices on a publication. Look at N Ram's *The Hindu* today: on the one hand it displays courage in publishing the Wikileaks files; and on the other, it does not permit its correspondents to criticise China or write favourably about the Dalai Lama and the Tibet struggle.

My next experience as an editor pushing against censorship's shackles during the Emergency had an altogether different denouement. When I was editing *Fulcrum* magazine, we heard of forced sterilisations in a rural market town called Barsi in Maharashtra. I went there to discover the full horror of the national family planning campaign — a number of peasants who had come to town on market day were dragged to hospital and forcibly sterilised in order to meet the annual target. Some were unmarried, some newly married and without children, some quite old. A brave local studio photographer had clicked the chaotic street scenes.

'Barsi — Success or Excess?' appeared as a cover story in *Fulcrum*, illustrated with photos of peasants being dragged into government vans. The sterilisation campaign was a pet project of Sanjay Gandhi, so there was no knowing how the government would react. The story got some play in the international media — the *Washington Post* even sent an undercover correspondent to Mumbai. But the knock on the door came some weeks after publication. Two somewhat sheepish Special Branch men walked into the office and enquired about the story. However, they seemed mainly interested in taking away the photographs. I lied and said all the photos had been sent to the press. They quietly accepted my lie, and left. I never saw them again.

Barsi is located in Marathwada, a region to which the then Maharashtra Chief Minister S B Chavan belonged. The rural elite in the state had been outraged by the forced sterilisations. I was certain that the genteel behaviour of the Special Branch men when they called in at the *Fulcrum* office

If proof were needed that besides bigotry and hatred, behind such 'new censorship' dramas there also lurks cold political calculation, one need look no further than the successful Shiv Sena campaign to get *Such A Long Journey* removed from the University of Mumbai's BA syllabus, ostensibly for describing the Sena as 'fascist'

had a lot to do with the feedback Chavan was getting from his rural supporters. If I had done the story out of Delhi, the police response may have been altogether different. In those days, before Internet and satellite news TV, Mumbai was still far from Delhi, and Sanjay Gandhi's goons.

So the fourth lesson in state repression of the media: sometimes, its intensity can be in inverse proportion to the leader's links with the people. Chavan knew the *Fulcrum* sterilisation story expressed genuine grassroots anger; Sanjay Gandhi wouldn't have known that. Ultimately, the irony of this divide may not have been lost on Mrs Gandhi when she later looked back on the Emergency: press censorship ensured her insulation from the people, making her unaware of the popular rage against forced sterilisations. Smug in the belief of her own invincibility, she called a general election in 1977 and was resoundingly defeated.

The Indian media has undergone a dramatic transformation since that time. The print media has multiplied and boomed. Television has been liberated from absolute government control. And the Internet and social media now provide a radical way of disseminating "news" and "views".

Newer forms of censorship

But along with this new spring has come another insidious blight. Rajeev Dhavan, the noted Delhi lawyer and free speech advocate, calls it "the new 'censorship' of communal intolerance through any legal or illegal means". He believes the destruction of the Babri Masjid in December 1992 marked the beginning of this disturbing phase, though there were some warning signals even earlier — such as the alacrity with which the government banned Salman Rushdie's novel *Satanic Verses* in September 1989. These high-decibel communal campaigns variously targeting

newspapers, magazines, TV channels, books, art, cinema and music — in other words, the entire panoply of cultural production — today constitute the biggest threat to freedom and democracy in India. And ironically, as Dhavan points out, “the new ‘censorship’ is as much the creation of democracy and development as it is simultaneously antithetical to it”.

I realised this when the Hindu radical campaign protesting against a sketch of the Goddess Saraswati by the painter M F Husain began in 1996. During the last 15 years, with the state mostly acting as a mute spectator, the celebrated artist’s entire oeuvre has been condemned; his paintings slashed and museums ransacked; cases filed against him in court; and his life and limb threatened, forcing him to seek asylum abroad.

During this period, Husain has also become a favourite topic of discussion — some would say, whipping boy — on TV talk shows, with the participants often displaying little understanding of either Husain as an artist or indeed of modern art itself. It seems to matter little that for Husain whose work is deeply influenced by Hindu iconography, inspiration for the controversial Saraswati sketch, for instance, came from an 11th century icon of the goddess in the magnificent Vimal Vasahi temple at Mount Abu.

But of course, art was never the context of the vicious anti-Husain campaign; it was communalism. As the then Bajrang Dal chief told me back in 1996, the point is not what approach the artist takes towards his subject, or which aesthetic tradition influences and inspires him. The point is much more simple — “a Muslim has no right to paint our gods and goddesses”.

Nor was the campaign to gag, bind and quarter Husain new — it only acquired dramatic dimensions after 1996 due to a vibrant media and resurgent Hindutva radicalism. One leader of the campaign pointed out a letter by him published in Khushwant Singh’s *Illustrated Weekly* around 1973 attacking Husain’s paintings of Lord Ganesha. He was showing off his life-long commitment to the anti-Husain cause. But such letters were seen in those days as the outpourings of cranks, providing some entertainment on the readers’ page. Now the farce has not only become serious, it is threatening to turn into a tragedy.

If proof were needed that besides bigotry and hatred, behind such ‘new censorship’ dramas there also lurks cold political calculation, one need look no further than the recent successful Shiv Sena campaign to get Rohinton Mistry’s *Such A Long Journey* removed from the University of Mumbai’s BA syllabus, ostensibly for describing the Sena as ‘fascist’. The 1991 novel had been on the syllabus for years without anyone objecting. It’s only after Sena founder Bal Thackeray’s grandson Aditya was anointed head of the party’s student wing and was looking for a suitable ‘cause’ to promote himself that he burned Mistry’s book at the

university gates, catapulting himself to national fame.

Can there be any doubt that the uproar against Mistry’s novel was cynically manufactured by the Thackeray clan to project Aditya and mobilise Sainiks behind him, just as the campaign against Husain’s paintings appears designed to mobilise ‘devout’ Hindus against ‘iconoclastic’ Muslims? Therein lies the real long-term danger of this ‘new censorship’. As Dhavan points out, this perilous trend is “the creation of democracy and development”. It is also an instrument that all political parties without exception are using from time to time to respond to a sectarian grievance and whip up ‘popular’ support.

And the nature of the beast is such that the more free speech advocates confront it and the more the media report this confrontation, the bigger the beast becomes. Indian democracy is facing this existential dilemma only because the state often abdicates its responsibility to defend freedom and keeps surrendering to the mob. And this happens not because the mob is too big or too dangerous (we’re still *not* Pakistan), but because the organs of the state lack conviction and leadership in order to be able to effectively defend freedom.

Let me take an opposite example to illustrate the point that the spectre of this ‘new censorship’ has grown mainly due to the passivity, nay cowardice, of the state.

Art galleries participating in the India Art Summit in Delhi in January were once again threatened this year that if they don’t bring down Husain’s paintings they would be attacked. As the art fair opened, all of Husain’s works were hurriedly brought down by both Indian and foreign galleries. But for the first time ever in 15 years of the anti-Husain campaign, the state took its responsibilities seriously. The home ministry assured the organisers of proper security. Policemen were stationed in all the galleries showing Husain’s works. The Delhi police commissioner visited the art fair to send a clear message that at last the government was ready to use its enormous resources to confront law-breakers. Record crowds showed up at the Art Summit, and there were long queues to see Husain’s works. Not one viewer attacked any painting.

There are of course many other internal and external threats to the media in India today — the insidious growth of ‘paid news’; the increasing influence of powerful lobbyists as revealed in the Niira Radia tapes; the troubling impact of secret investments in media houses by big business, especially in television; the government’s continued attempts to hobble the media, as evidenced, say, in proposals to control blogging. None of these pose as big a challenge as the ‘new censorship’ of intolerance which, as Dhavan observes, “relies on coercion to silence the exercise of democratic free expression in a secular society”.

Maseeh Rahman is a senior journalist based in New Delhi

Sedition and the death of free speech

The repeated use of India's sedition laws — most recently against human rights activist Dr Binayak Sen — has made them one of the biggest threats to the freedom of speech and expression. Along with other colonial laws dealing with obscenity and blasphemy, sedition laws undermine the right to dissent and the right to criticise state policy. Is it time to seriously re-examine them?

SIDDHARTH
NARRAIN

RECENT MEDIA ATTENTION and public debate around India's sedition laws have sparked renewed interest in the manner in which these laws have been used to curb free speech in the country. A quick look at some of those facing sedition charges over the last few years is enough to tell us that



there is pressing need for a debate on whether we require these archaic provisions at all. The sedition charges against medical practitioner and human rights worker Dr Binayak Sen have provoked outrage amongst a large section of Indian citizens as well as human rights activists globally. Sen's work, especially in the area of public health, has gained worldwide recognition, which explains why his trial is being followed closely across the world. Unfortunately, his credentials seem to have had little impact on the Raipur trial court, which convicted him with a maximum sentence of life imprisonment in December 2010. Sen's application to be released on bail was rejected by the Bilaspur High Court. He subsequently filed an appeal in the Supreme Court which granted him bail on April 15, 2011.

While the Chhattisgarh government claims that Sen acted as a courier between an alleged Naxalite leader in Raipur jail and the party leadership in hiding, many believe that he is the target of a systematic campaign to silence dissenting voices in a state which has seen violent conflict between the state-supported vigilante force Salwa Judum and the Naxalites. Sen represented the shrinking group of civil society voices opposed to a military solution to the problem

of Naxalism. These groups include Sen's organisation, the People's Union for Civil Liberties (PUCL), Chhattisgarh, which has been critical of the state government's policies of encouraging large-scale investments in mines and minerals and other industries in this resource-rich state without regard to the consequences for the already pauperised tribal population in these areas.

In another high-profile case, sedition charges were filed in November 2010 against Arundhati Roy, S A R Geelani, Varavara Rao and others for their speeches at a seminar on Kashmir titled 'Azadi: The Only Way'. The charges were pursued based on a private complaint filed in a trial court in Delhi.

The charges demonstrate how sedition laws are used to harass people even if the government is wary of using them. Facts listed in the accompanying table indicate the manner in which these laws are used to muzzle dissent and target the media. These cases have been reported in the newspapers; there are probably many unreported ones.

Given the widespread nature of its use, there is an urgent need to re-examine the history of this legislation. Sedition laws are found in the following laws in India: the Indian Penal Code, 1860 (Section 124 (A)); the Code of Criminal Procedure, 1973 (Section 95); the Seditious Meetings Act, 1911; and the Unlawful Activities (Prevention) Act (Section 2 (o) (iii)). Common to these laws is the idea of 'disaffection' that we have inherited from the British. 'Disaffection' has been defined as a feeling that can exist only between 'the ruler' and 'the ruled'. The ruler must be accepted as a ruler. Disaffection is the opposite of that feeling, and manifests a lack of, or repudiation of acceptance of a particular government as ruler.

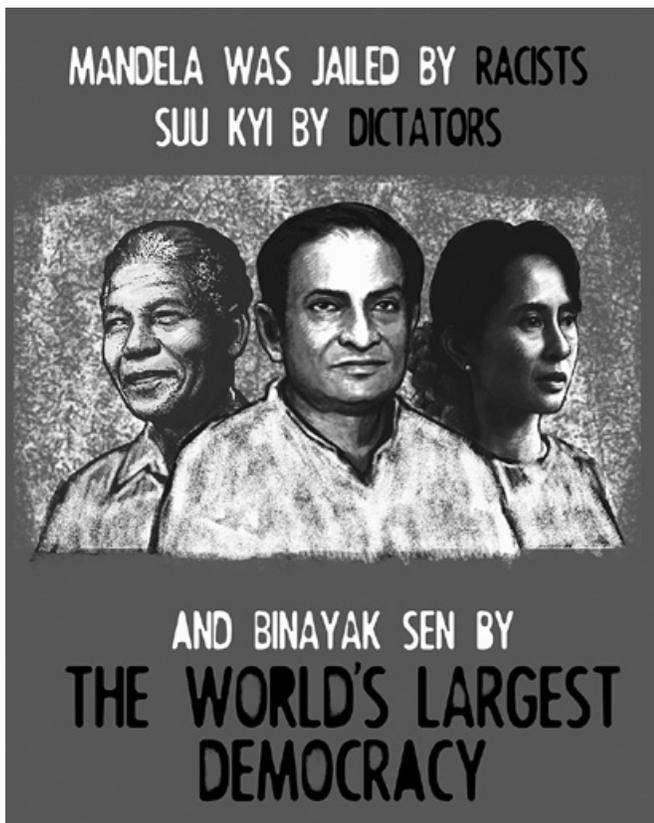
Ironically, some of the most famous sedition trials of the late-19th and early-20th century were those of Indian nationalist leaders including Tilak, Gandhi, and Annie Besant. In 1898, the law was amended by the British. Disaffection was now stated to include 'disloyalty and all feelings of enmity'. The new amendment added the words 'hatred or contempt' to the word 'disaffection'. These

Recent cases at a glance				
Person charged with sedition	Occupation	When	Where	Nature of charges
Manoj Shinde	Editor, Surat, <i>Saamna</i>	August 2006	Surat, Gujarat	For using "abusive words" against Chief Minister Narendra Modi in an editorial while alleging administrative failure in tackling the flood situation in Surat
Kahturam Sunani	Journalist, OTV	May 2007	Sinapali, Orissa	For filing a report that Pahariya tribals were consuming 'soft' dolomite stones in Nuapada district due to acute hunger
Binayak Sen	Doctor and human rights activist	May 2007	Raipur, Chhattisgarh	For allegedly helping courier messages to Maoist leadership. Sen had criticised the Chhattisgarh government's support to the vigilante Salwa Judum
Bharat Desai and Gautam Mehta	Resident Editor, <i>Times of India</i> , Ahmedabad; photographer, <i>Gujarat Samachar</i> (Mehta)	June 2008	Ahmedabad, Gujarat	For articles and photographs that alleged links between the Ahmedabad police commissioner and the underworld
Kirori Singh Bainsla	Gujjar community leader	June 2008	Bayana, Rajasthan	For leading an agitation demanding ST status for Gujjars
Lenin Kumar	Editor, <i>Nishan</i>	December 2008	Bhubaneswar, Orissa	For publishing a special booklet on the Kandhamal riots entitled 'Dharmanare Kandhamalre Raktanadhi' (Kandhamal's rivers of blood)
Laxman Choudhury	Journalist, <i>Sambadh</i>	September 2009	Gajapati district, Orissa	For allegedly possessing Maoist literature. Chaudhury had been writing about the involvement of local police in illegal drug trafficking
V Gopaldaswamy (Vaiko)	Politician, MDMK	December 2009	Chennai, Tamil Nadu	Remarks allegedly against India's sovereignty at a book launch function
Piyush Sethia	Environmentalist and organic farmer	January 2010	Salem, Tamil Nadu	Pamphlet distributed during protest against Chhattisgarh government's support for Salwa Judum
E Rati Rao	Resident Editor, <i>Varthapatra</i>	February 2010	Mysore, Karnataka	Article in <i>Varthapatra</i> alleging encounter deaths in Karnataka
Niranjan Mahapatra, Avinash Kulkarni, Bharat Pawar, and others	Trade union leaders and social activists	March 2010- June 2010	Gujarat	Police allege links with CPI (Maoist)
Arundhati Roy, S A R Geelani, Varavara Rao, Shuddabrata Sengupta and others	Writers, political activists, and media theorists	November 2010	Delhi	Private complaint alleging that they made anti-India speeches at a seminar on Kashmir titled 'Azadi: The Only Way'
Noor Muhammed Bhat	Lecturer, Gandhi Memorial College, Srinagar	December 2010	Srinagar	For setting a question paper for English literature students on whether 'stone-pelters were the real heroes'
Sudhir Dhawale	Dalit rights activist and freelance journalist	January 2011	Wardha, Maharashtra	Police allege links with CPI (Maoist) party

amendments also brought in Section 153-Aⁱ and Section 505ⁱⁱ of the IPC.

The most famous sedition trial after Tilak's was the trial of Mohandas Gandhi in 1922. Gandhi was charged, along with Shankerlal Banker, the proprietor of *Young India*, for three articles published in the magazine. The trial, attended by the most prominent political figures of

that time, was followed closely by the entire nation. It was presided over by Judge Strangman. Gandhi explained to the judge why from being a staunch royalist he had become an uncompromising disaffectionist and non-cooperator, and why it was his moral duty to disobey the law. In a stunning statement, Gandhi commented on the law that was used to try him, and demanded that the judge give him the maximum punishment possible.



"...Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. But the section under which Mr Banker and I are charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it, and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavoured to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator, much less can I have any disaffection towards the King's person. But I hold it a virtue to be disaffected towards a Government which in its totality has done more harm to India than previous systems. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in as evidence against me."

The irony of the sedition law used against nationalists like Gandhi and Tilak continuing in the statute books of independent India was not lost on those drafting the Constitution. The draft Constitution included 'sedition' and the term 'public order' as grounds on which laws

limiting the fundamental right to speech (Article 13) could be framed. However, the final draft of the Constitution eliminated sedition from the list of exceptions to the freedom of speech and expression (Article 19 (2)). This amendment was the result of the initiative taken by K M Munshi who proposed these changes in the debates in the Constitutional Assembly.

The sedition laws were successfully challenged in two high court cases in the 1950s, when the courts held that they violated the right to freedom of speech and expression guaranteed by the Constitution (1). However these judicial developments received a jolt when, stung by two court decisions in 1949 that upheld freedom of speech with regard to opinions from the far left and the far right, Nehru asked his Cabinet to amend Article 19 (1) a. The two cases that prompted Nehru to do this were the Romesh Thapar case, in which the Madras government, after declaring the Communist Party illegal, banned the left-leaning magazine *Crossroads* for being overly critical of the Nehru government. The court held that banning a publication because it would endanger public safety or public order was not supported by the constitutional scheme since the exceptions to 19 (1) a were specific and had to entail a danger to the security of the state. The second case related to an order passed by the chief commissioner, Delhi, asking the RSS mouthpiece *Organiser* to submit all communal matter and material related to Pakistan to scrutiny.

Nehru's government decided to amend the Constitution, inserting the words 'public order' and 'relations with friendly states' into Article 19 (2); and the word 'reasonable' before 'restrictions', as a safeguard against misuse by the government. In the debates around this amendment, Ambedkar supported the move which he saw as a way of tackling social boycott and incitement to offences against vulnerable communities in contexts of extreme inequality. Nehru saw it as a way of dealing with what he called 'irresponsible journalism', and with dangers to the state — widely understood to be linked to the ongoing armed rebellion in Telengana. Of those who disagreed with the move, Anglo-Indian leader Frank Anthony was the most prescient. In the debate on the amendment in Parliament, Anthony warned that state legislatures might use this power to crush political opposition, especially at a local level. This can be seen happening in states across India today.

Despite the First Amendment, in 1958 the Allahabad High Court did follow the previous two cases and held Section 124 A of the IPC to be unconstitutional (2). However, the defining moment came in 1962 when in the landmark Kedar Nath Singh judgment the Supreme Court upheld the constitutionality of Section 124 A, at the same time circumscribing its meaning. In its decision, the Supreme Court distinguished clearly between disloyalty to the government and commenting upon the measures of the government without inciting public disorder by acts of violence. The court upheld the constitutionality of the

sedition law, whilst also curtailing its meaning and limiting its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. The judges observed that if the sedition law were to be given a wider interpretation, it would not survive the test of constitutionality.

While the Supreme Court has limited the scope of the sedition law (at the same time upholding its constitutionality), successive central and state governments in the country continue to file charges of sedition against journalists, media practitioners, human rights activists and anyone who dares express dissent. For many, it is the process of being dragged to court that is the punishment. So even if someone charged with sedition is acquitted along the way, he faces punishment by being put through a torturous legal process. Trial courts have been increasingly guilty of entertaining sedition charges (and sometimes even convicting) at the initial stages. Some of this can be attributed to the local pressures that judges in the trial court face and the larger atmosphere of the so-called 'war against terror'. The problem is aptly described in the Supreme Court's observation in a case concerning a Kashmiri youth acquitted of charges of sedition in 1997 (3):

"Before parting with this judgment, we wish to observe that the manner in which convictions have been recorded for offences under Section 153 A, 124 A and 505 (2), has exhibited a very casual approach of the trial court. Let alone the absence of any evidence which may attract the provisions of the sections, as already observed, even the charges framed against the appellant for these offences did not contain the essential ingredients of the offences under the three sections. The appellant strictly speaking should not have been put to trial for those offences. Mechanical order convicting a citizen for offences of such serious nature like sedition and to promote enmity and hatred, etc, does harm to the cause. It is expected that graver the offence, greater should be the care taken so that the liberty of a citizen is not lightly interfered with."

The repeated use of sedition laws has made these laws one of the biggest threats to the freedom of speech and expression in this country. Along with other colonial laws such as criminal defamation, laws dealing with obscenity, and blasphemy laws, sedition laws undermine the right to dissent and the right to criticise state policy in large parts of the Commonwealth. It is time we followed the lead of modern constitutional democracies such as the United Kingdom, the US, and New Zealand and seriously re-examined the need for these undemocratic laws in the world's largest democracy.

Siddharth Narrain is a legal researcher and lawyer with the Alternative Law Forum, Bangalore. His research interests include media laws and censorship, sexuality and gender rights, and the politics of the Supreme Court. He has previously worked as a journalist with Frontline magazine and The Hindu newspaper in New Delhi

Endnotes

1 Tara Singh Gopi Chand v The State 1951 CriJ 449 and Sabir Raza v The State, Cri App No 1434 of 1955, D/-11-2-1958 (All) cited in Ram Nandan v State, AIR 1959 All 101

2 Ram Nandan v State, AIR 1959 All 101

3 Bilal Ahmed Kaloo v State of Andhra Pradesh, AIR 1997 SC 3483

i Section 153 A as it reads today:

Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc, and doing acts prejudicial to maintenance of harmony

(1) Whoever

(a) By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
(b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2 [or]

(b) 2 [(c) Organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence of knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

Shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc — (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

ii Section 505 (as it stands today) reads

[505 Statements conducing to public mischief

[(1)] Whoever makes, publishes or circulates any statement, rumour or report,

(a) With intent to cause, or which is likely to cause, any officer, soldier, [sailor or airman] in the Army, [Navy or Air Force] [of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) With intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) With intent to incite, or which is likely to incite, any class or community or persons to commit any offence against any other class or community;

Shall be punished with imprisonment which may extend to [three years], or with fine, or with both.

[(2) Statements creating or promoting enmity, hatred or ill-will between classes: — Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc: — Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Exception — It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it [in good faith and] without any such intent as aforesaid.]

Freedom in security

In recent months we have seen a counter-productive debate on freedom vs security, and mounting criticism of ‘draconian’, ‘colonial’ statutes such as the law on sedition, on the grounds that they are susceptible to abuse. But isn’t the problem rooted not in the legislations themselves but in the inability of the state and its agencies to implement the rule of law, and the subordination of legal processes to political expediency?

AJAI SAHNI

WHAT, PRECISELY, is the meaning of ‘freedom’ in India today? The chief minister of her capital city, in the wake of the murder of a woman journalist driving home from work late at night, declares: “Women should not be so adventurous.” Unsurprisingly, given such lofty precedents, after the rape of the nth BPO worker returning home in the night, family members of the perpetrators proclaim that women who work such hours ‘deserve to be raped’. An additional district collector in Maharashtra is brutally murdered in broad daylight while investigating a nationwide petrol theft racket estimated at billions of rupees annually and, months later, the retiring director general of the state police declares that, despite the public outrage and political posturing in this case, the police ‘crackdown’ against the oil mafia is “only for the media”. Increasingly, right-wing formations issue fatwas and moral codes, and back these with intimidation and, at least sometimes, brutal violence, even as governments argue that their ‘sentiments’ must be respected. Khap panchayats and regressive elements in rural society sanction honour killings and issue and execute death sentences, while advocates of panchayati raj blissfully argue that devolution of powers to these antediluvian bodies is the ‘solution’ to all of India’s problems. The Right to Information (RTI) Act has become a death trap for RTI activists, dozens of whom have been killed by a thuggish politician-bureaucrat-business-crime nexus long inured to rapine with impunity. Every high office in the country is suffocating under the leaden pall of a vast corruption, and the astronomical proportions of new scandals beggar the budgets of most states. A hundred and sixty-two members of India’s present Parliament have criminal charges against them, but remain responsible for framing India’s laws and holding government answerable to the Constitution.

But these are not the greatest of our oppressions. For hundreds of millions of citizens, ‘freedom’ means little more than the freedom to starve; to suffer limitless abuse with no hope of justice or redress; to be arbitrarily and pitilessly divested of their meagre means of survival, indeed, often of their lives, by lumbering bureaucracies that know little and understand even less. Behind the banality of statistics — a third of the world’s poor, among the highest rates of infant, child and maternal mortality, rural distress reflected in tens of thousands of farmer suicides, millions expropriated and displaced without relief or recompense — is the reality of a destitute and hopeless

darkness in which much of India still lives.

The sheer and overwhelming structural violence of India’s louché democracy, her loutish state, her licentious, corrupt, inept, infirm and callous administration, have eviscerated her Constitution and her laws. This is the context against which any meaningful discourse on freedom and security must be framed.

Instead, an absurd and counter-productive dyad, freedom vs security, has been constructed out of a polarised debate and partisan adherence to blind legal formalism or a lawless and misdirected ethic of expediency, both of which take away from the substance of enduring justice.

Three cases have been the cause of much consternation in the recent past, and have brought abrupt, though largely incoherent, focus in the public discourse on the law of sedition in particular, and the wider question of the ostensibly conflicting objectives of security and the protection of constitutional freedoms.

The most prominent of these is the conviction of Dr Binayak Sen on charges of sedition by a Chhattisgarh court, while the other two relate to speeches by Kashmiri separatist leader Syed Ali Shah Geelani and ubiquitous loose cannon Arundhati Roy at a seminar in Delhi. While no detailed analysis is possible here, it is useful to highlight some aspects that have an immediate bearing on the present arguments.

A strident and personalised campaign against Sen’s sentencing to imprisonment for life quickly turned into a broader, but essentially sentimental, critique of the law of sedition itself. This, it was argued, was a ‘colonial law’ (how many laws in our statute books aren’t?), and had been used against luminaries such as Mahatma Gandhi and Aurobindo Ghose; such a ‘repressive act’ had no place in India’s luminescent democracy.

Unfortunately, neither the superlative campaign in Sen’s support — including high-profile character endorsements by Nobel laureates and intellectuals highlighting his many virtues — nor the ill-informed diatribes against the law of sedition have any real bearing on the merits of the case. Men of otherwise impeccable virtue have, on occasion,

been found on the wrong side of the law; history is replete with chronicles of 'the evil that good men do'. Crucially, the law of sedition has been repeatedly circumscribed after Independence, and its current avatar has little to do with its colonial antecedents. The settled law of sedition in India now recognises an offence only where a clear intention to incite violence or public disorder is demonstrated beyond doubt.

The scandal of the Binayak Sen judgment, I have noted elsewhere, is that the evidence against him is appallingly weak. Even on the most cursory examination, no self-respecting investigator would have taken this case to court; worse, no court could rationally have delivered a conviction on the utterly contrived, tenuous and, in several instances, manifestly falsified evidence. It is clear that purely extraneous factors engineered Sen's ordeal.

This takes us to the next stream of the critique of the law of sedition, and associated arguments against a wide range of purportedly 'draconian' laws (against terrorism and organised crime; enabling the armed forces to operate in 'disturbed' areas, etc), that these are uniquely or exceptionally susceptible to abuse and should, consequently, be struck down.

This, again, is nonsense. A law is particularly susceptible to abuse only to the extent that it suffers from the vice of 'overbreadth' — where offences are not defined with sufficient precision and are, consequently, open to wide discretion in interpretation. This, as already noted, is not the case with the current jurisprudence on sedition, and, on detailed analysis, would rarely be found to be the case with any specific clause of most of the laws sweepingly condemned as 'draconian'.

Individual instances of abuse of legal process do not amount to any coherent critique of particular statutes. India's jails contain a significant proportion of people — ordinarily the poor and hence poorly defended — wrongly convicted of every major crime, including murder, rape, dowry killings, crimes against women, and so on. This can hardly be an argument for the removal of these offences from the criminal statutes.

The abuse of laws — including sedition — is rooted squarely in the absence of capacities and competence in the police and investigative agencies, the laxity and susceptibility of courts, and the inhuman protraction of the judicial process. Indeed, if justice delayed is justice denied, then the judicial system in India today is a system not for the delivery, but for the sustained denial of justice. This has created a context in which investigators take cases to court, not because they have credible evidence and an acceptable probability of conviction, but simply to hold or to harass those who are thought to be dangerous or, in some cases, merely inconvenient. What we have installed is a system of 'punishment by trial', where the judicial process itself becomes the torment to which

guilty and innocent are subjected alike.

Such mischief could theoretically be ended by an efficient justice system that investigates cases with integrity and efficiency, and decides these without delay; and by a vigorous application of the laws against perjury and malicious prosecution. This, however, cannot happen where you have less than 133 policemen and roughly one judge per 100,000 people; a system, moreover, that is exceptionally hidebound and permeated with political prejudice, incompetence and, far too often, outright corruption.

Sedition is the link that brings us to our next 'offenders', Roy and Geelani, whose speeches on October 21, 2010, in Delhi, provoked much political bluster, and an eventual court directive to reluctant authorities to register cases of sedition.

Roy is the easier to deal with. In her narrative, there is much that is profoundly, sometimes spectacularly, irritating, but little that is punishably criminal. Her prognostications find little resonance in Kashmir's street, and any offence she gives relates essentially to the sheer ignorance of her critique, her hyperbolic falsehoods, and her relentless perversion, even invention, of 'facts' — thus, "68,000 Kashmiri Muslims have been murdered by the Indian state". It is useful to recall that, some years ago, Roy had accused Indian state agencies of 'Complicity, Collusion, Involvement' in the terrorist attack on India's Parliament in December 2001, and had woven a long and fanciful narrative on the theme. Roy is easily dismissed as a narcissistic attention-seeker, with little interest in serious investigation or activism in good faith, and, unless peddling fiction as political commentary is declared a punishable offence, will continue to enjoy the fullest protection of her freedom of speech.

Geelani is another matter altogether. His direct incitement of seditious violence — certainly in his published 'calendars' through the stone-pelting campaign of 2010 — is widely documented, even as are his complex linkages with terrorists. What he said in New Delhi was mild compared to his many inflammatory speeches in Kashmir. He has a multiplicity of cases against him relating to terrorist finance, hawala transactions and his intimate connection with various Pakistan-backed terrorist groups. Unfortunately, not one of these cases has been carried to a logical judicial culmination, though the earliest date back nearly two decades, and prosecutions in each of these are stalled or started purely on transient political considerations. Indeed, at the height of the controversy over his Delhi speech, Geelani contemptuously declared: "I have 90 FIRs registered against me already, this will be (the) 91st."

This, then, is the heart of the problem: the lack of capacity and will to implement the rule of law, and the subordination of legal processes to political expediency. Indeed, if the true measure of democracy is the degree to which the rule of law prevails, without the taint of exceptionalism, India performs abysmally.

It is now abundantly clear that every extremist organisation sets up a number of legal fronts to exploit the interstices of the law in order “to attain access to their opponents’ strongholds and destroy democracy from within”. The *Maoist Political and Organisational Review* explicitly emphasises the need to create “cover organisations... those which are formed on a broad basis by ourselves; and... those organisations led by other forces which we utilise by working from within without getting exposed”. These organisations focus on various ‘burning issues’. Crucially, however, “any joint activity or tactical alliances which do not serve the cause of the peoples’ war will be a futile exercise”. It is evident, consequently, that extremist, terrorist and insurgent groups systematically use fronts and overground networks of sympathisers, as well as some ‘useful idiots’, to further their radical ends, and that legal restraints are necessary to rein in elements who cross clearly defined lines.

The Supreme Court’s decision in *Arup Bhuyan vs State of Assam*, delivered on February 3, 2011, is thus crucial. Recognising that “our fundamental rights are similar to the Bill of Rights in the US Constitution”, the court relied on US judgments dating back to the 1960s (including the landmark *Clarence Brandenburg vs State of Ohio*, 1969), to conclude that, “mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence”.

The Supreme Court, here, ignores dramatic developments in organisation, technology, capabilities, strategy and tactics of armed anti-state groups in the intervening decades, as well as significant changes in US jurisprudence, specifically the US Supreme Court judgment in *Holder vs Humanitarian Law Project*, delivered on June 21, 2010, which recognised that the support of a range of “presumably non-violent and peaceful” organisations to designated terrorist groups, “frees up other resources within the (terrorist) organisation that may be put to violent ends. It also importantly helps lend legitimacy to... terrorist groups — legitimacy that makes it easier for those groups to persist, to recruit members, and to raise funds — all of which facilitate more terrorist attacks”. The US Supreme Court thus concluded, “that a criminal prohibition on advocacy performed in coordination with, or at the direction of, a foreign terrorist organisation is not unconstitutional”.

Across Europe, there are a number of laws that now criminalise the glorification of terrorism and patterns of hate speech. In Spain, the “glorification or justification, through any form of public information or communication” of terrorist acts “or of persons having participated in their perpetration, or the commission of acts tending to discredit, demean or humiliate the victims of terrorist offences or their families” is punishable. Laws in France and the UK prohibit the provocation, advocacy and glorification of terrorism.

It is not, of course, the case that we must immediately imitate these trends. But their rationale must be examined and be explicitly accepted or rejected. Indian jurisprudence remains stagnant and isolated from the dynamic and evolving realities of the ground, as well as from India’s deepening institutional infirmities. Human rights activism has been even more dogmatic, partisan and utopian, and rigidly critical of the state without appreciation of the imperatives of security, administration or the available configuration of resources and demography. Rights jurisprudence has remained mired in a formalism that has lost touch with the original objectives of human rights protection, in a belief, as K P S Gill expresses it, “that, as long as the tedious rites and rituals of the judicial yagna are fulfilled, all the interests of justice are served — no matter how many people are slaughtered in the streets”.

The substance of liberty, or of its absence, goes well beyond the statute and its arcane interpretations. Inured to democratic freedoms, we have pushed the limits of the law into the realms of lawlessness, transforming the protection of rights into a weapon in the hands of the powerful, the unscrupulous, the criminalised and the violent, even as we routinely accept the denial of the most rudimentary rights to vast populations. The institutional apparatus for the protection of our freedoms remains tied, blindly, desperately, to hollow forms and processes.

The established narrative in India has attributed the denial of freedom to an excess, and consequent abuse, of power vested in state institutions, and has thus sought to progressively constrain and emasculate these. A counter-narrative demands greater and greater impunity for state agencies to counter rising security threats. Both positions are a complete misreading of reality and the imperatives of constitutional governance. The cumulative brutalisation of the Indian state is a consequence, not of any excess of power, but of a progressive erosion of capacities and capabilities. It is not power but infirmity that brutalises the state and its agencies. Endemic deficits of capacity in every institution have made it impossible to secure the necessary and legitimate ends of governance through due process, and the result is a progressive resort to shortcuts. As the state weakens, power becomes progressively randomised, uncertain, malignant.

Both security and freedom, in any real sense — and the two are inseparable — can arise only out of the rule of law, a set of settled, clearly defined regulations, inexorably implemented, without the constant dilution of exceptions. Very few, in India, seem to want this; and the state no longer has the capacity to achieve it.

Dr Ajai Sahni is Executive Director of the Institute for Conflict Management and South Asia Terrorism Portal <http://www.satp.org>; Editor, South Asia Intelligence Review; Executive Editor, Faultlines: Writings on Conflict & Resolution. He has researched and written extensively on issues relating to conflict, politics and development in South Asia, and has participated in advisory projects undertaken for various national and state governments

Reasonable restrictions and unreasonable speech

Two cases — one related to the left-leaning journal *Crossroads* and the other related to the RSS mouthpiece *Organizer* — led to the first amendment of the Indian Constitution which, unlike the first amendment in the USA, did not promote freedom of expression but curtailed it, prioritising the promotion of national security and sovereignty over the promotion of democratic institutions

LAWRENCE
LIANG

IT IS ALWAYS THROUGH THE CURIOUS histories of irony that larger stories reveal themselves. The irony that concerns us is that of an apparently innocuous phrase — “the first amendment”. The first amendment in the context of the US Constitution refers to the right of freedom of speech and expression, a right which has been held to be almost absolute in the US. The first amendment in India refers to the first amendment to the Constitution in 1951 which attempted to strengthen state regulation over the freedom of speech and expression by expanding the scope of Article 19 (2). This article narrates the history of the first amendment to the Constitution of India as the history of the first media crisis in post-colonial India, and the response of the state to the crisis.

This crisis of media in the early life of the ‘new’ nation was — not surprisingly — seen to be a crisis of the nation, and this configuration of the ‘national crisis’ has remained the spectral fear that permeates much of media history in post-colonial India. It also provides for us the first instance of what Upendra Baxi terms as “constitutionalism as a site of state formative practices” (1). Article 19 (1) (a) in its original form read as follows: “All citizens shall have the right to freedom of speech and expression.” This fundamental right was, however, limited by Article 19 (2) which said: “Nothing in sub-clause (a) of clause 1 shall affect the operation of any existing law insofar as it relates to or prevents the state from making any law relating to libel, slander, defamation, contempt of court or any matter which offend against decency or morality or which undermines the security of the state or tends to overthrow the state.”

The first amendment to the Constitution was to the proviso to Article 19 (1) (a), namely Article 19 (2), and after the amendment the provision read as follows: Article 19 (2) “Nothing in sub-clause (a) of clause 1 shall affect the operation of any existing law insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the sub-clause in the interests of 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)

The three significant additions brought about by the amendment were: a) addition of the word ‘reasonable’

before restrictions b) addition of ‘friendly relations with foreign states’ as one of the grounds for restricting freedom of speech and expression, and finally c) the addition of ‘public order’.

Before we begin to understand why this amendment was made, it is important to provide a background to the emergence of the Constitution, and the philosophy that it sought to articulate, and the structural logic it adopted to realise its goals. While India gained independence on August 15, 1947, it was not until two-and-a-half years later — on January 26, 1950 — that India adopted a formal Constitution. The headline of the *Hindustan Times* on January 26, 1950, triumphantly announced: “Hail our sovereign republic... a day of fulfilment... good wishes from near and far... Rejoicings all over.” The day marked the end of three years of debate and drafting, and the paper’s editorial went on to say: “Today India recovers her soul after centuries of serfdom and resumes her ancient name.”(3) The Constitution was therefore seen to be both a document that articulated the hopes and aspirations of the new nation, as well as one which was structurally designed to actualise these aspirations.

The greatest challenges for the framers of the Constitution included: “How could authority be centralised enough to enhance national unity and to promote economic development without alienating subordinate levels of government and stultifying local initiative? How, while applying the rule of law, would social economic reform be fostered and democratic institutions strengthened in a huge society in which religion and tradition sanctioned inequality and exploitation? How would government achieve these and other national goals — indeed, how would it govern when the law, the courts and the administration failed to reach so many citizens effectively?” (4)

According to Austin, the Indian Constitution sought to ensure a structure which would tie in all these concerns in a non-contradictory manner. The core vision of the Constitution “may be summarised as having three strands: protecting and enhancing national unity and integrity; establishing the institutions and spirit of democracy; and fostering a social revolution to better the lot of the mass

of Indians. The framers believed, and Indians believe today, that the three strands are mutually interdependent and inextricably intertwined. Social revolution could not be sought or gained at the expense of democracy. Nor could India be truly democratic unless the social revolution had established a just society. Without national unity, democracy would be endangered and there could be little progress towards social and economic reform. And without democracy and reform the nation would not hold together. With these three strands, the framers had spun a seamless web”(5).

However, the early history of the Constitution of India is precisely about the strains that begin to emerge in this imagination of the seamless web, as the three strands start to contradict each other and work against each other. On the one hand, the project of nation-building in terms of national sovereignty and security begins to conflict with the exercise of democratic rights, especially freedom of speech and expression. On the other, the promotion of social justice by way of land reforms conflicts with the right to property and equality under the Constitution. Was this seamless web then an impossible project right from the beginning? If the seamless web were to be resolved, then could it be done in a harmonious manner, or would it require the prioritisation of one strand over the other? How could you resolve the differing interpretations of different organs of the state, from the legislature to the judiciary, over the interpretation of the Constitution in the case of a conflict between one of the strands?

Between the left and right of free speech

The first real strain on the seamless fabric of the Constitution emerged in the context of three decisions, one by the Patna High Court (6) and two by the Supreme Court over the interpretation of what constituted freedom of speech and expression in a democracy and what were the powers of the state to impose restrictions on the exercise of these rights. In the *Romesh Thapar v State of Madras* (7) case the petitioner was the printer, publisher and editor of an English journal called *Crossroads*. *Crossroads* was printed and published in Bombay and was considered a left-leaning journal, very critical of a number of the policies of the Nehruvian government. The Madras government had declared the communist parties illegal. The Government of Madras, in exercise of their powers under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949 purported to issue an order No MS 1333 dated March 1, 1950, whereby they imposed a ban on the entry and circulation of the journal in that state. Romesh Thapar approached the Supreme Court of India and alleged that this ban was a violation of his freedom of speech and expression as guaranteed under Article 19 (1) (a). The court stated that the ban would prima facie constitute a clear violation of the fundamental right of freedom of speech and expression unless it could be shown that the restriction was saved by the exceptions provided by Article 19 (2) of the Constitution. The question that therefore arose was whether

Section 9 (1-A) of the Madras Maintenance of Public Order Act was saved by Article 19 (2). Section 9 (1-A) authorised the Provincial Government “for the purpose of securing the public safety or the maintenance of public order, to prohibit or regulate the entry into or the circulation, sale or distribution in the Province of Madras or any part thereof of any document or class of documents”. Given the fact that Article 19 (2) did not contain the phrase ‘public safety’ or ‘public order’, the question was whether it could fall under the language of Article 19 (2) and be considered a “law relating to any matter which undermines the security of or tends to overthrow the state”. The government argued that the expression “public safety” in the Act, which is a statute relating to law and order, means the security of the Province, and, therefore, “the security of the state” within the meaning of Article 19 (2) as “the state” has been defined in Article 12 as including, among other things, the government and the legislature of each of the erstwhile Provinces. The court however stated that the phrase ‘public safety’ had a much wider connotation than ‘security of the state’, as the former included a number of trivial matters not necessarily as serious as the issue of the security of the state. It concluded that “unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9 (1-A) which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under clause (2), and is therefore void and unconstitutional”.

In the second case, *Brij Bhushan v State of Bihar* (8), the chief commissioner of Delhi passed an order under Section 7 (1) (c) of the East Punjab Public Safety Act, 1949 against an English weekly from Delhi called the *Organizer*. If in the *Romesh Thapar* case the order was against the far left, in this case the order was against the far right, as the *Organizer* was the mouthpiece of the RSS. The commissioner had issued the order against the *Organizer* for printing inflammatory materials with respect to the Partition. As per the order, the editor of the *Organizer* had to submit for scrutiny, before publication, all communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources or supplied by the news agencies, viz, Press Trust of India, United Press of India and United Press of America. The question arose as to whether this order of pre-censorship could be held to be constitutionally valid. This decision was delivered on the same day as the *Romesh Thapar* case, and the majority in this case referred to their decision in *Thapar’s* case and concurred with the findings in the *Thapar* case. The key factor in both the decisions was the fact that the phrase ‘public order’ was not included in Article 19 (2) and that the courts interpreted restrictions on freedom

Two decisions of the Supreme Court precipitated in the minds of the government the first major crisis of the nation state. It exposed the inherent tensions between balancing freedom of speech and expression and the promotion of national security and sovereignty. It also posed the question as to who the guardians of the Constitution were. And finally it set in motion a debate which would haunt Indian democracy — viz the exercise of a democratic right as a threat to the larger abstract ideal of a democratic state

of speech and expression as being legitimate only if they pertained to “undermining the security of the state or overthrowing the state”. Mere criticism of the government could not be considered as speech which could be restricted for the purposes of Article 19 (2). It is interesting to note that Justice Fazl Ali delivered a dissenting decision in both the cases, and his argument was that a literal construction of the phrase ‘public order’ would justify restrictions even in the case of trivial offences. However, in the context of the two legislations, it could only relate to serious offences affecting public order.

These two decisions of the Supreme Court precipitated in the minds of the government the first major crisis of the nation state. The crisis can be read at various levels; it exposed the inherent tensions between balancing freedom

of speech and expression and the promotion of national security and sovereignty. It also posed the question as to who the guardians of the Constitution were. And finally it set in motion a debate which would haunt Indian democracy — viz the exercise of a democratic right as a threat to the larger abstract ideal of a democratic state.

The first amendment: Bringing order to speech

Sardar Patel, the home minister, thought that the *Crossroads* decision “knocked the bottom (out) of most of our penal laws for the control and regulation of the press” (9), while Nehru was livid with the interpretation of the court. He immediately wrote to Ambedkar “expressing the view that the Constitution’s provisions pertaining to law and order and subversive activities needed to be amended. Reflecting the difficulties the government was having with the courts over the fundamental rights, Nehru added that the provision affecting zamindari abolition and nationalisation of road transport also needed to be amended”(10). In February 1951, Nehru formed a cabinet committee to examine the proposed amendment. The home ministry recommended to the cabinet committee that ‘public order’ and ‘incitement to a crime’ should be included among the exceptions to the right of freedom of speech. It preferred dropping ‘to overthrow the state’ in favour of a wider formulation, ‘in the interests of the security of the state’. It is to be noted that the original Article 19 (2) did not have the word ‘reasonable’ before the word ‘restrictions’, and the law ministry was of the opinion that the word ‘reasonable’ as used in Article 19 should be retained and even added to Article 19 (2). The cabinet committee, however, strongly disagreed with Ambedkar and felt that while it was reasonable to retain the word ‘reasonable’ in the other provisions in Article 19, restrictions on freedom of speech and expression should not be qualified in any manner. This slightly contradictory logic was justified on the ground that they feared the political repercussions of taking away the protection that ‘reasonable’ accorded to the other freedoms in the article. But they were so alarmed by the dangers to national security, friendly relations with foreign states, public order, etc, that they felt that possible curbs on free speech did not have to be ‘reasonable’. President Rajendra Prasad, on a reading of the Supreme Court decision, did not think that it was necessary to amend the Constitution and he was of the view that “amendments should only come if it was found impossible to bring the impugned provisions of law ‘in conformity with the Constitution’”.

The draft amendment without the word ‘reasonable’ and with the addition of ‘public order’ was introduced on May 12, 1951. Nehru defended the amendment stating that it fulfilled the need of the hour. Referring to the statement by the judge in the Patna High Court, he stated: “It was an extraordinary state of affairs that a high court had held that even murder or like offences can be preached.” Critics of the bill included H N Kunzru who argued that

this was not an amendment but a repeal of Article 19 (1) (a). Shayama Prasad Mookerjee of the Hindu Mahasabha delivered a scathing critique of the proposed amendment. In response to the various apprehensions articulated, and as a compromise gesture, Nehru suggested adding the word ‘reasonable’ to qualify the restrictions on freedom of speech and expression.

The addition of the word ‘reasonable’ was a partial defeat for Nehru, as it was clear that given a choice he would have preferred not having any qualifications to the restrictions. In a subsequent letter to T T Krishnamachari, Nehru stated that the reason why he did not like the word ‘reasonable’ was because the word was an ambiguous one and it would open up the possibility of the court being called to interpret whether a particular act was reasonable or not.

The Cabinet accepted the recommendation in order to avoid a split in the Cabinet and ensure a two-thirds majority. On the first of June 1951, Parliament passed the bill by a vote of 228 to 20.

Conclusion

Over the decades there have been many more amendments to the Constitution, not all of which have great historical significance. However, one thing is certain — every period of conflict in the history of India can almost be mapped alongside a history of moves to amend the Constitution, the constitutional history during the Emergency being a classic case. The first amendment, however, retains a significant space in this history, not merely because it was the first amendment but because in many ways it also signalled the kinds of battles that would take place between the project of nation-building and the sphere of the media. It marked the rather premature end of the vision of a ‘seamless web’, with the promotion of national security and sovereignty being prioritised over the promotion of democratic institutions.

As with any project of state imagination, the impact of the first amendment is also fraught with contradictions and internal conflicts. While introducing the discourse of public order into constitutional restrictions on freedom of speech and expression, it also introduced the idea of ‘reasonable restriction’, and, as Nehru rightly predicted, it proved to be the basis for future conflicts over the media, the Constitution and state formative practices. The contradictions that arose between the three strands of the seamless web of the Constitution were seen as the disintegration of the whole, rather than as the inevitable process through which fragments work their way into monumentalist imaginations. It is also perhaps well worth looking at the crisis that precipitated the first amendment to understand our contemporary situation. In 1950, you had a situation where Nehru had to contend with speech and expression that were ideologically opposed to his liberal values, from that of the far left to that of the far

right. Nehru’s response was a classical case of deferring of an exercise of a democratic right, or democratic practice in favour of the larger interest or abstract norm of a democratic state. Having assumed the greater common good, he could then determine what was desirable and undesirable speech, and proceed to act with a democratic conscience. Rather than understanding the media as a perpetual site of politics and contestation over the form of the nation over what constitutes the public sphere, the media was seen to be an instrument/medium for the promotion of an assumed public interest. This perhaps also speaks to some contemporary debates where progressive intellectuals, media practitioners, etc, demand greater regulation against the ‘hate speech’ of the right. We need to be a little cautious in our responses to forms of speech that offend our liberal sentiments. Very often the assumption of desirable forms of speech presumes a pre-tailored relationship between media and the properly constituted public sphere (much like the imagination of the seamless web), and a plea to the state to rule out undesirable forms of speech abandons the site of politics and converts it into a site of regulation that will merely heighten the crisis rather than resolve it.

Note: This essay by Lawrence Liang was published in *Sarai Reader 04* (2004)

Lawrence Liang is a researcher at the Alternative Law Forum

Endnotes

1 See Upendra Baxi, *Constitutionalism As a Site of State Formative Practices*, 21 *Cardozo L Rev* 1183

2 Article 19 (2) was subsequently amended again in 1963 by the 16th Amendment Act following the Indo-China war

3 Glanville Austin, *Working a Democratic Constitution: The Indian Experience* (New Delhi: OUP, 1999) p 13

4 *Ibid* at p 14

5 *Ibid* at p 6

6 We will not be referring to the Patna High Court decision. But an important point to note is that Justice Sarjoo Prasad’s statement would later be used by Nehru while defending the first amendment. Justice Sarjoo Prasad had stated that ‘if a person were to go on inciting murder or other cognisable offences either through the press or by word of mouth, he would be free to do so with impunity, because he could claim freedom of speech and expression’

7 AIR 1950 SC 124

8 AIR 1950 SC 129

9 Glanville Austin at p 42

10 *Ibid*

The secret life of film censorship

The processes and practices of censorship are really a series of transactions by which the boundaries of 'prohibition' and 'acceptability' are constantly negotiated. Conventional studies of censorship invariably emphasise its institutional and prohibitive aspects. But it can also be 'productive', suggesting not just what we may not see but also the proper way of seeing, and building a theory of cinema, of spectatorship and the idea of the public

SHOHINI GHOSH

IF FILM AND CULTURAL STUDIES argue that cinematic texts are open to a number of readings, then censorship believes in just the reverse. Censorship is always carried out on the basis of a singular interpretation of a text with the belief that, if allowed to pass, the images could have a 'harmful impact' on the viewer. What kind of harm can images do? The most commonly held belief is that images can cause harm by instigating imitative action. In other words, it can lead people (or at least some people) to violence, sexual assault or other harmful activities. The second notion of 'harm' around which censorship is invoked concerns images that offend, degrade or belittle groups or individuals. Those who hold this view believe that one may rightfully ask for the elimination of an image, speech or representation if it 'offends' groups or communities. Those who disagree with this view argue that there is no speech that does not offend someone.

Most of the anxieties around the 'image-causes-harm' theory revolve around screen violence and sexually explicit imagery. Janet Staiger aptly sums up the academic position when she writes: "The proposition that violent movies produce imitative behaviour has had great media attention and equal critical scholarly rejection." (1) Over the years, there has been no evidence to show that images have a direct impact on behaviour. Film texts, regardless of authorial intention, are open to many different readings as viewers construct meaning according to their predisposition, generic expectations and what scholar Annette Hill has described as their "portfolios of interpretations".

Insofar as the notion of 'image is the harm' is concerned, it has been pointed out that since images are hugely interpretable, there can be no consensus about its 'meaning'. Radical feminists in the USA invoked both notions of 'harm' to demand the banning of pornography. Using slogans like "pornography is the theory, rape is the practice", they drew a straight line between pornography and male sexual violence. Pornography, they said, causes harm and is itself harm in that it "degrades" women. The anti-censorship feminists, on the other hand, initiated debates that profoundly shaped the contemporary understanding of consent, women's sexual pleasure, and the wisdom of using censorship as a strategy for social change.

They drew attention to the difference between sexist speech and sexually explicit speech and argued that by conflating sexual explicitness with sexism/misogyny, anti-porn feminists had failed to interrogate gender-based discrimination in 'respectable institutions' like religion, the family, and the judiciary. They argue that terms like 'obscenity', 'degradation', 'objectification' and 'commodification' are highly subjective terms that were bound to be interpreted differently by different people. The best way to counter discriminatory speech, they advocated, was not censorship but counter-speech.

But does this mean that media has no 'impact' at all? If words and images left no impact, why would we make films, write articles or even present papers at conferences? Studies in spectatorship tell us that the relationship between the image and the viewer is complex and is contoured by a variety of social and personal factors. Meaning is not produced exclusively by either the text or the viewer, but emerges at the intersection of both. As Linda Williams writes, any study or theory of spectatorship must be "historically specific, grounded in specific spectatorial practices, the specific narratives and the specific attractions of the mobilised and embodied gaze of the viewers" (2). There is no doubt that media has consequences and does influence, inflect and mediate but in ways that are contingent, non-determinate and certainly not predictable. Therefore, to state that the media does not have predictable impact is not the same as saying it has no impact at all. Ironically, all acts of censorship work through the logic of a singular meaning and a predictable impact. For this reason, film scholar Annette Kuhn writes that attempts at censoring are bound to fail because the censors "construct" film texts as "carriers of fixed meanings, when meaning is not actually inherent in film texts but produced in the process of their consumption" (3).

While film censorship's avowed aim is to protect people from harmful effects, it is always executed by a select few who watch and interpret the film on behalf of everybody else. Since no group can ever represent the diversity and heterogeneity of real audience members, this process remains arbitrary, even idiosyncratic. Sometimes the inability of the censors to 'decipher' meaning has also been the basis of censorship. The British Board of Film Censor's verdict

on Germaine Dulac’s 1927 European avant-garde classic *Seashell and the Clergyman* read: “The film is so cryptic as to be meaningless. And if it has any meaning, it is doubtless objectionable.”

Annette Kuhn’s influential work on censorship points out that conventional studies on censorship have invariably emphasised its institutional and prohibitive aspects, constructing it as an activity on the part of the specific organisations whose avowed objective it is to impose control on films usually by excluding from them themes, topics and images deemed for one reason or another, unacceptable. Inspired by the writings of French philosopher Michel Foucault, she argues that the processes, practices and consequences of censorship are not only prohibitive, but also ‘productive’. Queer theorist Judith Butler extends the same argument by pointing out that the term ‘productive’ should not be understood to mean “positive or beneficial” but as proposing “a view of power as formative and constitutive” and not “conceived exclusively as an external exertion of control or the deprivation of liberties” (4). Since film censorship involves a set of interrelated institutions, practices and discourses, its power cannot be conceptualised as monolithic, deterministic or wholly repressive. As legal scholar Lawrence Liang explains, the prohibitive approach prevents us from seeing “a wide range of ways in which the law is building a theory of cinema, of spectatorship and the idea of the public”. He says that the law “is not merely interested in prohibiting a particular kind of ‘seeing’, but also equally interested in suggesting the proper way of seeing”.

Annette Kuhn invites us to understand the process of film censorship as a “play of production and prohibition”. Resistance she says is ‘produced’ by strategies of regulation. If censorship produces resistance, it generates, in turn, further acts of censorship in order to maintain the boundaries of what is “acceptably representable”. This makes censorship an “ongoing process of definition and boundary-maintenance produced and re-produced in challenges to, and transgressions of, the very limits it seeks to fix”.

Take for instance the films that were produced under the Hollywood Motion Picture Production Code that governed Hollywood film production from 1930 to 1968. The code stated that “sex perversion or any inference to it is forbidden” which essentially implied that no reference to homosexuality could be made. Yet a number of films found inventive ways of ‘showing’ homosexuality through allusion, allegories and oblique suggestions. Based on Vitto Russo’s famous book, *The Celluloid Closet* (1996, Rob Epstein and Jeffrey Freidman) is a documentary about the different ways in which homosexuality found expression in Hollywood cinema. With extensive film clips from over 100 films and interviews with filmmakers, scholars and actors like Tony Curtis, Susan Sarandon, Richard Dyer, Gore Vidal and Shirley McClaine, the film shows how homosexuality was both silenced and articulated in Hollywood films of the period.

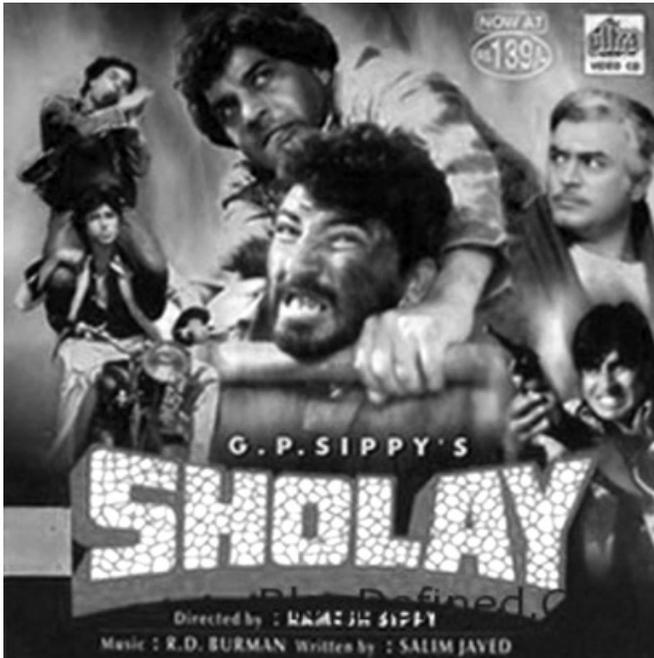
The Production Code’s primary attempt was to avoid bans

and boycotts that would affect the commercial prospects of films. As newer more radical viewers emerged, the Production Code began to creak under pressure. In 1956, the code was revised wherein ‘responsible’ treatments of drug addiction, prostitution and inter-racial sexual relations were permitted. Other barriers fell in the 1950s and 1960s including representations of “illicit sex”. It was further shortened in 1966 and altogether scrapped in 1968 in favour of a ratings system whereby a formal system of classification was evolved to determine the suitability of films for different age-groups.

In India, the authority of the CBFC (Central Board of Film Certification) is subverted in a number of ways even as filmmakers are aware that it provides them cover from facing any direct attack or litigation. Apart from persuasion and reasoning, filmmakers and producers are known to offer bribes, gifts and favours to officials. Films that are released in suburban or smaller towns are often known to use fake censor certificates or add ‘prohibited’ sequences after the film has been censored. One of the most popular (and effective) strategies of negotiation involves shooting and editing of extra footage (of mostly sex or violence) so that even after extensive cuts are made what is allowed to remain is sufficient for the purposes of the film. On occasion, there are the ‘benefits’ that accrue from a ‘censorship controversy’. One film producer at a recent meeting with CBFC officials regretted that his new release did not cause a ‘censorship controversy’ thereby boosting the publicity of the film.

Some filmmakers have confronted the authority of the CBFC more directly. Independent filmmaker Anand Patwardhan whose political documentaries were inevitably subjected to major cuts fought protracted legal battles to have his films telecast on national television and released in theatres. On the other hand, a large number of documentary filmmakers refuse to submit their films to the CBFC and disseminate their work through non-formal and non-theatrical networks. I never sent my own documentary, *Tales of the Night Fairies* (2002), on the sex workers’ rights movement in Kolkata to the CBFC. The film contains sexually explicit language, discusses sex outside marriage, challenges heteronormativity and strongly favours the decriminalisation of sex work. I had no doubts that the CBFC would consider it “against public morality and decency” and I was not wrong. That same year, *In the Flesh*, Bishakha Datta’s 53-minute documentary on sex workers, was submitted for certification. The CBFC refused to certify it for public viewing by stating that: “The film promotes sex, prostitution, drinking and smoking, free use of these even with women, use of vulgar language and promoting extra-marital relations.” (5)

Censorship can severely damage the public circulation and commercial prospects of a film, but in the age of piracy, Internet downloads and new technologies of access and circulation, it cannot extinguish the work. The CBFC in India cannot be oblivious to the fact that ‘uncensored’ Hollywood



films are available to audiences through on-line and off-line pirate networks much before the censored versions are allowed to hit the theatres. Why then does the CBFC persist with its mission? We may gain an insight if we begin to understand that censorship has less to do with cinema and more to do with regulation of the public sphere. A member of the CBFC once told me: “We do not care if people are watching uncensored films privately, but we cannot have them watch objectionable sequences publicly.”

The processes and practices of censorship are really a series of transactions by which the boundaries of ‘prohibition’ and ‘acceptability’ are constantly negotiated. The censorship controversy around the climax of *Sholay* (Ramesh Sippy, 1975), Bombay cinema’s biggest blockbuster, provides an excellent illustration. The director’s cut presented to the censor board showed the ruthless dacoit Gabbar Singh (Amjad Khan) being killed by former police officer Thakur (Sanjeev Kumar) at the end of the film. In the story, Gabbar Singh is responsible for killing almost all members of Thakur’s family as vendetta because the latter had captured and put him in jail. To add insult to injury, Gabbar brutally severs Thakur’s arms from his body. In her book on the making of the film, Anupama Chopra describes the original climax as follows:

The Thakur kills Gabbar with his feet wearing shoes that the servant Ramlal has fashioned with nails fitted in the soles. The armless Thakur first crushes Gabbar’s arms. Then they stand face-to-face, two armless warriors, two equals. And the Thakur pounds Gabbar to death as if he were a venomous snake; he does not stop till the dacoit is a bloody mess under his shoes. Then he breaks down and cries. He weeps long and hard: his life’s mission is complete, but all he feels is a vast emptiness. It is a pyrrhic victory. Revenge begets only loss. (6)

The censor board took serious objection to the sequence especially as the film was being examined during the Emergency when censorship was at its worst. The CBFC objected to the suggestion that a police officer — even though he was no longer in service — should take the law into his own hands and punish the culprit with death. They demanded that the climax be re-shot so that the police could arrive and prevent Thakur from killing Gabbar Singh. Ramesh Sippy was furious as these suggestions were totally contrary to his authorial vision. The end being suggested by the CBFC was not only hackneyed but (as Sippy tried to argue) also showed the police in a poor light. After all, where was the police when dacoits were looting and plundering the village? All negotiations failed as the CBFC refused to budge. Finally, Ramesh Sippy had to shoot a new conclusion which is now the film’s official climax. In asserting the rule of law both within and outside the film, the CBFC acted as guardian gatekeepers whose job it was to protect the people from ‘messages’ deemed injurious to public health.

In *Excitable Speech*, Judith Butler proposes that censorship seeks to produce subjects according to explicit and implicit norms, and that the production of the subject has everything to do with the regulation of speech. The production of the subject happens not just through the regulation of speech but through the “regulation of the social domain of speakable discourse”. She writes: “To move outside the domain of speakability is to risk one’s status as a subject. To embody the norms that govern one’s speech is to consummate one’s status as the subject of speech.” Therefore, “impossible speech” as in the “ramblings of the asocial” and “the rantings of the psychotic” are ‘produced’ by the domain of speakability, and also haunted by it. Cinema frequently occupies the space of the unruly subject who needs to be disciplined, controlled and punished if necessary. But like all unruly subjects, it resists. In the process, cinema and cinephilia repeatedly muddle and re-constitute the borders of the prohibited and the acceptable, the speakable and the non-speakable. If censorship attempts to silence speech, cinema has the ability to make speech out of silence.

(This is an abridged version of an essay written for Count Me In!, a conference organised by CREA, Kathmandu, April 16-18, 2011)

Shohini Ghosh is Sajjad Zaheer Professor at the AJK Mass Communication Research Centre, Jamia Millia Islamia

Endnotes

- 1 Staiger, Janet. *Media Reception Studies*, New York University Press (New York-London), 2005
- 2 Williams, Linda (ed). *Viewing Positions: Ways of Seeing Film*, Rutgers University Press (New Brunswick-New Jersey), 1995
- 3 Annette Kuhn, *Cinema, Censorship and Society (1909-1925)*, Routledge (London-New York), 1988
- 4 Butler, Judith. *Excitable Speech: A Politics of the Performative*, Routledge (New York-London), 1997
- 5 Examining Committee, Central Board of Film Certification, August 27, 2002
- 6 See *Sholay: The Making of a Classic* by Anupama Chopra, Penguin, 2000

When is ‘news’ better off not reported?

Did it make sense for the Gujarat government to ban use of the image of the burning Sabarmati Express in the media before the Godhra judgment, nine years after the event? Is some limit on press freedom necessary in order to keep the peace at all costs? This article explores this and other dilemmas of mediapersons

JYOTI PUNWANI

SOME IMAGES remain in the memory. One such image is the burning Sabarmati Express outside Godhra station. It dominated our TV screens for days and became identified with the Godhra incident of 2002. The Vishwa Hindu Parishad made a poster of it and distributed it to its supporters during the massacre of Muslims all over Gujarat, following the train burning.

Nine years later, the chief minister who presided over that massacre ordered that this image, which had reaped such rich dividends then, should not be used by the media. Ironically, the order came at a time when its use would have been really apt — a Gujarat court was set to deliver its verdict on the train burning. Far from protesting this state censorship, everyone complied without a murmur.

Why did Narendra Modi not want the Hindus in his state, his loyal votebank, to be vividly reminded of the horrifying incident which he himself claimed was the ‘action’ that led to an ‘equal and opposite reaction’, in 2002? News channels reporting on the Godhra judgment, scheduled to be delivered on February 22, 2011, would anyway have rekindled memories; the incident would have been described in some detail; what more would the visual of the burning train have done? Inflammate feelings? Why was this undesirable in February 2011, and acceptable in 2002?

Far away from Modi’s darbar, on the ground at Godhra station itself, a few hours before the judgment was to be delivered, a Muslim tea vendor who’d witnessed the original incident was vehement in his assertion that everything was fine in Godhra. Nothing would happen, he said, no matter what the judgment was. But there was one player who could create mischief: the media. TV vans were parked outside the station; cameramen roamed inside. “It is they who provoke people to violence, only so they can make money,” he raged, invoking Allah’s curses on them.

That day in Godhra, schools that had originally decided to stay open in the morning (the judgment was expected at noon) hurriedly sent their students home as rumours spread. The road outside the railway station was deserted. As news of the verdict — 63 freed, 31 convicted — began coming in you were thankful for the ban on the burning train visual.

Given the peace that prevailed and the cordial relations that now existed between the two communities, who would want that image thrust before their eyes? Certainly not the Muslims who’d lived with the disgrace of having burnt that train for nine years (all the while refusing to acknowledge that some of their own community had done it), with more than a hundred put behind bars for it, many of whose families had become impoverished. As for the Hindus, was there any point rekindling their anger? At least some Hindus in Gujarat — the families of the 59 who perished in the train — would definitely not have wanted to see that image.

These may not have been Modi’s calculations. Godhra’s VHP members had been ordered by their own party, the BJP, not to take out any rallies, whether for or against the verdict. Either way, a rally could provoke Muslims; even a stone thrown could lead to a riot and spoil Modi’s record of a curfew-free Gujarat. That was important for the man hailed as the country’s most successful chief minister, but unable to wash off the stain of the 2002 pogrom.

Banning a single evocative image... but on the ground you realised the difference it made. Would the media have abstained from showing the visual if the government hadn’t banned it? Unlikely. The temptation would have been too great. It was only whilst walking the streets of Godhra that you realised the damage it could do, and the need to keep the peace at all costs.

Speaking for myself, such realisation has come after 25 years of reporting communal conflict. In 1984, covering the 10-day-long riots that started in Bhiwandi, and spread to Thane and Mumbai, it seemed important to report not just the actual violence and the partisanship of the police towards Shiv Sainiks but also, immediately after the violence had died down, the plans for ‘revenge’ that both sides made for Bakri Id, due a few days later. When this piece, on which I’d spent a week moving around the city, was censored for being too provocative, it made no sense to me. Recently, a newspaper spiked another piece I wrote on the fallout of *Saamna* carrying an illustration of the Prophet Mohammed. I wasn’t told why, but I assume the reasoning must have been that few of the paper’s readers read *Saamna*; was there any point spreading the news?

When is 'news' better off not reported?

In a weekly feature on 'faith', *Saamna* narrated a story from the Quran which featured the Prophet and sent out a positive message. The illustration accompanied the piece. This resulted in stone-throwing outside the *Saamna* office in Nanded. The following day, *Saamna* carried a front page report saying that violence had broken out in Nanded over an illustration 'that was not of the Prophet'. This was clearly a face-saving measure to avoid an apology. While Muslim activists in Mumbai were keen on an apology, or at least a 'we-didn't-mean-to-hurt-feelings' statement from *Saamna*, they were keener that their community not get worked up over the incident. Since most Muslims don't read *Saamna*, they appealed to the Urdu press not to publicise the incident. But only two of the four Urdu papers published from Mumbai obliged; the *Urdu Times* and *Sahara* went ahead and reported it.

A similar incident took place in 2001. The Bajrang Dal burnt copies of the Quran outside the UN office in Delhi, in response to the destruction of the Bamiyan Buddhas in Afghanistan. The BJP-led NDA government was at the Centre. The story was blacked out and made out to be a rumour — until a Reuters picture of the actual burning appeared on the Internet. Violence in interior Maharashtra had already broken out when Mumbai's *Urdu Times* carried the news on Page One, on a Friday — the only paper to do

so — along with an appeal for peace by Muslim leaders. Again, Muslim leaders worked overtime to keep the peace, but failed in SIMI's stronghold where the organisation pasted posters with a photograph of the Quran being burnt, and the question: 'What is your responsibility?'. They also took out a rally and stoned buses.

The features editor of *Urdu Times*, while admitting that putting the news on Page One could have incited trouble, told me that his paper catered to Muslims and hence had to publish news of importance to the community. Besides, the Hyderabad-based *Munsiff* had already done so. His only argument to which I had no reply was: had some Muslims desecrated a Hindu holy book, would the press have blacked it out? The answer to that is obvious. Even if editors had decided to black it out in the interests of keeping the peace, the BJP and all its affiliates would have gone to town protesting the incident. That itself would have made news.

It's interesting to see how when the Quran was burnt by the Bajrang Dal, protests by Muslim leaders were muted. It was almost as if the government, led by the communal BJP whose cadres had committed the indefensible offence, and the 'secular' opposition were in league to hush up the incident. Such was the gravity of the sacrilege that everyone felt it necessary to deny it, lest Muslims get provoked. In this, the media — barring a few Urdu papers —



were willing accomplices.

Why?

After the riots of 1992-93, whenever a communally tense situation is expected, Mumbai's police commissioner sends for Muslim leaders to tell them to keep their community off the streets. The latter assure the commissioner of their fullest cooperation. Shiv Sena leaders are also called to such meetings, but, on occasion, in the presence of the commissioner, these leaders have warned the Muslims present to behave, or else... Muslims have often wondered whether it is only *their* responsibility to keep the peace.

The media's black-out of the burning of the Quran seemed to reflect the police's attitude — keep Muslims off the streets at all costs. What about Hindus? One can be sure that had Muslims burnt the Gita, the government, even if it had been led by the Congress, would not have enforced any such censorship, and, as mentioned earlier, nor would the media. Blacking out protests by the BJP? Unimaginable. The most rabid of Hindutva leaders are media darlings, never mind what the minorities may feel reading their hate-filled utterances on Page One, prefaced with descriptions such as 'Supremo', 'ageing Tiger', 'feisty sanyasin', 'firebrand leader' and 'patriarch'. For years, journalists troubled by the poison spewed by these leaders have debated how such demagogues should be reported. Ignore them and deprive readers of news? Put them on the inside pages? Tone down their rants? No consensus has been reached because the editors and news editors who decide these matters have never found it worthwhile formulating norms for such coverage; nor is it taught in journalism schools. More importantly, competition between newspapers has ensured that no one misses out on the sensation created by such utterances.

At the height of the Khalistan movement, Bal Thackeray called Mumbai's Sikh leaders to a press conference and announced an economic boycott of the community unless they wrote to the Akal Takht condemning the acts of Khalistanis in Punjab. Many journalists were sickened at this public humiliation of the Sikhs, but finally the conclusion was — even if we don't report it, others will. A collective decision to black out news, it seems, is only taken when journalists themselves are attacked by the police or abused by some politician. Abuse directed at other citizens, in violation of the laws of free speech, is not seen to be worthy of collective boycott. On the contrary. Raj Thackeray, as skilled a hate-monger as his uncle, actually thanked the media on the fourth anniversary of his party, soon after it won 13 Assembly seats in 2009, for having "conveyed to people across the state what we were saying, thereby motivating people to trust us".

Should the media be proud of this?

Soon after the MNS burst onto Maharashtra's political

scene with its attacks on north Indians in 2008, which left two dead and many innocent north Indians injured, Mumbai's leading Marathi newspaper *Maharashtra Times* gave the party chief almost a full page to air his views. His article, titled 'My Stand, My Fight', was inflammatory and provocative, aimed at creating hatred among readers against north Indians. What motivates an editor to publish an article like this that justifies violence against innocents? And what is the remedy for such publication?

There was a time when complaints to the Press Council by concerned citizens and a reprimand by the Council were taken seriously. Today, no one even mentions the Press Council. The government has immense powers to curb such writing in newspapers, but rarely uses them. At the height of the Mumbai 1992-93 riots, *Saamna* was encouraging its "boys" to wipe out "traitors" in the "dharmyudh" that was being fought on the streets, and celebrating the burning of mosques. The Congress government did nothing, until forced to by a petition filed by two citizens. Long after the riots were over, two Bombay High Court judges found nothing objectionable in Bal Thackeray's writings; besides, they said, "let bygones be bygones". Now, Bal Thackeray's nephew, who has followed his uncle's politics to the letter, is getting the same kid-glove treatment. The Congress-NCP government in Maharashtra uses him to dent the Shiv Sena's Marathi votebank, and had to be forced by the court to file cases against him. Why would such a government take action against newspapers that publish his venom? What do north Indians in Maharashtra feel when their tormentor thanks the media for his success? What do Muslims feel when leading English newspapers write lovingly about the 'Tiger's roar'? In the late-1980s, Arun Shourie used to be given full pages in *The Indian Express* to pour scorn on Dr Ambedkar and on the ridiculous fatwas issued by the Deoband and other Islamic institutions. Would an Abu Asim Azmi, Samajwadi Party chief in Maharashtra and a rabble-rouser of the worst kind, get even half a page in any Hindi newspaper to air his views? Would Imam Bukhari? If you give space to demagogues of the majority community and not to those of the minority communities, isn't that censorship?

Take coverage of Arjun Singh's announcement on reservations for other backward classes (OBCs) in higher education. While the protests against it surely counted as news, shouldn't one of them have been censored? Instead it got front page coverage. What was the message sent out by the upper-caste students who swept the streets in protest? That, now that OBCs were going to take away their seats they would have to do the jobs that OBCs were doing (in fact, it is dalits who do this hereditary job)? The press has often reported on the 'purification rituals' performed by priests after dalits have tried entering temples. No newspaper ever puts these words in quotes. Should such news be carried at all? If it isn't, would we realise how prevalent casteism continues to be?

Reporting violence

The other dilemma journalists face is: how far can one go in reporting violence? Readers wrote in to complain when newspapers carried close-ups of Muslim children burnt in the 2002 pogrom in Gujarat. In one case, the Press Council felt publication of the photograph (in *The Hindustan Times*) was okay, as long as the child's name was not mentioned. Given the tense situation, that could have aroused the anger of the minority community. In another case involving *The Telegraph*, the Council felt that a caption which said "73-year-old man collects the ashes of the Quran in Ahmedabad (AFP)" could have been worded differently, since, from the photograph it wasn't obvious that the book was the Quran. The Press Council was obviously concerned about the possibility of provoking Muslims outside Gujarat (*The Hindustan Times* was then published in Delhi; *The Telegraph* in Kolkata).

While covering the Srikrishna Commission of Inquiry into the 1992-93 Mumbai riots, I wrote a series on the worst riot cases. Most of them had had TADA applied to them; many related to mobs lynching lone Muslims. I made it a point to quote the post-mortem reports to show just how brutally these Muslims had been attacked. A friend complained that it made for gruesome reading. But I had a reason. It was 1997, four years after the riots. The Shiv Sena was in power, doing its best to discredit the Commission, which was then in session, and to propagate its version that the violence in the second phase of the riots (January 1993) was a "spontaneous and natural retaliation" to the violence by Muslims. That lie needed to be shown up by describing just how well-thought-out the violence against Muslims had been.

Would I do the same now, 20 years after the riots? Justice has still not been done; all those lynch mobs have got away. Yet, having seen firsthand the desire of many of Mumbai's riot victims — even those who lost husbands and sons — to get on with their ruined lives, and their unwillingness to participate in long-drawn-out court proceedings, I am not so sure. I have had doors slammed in my face by victims; told not to call any more; and requested by those who I know well not to send journalists to them.

Exposing the state's complicity in violence against minorities is definitely the media's job. But in its decisions on complaints against coverage of the violence in Gujarat, the Press Council spoke about the "palliative" role needed to be played by the media. Recent coverage of the Indo-Pak semi-final was anything but palliative. At a press conference on the eve of the match, Pakistani captain Shahid Afridi blamed the Indian media for souring relations between the two countries. He was right. Would it have been considered state censorship had the prime minister told the media to be restrained?

In the run-up to the match, reports and pictures of Muslims

praying for India's success made their expected appearance, as they did before the Kargil war. Muslims remain the only community that displays its patriotism as a community. Should the press publish such pictures on Page One, or at all? Surely we all know what this is about — thanks to continuous propaganda by the Hindutva parties that Muslims always want Pakistan to win in an Indo-Pak encounter, a section of Muslims has internalised the need to prove their patriotism. If there was no accompanying publicity, would these prayers be held? On the other hand, if the media were to black out such pictures or news, would the message conveyed by such 'censorship' be the reverse — that the press doesn't want to show that Muslims too are patriotic?

There is also the very deliberate censorship carried out by newspapers while reporting terror. After Mumbai's train blasts in 2006 only one English newspaper thought fit to report allegations of police torture made by the families of those arrested. The torture stopped only after the PMO intervened. The Urdu press carried the allegations, so most Muslims in Mumbai knew about them. By not carrying them, the English press only added to the alienation already being felt by the Muslims thanks to indiscriminate police raids in Muslim areas.

In the same way, eyewitness accounts of the 26/11 Mumbai attacks which departed from the official narrative were blacked out by the English press. So was a large part of the cross-examination by the lawyer appointed to defend Ajmal Kasab, during the trial of the Pakistani terrorist. The cross-examination raised disturbing questions about the response of the Mumbai police not only to the attack but also to the repeated SOS from its senior officers, one of whom, Hemant Karkare, was killed and another, Sadanand Date, injured. Where terror is concerned, the press seems to think its responsibility lies not to its readers but to the police — a thoroughly communalised force.

Looking at the world from the viewpoint of the minority or the marginalised isn't something taught in journalism school. But prolonged interaction with these sections makes you aware of their grievance — that the mainstream media rarely reflects their concerns, and this often happens through an unconscious process of selecting what's 'news' and censoring what isn't.

Jyoti Punwani is a freelance journalist based in Mumbai. She has reported extensively on issues related to communalism in India

Cultural memory and the politics of intolerance

How should the scholar or historian negotiate a community's cultural memory, and public outrage against perceived misrepresentations of its icons such as Shivaji? The liberal perspective is quick to spot the threat posed by chauvinist forces to freedom of expression. But how is such freedom to be reconciled with the imperative of respecting popular sentiment?

MANGESH KULKARNI

The concept of cultural memory comprises that body of re-usable texts, images, and rituals specific to each society in each epoch, whose "cultivation" serves to stabilise and convey that society's self-image. — Jan Assman

Tolerance is first and foremost for the sake of the heretics... Heresy by itself, however, is no token of truth.
— Herbert Marcuse

Communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined.
— Benedict Anderson

IN 1973, a professor of history at the Marathwada University (Aurangabad) was compelled to resign following the public furore generated by one of his polemical pieces; a young woman studying English literature at the University of Bombay was prosecuted for her purportedly incendiary essay published by a popular periodical in 1993; the Pune-based Bhandarkar Oriental Research Institute — a venerable centre of Indological research — was vandalised by activists of the Sambhaji Brigade in 2004 for its alleged complicity in the writing of a controversial book authored by an American academic. What is common to these acts of 'intolerance' that mark the chequered trajectory of cultural politics in contemporary Maharashtra?

The short answer is that they all sprang from a sense of outrage triggered by supposedly flagrant misrepresentations of Chhatrapati Shivaji Raje Bhosle (1627/30-1680) — the legendary warrior-king of Maratha (1) history and an iconic figure in the Maharashtrian collective consciousness. A more elaborate answer would require a closer look at each of the episodes mentioned above.

The predicament of the professor of history, Pandharinath Ranade, was occasioned by his article entitled 'Maharashtraateel Shivaji Stom' ('The Shivaji Hype/Cult in Maharashtra' would be a rough translation) in the August 1, 1973 issue of *Ranangan* (meaning 'battleground') — a Marathi left-wing periodical published from Pune. Ranade sought to dispel the aura surrounding Shivaji and his government by invoking a rather orthodox Marxist understanding of feudalism. Accordingly, he emphasised the similarity between the Mughal and Maratha ruling classes, arguing that both lived on the surplus extorted from the toiling masses. This denial of the distinctiveness of Shivaji's rule provoked a public outcry and governmental

pressure targeting the author of the article as well as the editor of *Ranangan*, Anil Barve. Ranade had no choice but to resign his university post. However, his colleagues in the Indian History Congress — the largest professional and academic body of Indian historians, founded in 1935 — rallied in his support. During its winter session that year, the Congress adopted a motion defending the historian's right and obligation to publicise his findings, however unpalatable they might seem. It also pleaded for Ranade's reinstatement. The plea did not fall on deaf ears and the latter soon resumed his post.

At the centre of the second episode lay Nancy Adajania's article entitled 'Myth and Supermyth', which appeared in the April 10-16, 1993, issue of *The Illustrated Weekly of India* — a periodical published by the Mumbai-based Times of India Group. The author's intention was to expose the 'nationalist' parties' opportunistic homogenisation of historical figures into superhuman symbols. Her specific argument included the following unsavoury, though not entirely original, contentions: Shivaji sought legitimacy by manufacturing a genealogy, his administrative infrastructure was borrowed from the Mughal rulers, and the empire he created was based on extortion. A report condemning the article and its author appeared in the Marathi newspaper *Kesari*, triggering a volley of protests, withdrawal of the issue from the market, a public apology from the editor of the *Weekly*, and the registration of a criminal case against the publisher and the author for promoting communal enmity. A defiant Adajania refused to apologise in the face of imminent arrest; but she was adjudged innocent by Justice Michael Saldanha of the Bombay High Court, who described the action contemplated by the government as "misdirected".

The vandalism of the Bhandarkar Institute on January 4, 2004, by the Sambhaji Brigade — a militant maratha organisation named after Shivaji's elder son — sprang from the perception that the Institute's librarian and some scholars (many of them were brahmins) associated with it, who had helped American professor James Laine to write *Shivaji: Hindu King in Islamic India* (Oxford University Press, 2003), were responsible for the book's reckless reference to an insidious joke about Shivaji's parentage. In the wake of critical comments on the book, carried by two periodicals, *Rangataranga* and *Chitralekha*, a campaign against Laine and his native informants gathered momentum.

By late-2003, Oxford University Press was compelled to withdraw the book, and one of the scholars accused of collaborating with Laine had his face blackened by activists of the Shiv Sena. After the attack on the Bhandarkar Institute, a criminal case was registered against the author and the publisher for posing a threat to social harmony, and the book itself was banned, though Laine had issued a statement apologising for inadvertently hurting people's sensibilities. The ban was finally lifted by the Supreme Court in July 2010; but as far as Maharashtra is concerned, it remains in force for all practical purposes.

It is possible to view these cases in the familiar liberal perspective as instances of the threat posed by chauvinist forces to freedom of expression. One may debate as to how such freedom can be reconciled with the imperative of respecting popular sentiment, especially in the face of deep-rooted contention between communities. This would then lead to a larger preoccupation with the contradictions endemic to 'imperfectly modernised' societies which subject individual rights to the overbearing pressures of democratic politics. Though such concerns are legitimate, they often find expression in well-rehearsed arguments that tend to be excessively abstract and move monotonously in worn-out grooves. It would be more instructive to locate the above-mentioned controversies vis-à-vis the cultural politics of Maratha history in modern Maharashtra. The latter comprises certain key constructs of Shivaji, which offer different interpretations of the precise nature and long-term significance of his career. For the sake of analytical convenience they have been divided into four broad categories (2).

1 Bahujan: This construct was first articulated by the 19th century public intellectual and social reformer Jotiba Phule alias Mahatma Jotirao Phule (1827-1890) who founded the non-brahman *bahujan* (literally meaning 'majority'; but the reference here is to the numerous 'lower' castes) movement in Maharashtra. In his famous ballad (*powada*) on Shivaji, published in 1869, Phule described the latter as *kulwadibhushan* — a shudra king in whom the peasant masses could take pride. In the *magnum opus*, *Sarvajanik Satya Dharma Pustaka* (1891), he deplored the influence that the brahman saint-poet Sant Ramdas (1608-1682) exercised over Shivaji. Phule himself belonged to the intermediate *mali* caste; but his countercultural intervention envisioned an inclusive alternative to the brahmanical order. His understanding of Shivaji was anchored in this larger project. However, subsequently, *bahujan* maratha leaders such as V R alias Maharshi Shinde (1873-1944) began to emphasise Shivaji's — and as his descendants, their own — kshatriya status to counter the tendency of brahmins to treat them as shudras.

2 Nationalist: The *locus classicus* of this construct is *Rise of the Maratha Power* (1900) — a historical tract penned by the renowned liberal leader, judge and scholar Mahadev Govind Ranade (1842-1901). Ranade refuted the charge of British historians like James Grant Duff (1789-1858) that Shivaji

was an unscrupulous adventurer. He argued that the great Maratha king's rule had a strong popular base and a spiritual foundation; it thus heralded the emergence of a national consciousness. To him, the Bhakti movement propelled by the medieval saint-poets had prepared the ground for Shivaji's rise to power. Unlike Phule, Ranade saw Ramdas in a positive light and described him as Shivaji's "chief adviser". The Shivaji public festival, launched as an anti-colonial platform by the renowned nationalist leader B G alias Lokamanya Tilak (1856-1920) in the mid-1890s, had already pre-figured this construct, even as it provided space to elements of the Hindutva-centric construct discussed below.

3 Hindutva-centric: The roots of the construct may be traced to the writings of the celebrated historian V K Rajwade (1864-1926) who collected and published an enormous amount of material on Maratha history. He viewed Shivaji as a religious rebel protesting against Muslim tyranny and as the founder of a Hindu kingdom in opposition to the alien Mughal imperial rule. While downplaying the importance of the 'otherworldly' Bhakti movement, Rajwade zealously projected Ramdas as a champion of Hindu empowerment and as Shivaji's guru. Quite logically, he saw the brahmanical Peshwa regime of the 18th century as expanding and completing the Hindu upsurge. Subsequently, Vinayak Damodar alias Swantrayaveer Savarkar (1883-1966), a prominent leader of the Hindu Mahasabha, was among the ardent advocates of the construct.

4 Communist: This construct is best exemplified by the writings of Comrade Shripad Amrit Dange (1899-1991) who claimed that Shivaji had introduced revolutionary changes in property relations pertaining to land. By destroying the economic power of the feudal *deshmukhs*, Shivaji transferred ownership of land to the cultivating peasants. Further, he created a non-hereditary bureaucracy, thereby bringing the peasantry into direct contact with a centralised, monarchical state. The construct also found expression in the writings of fellow communists like Lalji Pendse (1898-1973). Interestingly, the pioneering exponents of all except the first of the constructs discussed so far were brahmins; and perhaps this explains the curious fact that even the communist Pendse projected Ramdas as a source of intellectual inspiration to Shivaji.

5 Consensual: The Samyukta Maharashtra Movement of the 1950s sought to carve out a separate state for Marathi-speaking people from the bilingual state of Bombay. It elicited the participation of a wide spectrum of political forces and witnessed the invocation of Shivaji as a symbol of regional pride. When the state of Maharashtra was formed within the Indian federation in 1960, the medieval ruler gained a place of prominence in the official iconography. In the new regime based on the political domination of the marathas and the continued cultural hegemony of the brahmins, the regnant discourse on Shivaji amalgamated various elements present in the earlier constructs. The resulting consensual construct portrayed Shivaji as a valiant son of the soil, representing the unity and identity of

Maharashtra, and as a benevolent kshatriya king.

In his popular biography of Shivaji, published by the National Book Trust — an autonomous organisation of the Government of India — the historian Setumadhavrao Pagadi (1910-1994) articulated the consensual construct as follows:

Shivaji is one of the great national figures of India. A man of faith as well as action, this extraordinary statesman and general created a nation, gave its people a cause to fight and die for and established a state permeated with a spirit of tolerance and justice: a truly secular and welfare state. (Shivaji, 1993)

This construct has been widely disseminated through various channels such as school textbooks, the mass media, public statues, monuments, spectacles and ceremonies. It has become an integral constituent of the Marathi-speaking people's cultural memory and a central axis of contemporary Maharashtra's self-image as a political community. Therefore, any form of expression deemed to be a defamation of Shivaji draws the ire of Maharashtrians and quickly drains their reserves of tolerance. Quite predictably, a variety of political forces further their own agenda by using manipulative tactics and fanning the flames of intolerance to take undue advantage of public reverence for the Maratha hero.

Let us not forget that even the famed tolerance of the hypermodern European nations gets frayed when they confront the 'alien' cultural norms and practices of non-White immigrant communities. It is no wonder that the perceived profaning of iconic figures like Shivaji leads to flared tempers and excesses in the somewhat precariously constituted regional public sphere which is vitiated by caste and communal tensions. Thus, different versions of the Shivaji corpus clash over the status of brahman authority figures like Ramdas and Dadoji Kondadev who served as Shivaji's political adviser in his younger days. While some (for example, the Hindutva-centric version) treat the former as Shivaji's guru and the latter as his early mentor, others (especially the *bahujan* version) tend to downplay, if not deny their importance. A particularly dramatic manifestation of this tussle was witnessed on December 27, 2010, in Pune, when the statue of Dadoji Kondadev was removed from the historic Lal Mahal with the backing of the Maratha-dominated Congress-Nationalist Congress Party combine which controlled the Pune Municipal Corporation. The incident — a fallout of the Laine controversy — provided cause for celebration to forces such as the Sambhaji Brigade which had campaigned for the removal of the statue, even as it sparked off vehement public protests by the champions of Hindutva, especially the Shiv Sena and the Bharatiya Janata Party.

The episodes — each involving an outburst of public 'intolerance' — that we have discussed so far also reveal a disconnect between 'civil society' which seeks to act as a guardian of cosmopolitanism and liberal modernity, and 'political society' which serves as an arena for the articulation

of conflicting passions and interests (3). The response of the Indian History Congress to the Ranade controversy, upholding the sanctity of untrammelled historical inquiry, as also Justice Saldanha's order in the *Illustrated Weekly* case, striking a blow for intellectual freedom, represent the voice of civil society; while the Sambhaji Brigade and the Shiv Sena are two poles of the region's political society. Principles and arguments that seem perfectly straightforward in the somewhat rarefied medium of civil society undergo strange refractions when they enter the fraught domain of political society (4). Sensitivity to the protocols and nuances of intellectual discourse — a key feature of the former — has no place in the rough and tumble world of the latter.

A scholar venturing on to the terrain constituted by the politics of history must tread carefully and soberly, taking due cognisance of the community's cultural memory, even as s/he remains faithful to the demands of her/his profession. S/he would do well to heed Ernest Renan's observation that a nation (and *eo ipso*, a supposedly 'sub-national' community like Maharashtra) sustains itself through strategies of commemoration as *well as* amnesia. On a more positive note, such a scholar may also want to consider the earnest advice of cultural critics like Ashis Nandy and Vinay Lal that s/he should overcome the hubris of scientism, while seeking out and drawing intellectual nourishment from the 'truths' represented by inclusive, benign 'myths' lodged in the complex interweave of collective consciousness. These are a few signposts in the search for a theory and practice of emancipatory tolerance; but the episodes discussed above remind us that there are no easy roadmaps for those who wish to traverse the minefield of the 'past continuous'.

Note: Help received from D K Kulkarni, Sandeep Pendse, Ashok Chousalkar, Shantaram Pandere, Jatin Wagle, Shivaji Motegaonkar and Sunil Kankate is gratefully acknowledged; however, the author takes sole responsibility for any errors of fact or judgment that may be found in the article

Dr Mangesh Kulkarni teaches at the Department of Politics and Public Administration, University of Pune. Later this year he will serve as the first Visiting Professor holding the Chair of Indian Studies at the University of Vienna (Austria). He has recently edited a book entitled Interdisciplinary Perspectives in Political Theory (Sage, 2011)

Endnotes

1 In this article, the term 'Maratha' is used to denote the community of Marathi-speaking people, while the term 'maratha' denotes the most numerous and dominant caste cluster in Maharashtra

2 This exercise is based on the pioneering work of scholars like D K Bedekar and Gail Omvedt

3 This distinction between 'civil society' and 'political society' is a variation on Partha Chatterjee's formulation of the analytical binary. It is best treated as an open-ended, heuristic device. The possibility of overlap and osmosis between the two 'sectors' is acknowledged but not addressed in this article

4 Perceptive readers will recognise the Burkean provenance of the metaphor invoked here. In his critique of natural rights, Edmund Burke (1729-1797) made the following celebrated statement: "These metaphysic rights entering into common life, like rays of light which pierce into a dense medium, are by the laws of nature refracted from their straight line. Indeed, in the gross and complicated mass of human passions and concerns, the primitive rights of men undergo such a variety of refractions and reflections that it becomes absurd to talk of them as if they continued in the simplicity of their original direction." (*Reflections on the Revolution in France*, 1790)

Dissent vs incitement?

Are human rights organisations failing to draw the line between prisoners of conscience and individuals who espouse extremist and violent forms of identity-based politics? Are organisations such as Amnesty International failing to make clear that some of the people whose rights they were upholding intended to destroy fundamental human rights?

GITA SAHGAL

"The best lack all conviction, while the worst are full of passionate intensity." — Y B Yeats

ON FEBRUARY 7, 2010, I was suspended from my job hours after a newspaper published a report about my concerns regarding Amnesty International's promotion of the former Guantanamo Bay detainee, Moazzam Begg. I immediately issued a statement: "A moment comes, which comes but rarely in history, when a great organisation must ask: if it lies to itself, can it demand the truth of others?" I argued that in defending the absolute prohibition on torture, one of the strongest standards in international human rights law, Amnesty International had sanitised the history and politics of the ex-Guantanamo detainee, Moazzam Begg, and completely failed to recognise the nature of his organisation Cageprisoners. My statement said: "The tragedy here is that the necessary defence of the torture standard has been inexcusably allied to the political legitimisation of individuals and organisations belonging to the Islamic Right."

Amnesty International's first response to the media was to deny that they promoted his views. He only spoke about his experiences, they said, showing that they were not anxious to claim his views as compatible with a human rights organisation. But they continued to be under pressure following a global petition drafted by three senior women's rights advocates from South Asia calling for the integrity of human rights to be restored. The petitioners argued that "the language of human rights and human rights defenders is being taken over by the US/NATO alliance in its efforts to legitimise a re-born imperialism. Equally disturbingly, this language is also being hijacked by organisations that espouse extremist and violent forms of identity-based politics" (1). The petitioners raised a number of questions and called for a debate with Amnesty International.

So, Amnesty International changed tack and decided to embrace Begg's views, declaring that he was a human rights advocate like themselves. Just over three months after I left Amnesty, over irreconcilable differences, Cageprisoners had become a partner of Amnesty and "jihad in self-defence" had been declared "not antithetical to human rights". Amnesty has refused to debate these issues with my supporters and has failed to provide any account of Begg or

Cageprisoners to their own membership or staff.

Prisoner of conscience?

For some, Amnesty International had long lost its way when it moved away from its original brief of defending free expression. The term 'prisoner of conscience' was invented by Amnesty International's founder, Peter Benenson, as a term of honour awarded to those imprisoned for simply expressing their beliefs. 'Appeal for Amnesty' was launched in 1961, naming a number of political prisoners in a famous article in *The Observer*, a liberal British newspaper. It was based on Article 18 of the Universal Declaration of Human Rights which guarantees "freedom of thought, conscience and religion", and Article 19 guaranteeing "freedom of opinion and expression". Benenson defined a prisoner of conscience as "any person who is physically restrained (by imprisonment or otherwise) from expressing (in any form of words or symbols) any opinion which he honestly holds and which does not advocate or condone personal violence" (2).

So strict was Amnesty International's definition that it refrained from declaring Nelson Mandela a 'prisoner of conscience' because he advocated armed struggle. Though they angered many anti-apartheid activists, the organisation saw itself maintaining its integrity of view in the face of competing political pressures.

This badge of honour was never awarded to Begg or other Guantanamo prisoners either, although there was sometimes pressure from members to do so. The mandarins in the policy department where I served as Head of the Gender Unit, were perfectly aware that many of the people held in Guantanamo had extremely unsavoury politics, whether they had committed crimes or not. The demands relating to Guantanamo were to close the prison and release the prisoners, or to charge them and give them a fair trial. Amnesty International also campaigned very strongly against the attacks by the Bush administration on the absolute prohibition on torture in international law, whether in war or peacetime. This defence of the 'torture standard', which I also believe was essential (3), came to occupy a central position in Amnesty's work. But the way it was interpreted fundamentally undermined its analysis of Articles 18 and 19

of the Universal Declaration of Human Rights (4).

Amnesty’s campaigning activities promoted detainees through “a narrative of innocence”. I do not mean to imply that the detainees should have been declared guilty without due process. The organisation could have gathered evidence that some individuals they were campaigning for were involved with salafi-jihadi networks. In order to support victims of terrorism (rather than only victims of counter-terrorism), they needed to be active in ensuring that these individuals faced justice. Human rights organisations should be at the forefront of gathering evidence in ways that uphold human rights norms. Instead, Amnesty International’s campaigning techniques effectively confused the inalienable right of every human being to be free from torture, with its classical focus on non-violent prisoners who had been imprisoned in contravention of international standards on conscience and free expression.

The organisation failed to make clear that many people whose rights they were upholding intended to destroy fundamental human rights. They were not simply resisting occupation. Amnesty failed to produce materials showing that the version of Islam upheld by their ‘cases’ was so harsh, that by their standards most Muslims could be labelled apostates, and normal Muslim practices and prayers could be banned. Moazzam Begg supports ideologues such as Ali al Timimi (called “inspirational” on the Cageprisoners website), who advocates the killing of Shia. In short, Amnesty promotes certain individuals as if they were purely victims, when in fact these persons are dedicated to the destruction of Articles 18 and 19 of the Universal Declaration of Human Rights, along with many other rights.

Victims and perpetrators

Marieme Helie Lucas, an Algerian feminist and founder of the network Women Living Under Muslim Laws, has long warned that a victim can also be a perpetrator, and that human rights organisations need to be mindful of this. Otherwise, organisations can end up condemning terrorism in general terms; but when taking up individual cases of terrorist suspects, behave as if these persons had nothing to do with supporting terrorism or other human rights abuses. In an article for *Communalism Combat*, Helie Lucas argued that there was a pattern to the promotion of fundamentalists on Amnesty platforms (5). She also revealed for the first time that three founding members of Amnesty’s Algerian section had been expelled after they wrote to the Secretary General protesting the publication of a report which (they felt) assigned disproportionate responsibility to the state, at a time when fundamentalists were killing large numbers of civilians in planned attacks. “Being loyal to the organisation, they remained silent and did not publicly expose Al’s inappropriate reaction to their freedom of thought, freedom of speech and freedom of conscience.”

Cageprisoners have brilliantly adapted Amnesty

International’s techniques. Following intense scrutiny after my complaint, they have finally made changes to their website to remove some of the more obvious markers of their ideological stance. Gone now is the section called ‘Islamic Focus’, which showed distinct salafi-jihadi sympathies in the choice of people they highlighted, either as revered scholars or as prisoners whom they were defending. Abu Muhammad al-Maqdisi, a very senior member of al Qaeda (6), was styled a ‘prisoner of conscience’ (7). Detainees who were highlighted at the time of my dispute included Khaled Mohammed Sheikh the ‘mastermind’ of 9/11 and his colleague Dhiren Barot who pleaded guilty and is serving 30 years in a British prison for planning massive attacks on civilians (8). Neither of them was condemned for either their ideology or their actions.

Careful examination of the Cageprisoners website shows that their goal was to obtain the release of such prisoners, rather than simply affording them fair trial and punishment by a properly constituted court. So while one section of the website appears to work within human rights standards (9), others are more clearly dedicated to imposing a religious obligation to ‘Free the Prisoners’ who are seen as suffering for their faith. Supporters such as Imams are asked to “give *fatawa* (legal verdicts) explaining to your congregation the obligations of Muslims towards their unjustly detained brethren around the world, and the punishment for abandoning them” (10). Supporting prisoners in this way is not simply an act of charity, but a form of religious support towards their theo-political goals — the founding of a theocratic state. Not meeting this obligation should become a punishable offence.

Moazzam Begg also believes that jihad is the obligation of every Muslim. Writing in a journal associated with the Muslim Brotherhood, he is clear that he does not mean jihad simply as a form of spiritual or intellectual struggle. He means war, which includes war against *shaytan* or desires, against unbelievers, hypocrites, oppressors and evil-doers. He states his opposition to the killing of “unarmed civilians”, but the wide range of people against whom (in his opinion) it is obligatory to wage war, constitutes an attack on the freedom of religion and of expression (11).

No attempt is made by Cageprisoners to distinguish between detainees who have never been charged and those imprisoned after a fair trial. When Abu Hamza, a notorious pro-jihadi preacher, was interviewed, he is said to have been convicted of “alleged incitement”. The reader is not told that Hamza is serving a seven-year sentence for incitement to murder and racial hatred. Asked about his extradition, Abu Hamza said: “It is part of a dirty war against terrorism which means nothing but promotion of real Islam” (12).

Cageprisoners use similar language to describe grassroots campaign groups that support “communities” that claim they are being criminalised. Thus, they write: “Counter-terrorism policies in the UK and European mainland have led

to innumerable pieces of legislation that seek to criminalise communities and any form of dissent" (13). There are indeed legitimate concerns relating to the surveillance of people according to their identity rather than their acts. But Cageprisoners do not discuss the difference between 'dissent' and 'incitement to kill'. They too are promoting a narrative of innocence which elides terrorism with the 'right to dissent'.

Dissent vs incitement?

Nowhere is this clearer than in Cageprisoners' relationship to Anwar al Awlaki who has emerged as a senior voice in al Qaeda and writes for a new online magazine called *Inspire*, al Qaeda's English language propaganda organ. Cageprisoners have long been Awlaki enthusiasts, having conducted interviews with Awlaki and invited him to send a message to a Ramadan dinner at a Town Hall. After concerted protests, the dinner went ahead without the Awlaki message, which was put online later. Cageprisoners claimed that they had been censored and denied any knowledge of Awlaki's views (14). Yet Awlaki's work *44 Ways To Support Jihad*, had been available online for about eight months. It clearly supports the foundation of a theocratic and fascistic state practising systematic discrimination against women and minorities (15). Begg's views on jihad and the obligation to free prisoners appear to derive from the same sources as Awlaki's. When Amnesty International said that jihad in self-defence was "not antithetical to human rights", this is what they were supporting, and what they continue to support.

Cageprisoners have been forced to acknowledge that Awlaki has issued calls to attack civilians. They say they oppose such calls (16). But their position on the killing of civilians is not clearly stated on their website. The distancing from Awlaki seems to occur only when he is directly criticised, and when the silence of human rights advocates regarding Awlaki's beliefs and activities is highlighted.

Karima Bennoune, a human rights lawyer and member of the Board of the Centre for Constitutional Rights (CCR) in the US, publicly voiced her concerns regarding a case launched by CCR challenging the US government for putting Awlaki (a US citizen) on a hit-list for drone attacks. Bennoune argued her view on the Board before she went public. She was clear that she opposed extra-judicial executions (17). However, she pointed out that there was mounting evidence that Awlaki had inspired bombings and attacks such as the attempt by Faisal Shazad to blow up Times Square, and by Abdulmuttalab, the 'Christmas bomber', to blow up a plane with explosives in his underpants. Awlaki has published death lists which include Salman Rushdie, Ayaan Hirsi Ali and a cartoonist called Molly Norris who has had to go into hiding. But CCR was silent about all this. They treated him as a respected 'cleric', a title that most Muslim scholars would not give him. CCR could have supported a process for bringing Awlaki to stand trial. Instead, they merely

developed a case against the drone attack, which amounted to claiming that there were no grounds for an investigation of him at all. Bennoune felt that this was "tantamount to representing, without comment, the father of the Grand Dragon of the Ku Klux Klan who claims his son is a good man. Would a progressive human rights group do that, even if the son faced abuses at the hands of the US government? And if they did, would they be silent about the grave harms done by the KKK?"

There is a piece on Awlaki on the Cageprisoners website that is clearly composed to respond to critics. Distancing language is carefully used, even where the facts are well established. "Nidal Hassan is said to have killed 13 people...", "Someone tried to blow up some people in Times Square" (18). The Cageprisoners 'briefing' quotes a Yemeni claim that there is no confirmation that Awlaki is part of Al Qaeda in the Arabian Peninsula (AQAP). AQAP itself is only mentioned once with regard to its responsibility for the attempted bombing by Umar Farouk Abdulmuttalab. This claim appears to help to distance Awlaki from responsibility, as if he were not part of AQAP. His philosophical or political stances are not analysed, nor would you discover from this 'briefing' that he writes for the al Qaeda journal.

Nowhere in the Cageprisoners document, or in the legal case brought by CCR and ACLU, will you find any discussion of statements by Awlaki such as: "Hatred of the *kuffar* (unbelievers) is a central element of our military creed." This statement was cited by Karima Bennoune in her explanation of her extreme disquiet at the stand taken by CCR — a stand that seemed to have turned away from its long-held values. In the 1990s, when most human rights organisations were supporting Algerian fundamentalists, CCR associates were virtually alone in their support to the victims of fundamentalism, to research and present their case to human rights bodies, and to litigate against the leader of the Algerian fundamentalist political party, the FIS (19).

By 2010, CCR constructed their case for Awlaki by ignoring all evidence that he was implicated in serious crimes. The US has strong free speech protections, and it is possible that CCR would consider that the instigation of a crime was protected by the First Amendment that guarantees free speech. But it seems that in other cases, CCR do understand the distinction between speaking freely and inciting violence. In January this year, they wrote to Fox News about an academic who had been attacked by the right-wing host Glenn Beck and then subjected to death threats. They distinguished between First Amendment rights, of which they were "vigorous defenders" and an "intentional repetition of provocative, incendiary, emotional misinformation and falsehoods (that place, that person) in actual physical danger of a violent response" (20).

Awlaki's death lists and his involvement in many terrorist plots could be regarded as orders to kill rather than endangering someone by extreme and false statements.

Professor Chetan Bhatt, an expert on right-wing religious movements, including Hindutva and al Qaeda, believes there is ample evidence that al Qaeda publications are providing English-speaking readers with recipes on manufacturing explosives as well as producing orders to kill through assassination lists. Recently, they claimed responsibility for postal bombs that were carried on planes to Europe and boasted of how little the plot had cost (21).

Those defending Awlaki and supporters of so-called 'defensive jihad' are attacking foundational principles of free speech and freedom of religion. As Article 30 of the Universal Declaration of Human Rights tells us, "no state, group or person" has any right to engage in activities aimed at the "destruction of any of the rights and freedoms set forth". By 2011, Amnesty International's 50th anniversary, it has become clear that it is doing just that. On its 10th anniversary, Peter Benenson lit a candle for the great Gandhian leader, Khan Abdul Gaffar Khan. Today, Moazzam Begg is their hero. What a distance they have travelled.

Note: This article by Gita Sahgal reflects the opinion of the author, and not necessarily that of Infochange Agenda. Amnesty International's counter-arguments and position on this issue may be read at the following link: A letter by Amnesty's ad interim Secretary General Claudia Cordone dated February 28, 2010, <http://www.human-rights-for-all.org/IMG/pdf/Claudioletter-2.pdf>

Gita Sahgal was a Founder Member of Women Against Fundamentalism and former Head of the Gender Unit at Amnesty International, which she left after making public her disquiet about Amnesty International's promotion of salafi-jihadis. She is a Founder of the Centre for Secular Space, which opposes fundamentalism, amplifies secular voices and promotes universality in human rights

Endnotes

- 1 Global petition to Amnesty International to restore the integrity of human rights. <http://www.human-rights-for-all.org/spip.php?article15>
- 2 <http://www.amnestyusa.org/about-us/the-forgotten-prisoners-by-peter-benenson/page.do?id=1101201>
- 3 See Gita Sahgal's statement on Amnesty International and Cageprisoners at <http://www.human-rights-for-all.org/spip.php?article1>
- 4 For a longer discussion of how western human rights organisations have concentrated on some rights and not others, please see, 'Soft Law, Hard Choices', <http://www.opendemocracy.net/5050/deniz-kandiyoti/soft-law-and-hard-choices-conversation-with-gita-sahgal>. And 'Conflict and Custom in the New World Order', <http://www.opendemocracy.net/5050/deniz-kandiyoti/conflict-and-custom-in-new-world-order-conversation-with-gita-sahgal>
- 5 Marieme Helie Lucas, 'Conscientious Objection: Amnesty International Persists in Suppressing Dissent', at <http://www.siawi.org/article1775.html>
- 6 While Cageprisoners never mentions al Maqdisi's political affiliation, Maqdisi himself uses US military and scholars' assessments to bolster his position in internal sectarian debates. http://www.nytimes.com/2009/04/30/world/middleeast/30jihad.html?_r=1&hp
- 7 See 'The Firmness of a Prisoner of Conscience', <http://old.cageprisoners.com/articles.php?id=27293>
- 8 A counter-extremism think-tank, Quilliam Foundation, based a report on the spread of extremism in British prisons from materials found on Cageprisoners

websites. See 'Unlocking Al-Qaeda: Islamist Extremism in British Prisons', at <http://www.quilliamfoundation.org/index.php/component/content/article/582>

- 9 See for instance, <http://www.cageprisoners.com/about-us>
- 10 <http://www.cageprisoners.com/get-involved/item/15-volunteering>
- 11 Moazzam Begg, 'Jihad and Terrorism, a War of Words', *Arches*, Vol 2, Edition 1, Summer 2008
- 12 <http://old.cageprisoners.com/articles.php?id=24793>
- 13 <http://www.cageprisoners.com/the-issues> and the website <http://www.campacc.org.uk/>, which purports to highlight the impact of anti-terror laws (such as bans on particular groups) on the broader communities within which the terrorist groups operate. Neither organisation has acknowledged the existence of terrorism, nor the distinction between democratic dissent and the incitement towards or commission of violence
- 14 http://www.pureislam.co.za/index.php?option=com_content&task=view&id=777&Itemid=37
- 15 This link to Awlaki's website and *44 Ways to Jihad* was available online at <http://cryptome.org/anwar-alawlaki/09-0105.htm>
- 16 Victoria Brittain and Asim Qureshi. A reply to Karima Bennouna on al Awlaki's rights, <http://www.guardian.co.uk/commentisfree/cifamerica/2010/nov/23/human-rights-us-constitution-and-civil-liberties?INTCMP=ILCNETTX3487>
- 17 Karima Bennouna, 'Why I Spoke Out on Anwar al Awlaki', <http://www.guardian.co.uk/commentisfree/cifamerica/2010/nov/19/human-rights-usa?INTCMP=ILCNETTX3487>
- 18 <http://www.cageprisoners.com/cases/middle-east/yemen/item/1126-anwar-al-awlaki>
- 19 See reports of civil law case against the leader of the Algerian Islamist party, FIS, <http://apic.igc.org/docs97/alg9703.htm>
- 20 UPDATE: CCR Appeals to Fox News President for Help in Silencing Glenn Beck Misinformation Campaign Against Progressive Professor, <http://ccrjustice.org/newsroom/press-releases/update%3A-ccr-appeals-fox-news-president-help-silencing-glenn-beck-misinforma>
- 21 Prof Chetan Bhatt, inaugural lecture, 'The Virtues of Violence and the Arts of Terror', March 23, 2011

Freedom gagged

There are no clearly set standards in the Kashmir valley of what is allowed under free speech, and what constitutes the abuse of this right. Information asymmetry is counterproductive. Any lopsided perspective is far from 'free' if it closes itself to other narratives. This is equally true for the state, which must realise that not allowing people space to protest democratically will lead to protests in less desirable forms

SUALEH KEEN

IN INDIA, THE ISSUE OF FREEDOM of expression enters public debate at the national level only occasionally. For example when a book is banned for its controversial content, a movie censored for politically incorrect content, or an artist offends the sensibility of some groups. However, in a conflict zone like Kashmir, freedom of expression and its scope is always a hot topic. And it is easy to see why: a secessionist movement in the valley creates a conflict of interest between the separatists and the state, and it suits the interests of each side to tilt the information asymmetry to its advantage. Each side tries its best to highlight and exaggerate the wrongs of the opposite side, while remaining silent over, or denying or suppressing any mention of its own wrongs.

As expected, much of the information circulated in the valley tends to be half-truths and one-and-a-half-truths, if not outright fabrications. Also, there are no clearly set standards of what is allowed under free speech, and what constitutes the abuse of this right. Apart from this, certain aspects of free speech peculiar to the valley pose challenges in arriving at universally acceptable standards. I intend to extrapolate these peculiarities.

Geographically, the Kashmir valley is a relatively isolated place surrounded by mountain ranges, enjoying a climate and culture distinct from surrounding regions. Historically, Kashmir has always been relatively insulated from the external world. The 11th century Muslim scholar and polymath Al-Biruni mentions that the inhabitants of Kashmir did not allow outsiders to enter the valley. In modern times, thanks to Article 370 of the Indian Constitution that grants special autonomous status to Jammu and Kashmir, Indian citizens from other states cannot purchase land or property in the valley. Thus, the valley of Kashmir possesses conditions favourable for the evolution of unique local standards covering a gamut of social aspects, including free speech.

The centripetal pull of an island mentality is offset by a centrifugal push to connect with the outside world. Presently, this outward-looking impulse manifests itself in the Kashmiri Muslim majority's romance with Pakistan, and in their latching onto issues concerning the Muslim

world. Controversial issues in faraway Muslim countries can incur fierce responses in the valley. Thus, its unique identity together with the special feature of being a Muslim majority region in India is the religio-regional complex around which secessionism in the valley is constructed.

The beginnings of insurgency

Secessionism did not find support among the masses until a rigged election in 1987 resulted in an unexpected defeat of the Muslim United Front, a new political party floated by various valley-based Muslim groups. Pakistan took advantage of the disenfranchisement of Kashmiri Muslims and extended arms training and weapons to local rebels, which resulted in an armed uprising in the valley in 1989.

The government was in complete disarray while armed militants roamed the streets freely, with full emotional and ideological support from the local Muslim populace. Given the stakes involved, information about militants became valuable, and reciprocally, secrecy about the identity of militants became imperative. A witchhunt ensued wherein a whiff of an allegation of being an informer or *mukhbir* could get someone gruesomely killed to 'set an example'. Pandits, being the Hindu minority, were not expected by the Muslim militants and their Pakistani handlers to support this movement and were considered traitors by default. Many of them were gratuitously murdered, and threatening messages from various militant groups were sent to them, warning them of consequences if they did not leave the valley. In some cases, threats were issued via loudspeakers fitted in mosques and in leading newspapers (1). All these events forced them to flee from the valley in order to survive.

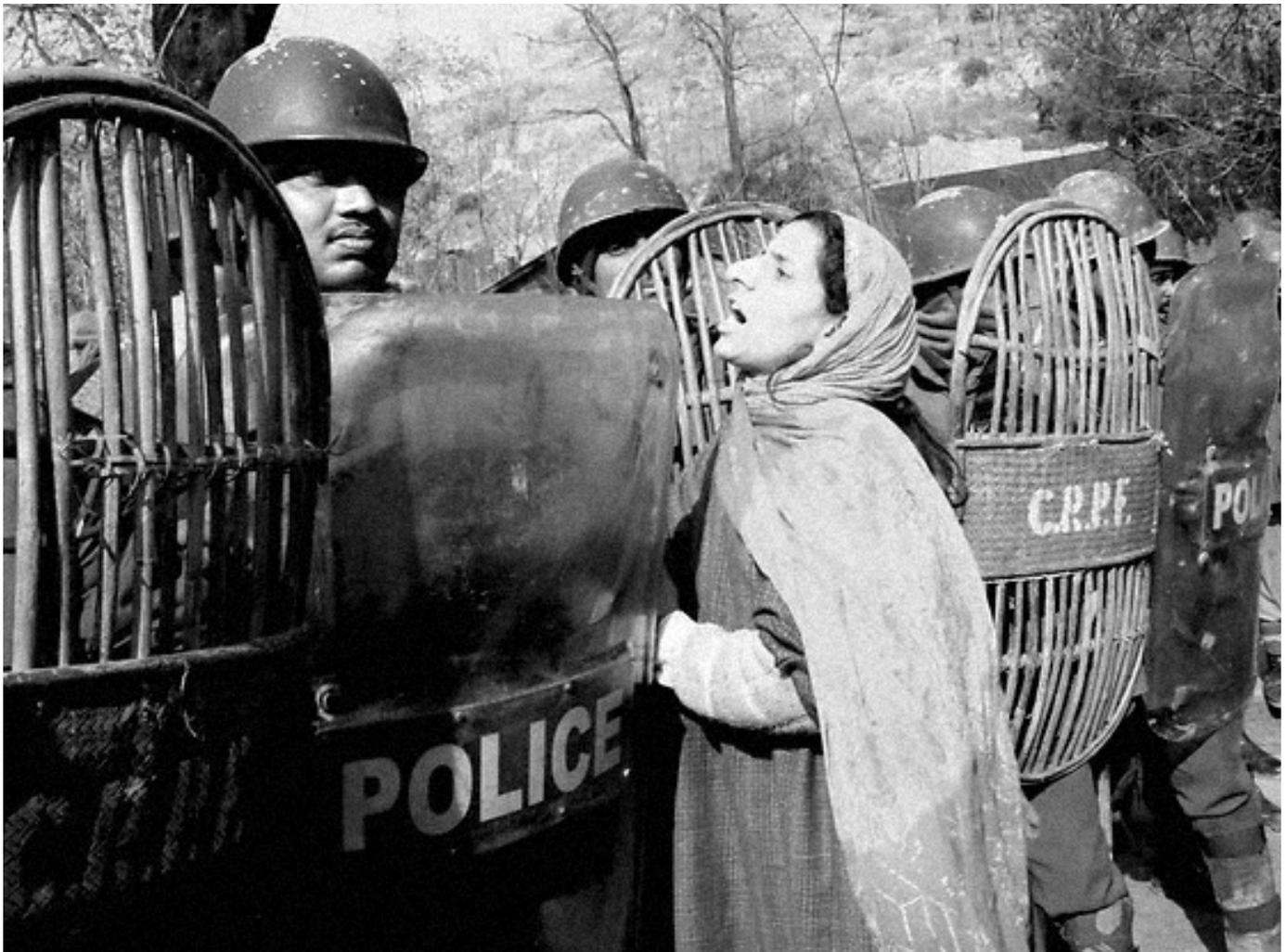
Following the exodus of Pandits in 1990, the demographics of the valley became largely homogenous and the vestiges of multiculturalism that an influential minority had offered came to an abrupt end. The new generation of Muslims today have no memory of a multicultural Kashmir, nor do they have any frame of reference about sustaining a non-abusive political discourse with non-Muslims and people of other regions of the state. Because the targets are not around to protest, it is not unusual for hate speeches, uncontested claims and unsubstantiated 'facts' to find their

way into local newspapers and common discourse.

Terror, press controls and conspiracy theories

In addition to murdering alleged informers in the early years of the insurgency, militants also took immediate control of the local press through intimidation and murder of editors and journalists. Thereafter for many years, local newspapers read like jihadi tabloids with exaggerated figures of the number of armed personnel killed in encounters, spurious news, and propagandist literature. During those days, anybody with a wooden pistol could get anything published on the front page of any valley-based newspaper. This reduced free speech to ‘free-for-all’ speech, but was limited to the separatist side because the ‘freedom fighters’ ensured that nobody was free to challenge them. Television and radio stations were also targeted and their staff intimidated and murdered. It was not until successes in counter-insurgency and the resurgence of an elected government in 1996 that the press gained some semblance of editorial control.

The state gave the armed forces special powers under draconian laws, providing them impunity and a licence to kill. These powers were rampantly misused, resulting in fake encounters, custodial deaths and rape. The counter-insurgents, who were pulled from the ranks of surrendered local militants, in turn indulged in extortion, abduction and crime in areas they controlled. Anybody they killed was perfunctorily dubbed a militant or a militant sympathiser. Non-combatant Kashmiris were caught in the crossfire. Supporting one side meant invoking the wrath of the other. This resulted in self-censorship and doublespeak among the masses, as they could not risk taking a committed stand in the conflict. The fear psychosis created by this dilemma meant that the families of victims, when questioned by journalists, hesitated to reveal the identity of the killers. In one case, bereaved families of the 35 Sikhs (another minority), killed in the Chattisinghpora massacre of 2000 by unidentified gunmen, attempted to reach a consensus right in front of the interviewer regarding which account would be less dangerous for the survivors (2). It became characteristic for people to tell different accounts in public and in private.



Misinformation spread by the separatists and the state, coupled with the common people's reluctance to speak fearlessly, resulted in misattribution of culpability and distortion of reality. The conflicting motives of numerous vested interests made the ground fertile for conspiracy theories. A myriad such theories, ranging from the plausible to the bizarre, vied for mindscape. People made whimsical selections, with the most popular theory being declared the truth.

According to a conspiracy theory about the exodus of Pandits — now a 'consensual truth' among many valley Muslims — "the Pandits were instructed by the Government of India to leave the valley to clear the ground for the genocide of Muslims". This theory is an example of 'moral disengagement' from collective responsibility for the exodus. It aims to remove the communal taint from the Mujahideen (as the armed insurgents were euphemistically called) and the secessionist movement, and additionally shifts the blame to the Pandit victims whose 'absence' is shown as being responsible for subsequent deaths of Muslim insurgents. There are also insensitive references to stereotypical 'enemies' such as the Jews, exemplified by a recent newspaper article (3) that propounded a theory wherein Jews, capitalists and Indians scheme to ruin the local economy to enslave Kashmiris with their banking loans, no matter that the economy is most damaged by protracted shutdowns enforced by separatists. Shopkeepers cannot speak out against these shutdowns lest their shops be damaged by separatists.

Regional war of words

According to a recent survey (4) conducted by Ipsos MORI to establish current attitudes in the state, an overwhelming majority of people in the valley support independence for Kashmir, while people of the remaining regions prefer to remain in the Indian Union. Exclusive secessionist and nationalistic aspirations have resulted in regional polarisation, with a neat dichotomy between valley-based newspapers and those from the Jammu region. The regional divide is exacerbated by the flourishing of Hindu right-wing parties in Jammu as a counterpoint to the valley's Islamist separatism.

Srinagar-based newspapers tend to maintain a sloppy balance between separatist opinions and official statements. The bipolar content is encouraged because the 'mainstream' valley-based political parties espouse soft-separatist tendencies in their political promulgation of greater autonomy for the state. Besides, newspapers depend upon the state for revenue through tender notices and advertisements. Presently, separatism has permeated into educational institutions, the judiciary, trade unions and every sphere of life, a spread inadvertently abetted by the constant harassment of common people by the armed forces, which have held draconian powers over the lives of people for the past two decades.

In contrast, Jammu-based newspapers, in addition to being

highly critical of separatists, are wary of dominant valley-based political parties which are seen to pursue policies that discriminate against other regions. As a result, where the general consensus in the valley is against the continuation of draconian laws and of the armed forces in general, the Jammu-based papers exhibit solidarity with the armed forces. This vitriolic regional confrontation creates occasions for the settling of personal scores. In a midnight crackdown on June 29, 2010, the Government of Jammu and Kashmir, headed by a Kashmir-based party, sealed the office and press of a Jammu-based newspaper whose June 29th edition had criticised Kashmiri leadership (5).

Endemic state of sedition

A New Delhi court recently ordered the police to file charges of sedition against Kashmiri separatist Syed Ali Shah Geelani and novelist Arundhati Roy for making anti-India speeches at a conference held in New Delhi on October 21, 2010. This is a selective application of charges, given that Geelani and other separatist leaders make similar speeches frequently in the valley with wide media coverage. Besides, how does a government tackle sedition when a majority of people in the valley are 'guilty' of it? It cannot press charges against an entire population. Unless the alleged seditious speech is a clear call for violence, the government is better off ignoring it and addressing the root cause of the widespread alienation.

Also, the state needs to reconsider the denial of freedom of assembly for public gatherings to Kashmiri people, while allowing such freedom in other regions and states. Mosques and Friday sermons have a long political history in the mobilisation of masses in the valley, but preventing people from gathering for prayers in mosques reinforces the native feeling of being 'occupied by a Hindu majority nation'. As such, the state needs to take extra care and not give the impression of discriminating against Kashmiri Muslims.

Hostile media phenomenon

In Kashmir, it is generally believed that the Indian state has enforced a 'media embargo' on the Kashmir issue, an impression propagated by valley-based journalists. The nationalist Indian media, as it is called in the valley, is perceived to whitewash any wrongdoing by the state, while highlighting the transgressions of separatists and exaggerating the role played by Islamism and Pakistan in the 'people's movement'. Indeed, for over two decades of strife, the Indian media tended to look the other way and only intermittently focused on sensational ephemeral news from Kashmir. In the past few years, however, the media have given ample coverage to Kashmir and accommodated a range of opinions and analyses. What then explains the continued suspicion of the Indian media in the present milieu?

The perceived lack of concern by the Indian media can be explained by the fact that local populations in conflict zones which face numerous problems on a daily basis always want

their problems to be considered more urgent than, say, coverage of some celebrity's wedding. It would seem that nothing less than dedicating a full page to Kashmir daily by the main Indian newspapers is going to satisfy the people of the valley. Perhaps even that will not be enough. This 'trust deficit' is referred to by social psychologists as the 'Hostile Media Phenomenon' (6) according to which people tend to see the world through the eyes of their own side and thus have a biased view about situations where they compete. The competition, in this case, is for media space, not just between secessionist and nationalistic perspectives but between issues concerning the locals of Kashmir and all the other myriad issues and non-issues covered by the media of a large and diverse country.

Also, valley-based journalists are often harassed by the police due to which they empathise with anti-state sentiment and develop 'localitis' whereby they are unable to visualise the law-and-order situation holistically.

Facebook face-off

The advent of social networking websites has created new opportunities and challenges for public expression. Their potential for a revolutionary movement are obvious, as exemplified by their role in recent uprisings in the Middle East and North Africa. The Internet gives ordinary Kashmiris an opportunity to counter official narratives and tilt the information asymmetry towards their preferred stance. Indeed, the ability of local 'citizen journalists' to upload a video of an incident of police brutality directly to YouTube can prevent the state from sweeping such cases under the carpet. However, the absence of control and validation of web-based content also means that rumours, propaganda and spurious videos can contribute to manipulating public opinion.

The Internet played a critical role during the unrest of 2010 that left more than a hundred Kashmiri civilians dead in police firings. Each uploaded photo and video, showing gory details of the victims, enraged the masses further, resulting in pitched battles between stone-pelters and the police and adding to the spiral of violence. Facts can be as damaging to the state as fiction, especially when the state has a habit of abusing human rights, shielding the guilty, and using excessive force against protestors. Facebook stone-pelting support groups have come under the police scanner, but the police should distinguish between real violators of freedom of speech and those who want to seek secession peacefully.

The Internet also became the medium through which estranged Kashmiri Muslims and Pandits interacted with each other for the first time since 1990. The results of this virtual 'reunion' have been mixed. Conversation on a web-based platform tends to be loud due to relative anonymity, overcompensation after a long silence, and the bravado of being out of range. There has been no closure between Pandits and Kashmiri Muslims whom the former believe were responsible for their exodus. Thus, interactions

The advent of social networking websites has created new opportunities and challenges for public expression. The Internet gives ordinary Kashmiris an opportunity to counter official narratives and tilt the information asymmetry towards their preferred stance. Indeed, the ability of local 'citizen journalists' to upload a video of an incident of police brutality directly to YouTube can prevent the state from sweeping such cases under the carpet. However, the absence of control and validation of web-based content also means that rumours, propaganda and spurious videos can contribute to manipulating public opinion

between the two have generally been abusive, cause for heartburn for both, and have reinforced stereotypes.

However, the Net also enabled an expression of love for a common culture, the renewal of friendships, catharsis, and closure. I hope that the opportunity to vent pent-up emotions and to share personal grief will engender moderation and sensitivity towards the pain of the 'other'. But that is only possible if the various exclusively Muslim and Pandit platforms break out of the 'groupthink' trap and start seeing things from the other's perspective.

Groupthink

The flight towards polarised online forums with lopsided

perspectives of the freedom struggle has led to a curious situation. Separatist Facebook groups suffer from a severe case of groupthink (7), resulting in illusions of invulnerability and unanimity, ignoring or rationalising any challenges to their assumptions, indulging in self-righteous behaviour that disowns responsibility for actions, and stereotyping those who oppose the group. As a result of this lack of introspection, 'online stone-pelters' are unable to survey and re-evaluate alternative solutions to the conflict, to examine risks and contingency plans objectively, or listen to perspectives of the out-group. They end up with incomplete information about the very issue that is of utmost concern to them.

It is often observed that 'mind guards' (self-appointed members who shield the group from dissenting information) pressurise questioning members to conform and to self-censor ideas that deviate from the assumed group consensus. Non-conformists are dubbed traitors, Indian agents, boot-lickers of the state, vested interests, biased communalists, etc. On August 22, 2010, a Kashmiri woman artist was threatened with dire physical consequences after an article featuring an interview with her was posted on the Kashmiri Facebook group 'Bekaar Jamaath' (literally, 'Idle Group'). Her fault was that she had voiced her wish to see children in schools instead of pelting stones on roads. There are many such examples.

Groupthink also exists in Pandit Facebook groups contaminated by hardline Hindu right-wingers. Most of these groups see a homogenous Kashmiri Muslim community, all of whom are terrorists or their supporters. Any member who expresses a desire to reconcile with Kashmiri Muslims or shows an aversion for right-wing politics is called a traitor, evil, impotent, or stupid.

Conclusion

After an armed uprising, pelting stones at the armed forces may appear 'non-violent' in terms of relative local standards, but local standards are misleading when it comes to anticipating a global response. Making a grand mufti of Kashmir retract his fatwa that stone-pelting is un-Islamic, or getting the stone-pelting 'Intifada' endorsed by non-Kashmiri anarchists is not going to win support for the secessionist movement. It does not matter if there is unanimity among the group about a certain mode of protest; what matters is whether or not the world agrees. If they are to earn the solidarity of people around the world, separatists should introspect, analyse the differences between actual and potential performance, and apply universally-accepted standards to their narrative and their actions.

The Indian media should also introspect about their two-decades-long apathy towards the misery of the common Kashmiri. The Indian media are also guilty of violating journalistic principles in the face of 'national interest'. When we tell Kashmiri youth they should demonstrate peacefully and not pelt stones, they reply that their peaceful demonstrations do not sway the nationalist media. If it takes

over a hundred deaths for them to start paying attention to abuses of power in a purportedly 'inseparable part of India', we can say that the hardness of hearing of the nationalist media is against the national interest. This has paved the way for stentorian and violent methods of public expression, and has aided the cycle of violence.

Information asymmetry is counterproductive. Any lopsided and biased perspective is far from 'free' if it closes itself to other narratives. This is equally true for the state, which must realise that not allowing people space to protest democratically will lead to protests in less desirable forms. The state should not abuse its power by applying laws selectively to settle personal scores, or by harassing people who use peaceful methods of seeking independence. Facts, no matter how bitter and embarrassing, should be proactively sought. Towards this end, the state should open grievance redressal cells in every corner of the valley to proactively seek feedback and complaints from the people. Time-bound action should be taken to resolve their grievances. If the state provided easily accessible communication channels, people wouldn't need to take to the streets to register their protest, and local issues wouldn't result in valley-wide agitations. Accepting blame where it is culpable is the duty of a responsible government. It will lend it stature, and go a long way towards assuaging the alienated feelings of the people of Kashmir.

Finally, there is a fine line between freedom of expression and violation of that freedom. Attention should be paid to bringing that line sharply into focus.

Sualeh Keen is a Kashmiri writer, poet, graphic artist, and cultural critic. He works as a marketing communications professional in a Pune-based software company. He created the Facebook group Moderate Voice of Jammu, Kashmir and Ladakh as a platform to promote dialogue between various stakeholders of the state

Endnotes

- 1 Hizbul Mujahideen, a militant outfit, published an ultimatum to the Pandits to leave the valley within 48 hours in *The Daily Aftab* edition of April 14, 1990
- 2 'A Kashmiri Mystery' by Barry Bearak, *The New York Times*, December 31, 2000. <http://query.nytimes.com/gst/fullpage.html?res=9F00E2DD1138F932A05751C1A9669C8B63&pagewanted=all>
- 3 'Why Jews Love Our Hartals'. *Greater Kashmir*, December 31, 2010. <http://www.greaterkashmir.com/news/2010/Dec/31/why-jews-love-our-hartals-19.asp>
- 4 'Kashmir: Paths to Peace', Robert W Bradnock, King's College London and Associate Fellow, Asia Programme, Chatham House, May 2010. <http://www.ipsos-mori.com/researchpublications/researcharchive/2551/Kashmir-Paths-to-Peace.aspx>
- 5 'Police Harasses the Family of *Early Times* Editor'. *The North Lines*, Jammu, July 4, 2010. <http://www.thenorthlines.com/newsdet.aspx?q=33854>
- 6 Vallone R P, Ross L, and Lepper M R (1985), 'The Hostile Media Phenomenon: Biased Perception and Perceptions of Media Bias in Coverage of the Beirut Massacre', *Journal of Personality and Social Psychology*, 49, 577-585. Vallone, Ross and Lepper showed news broadcasts about the Middle East to Arabs and Israelis. Each group thought the broadcasts were biased towards the other side
- 7 For more information on groupthink, see <http://en.wikipedia.org/wiki/Groupthink>

Out, dark spots: History and the state in Russia

Under the Putin regime there is a reversal of the exercise to infuse authenticity into Soviet history that started in 1986 under the banner of *glasnost*. This article explores Russia's attempts to mould a usable past and construct a 'positive' history that would 'create patriots' rather than 'smear the Motherland with mud'

ARUP BANERJI

HISTORY IN THE SOVIET UNION was nurtured by the Communist Party and the Soviet state in ways that were geared to bolstering political objectives over academic rigour; of making the past serve different ends than observed in other societies. If the Soviet authorities had viewed historical materialism as an ideological pillar of scientific socialism, then President Putin's colleagues regard the manipulation of the historical past as a key ingredient in fostering Russian statehood and nurturing a patriotic and politically compliant citizenry. The remark by the British historian Eric Hobsbawm in 1992, that "historians are to nationalism what poppy growers in Pakistan are to heroin addicts: we supply the essential raw material for the market", remains an apt aspiration for historians seeking acclaim in Russia today.

This essay will seek to identify some of the forces that remain inimical to a full exploration of the history of the Soviet Union by its residents since the revolution of 1917. The 1930s and 1940s were impregnated by a phenomenon known as Stalinism. Eponymously designated after the country's leader, the system amounted to a series of legitimisations for creating a superior social order, viz socialism, predicated upon (to name the cardinal features only) the pervasive fear of citizens before state 'organs' such as the KGB; the incarceration and execution of millions in a system of prison camps (the GULAG); the deliberate and prolonged suppression of consumer demand; the effective illegality of protest; and the immobility of rural residents. The decades since then have been dominated as much by occasional bouts of state generosity in permitting the uncovering of the dark Stalinist past (1986-2000) as by the current slew of measures to curb honest enquiry into that past by Russian citizens. Those affected by the limits on freedom of expression argue that a genuinely democratic and honest society can be built only after acknowledging the criminality of the Stalinist state. They are aware however, that this is complicated by the insistence of those in authority of their infallibility. This was the case during the 1930s and '40s, and remains true today. Even if the state tacitly recognises the past victims of repression, it robustly denies the fact that the state itself was the perpetrator of crimes. Archives and textbooks of history have been foregrounded in a manner designed to assist the state in

diminishing and falsifying knowledge of history in Russia.

Imperial Russia boasted of an erudite community of historians whose work was grounded in massive archival research and marked by an impregnable scholarly integrity. Much of it was repudiated after the revolution as 'bourgeois' scholarship. Soviet scholarship began with considerable capital on hand in the form of historians trained under the old regime. Many non-Marxist historians chose to remain in the country after the revolution and in the first aftermath of the peace, from 1921, their scholarly work was not interfered with. Purges of historians began in late-1929 and by 1931, after secret political trials were fabricated, more than 100 historians were arrested, some executed and others compelled to emigrate while their works went out of circulation.

History writing traditionally concentrated on the actions of the leadership and Party faithful. At a roundtable discussion in Moscow in January 1989 that brought together 15 Soviet and American historians, Pavel Vasilievich Volobuev, a prominent Russian historian of the Bolshevik revolution, said that "Soviet historical works are sadly depopulated. Everything you might want in a historical narrative is there — laws, logical development... except individual human beings... There are certain names there but there aren't any people... individual people are only mentioned by way of examples in our histories; they do not appear as real historical actors". Vladimir Alexandrovich Kozlov, a senior Party member, pointed out at the same roundtable that they used to have "a history of bosses written for bosses, but now had a history of bosses that was being written for the people, but they still lacked the history of the people and society".

Public knowledge of landmark events, turning points in the history of their country, was substantially limited by official distillations brewed by Party historians and bottled in biographies of Stalin, histories of the Party, or textbooks for secondary schools. Histories of the Communist Party played a role that was so distinctive as to be arguably unique. They were intended to serve as master narratives within which all that was politically knowable, doctrinally reliable and pedagogically suitable was to be condensed.

They were to inspire imitation and serve as the touchstone for research into the history of the Soviet Union, and not merely of the Party as their titles proclaimed. The history of the Communist Party was the most significant form of representing the entire Soviet past. From the 1930s until the demise of the USSR in 1991, these histories (principally those of 1938 and 1962) set the tone for research, conclusion and communication. Those who wrote Party histories had to weigh every line not merely as a justification for the Bolsheviks against the world, but with greater care, as a justification of 'true' Bolsheviks against the 'deviator' Bolsheviks, who in due course would turn out to be anti-Bolshevik enemies within the Party.

Since, as in India, most Soviet citizens do not study history beyond secondary school, the history curriculum furnished those who sought to shape the social environment with a final opportunity to present their own version of history and its lessons. With the accession to power of M S Gorbachev in 1985, Soviet authorities acknowledged that the former official treatment of Soviet history, especially of Stalinism, had become so corrupted and debased as to be meaningless. This averment was implicit in the decision of the State Committee on Public Education in May 1988 to pulp school textbooks on the history of the USSR and to cancel the secondary school history and social science exams in 1988. The front page article in *Izvestiya* that announced the cancellation of the exam described the level of instruction as being so poor that "even the best and most inquisitive teachers presented the history of our homeland in a monstrously distorted and unrecognisable form". The exam was restored the following year, but not the old textbooks.

Access to the Soviet historical archive depended more on the political reliability than the academic merit of the scholar. The system was administered by the Peoples' Commissariat of Internal Affairs (the notorious NKVD) rather than by an academic institution. There was the periodic destruction of holdings that testified to a past best removed from scrutiny. Throughout the Soviet decades, documents that the police authorities regarded as unnecessary, unimportant or dangerous were destroyed, particularly about people who had disappeared. A senior officer in the archives system estimated that 8.7 million files were slated for destruction in 1945, 30.7 million in 1950, 68.1 in 1955 and nearly 88 million four years later. More than 25 million files were destroyed in the 1960s and 1970s. In August 1987, *Le Monde* reported that "the legal archives of the 1930s, '40s and '50s were actually being destroyed at the rate of 5,000 dossiers a month" under the pretext of a lack of storage space. When smoke from the burnt documents caused a problem in Moscow, the process of destruction was shifted outside the city.

The Yeltsin regime (1990-1999) was committed to perspectives on history that were at diametric variance with

those of the just departed Soviet past: de-communisation in place of the dialectic, plurality instead of the deadening hand of uniform interpretation. There was the exhilaration generated by the passing away of the malign compound of the Soviet state, the Communist Party and Marxism-Leninism. The Soviet period was distanced as a largely negative interlude between the Russian Empire and the new Russian Federation. Lenin was turned into a villain and the last years of the Tsarism recast as a period of advance towards a liberal order and a prosperous economy, a process that was rudely interrupted by the World War in 1914.

Putin rejected Yeltsin's repudiation of the Soviet historical legacy and the denigration of the USSR's achievements. Continuity, not rupture, was to become the guiding principle in official ideas about history. He accepted that Stalin's rule had been abusive and that the Soviet Union had been a "totalitarian state". He wanted, however, to strike a balance, expressed in pronouncements like, "Anyone who does not regret the collapse of the Soviet Union has no heart, but anyone who wants it restored has no brain". Accounts of how history is heard in the classroom today reflect a dismissive, ignorant and disinterested interest in the Soviet past.

Permissible interpretations of the Soviet past under the Putin regime are tantamount to a reversal of the enormous exercise in infusing authenticity into Soviet history that started in 1986 under the banner of *glasnost*, or transparency, and integral investigation. That period represented the beginning of attempts by fiction writers, historians and people with informed opinion to force the state to recognise its criminality in waging the civil war known as the Terror and the Purges. But the fact is that Russia is yet to come to terms with the crimes of its Soviet past. There are few who want to discuss the subject while most Russians feel that the issue divides rather than unites society. It is not that there are so many committed Stalinists around today as much as the fact that a substantial number of Russians believe that condemning the crimes of the past somehow humiliates themselves, forces them to confront their inner courage.

In 2008, Raymond Aron identified guidelines for the production of history textbooks in Putin's Russian Federation. Since the survival of the Soviet Union was necessary, "mistakes" and "dark spots" were bearable costs, the breaking of eggs en route to confecting the omelette. Secondly, the modes of economic advance in the 1930s and 1940s, namely forcible collectivisation and accelerated heavy industrialisation, the uprooting of villages and the creation of vast urban slums, were the consequences of western pressure upon a besieged and beleaguered Soviet Union; not strategic choices made endogenously. Most critical, however, is the continuing endeavour to infuse historical narratives with a mission statement of normalising the 'excesses' of the past.

Since 1993, half-a-million 10th and 11th grade high school students had used a history textbook written by Igor Dolutskii, *National History, 20th Century*, for 10 years. Among the reasons for its popularity were its accessible language; the author's belief that "in history there are no right answers — only different interpretations"; the "populating" of history and a frank discussion of charged subjects like the Purges, the GULAG and Moscow's war against Chechnya. The book was taken off the education ministry's list of approved textbooks at the end of 2003. Yelena Zinina, head of the education ministry's textbook publishing department said that the book "elicits contempt, natural contempt for our past and for the Russian people", and that it was unbalanced and inappropriate in its treatment of subjects like the Purges, the Second World War and the war on Chechnya. It was replaced by a textbook by Nikita Zagladin, *The History of Russia and the World in the 20th Century*. Writing more than a decade after the demise of the Soviet Union, Zagladin, a professional historian, appeared completely uninformed about the large amount of *glasnost*-inspired research that had challenged the legitimacy and benefits of Soviet economic development and that had condemned the war the regime had led on its people in peace time, from the early-1920s to 1953.

In 2007, Putin attacked some history textbook authors for taking foreign money and so "naturally they are dancing the polka ordered by those who pay them". After his call for a more patriotic history, a textbook called *The Modern History of Russia, 1945-2006: A Teacher's Handbook* by Alexander Filippov was presented to a national conference of high school historians and teachers of social sciences in Moscow for adoption as the standard high school textbook of Russian history. Known in certain quarters in Moscow as the 'positive history man', Filippov earned the moniker for this statement: "It is wrong to write a textbook that will fill the children who learn from it with horror and disgust about their past and their people. A generally positive tone for the teaching of history will build optimism and self-assurance in the growing young generation and make them feel as if they are part of the country's bright future... the general tone for a school textbook should be positive." The author of one of its chapters, Pavel Danilin, proclaimed that its goal is "to make the first textbook in which Russian history will look not as a depressing sequence of misfortunes and mistakes but as something to instil pride in one's country. It is precisely in this way that teachers must teach history and not smear the Motherland with mud".

In this textbook the Terror has been limited to 1937-38 (the old Soviet Great Terror), its victims to 786,000, and the range of its victims narrowed to the Party and military leadership and members of the intelligentsia — ignoring the largest demographics: collectivised peasants, ordinary people and the deported nationalities. This ignores a widely accepted estimate by the esteemed Russian historian Roy Medvedev in 1988 that 17-18 million people might have

been arrested, and at least 10 million of them perished before 1937. After several pages devoted to celebrating economic successes, the GULAG is mentioned only once, to warn children against any views that seek to "exaggerate its contribution" to the economy: it points out that in 1950 there were only 2.6 million prisoners, but 40.4 million free workers.

Striking an even more strident tone, Danilin threatened history teachers thus: "You may ooze bile but you will teach the children by those books that you will be given and in the way that is needed by Russia. And as to the noble nonsense that you carry in your misshapen goateed heads, either it will be ventilated out of them or you yourself will be ventilated out of teaching... it is impossible to let some Russophobe shit-stinker (*govnyuk*) or just any amoral type, teach Russia history. It is necessary to clear the filth, and if it does not work, then clear it by force."

Danilin's outburst was resonant of an older Russian intention to mould a usable past and harness the published product to the needs of nation-building. Count Alexander von Benckendorf, the first head of the notorious Third Department of His Majesty's Chancery, the secret police set up by Tsar Nicholas I in 1826, informed Russian historians that "Russia's past was wonderful, its present is more than superlative, and when it comes to her future, it is above anything that the most daring imagination could conjure. This is the point of view from which Russian history must be written". It is in protest against this embedding of the future in the past to build a profoundly unrepresentative 'sovereign democracy' in the Russian Federation today that Dolutskii argues that "school history should not create patriots, it should teach children to think". Independent thought is perilous in Russia today.

Note: Additional information on the subjects discussed in this essay is available in the author's *Writing History in the Soviet Union: Making the Past Work*, New Delhi: Social Science Press, 2008

Dr Arup Banerji teaches Russian and Soviet history at the University of Delhi. He has written on agriculture, privatisation and the military in post-Soviet Russia and on archaeological activity on the Silk Routes. His research on the early Soviet Union appeared in 1996 as Merchants and Markets in Revolutionary Russia, 1917-30. Recent writings by him include a book on Russian and Soviet historiography: Writing History in the Soviet Union: Making the Past Work; and a study of commercial relations between South and Central Asia in the 17th and 19th centuries: 'Old Routes: North Indian Nomads and Bankers in Afghan, Uzbek and Russian Lands'

Repression and resurgence in Tibet

Before the Tibetan uprising of 2008, resistance to Chinese rule emanated mainly from monasteries and nunneries, with intellectuals and educated people staying away from political activism. Now, schoolchildren and university students have joined the protests, over 60 Tibetan writers, bloggers, intellectuals and cultural figures have been arrested, and every form of dissent is being targeted, including recording, selling and listening to songs considered subversive

TENZING
SONAM

IN EARLY-JANUARY, 2010, my partner Ritu Sarin and I received a panic email from the Palm Springs International Film Festival in California. Our film, *The Sun Behind the Clouds: Tibet's Struggle for Freedom*, was scheduled to screen there in a few days time and the festival had just been asked by the Chinese consulate in Los Angeles to remove it from the programme. The festival had never before experienced such direct interference from any quarter — let alone a foreign country — and was initially at a loss as to how to respond. The director, Darryl MacDonald, explained to the consulate that its request could not be entertained as the film had been selected on its own merits and had already been announced.

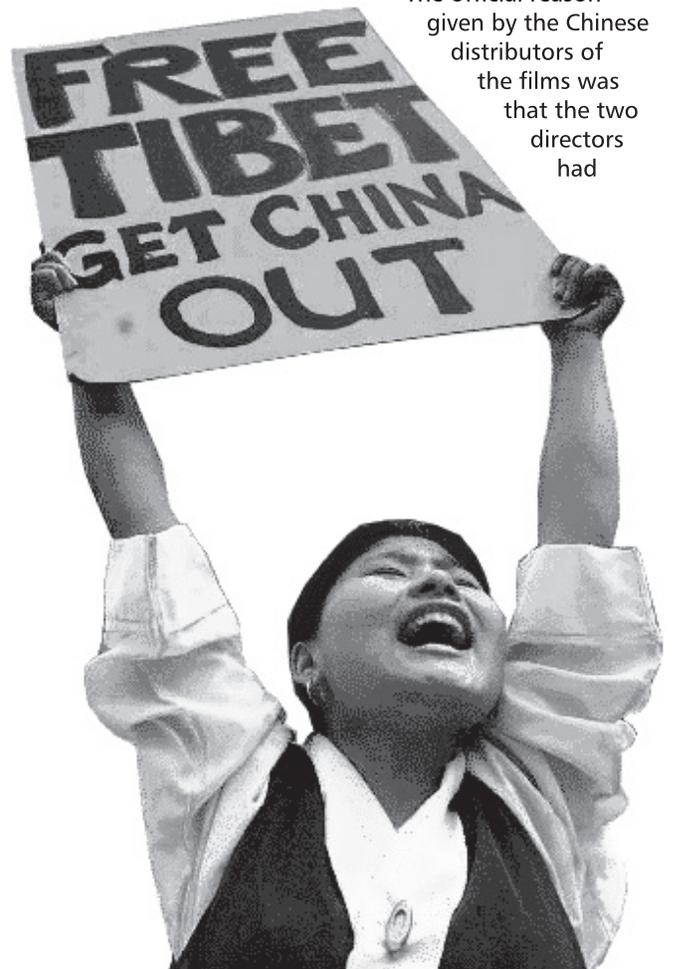
Not deterred, a group of Chinese officials drove into Palm Springs the next day to meet MacDonald in person. They first read him a statement that purported to explain why Tibet had always been a part of China. Our film, they told him, was full of lies because it contradicted this view and therefore should not be shown. Further, they reminded him that the US government recognised Tibet to be a part of China, and hinted darkly that screening the film amounted to something like sedition and could have serious repercussions on Sino-American relations.

MacDonald politely rejected their request. In a statement that he later issued, he said: "We cannot allow the concerns of one country or community to dictate what films we should or should not play, based on their own cultural or political perspective." Such sentiments, of course, don't go very far in the People's Republic of China, but nonetheless, the audacity of its action at Palm Springs caught us by surprise. We had experienced some instances of Chinese interference with our films in the past, most notably when the director of the Toronto International Film Festival was asked, behind the scenes, not to screen our 2005 feature film, *Dreaming Lhasa*. He declined and that was the end of the matter. But this was the first time Chinese officials had publicly tried to stop a screening of our film, and that too in the US. It was a reminder to us of just how bad the situation was in Tibet, particularly after the widespread uprising against Chinese rule that erupted across the Tibetan plateau in the spring of 2008. Our film touched upon those events and tried to place them within the

context of Tibet's ongoing struggle for freedom. China was determined to suppress and refute any version of the Tibet issue that challenged its official line (which is that there is no Tibet issue to begin with) and was willing to put pressure wherever necessary to enforce this.

The day after MacDonald refused to bow to the demands of the consular officials, two state-funded Chinese films that had been programmed and publicised were abruptly pulled out of the festival.

The official reason given by the Chinese distributors of the films was that the two directors had



The 2008 uprising and its brutal aftermath — detentions, torture, deaths — provoked a resurgence of nationalism and soul-searching by Tibetan intellectuals, artists and singers. It catalysed an upsurge of cultural and intellectual activity that focused on the reassertion of Tibetan identity and the suffering of the Tibetan people in the wake of the crackdown. Bloggers took to the Internet to express their anguish. Popular musicians sang about the need for Tibetan unity and the desire of all Tibetans to see the Dalai Lama return to Tibet. Writers wrote in uncompromising terms about the implications, and some openly called for freedom from Chinese rule

voluntarily withdrawn their films in protest against our film being shown. One of the directors, Lu Chuan, later told the *Hollywood Reporter*: “I have absolutely no knowledge of the film they’re talking about.” But he went on to add: “When it comes to Tibet and politics, we directors have no choice but to stand together with our film company.” It should not surprise us that the two directors had no choice in the matter. In China, there are limits to free speech and as we have seen from the much publicised case of Nobel laureate Liu Xiaobo, the fate of those who dare to protest too loudly is summary and harsh. But as bad as the situation is in China, the restrictions on personal and political freedoms and the punishment for transgressing them are of an entirely different magnitude in Tibet.

A distinct set of rules applies to Tibet. For instance, travellers to the region need special permits to visit and their movements are tightly regulated. There is an immediate sense of heightened control and oppression that is absent in the rest of China. Security presence is overwhelming and openly intimidating. Armed police and the military are deployed in the main cities and towns. Monasteries, long seen as hotbeds of anti-government activity, are rigorously controlled and under strict surveillance. Religious and cultural festivals that celebrate Tibet’s unique identity and heritage are discouraged. Chinese language is promoted at the expense of Tibetan. And in the past two decades, a massive migration of settlers from the mainland has altered the demographics so much that in the major urban centres, Chinese now outnumber Tibetans. More insidiously, a web of informers and spies infiltrates every aspect of Tibetan life, creating a stifling atmosphere of fear and suspicion.

Why does Tibet touch such a raw nerve in China? To answer that question, we have to go back to the roots of the current situation. Whatever the relationship between Tibet and China in the past — and China’s claims of historical overlordship are debatable at best — between 1911, when the 13th Dalai Lama expelled all Chinese presence from Tibet and declared independence, and 1950, when the People’s Liberation Army invaded the country, Tibet fulfilled all the conditions of a modern nation-state. If we take into consideration the fact that the majority of countries in the world today came into existence only after the end of the First World War, Tibet’s claim to sovereignty in contemporary terms is very strong. China understands this and knows that a question mark hangs over the legality of its authority in Tibet.

The official Chinese narrative is that Tibet was a part of China since at least the 13th century, that it was a backward and cruel society ruled by a despotic Dalai Lama, that China liberated it and brought to it enlightenment and civilisation, and that the people of Tibet are happy under its rule. This is the history all Chinese grow up learning, and so powerfully is it ingrained in their collective psyche that, with the exception of a small minority, they wholeheartedly believe it. Following the 2008 protests in Tibet, Chinese students in the US and Europe came out in full force to dog the Dalai Lama on his travels. They called him a liar, held him responsible for instigating the unrest and violence in Tibet, and accused him of wanting to revive his old privileges as a slave-owning king. This, despite the fact that they were all living in free countries with full access to any information they wanted.

But although China has succeeded in convincing its own people of its right to rule Tibet, it faces a very different challenge internationally and in Tibet itself. The very existence of the Dalai Lama and his government-in-exile questions the legitimacy of Chinese presence in Tibet and raises doubts about the colonial nature of its rule. This, coupled with the continuing faith and devotion of the Tibetan people in the Dalai Lama, and the failure of the

Chinese government to win their hearts and minds, means that it lives with the perpetual fear that its hold on Tibet is precarious and could one day disintegrate. Unlike most Han Chinese, for whom allegiance to the motherland would never be an issue — whatever grievances they might have against the Communist Party — Tibetans, even those born after the Chinese occupation, continue to feel a strong sense of separateness from the rest of China. This is bolstered by marked differences in language, culture, religion and geography, and strengthened by the people's belief in the Dalai Lama, whom they see as a symbol of free Tibet.

The only way China can gain the legitimacy it so desperately craves is by wiping out any memory or trace of the fact that Tibet not so long ago was an independent nation. The Dalai Lama remains the biggest obstacle to achieving this and therefore he is the foremost enemy of the state, someone who must be fought on all fronts, and fought, in the words of one Chinese official, to the death. And, it turns out, in the afterlife as well: the Communist Party has passed a law that allows it to take control of the Tibetan Buddhist tradition of reincarnation and dictate who will be the next Dalai Lama. But beyond the Dalai Lama himself, China must also efface all sense of Tibetan-ness within Tibet, and this means targeting, diluting and eventually destroying its unique linguistic, cultural and religious identity. This is the task it has set out to accomplish, and why Tibetans in Tibet face a level of repression that is far worse than what is taking place in China itself.

Before the events of 2008, most of the resistance to Chinese rule emanated from monasteries and nunneries, or from the more ordinary sections of society, and repressive measures were put in place to keep this in check. Photographs of the Dalai Lama were banned in what used to be central Tibet and what China now calls Tibet Autonomous Region (TAR). Monks and nuns were forced to undergo political re-education campaigns, a Cultural Revolution-era practice that does not exist anywhere else in China. Its primary purpose today is to inculcate a sense of patriotism and to force Tibetans to denounce their spiritual leader. The intellectuals and educated Tibetans, by and large, stayed away from political activism, leading many to believe that this influential segment of Tibetan society tacitly accepted and even approved of Chinese rule. A prominent exception was Woesser, a poet and writer who was working in Lhasa as an editor with the Chinese language journal *Tibetan Literature*, when she was removed from her position in 2003 for writing sympathetically about the Dalai Lama. She lives in self-imposed exile in Beijing, and despite official harassment continues to write fearlessly against Chinese rule in Tibet.

The 2008 uprising changed this. It was a watershed event in recent Tibetan history, the largest and most widespread revolt against Chinese rule since 1959, when the Dalai Lama was forced to flee to India and China consolidated its hold over Tibet. For the first time, the protests spread far

“Ever since we have been conquered by dictators, in a series of campaigns, we have been beaten, struggled against, seized, arrested, condemned, sentenced, massacred. They have made us unable or afraid to move, to speak, to think. Everything and everyone has become inert because of fear. These inhuman methods have been going on for more than 50 years.” Tagyal, as he predicted himself at the end of the book, was subsequently arrested and imprisoned for nearly two years

beyond the confines of TAR. Indeed, some of the largest demonstrations took place in the Tibetan areas of Qinghai, Szechwan and Gansu provinces. Unlike previous protests, people from all walks of life were involved, including schoolchildren and university students in cities as far away as Lanzhou and Beijing. And unprecedented too was the expression of pan-Tibetan nationalism that manifested itself during these protests, in an area that included all of traditional Tibet and not just TAR. This was deeply disturbing to China, which until then had focused on TAR as a potential source of instability.

The uprising and its brutal aftermath — detentions, torture, deaths — provoked a resurgence of nationalism and soul-searching by Tibetan intellectuals, artists and singers. It catalysed an upsurge of cultural and intellectual activity that focused on the reassertion of Tibetan identity and the suffering of the Tibetan people in the wake of the crackdown. Bloggers took to the Internet to express their anguish. Popular musicians sang about the need for Tibetan unity and the desire of all Tibetans to see the Dalai Lama return to Tibet. Writers wrote in uncompromising terms about the implications of the 2008 uprising, and some openly called for freedom from Chinese rule.

The well-known Tibetan writer, Tagyal, who writes under the pen name Shogdung, is a prime example of this change. Previously seen to be complicit with the state for publishing in official journals and for denouncing Buddhism as an impediment to modernisation, he now self-published a book, *The Line Between Sky and Earth*, in which he apologised for his earlier statements and made a fierce indictment of Chinese rule in Tibet. He wrote: “Ever since we have been conquered by dictators, in a series of campaigns, we have been beaten, struggled against, seized, arrested, condemned, sentenced, massacred. They have made us unable or afraid to move, to speak, to think. Everything and everyone has become inert because of fear. These inhuman methods have been going on for more than 50 years.” Tagyal, as he predicted himself at the end of the book, was subsequently arrested and imprisoned for nearly two years.

This was a new phenomenon that China was witnessing. Its hard-line policies in Tibet were alienating even the intelligentsia that had hitherto remained silent, and provoked it into launching a new wave of resistance that was in many ways even more dangerous than what had gone on before. In his book, Shogdung called for the Tibetan intelligentsia and state workers to stop cooperating with the Beijing government and to wage a campaign of civil disobedience. Towards the end of 2008, in response to the security clampdown, a new people’s movement emerged in Tibet. Called Lhakar — White Wednesday, a reference to the Dalai Lama’s birthday — it pledged to promote Tibetan language, culture and solidarity through non-provocative actions like speaking only in Tibetan, wearing Tibetan clothes, eating Tibetan food, and so on. Popular singers, who had in the past composed veiled tributes to the Dalai Lama and used symbols and allusive language to refer to him and to the political situation, now shook off the yoke of their fear and sang openly, knowing fully the consequences of their actions. Tashi Dhondup, a popular singer from Qinghai Province, is one of the better known of this emboldened new generation of singers. In his album, *Torture Without Trace*, he sang:

*Hey!
The year of 2008
is when innocent Tibetans were tortured
is when the earth destroyed people’s lives.
That time was terrifying
That time was terrifying*

Dhondup was arrested in January 2010 and sentenced to 15 months of re-education through labour for “separatist activities”. Another example of the kind of forthright lyrics coming out of Tibet today is the female singer Lhakyi’s song, *Telephone Rang*:

*The telephone rang, the telephone rang
The phone call was from central Tibet
A whisper said that His Holiness is to return
Let Tibetans from the three provinces enjoy and celebrate!
Tibetans within and without Tibet will soon re-unite*

For Beijing, such expressions of support for the Dalai Lama are tantamount to a call for insurrection. Since 2008, the net of illegal activities in Tibet has been widened to include recording, selling and listening to any song considered subversive. The ban is enforced by random checks on mobile ringtones and playlists. Along with monks and nuns, schoolchildren and government officials are now subject to political re-education; and the ban on photographs of the Dalai Lama extends beyond TAR. The current wave of repression in Tibet targets any form of dissent or expression of Tibetan identity by resorting to questionable interpretations of China’s “endangering state security” laws. The charges against Tibetans arrested for political activities most commonly include inciting “splittism”, causing “disturbances”, or leaking “state secrets”. The Tibetan Centre for Human Rights and Democracy estimates that as of December 30, 2010, there are 831 known political prisoners in Tibet. Since 2008, over 60 Tibetan writers, bloggers, intellectuals and cultural figures have been arrested.

Even as I write this, on the third anniversary of the beginning of the uprising of 2008, news has come out of Tibet that Phuntsok Jarutsang, a 21-year-old monk in a remote corner of Szechwan Province, self-immolated on March 14 in protest against the ongoing suffering of his people. And just recently, Woesser has published yet another article on her blog, in which she writes:

“The 2008 protests were a success. They revealed the Tibetan people’s national consciousness, which had been sealed in their hearts. They gave Tibetans hope for the future, and even though they also made their lives even harder than before, this is a reason why there will be more protests to come. The more protests occur, the better it will be for the Tibetan people; it will make more and more people see the true situation. If it happens again, I would still be in the frontline.”

This then is the spirit of resurgence that is spreading throughout Tibet. Just when the Chinese authorities thought they had crushed all opposition to their regime in Tibet, the uprising of 2008 proved them wrong, and sparked a renewed, more focused and more determined wave of resistance. Led by a generation that was born and brought up under Chinese occupation, a generation that is familiar with both Tibetan and Chinese cultures, that is Internet-savvy and internationally aware, the next phase of the Tibetan struggle has begun, and it promises not only to keep it alive but to take it to uncharted territory.

(A collection of blogs, articles and music videos coming out of Tibet, translated into English, can be found on the High Peaks Pure Earth website: <http://highpeakspureearth.com>)

Tenzing Sonam is a Tibetan filmmaker and writer. His parents escaped the Chinese invasion of Tibet and he was born in Darjeeling. He studied at the University of Delhi and the University of California, Berkeley’s Graduate School of Journalism. White Crane Films, his film company, has made several films on Tibetan themes, including the feature film, Dreaming Lhasa (2005) and the award-winning documentary, The Sun Behind the Clouds (2009). He is currently based in Dharamshala

Assaults on freedom of expression

Any hopes that the end of the civil war in Sri Lanka would inaugurate renewed freedom of expression have been dashed. Several outspoken journalists have been attacked, web journals focusing on corruption and human rights violations have been blocked, and a state plan to set up an Internet filtering system with the help of Chinese experts was exposed

ROHINI HENSMAN

I SHOULD CLARIFY at the start that I propose to use 'freedom of expression' in a broad sense, as encompassing not only freedom of the press but also the freedom to make speeches, hold up banners or placards and shout slogans in peaceful demonstrations, and express opinions in e-magazines, blogs, YouTube and SMS messages. Indeed, strikes and pickets can also be seen as ways in which workers express their dissatisfaction with the prevailing situation in their company or country, while campaigning and voting in elections are ways in which citizens express their feelings about government policies. And the right to use one's own language without being victimised can surely be seen as an element of freedom of expression.

Historical background

Attacks on the rights of Tamil-speaking people in Sri Lanka began in 1956, but the wholesale clampdown on freedom of expression began in the latter half of the 1970s. The month after J R Jayawardene and his United National Party (UNP) were swept to power in the July 1977 elections, there were pogroms against Tamils in Jaffna, Colombo, Kandy and elsewhere. Investigations showed that these were carried out at the behest of the UNP by the police. Subsequent massacres, most notably those of July 1983, were carried out by thugs of the Jathika Sevaka Sangamaya (JSS), supposedly a trade union affiliated to the UNP. These same stormtroopers were used to conduct brutal assaults on striking workers and picketers with the collusion of the police. In 1981, the civil rights movement documented dozens of such incidents in which strikers suffered grievous injuries and, in at least one case, death. Even pregnant women were not spared. The sacking of around 40,000 striking government employees in 1980 made it clear that the regime would not countenance long-established modes of expression of working class dissatisfaction.

The right to campaign and vote in elections was also attacked. In 1980, Jayawardene divested Sirimavo Bandaranaike, his main rival, of her civic rights, thus preventing her from standing or even campaigning against him in the October 1982 presidential election, and effectively disenfranchising her supporters. Moreover, the entire government apparatus (including vehicles, personnel and

state-controlled media) was used to campaign for him. Despite all this, he got only 52.91% of the votes cast, and there was a marked swing towards Bandaranaike's Sri Lanka Freedom Party (SLFP). In order to forestall an opposition victory in the general elections that were to follow, he carried out a referendum in which the people of Sri Lanka, who had always taken elections seriously, apparently voted to disenfranchise themselves by cancelling the elections. This result was achieved by massive vote-rigging at the referendum, accompanied by extensive intimidation of voters, who were physically prevented from voting in opposition strongholds.

The presidential elections of December 1988, which resulted in Ranasinghe Premadasa of the UNP coming to power, were even worse. Opposition candidates and organisers were detained or shot dead, curfews were suddenly declared when opposition candidates were about to have a meeting, and opposition campaigning was disrupted by bomb-throwing and other violence. Measures taken on polling day included UNP supporters voting several times, ballot boxes being captured and stuffed, armed thugs at polling booths monitoring how ballot papers were marked while the police looked on, trees felled across roads which voters would have to travel in order to reach polling stations, voters and polling officers shot dead, and a large number of polling booths closed down during polling. The violence continued into the general election of February 1989, with over a hundred people being killed every day, at its height.

All this was accompanied by assaults on freedom of expression in the more traditional sense. For example, 20,000 pamphlets opposing the referendum brought out by a Buddhist monk organisation, Voice of the Clergy, were seized by the police in 1982, while the Communist Party newspaper, *Aththa*, which also opposed the referendum and had an editorial entitled 'The Dictatorship of J R Jayawardene is Already Here', was sealed. The assault on journalists who were critical of the regime was exemplified by the murder of prominent journalist, author, human rights activist and actor Richard de Zoysa. He was abducted from his home in Colombo in the early hours of February 18, 1990, by two men in police uniform assisted by others in black uniforms; his dead body, showing signs of torture,

later washed up on the beach around 12 miles south of Colombo.

De Zoysa had published articles describing death squad killings of students in southern Sri Lanka; in one such article, entitled ‘Sri Lanka: Nearing a Human Rights Apocalypse’, he accused the special task force, a police commando unit, of carrying out extra-judicial executions. Furthermore, he was involved in staging a play, ‘Who is This Man and What is He Doing?’ that was highly critical of the government and satirised President Premadasa. A municipal councillor taking part in the production, Lakshman Perera, had disappeared in January 1990. De Zoysa’s mother, Dr Manorani Saravanamuttu, witnessed his abduction and was later able to identify one of the police officers who carried it out, Ronnie Gunasinghe. Her lawyer informed the police and the magistrate conducting the inquiry, but he was not arrested. Instead, Dr Saravanamuttu and her lawyer Batty Weerakoon were issued death threats.

Non-state actors violating freedom of expression

It was not just the state that was responsible for violations of the right to freedom of expression. The Janatha Vimukthi Peramuna (JVP) led by Rohana Wijeweera, a Sinhalese militant organisation with an ideology that was a mixture of socialism, Sinhala nationalism and extreme authoritarianism, was equally intolerant of dissent. The first JVP insurrection in 1971 was crushed rapidly by the state. The second, despite brutal state repression, carried on from 1987 until it was crushed following Wijeweera’s execution in late-1989. In 1986, the JVP murdered the leader of the Colombo University-based Independent Students Union, Daya Pathirana, who was sympathetic to the grievances of Tamils. After the Indo-Lanka Accord was signed by J R Jayawardene and Rajiv Gandhi in 1987, proposing a political solution to the ethnic crisis that was far from perfect but went further towards satisfying Tamil grievances than any previous proposal, the JVP targeted all those who supported it. This included members of the main left parties: the Lanka Sama Samaja Party (LSSP), Communist Party (CP), Nava Sama Samaja Party (NSSP), and Sri Lanka Mahajana Party (SLMP). Several members of these parties were killed by the JVP, prominent among them were Vijaya Kumaratunga, leader of the SLMP (killed in February 1988), and George Rajapakse of the CP. Terrorised and desperate, some members of the left parties, like Chandrika Kumaratunga, fled abroad, some took up arms to defend themselves, and some — tragically — collaborated with state security forces hunting the JVP.

The other major non-state organisation responsible for the destruction of freedom of expression was the Liberation Tigers of Tamil Eelam (LTTE). Its use of detention, torture and murder to silence critics claimed thousands of lives and sent many others into exile to escape such a fate. The case of Rajani Thiranagama exemplifies its modus operandi. Thiranagama was a doctor, lecturer, feminist and author who was also a founding member of University Teachers for

Human Rights (Jaffna) (UTHR-J). In 1989, she and three other academics from the university jointly published a book, *The Broken Palmyra*, which catalogued and criticised human rights violations committed by all parties to the conflict, including Tamil militant groups. A few weeks later, on September 21, an LTTE gunman shot her dead while she was cycling home from work. UTHR-J was forced underground, but continued to produce unbiased reports of human rights violations in the civil war: one of the exceedingly few sources from which it was possible to obtain accurate information about what was really happening.

It can be argued that the LTTE’s ruthless suppression of freedom of expression under its leader Velupillai Prabhakaran, was what ultimately led to its downfall. Protests by Tamil civilians in the parts of Sri Lanka’s northeast controlled by the LTTE, especially against its policy of conscripting children into the armed struggle, were ignored or crushed. This refusal to accept any criticism of its policies, even those that were universally hated, led to disenchantment with the LTTE and withdrawal of any popular support it may once have enjoyed. Dissatisfaction with Prabhakaran’s goals and strategy even penetrated the ranks of the LTTE, and in 2004, was voiced by his eastern commander, Karuna Amman. Instead of taking the criticisms on board, Prabhakaran threatened Karuna with death, and launched a military assault against him and his supporters. Some of those supporters were killed, but Karuna himself escaped, and later teamed up with the government to fight against the LTTE. This was probably the mistake that marked the beginning of the end for the LTTE. But it was compounded by the LTTE’s boycott of the presidential elections of 2005, enforced by violence. This is what enabled hardline President Mahinda Rajapaksa to come to power and crush the LTTE in 2009, with tens of thousands of civilian casualties.

A brief reprieve

In 1993, Premadasa was blown up by a suicide bomber, and in the presidential and parliamentary elections at the end of 1994 Chandrika Kumaratunga and the People’s Alliance (PA) led by her were swept to power on a platform of peace with justice for Tamils. There followed a decade during which assaults on freedom of expression by the government were reined in. It is true this was only a brief reprieve, but it is important to record it, lest it be thought that the people of Sri Lanka do not value freedom of expression, or that the majority of Sinhalese people are inherently and virulently anti-Tamil.

However, it is important to remember that throughout this period, the LTTE’s assaults on freedom of expression continued unabated, affecting not only the population of the north and east, but even Tamils in government-controlled areas including Colombo. Among the high-profile cases of Tamils who were eliminated because they did not toe the LTTE line were Sarojini Yogeswaran, Tamil United

Liberation Front (TULF) politician and mayor of Jaffna (killed on May 17, 1998); Neelan Tiruchelvam of the TULF, internationally renowned scholar and lawyer (killed on July 29, 1999); Foreign Minister Lakshman Kadirgamar, also a distinguished diplomat and lawyer (killed on August 12, 2005); and Ketheeswaran Loganathan, author, journalist, political activist and human rights advocate (killed on August 12, 2006). By systematically silencing Tamils who spoke out for peace with justice for Tamils, the LTTE eliminated a large proportion of the men and women who could have negotiated a just political settlement, and made the bloody finale of the war inevitable.

The Rajapaksa regime

Under the Rajapaksa administration, Sri Lanka descended once more into the ranks of those countries where journalists are most at risk. Between 2005 and mid-2008, 14 media workers were killed, seven abducted, and 25 fled abroad due to threats to their lives. Defence correspondent Iqbal Athas was subjected to sustained attacks by the Ministry of Defence, while government ministers repeatedly and openly attacked mediapersons verbally and physically without any disciplinary action being taken against them. Thirteen journalists were arrested and detained, including senior journalist J S Tissainayagam, who was later charged under the Prevention of Terrorism Act and sentenced to 20 years in jail. Defence columnist Keith Noyahr, Namal Perera of the Sri Lanka Press Institute, and Poddala Jayantha, secretary of the Sri Lanka Working Journalists' Association and campaigner for press freedom, were abducted and beaten so mercilessly that they barely escaped with their lives.

The case that received most publicity, perhaps, was that of Lasantha Wickrematunge, editor of the *Sunday Leader*, shot dead on January 8, 2009. These words in his last editorial, which was published posthumously, made it clear that this was a death foretold: "No other profession calls upon its practitioners to lay down their lives for their art save the armed forces — and, in Sri Lanka, journalism... Countless journalists have been harassed, threatened and killed. It has been my honour to belong to all those categories, and now especially the last... When finally I am killed, it will be the government that kills me."

Any hopes that the end of the war would inaugurate renewed freedom of expression were rapidly dashed. Indeed, the presidential and parliamentary elections in early-2010 and the passage of the 18th amendment to the Constitution, abolishing the two-term limit to the executive presidency and nullifying limits to the president's power that had been introduced by the 17th amendment, were eerily reminiscent of events in the 1980s. The use of government machinery to campaign for Mahinda Rajapaksa, the use of violence against the campaign of the main opposition candidate Sarath Fonseka, numerous polling irregularities, the arrest and incarceration of Sarath Fonseka after the

presidential elections and denunciation of those who had voted for him as 'traitors', and the way in which a constitutional amendment was rushed through without the required procedure, could all have come straight out of Jayawardene's and Premadasa's regimes. At the same time, journalists in Sri Lanka continued to be threatened and attacked, and foreign publications with articles critical of the regime were seized by customs.

A means of expression which was largely absent in the 1980s but has become extremely important today is the Internet. Consequently, attacks on freedom of expression have targeted websites and web journalists with censorship and violence. LankaNewsWeb was rendered inaccessible since July 11, 2009, and LankaeNews, InfoLanka and Sri Lanka Guardian were blocked temporarily. TamilNet remained blocked. In an interview with Reporters Without Borders, LankaNewsWeb editor-in-exile Chandima Withanaarachchi explained that his website focuses on "human rights abuses, corruption and malpractices of political leaders": clearly not topics that the regime wishes to see discussed. In February 2010, the *Sunday Times* and LankaNewsWeb reported a plan by the state to set up an Internet filtering system with the help of Chinese experts and make Internet website registration a requirement. The plan was abandoned only after being denounced by the World Bank, which funds Sri Lanka's Telecommunications Development Programme.

On January 24, 2010, political analyst and cartoonist Prageeth Eknaligoda, working for LankaeNews, disappeared. More than a year later, no progress has been made with his case. In July 2010, there was an arson attack by a dozen armed men on the Voice of Asia group's offices. Another arson attack destroyed the offices of LankaeNews during the night of January 30-31, 2011, after it published an article challenging the testimony given by Gotabaya Rajapaksa, secretary of defence and the president's brother, during the trial of Sarath Fonseka. The website's editor, Sandaruwan Senadheera, had already been forced to seek asylum in the UK with his family after receiving threats.

No action has been taken against the perpetrators of any of these crimes, making it clear that they were done at the behest of the regime in power. This makes it all the more important that violations of freedom of expression in Sri Lanka should remain in the spotlight.

Rohini Hensman is an activist and independent scholar working on issues of workers' rights, women's rights, the rights of minorities in India and Sri Lanka, and globalisation. She has written extensively on these issues, her most recent book being Workers, Unions, and Global Capitalism: Lessons From India. Her publications include two novels

‘Dissent is the quintessence of democracy’

The March 2011 judgment of the Delhi High Court on the censorship of *Had Anhad*, a documentary on the legacy of Kabir, outlines the broad principles governing censorship in India and makes a strong case for the right of the viewer/reader to think autonomously while reacting to the speaker/filmmaker, and to make informed choices without being controlled by the state

THE FOLLOWING are excerpts from the Delhi High Court judgment of March 9, 2011, in the case of *Srishti School of Art, Design and Technology versus the Central Board of Film Certification*. The judgment was delivered by Justice S Muralidhar.

The petitioner, producers of a documentary film *Had Anhad (Bounded-Boundless)*, challenged an order dated May 28, 2010, of the Film Certification Appellate Tribunal (FCAT) upholding three of the four excisions ordered by the Central Board of Film Certification (CBFC) by its order dated November 5, 2009, while granting the film a V/U certificate.

Had Anhad is part of a series of four films made by filmmaker Shabnam Virmani around the legacy and teachings of the 15th century poet-philosopher Kabir. The film begins in Ayodhya, where shopkeepers still sell VCDs of the demolition of the Babri Masjid that took place on December 6, 1992, asking them why, when Kabir says that Ram resides in each body Ram needs “this temple”. The film then moves to Malwa in central India where in Lunyakhedi village, popular Kabir folk singer Prahlad Tipanya discusses how Kabir’s Ram is not only the son of King Dashrath, the husband of Sita or the killer of Ravana but also the light that permeates all and resides in each body. From there the film takes viewers to Rajasthan and then to Benares where the different versions of Kabir’s birth and life are narrated by Muslims belonging to the weaver community, by a train ticket collector, and a mahant of the Dharamdasi Kabir Panth at Damakheda in Chhattisgarh. Then the filmmaker moves to Uttar Pradesh and Madhya Pradesh. “Kabir seems to push me to question the borders of my identity — where I draw the line, where I build my walls,” she says. She travels to the Wagah border separating India and Pakistan and finally to Pakistan where she meets leading qawwals who sing Kabir’s songs, discovering a Ram and Kabir “beyond borders”.

“The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each

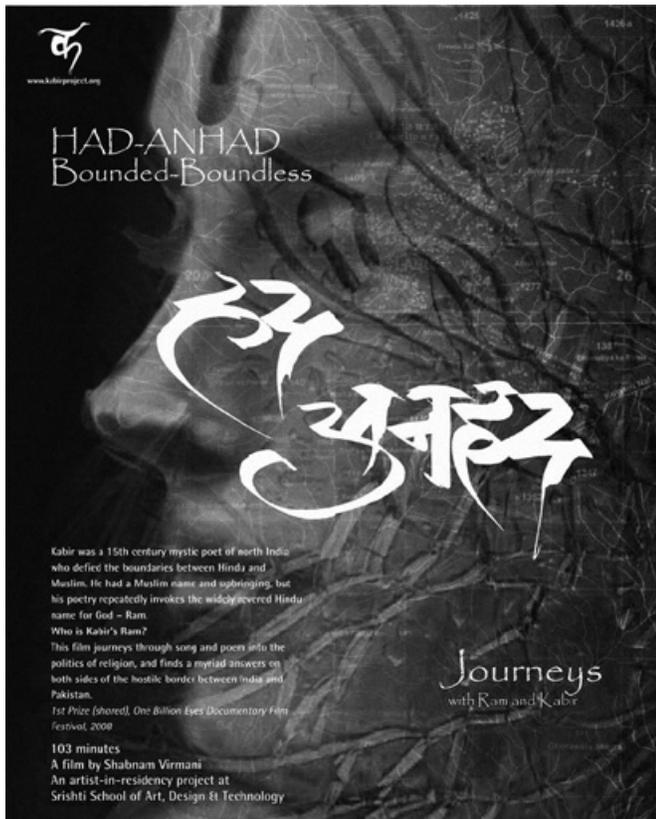
of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests.” (Justice Harlan in *Cohen v California* 403 US 15 [1971])

“I disapprove of what you say, but I will defend to death your right to say it.” (Attributed to Voltaire in S G Tallentyre, *The Friends of Voltaire* [1907])

Broad principles governing censorship

6.1 In the several decisions handed down involving the censoring of documentary and feature films, the Supreme Court has interpreted the provisions of the Cinematograph Act, 1952 (CA), the Guidelines under Section 5-B thereof in light of Articles 19 (1) (a) and 19 (2) of the Constitution of India. One of the early cases on film censorship decided by the Supreme Court was *K A Abbas v Union of India AIR 1971 SC 481*. The film in question was a documentary titled *A Tale of Four Cities*. The court held that “censorship of films including prior restraint is justified under our Constitution” and proceeded to explain (AIR, p 498):

“The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. **Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most deprived amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good.** We must not look upon such human relationships as banned in toto and forever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form, and the line is



to be drawn where the average man or moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth." (emphasis added)

6.3. In *Ramesh v Union of India* AIR 1988 SC 775, the challenge was to the telecast of a film *Tamas* which depicted the violence, killing and looting that took place during the partition of the country. The Supreme Court agreed with the observations of Justice Vivian Bose in *Bhagwati Charan Shukla v Provincial Government* AIR 1947 Nag 1 that (AIR, p 778): "...the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view."

6.4 It was further observed (AIR, p 781): "If some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, an equally deep, strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish

interests, scenes depicting mutual respect and tolerance, scenes showing comradeship, help and kindness which transcend the barriers in religion."

6.5 It was held that "viewed in its entirety" the film was "capable of creating a lasting impression of this message of peace and co-existence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film."

6.6 In *S Rangarajan v P Jaggivan Ram* (1989) 2 SCC 574, it was explained (SCC, p 599): "Freedom of expression which is legitimate and constitutionally protected cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19 (1) (a) can be reasonably restricted only for the purposes mentioned in Article 19 (2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practise tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."

6.7 In *Life Insurance Corporation of India v Prof Manubhai D Shah* (1992) 3 SCC 637, the Supreme Court underscored that the restrictions in Article 19 (2) on the freedom under Article 19 (1) (a) had to be interpreted strictly and narrowly. It was held (SCC, pp 664-665): "But since permissible restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article 19 (1) (a), such restrictions are bound to be viewed as anathema, in that they are in the nature of curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities that seek to impose them. The burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law."

6.8 The broad principles enunciated in the above decisions provide the backdrop against which the excisions directed by the CBFC and affirmed by the FCAT require to be examined.

The first excision

8. The film opens with the statement on the screen that Kabir was a 15th century mystic poet of north India who defied the boundaries between Hindus and Muslims. Kabir had a Muslim name and upbringing, but his poetry repeatedly invoked the widely revered Hindu name of God — Ram. The question "Who is Kabir's Ram?" appears on the screen, followed by the text: "This film journeys through song and poem into the politics of religion, and finds a myriad answers on both sides of the hostile border between India and Pakistan."

9. There are then plates that appear on the screen explaining the backdrop of the film. The opening plate reads: "For

centuries, fundamentalist forces amongst Muslims and Hindus have stoked divisive religious politics between the two communities in the Indian sub-continent. Ram is one of the most popular deities in Hindu religious traditions. He was the legendary king of Ayodhya in ancient India; hero of the epic Ramayana. In recent Indian politics, Ram has been invoked by certain groups to consolidate Hindu identity and votes in divisive opposition to Muslims living in India and the neighbouring Islamic state of Pakistan. It is in this backdrop that this film unfolds, in search of the “Ram” invoked in the poetry of Kabir, a popular mystic poet of 15th century north India.”

10. One of the first excisions ordered by the CBFC was that the words “Muslims living in India and the neighbouring Islamic state of Pakistan” should be deleted as it violates Guidelines 2 (xii), 2 (xiii) and 2 (xvi) formulated by the Government of India in the Ministry of Information and Broadcasting (I&B) by a Notification dated January 7, 1978, under Section 5-B (2) CA. Guideline 2 (xii) requires the CBFC to ensure that “visuals or words contemptuous of racial, religious or other groups are not presented”. Guideline 2 (xiii) requires the CBFC to ensure that “visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented” and Guideline 2 (xvi) requires it to ensure that “friendly relations with foreign states are not strained”.

11. By the impugned order dated May 28, 2010, the FCAT has disagreed with the CBFC on the above excision and to that extent allowed the petitioner’s appeal. The present petition is therefore concerned with the other three excisions that have been upheld by the FCAT.

The second excision

12. The filmmaker’s narration appears hereafter on screen as text. It reads: *“In 2003, I set out in search of Kabir. Why Kabir? What made me want to search for a 15th century mystic poet today? Maybe turning to Kabir was a turning away from Ram... ..that militant Ram used to stoke Hindu-Muslim hatred in India today. But then, I found a Ram in Kabir too. And their stories began to unfold through the fog of history and politics, intertwined.”*

13. The CBFC ordered the excision of the words “militant Ram” on the ground that it violates Guideline 2 (xii). The FCAT while discussing this excision observed in para 17 of its order:

“17. It is common knowledge that the Christian, Islam and Hindi religion are very old. The question of a “militant Ram” stoking ill-will between Hindus and Muslims does not arise. Therefore, wherever including in the title card there is reference to “militant Ram” and such similar ideas/words, the words have to be deleted. It is also recommended by CBFC. Guideline 2 (xii) is not applicable because it is factually incorrect. During Shri Ram’s times there was no Islam and

The right to speak, to disseminate, to argue, to debate, to witness, to react, to ignore, to engage in dialogue, to discuss, to agree, to disagree, to form and hold opinions. These different facets are integral to the freedom of speech and expression in Article 19 (1) (a). A non-fiction film provides the democratic space that permits the viewer, without having to suspend disbelief, to receive ideas, to be provoked, and to participate in a discussion

Shri Ram was a man of peace and was forced to battle with Ravana to save his wife. Lord Rama was not a man of war and returned to Ayodhya as soon as his wife was freed. Serial No 2 stands decided.”

14. It has been urged by Mr Jawahar Raja, learned counsel for the petitioner that in directing the second excision the CBFC, and the FCAT which upheld it, failed to appreciate the context in which the said words occur. It is urged that the film has to be viewed as a whole in order to understand what the central theme of the film is. Reliance has been placed on a large number of judgments which will be discussed hereafter. Mr Ashish Kumar Srivastava, learned counsel for the respondent, on the other hand, reiterated what has been observed in the impugned order of the FCAT. As regards the excision of the phrase “militant Ram” it was suggested that “the same meaning can be conveyed by using the word ‘Ram’ instead of “militant Ram”.

15. In the first place, the law is clear that words or visuals in a film have to be viewed in the context of the whole film. They ought not to be viewed in isolation. It appears that in coming to the conclusion they did on the second excision, neither the CBFC nor the FCAT kept this principle in view.

Gopal Vinayak Godse v Union of India AIR 1971 Bom 56, a decision rendered by a Full Bench of the Bombay High Court concerned the validity of the ban on the Marathi novel *Gandhi-hatya Ani Mee* authored by the petitioner which purportedly contained passages and words that were allegedly distortions of history and promoted feelings of communal hatred. The Bombay High Court struck down the ban. Speaking for the court, Chandrachud J (as he then was) underscored the importance of considering the offending passages in the context of the entire book. He observed (AIR, p 82): “We find ourselves wholly unable to take the view that the several passages on which the learned advocate general relies are capable of promoting feelings of enmity and hatred between Hindus and Muslims in India. **A passage here or a passage there, sentence here or a sentence there, a word similarly, may if strained and torn out of context supply inflammatory matter to a willing mind. But such a process is impermissible. We must read the book as a whole, we must not ignore the context of a passage and we must try and see what, reasonably, would be the reaction of the common reader.** If the offending passages are considered in this light, the book shall have to be cleared of the charge levelled against it.” (emphasis added)

16. The ratio of the said decision would in the view of this court equally apply to words and visuals in a film.

17. On the second excision, the FCAT’s approach is intriguing. If Guideline 2 (xii) is not applicable as held by the FCAT then the CBFC’s conclusion that these words are “contemptuous of racial, religious or other groups” obviously cannot be sustained. Secondly, the FCAT was not called upon to decide the tenability of the understanding of the filmmaker as regards the projection by certain others of Ram to justify acts of violence. The observations in para 17 of the impugned order of the FCAT about who Lord Ram was and what he did was unnecessary. One may agree or disagree with the filmmaker’s position but the issue is whether she has a right to express her point of view irrespective of its “acceptability” to the viewer or for that matter to the CBFC or the FCAT. To recall the lines from the famous dissent of Justice Oliver Wendell Holmes in *United States v Schwimmer 279 US 644 (1929) (at 655)*: “...if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — **not free thought for those who agree with us but freedom for the thought that we hate.**” The constitutional framework of the freedom of speech and expression as enshrined in Article 19 (1) (a) of the Constitution provides democratic space to a citizen to put forth a view which may be unacceptable to others but does not on that score alone become vulnerable to excision by way of censorship. Thirdly, the excision ordered makes little sense. If in the sentence, “May be turning to Kabir was a turning away from Ram... that militant Ram used to stoke Hindu-Muslim hatred in India today,” the phrase “militant Ram” is replaced by “Ram”, the sentence would read: “May

be turning to Kabir was a turning away from Ram... that Ram used to stoke Hindu-Muslim hatred in India today.” This not only mutilates the meaning of the sentence but perhaps renders it more objectionable from the point of view of the CBFC. In any event in the context of the entire sentence, and in the backdrop of the film when viewed as a whole, the words “militant Ram” do not represent the filmmaker’s view of Ram. It is her comment on how certain others have projected Ram to stoke religious hatred. In fact, she makes it clear that she does not subscribe to this viewpoint when she says soon thereafter: “*But then, I found a Ram in Kabir too.*” The conclusion that the phrase which has been ordered to be excised violates Guideline 2 (xii) is legally untenable.

The third excision

18. The third excision directed is of the entire visuals relating to the demolition of the Babri Masjid and the words beginning with “*Hamare Purvaj Ke Janm Bhumi...*” up to “*...thakathse milenge*”. The above excision has been upheld by the FCAT by simply stating as under in para 18 of the impugned order: “18. The tribunal has no hesitation in upholding the deletion of the words and visuals relating to Babri Masjid demolition. The appellant would delete the entire chapter on Ayodhya since there is gross violation of Guideline 2 (xiii), (xv), (xvii), indicated at serial no 3 in the CBFC impugned order. The words and visuals promote communal and anti-national attitudes.”

22. Guideline 2 (xiii) requires the CBFC to ensure that the film does not present “visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes”. Guideline 2 (xv) requires it to ensure that “the security of the state is not jeopardised or endangered” and Guideline 2 (xvii) requires the CBFC to ensure that “public order is not endangered”. The burden of showing that the visuals and words presented in the film “promote” communal or anti-national attitudes is definitely on the state. The visuals and words presented in the film cannot be viewed in isolation. They have to be viewed as part of the whole film. When so viewed they have to be shown to “promote” communal or anti-national attitudes. Likewise, the burden on the state to show that the film as a whole “jeopardises the security of the state” or that it “endangers” public order is indeed a heavy one. Mere apprehension of danger to law and order is hardly sufficient. Neither the CBFC nor the FCAT have in their impugned orders cared to explain why they conclude that Guidelines 2 (xiii), 2 (xv) and 2 (xvii) have been violated.

23. The freedom of the citizen’s speech and expression under Article 19 (1) (a) of the Constitution may not be absolute, but the restrictions thereon under Article 19 (2) have to be narrowly construed. As explained in *Life Insurance Corporation of India v Prof Manubhai D Shah* (supra) the burden is on the state to show that the benefit from restricting the freedom is far greater than the perceived harm resulting from the speech or depiction.

The state has to ensure that the restrictions do not rule out legitimate speech and that the benefit to the protected interest outweighs the harm to the freedom of expression. Justice Harlan in *Cohen v California* (supra) pertinently asked: “Surely the state has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us?”

24.1 The broad principle that the film has to be viewed as a whole before adjudging whether a particular scene or visual offends any of the guidelines has been reiterated in a large number of decisions of the Supreme Court, some of which have been referred to earlier. They have been followed by the high courts in adjudging the validity of censorship directions concerning documentary films. Some of these decisions will be discussed hereafter.

24.2 Documentary filmmaker Anand Patwardhan approached the Bombay High Court against the decision of the Prasar Bharti Board not to screen his documentary film *Father, Son and Holy War*. The Bombay High Court allowed his writ petition against which Doordarshan appealed to the Supreme Court. In *Director General, Directorate General of Doordarshan v Anand Patwardhan AIR 2006 SC 3346*, the Supreme Court confirmed the decision of the Bombay High Court and observed that the film no doubt dealt with communal violence but the attempt of the filmmaker was to portray the miseries of innocent victims of communal riots. It was observed (AIR, pp 3350-3351): “The message of the filmmaker cannot be gathered by viewing only certain portions of the film in isolation but one has to view it as a whole. There are scenes of violence, social injustice but the film by no stretch of imagination can be said to subscribe to the same. They are meant to convey that such social evils are evil. There cannot be any apprehension that it is likely to affect public order or it is likely to incite commission of an offence.”

24.3 It was further observed (AIR, p. 3353): “the correct approach to be taken here is to look at the documentary film as a whole and not in bits, as any message that is purported to be conveyed by way of a film cannot be conveyed just by watching certain bits of the film. In the present situation the documentary film is seeking to portray certain evils prevalent in our society and is not seeking to cater to the prurient interests in any person. Therefore, we have no hesitation in saying that this documentary film if judged in its entirety has a theme and message to convey and the view taken by the appellants that the film is not suitable for telecast is erroneous.”

25. When *Had Anhad* is viewed as a whole, the sequences (visuals and words) concerning the conversations in Ayodhya in the backdrop of the television screen showing the VCD on the Babri Masjid demolition do not in any manner violate any of the three guidelines — 2 (xiii), 2 (xv) and 2 (xvii). A deconstruction of those sequences shows how the film operates at different levels of speech and expression of the

protagonists, the filmmaker and the viewer. At the first level, the film (and the filmmaker) captures the points of view of those speaking in front of the camera. At another level, the filmmaker enters into a conversation with the speaker and the viewer gets to watch this interplay. At yet another level, the filmmaker communicates to the viewer her reaction to the conversation. Then we have the viewer who is reacting to all of the above and dialoguing or discussing albeit silently with the protagonists and the filmmaker by agreeing or disagreeing with one or the other or partly with one and partly with the other. Involved here then are different facets of speech and expression. The right to speak, to disseminate, to argue, to debate, to witness, to react, to ignore, to engage in dialogue, to discuss, to agree, to disagree, to form and hold opinions. These different facets are integral to the freedom of speech and expression in Article 19 (1) (a). A non-fiction film provides the democratic space that permits the viewer, without having to suspend disbelief, to receive ideas, to be provoked, and to participate in a discussion. This right of the viewer to think autonomously while reacting to the speaker or the filmmaker, and to make informed choices, without being controlled by the state, also constitutes an integral part of the freedom of speech and expression. This aspect has been brought out in some of the decisions of the Israel Supreme Court which will now be discussed.

26. In *Israel Film Studios Ltd v Gerry (1962) Isr SC 15 2407* (at 2416), the Israel Supreme Court was examining the justification of censoring a portion of a short film showing an eviction from the Smail suburb of Tel Aviv. The reason for disallowing the said portion, *inter alia*, was that it did not present the problem in its entirety. The Supreme Court of Israel reversed the decision of the censors. Speaking for the court, Justice Landau pointed out: “A sovereign arrogating for itself the power to determine what the citizen should know will ultimately determine what the citizen should think; nothing constitutes a greater contradiction of true democracy, which is not “directed from above”. This thought is echoed in an essay titled ‘Sense and Censorability’ (at <http://www.altlawforum.org/law-an-media/publications/sense-and-censorability> visited on February 25, 2011) by legal scholar Lawrence Liang. He points out that the law as interpreted by the Supreme Court “teaches you how you should see the film and a legal theory of spectatorship... it creates a world of reception theory, which plays an important pedagogic role, which is not just about prohibiting a particular view, but also about cultivating a particular view.” Recognising the need to acknowledge the rights of both the “citizen viewer” and the “speaking subject” he says: “The task of censorship is to teach the viewer to become a citizen through particular spectatorial practices, and the imagined gaze of the citizen-viewer determines the specific content of censorship laws.”

27. *Had Anhad* brings to the fore many of the facets of the freedom of speech and expression. At times the camera is a bystander and lets us view an exchange between two

protagonists. At other times the filmmaker herself engages in conversation and elicits the point of view of the speaker or voices her own opinion on the issue. The filmmaker at other times steps back and lets the viewer draw her own conclusions. This is precisely the democratic space that is required to be provided so that the less articulate viewer or the one who has already formed an opinion or has no opinion or has an opposite point of view are all able to appreciate the point of view of the "other" as is essential to all healthy democratic practices. As long as the film provides space for dialogue and discussion of a contentious issue, the "policing" out of a point of view or a visual merely because it is disagreeable to some cannot be justified.

28. The scenes and visuals that constitute the third excision are in one sense a recalling of the memory of an historical event. The recall may be imperfect. It may contradict the collective memory of that historical event. It may revive tensions over the events being recalled. Yet, that by itself does not invite censorial intervention to obliterate the scenes of recall. In *Laor v Film and Plays Censorship Board (1987) Isr SC 41 (1) 421* the censor board refused to permit the staging of a play *Ephraim Returns to the Army* which described events in the occupied territories under Israeli military rule on the ground that it presented a distorted and false image of the military administration. It feared an outburst of "negative feelings against the state" and "severe offence to the feelings of the Jewish public by the implied and explicit comparison between the Israeli regime and the Nazi occupation". Justice Barak speaking for the court that negated the ban held: "It is none of the board's business whether the play reflects reality, or distorts it." He went on to observe: "Indeed, the passage in the play may offend the feelings of the Jewish public, and is certainly liable to offend the feelings of those with personal experience of the Holocaust. I myself was a child during the Holocaust, and I crossed fences and borders guarded by the German Army smuggling objects on my body. The parallel between the German soldier arresting a child and the Israeli soldier arresting an Arab youngster breaks my heart. Nonetheless, we live in a democratic state, in which this heartbreak is the very heart of democracy."

30.1 Reverting to *Had Anhad*, the third excision as directed by the CBFC is on account of the film endangering security of the state and public order. Similar reasons adduced by the CBFC to order cuts in other documentary films have met with judicial disapproval. The feature film *Chand Bujh Gaya* which depicted the travails of the life of a young couple — a Hindu boy and a Muslim girl — whose friendship and lives are torn asunder in riots in the state of Gujarat formed the subject matter of *F A Picture International v CBFC AIR 2005 Bom 145*. The CBFC refused to certify the film for exhibition and the FCAT confirmed the order. What weighed with the CBFC and FCAT was that the film depicted gruesome communal violence, which, they felt would foment communal disharmony. The CBFC further held that "the Gujarat violence is a live issue and a scar on national

sensitivity. Exhibition of the film will certainly aggravate the situation".

30.2 The Bombay High Court reversed both the decisions of the CBFC and FCAT. It observed that dissent was the quintessence of democracy and that "those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the state to clamp down on the free expression of opinion must hence be frowned upon". It was then observed that "(f)ilms which deal with controversial issues necessarily have to portray what is controversial. A film which is set in the backdrop of communal violence cannot be expected to eschew a portrayal of violence".

30.3 As regards depiction of violence in Gujarat, it was observed as under (AIR, pp 149-150): "To say that the violence which took place in the State of Gujarat is a 'live issue' and a 'scar on national sensitivity' can furnish absolutely no ground for preventing the exhibition of the film. No democracy can countenance a lid of suppression on events in society. The violence which took place in the State of Gujarat has been the subject matter of extensive debate in the press and the media and it is impermissible to conjecture that a film dealing with the issue would aggravate the situation. On the contrary, stability in society can only be promoted by introspection into social reality, however grim it be. Ours, we believe, is a mature democracy. The view of the censor does no credit to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme."

33. The conclusion that *Had Anhad* endangers public order is not based on any material available to the CBFC or the FCAT. In this context the decision in *S Rangarajan v P Jagjivan Ram* (supra) is apposite. Rejecting a similar argument in the said case, the Supreme Court observed as under (SCC, p 595): "Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like equivalent of a 'spark in a powder keg'."

The war dogma

A reporter debates the meaning of neutrality, objectivity and truth in the conflict zone of Dantewada, where everything seems to depend on where you stand. Are you standing between a crying mother and the barbed wire across which state officials are conducting an autopsy on her son whom they shot dead? Or across from a young boy whose leg was filled with shrapnel from a Maoist grenade? Or in a police van getting beaten up by the police for reporting on the burning of a village?

JAVED IQBAL

“SO WHAT IS THIS IN MY CONTRACT? What does it really mean that I need to fulfil my role as a reporter?” I had asked my editor a week before I headed back to Dantewada, not as a freelancer anymore but as a reporter for *The New Indian Express*. “That you have to show some level of professionalism,” he replied curtly. “And that means?” I shuddered. The word ‘professionalism’ had strong leanings towards corporatism in my mind. “That you need to just write the truth,” he said. “Marry me,” I said, overjoyed. That’s all I wanted to do.

I left his office, went home, packed, took the first bus to the ‘jungle’, and wrote a story about the aftermath of a combing operation in the village of Gompad. The story would be printed a few days later as the lead story. The photograph showed Katam Suresh, an 18-month-old baby whose fingers had been cut off by members of the security forces. That was my first published story. It was November 15, 2009.

Dantewada 2009 was a very different place from Dantewada 2010. In 2009, Dantewada wasn’t yet the place where 76 jawans were killed, where a civilian bus was hit by an IED, where Arundhati Roy had gone walking with comrades, where the ‘army had to be sent in’, or where the media pundits had anything much to say about the place. In 2009, the emptying of 644 villages, the displacing of an estimated 60,000-200,000 people, the burning, the looting, murdering, raping of adivasis, the fratricidal violence of the Maoists and the Salwa Judum, and the daily anxiety of existing in a civil war for four years wasn’t news. That a young baby had been shot dead by the CRPF in Cherpal wasn’t national news even though the local press picked up the story.

It was January when I first reached Dantewada as a freelancer. Nineteen adivasis had been murdered at Singaram, a fair distance from the forest guest house where I was residing in Bijapur. It was news in the local newspapers, and in Andhra Pradesh’s Telegu media, and in *Teheika*. That’s where it ended. Maoism and tribal issues were out of sight and out of mind for the blind and mindless mainstream media. Much later I would learn that a group of anthropologists and human rights workers had

gone to Delhi to attend a meeting with a large number of editors on the realities of Dantewada and the atrocities of the Salwa Judum. Their response was silence.

I was hoping to take enough pictures to help bring the ‘truth’ to the public consciousness. But before I was allowed into the more sensitive areas of Bastar district, I was warned that I’d need a little ‘get-through-the-checkpoint’ press card. “Many cadres of the Maoist party are illiterate, and they don’t take kindly to strangers. But they have been taught to identify P-R-E-S-S,” said a local journalist. Large areas of the district were out of bounds for the general public and the press. However, in 2009, anyone with a press card could go almost anywhere. The truth was instantly available, provided one was willing to give it time and a good pair of boots.

I spent months in Dantewada running my boots into the ground.

I know there are no universal truths, no feeble ideologies, no nationalist dirges, development gospels, human rights, no individual glories. The one simple basis to hold the entire knife’s edge of ‘stepping into’ a war is a faint humanism that exists when you sit quietly and look at the woman whose face has been slashed with a knife, and wonder why. You end up sympathising with fathers who cut the necks of their adult sons after they’ve had too much to drink. You wonder if that’s the whole story. You know it’s not. You ask why a teacher who asks, ‘Why are you killing innocent people’ is stabbed by the Maoists. You ask why an orphan is now a feared soldier; you ask why his village is now desolate, unlivable and empty. You ask why the Maoists killed a young woman’s father...

The more I delved, the more I realised that nothing is what it seems. The black-and-white binary certainties are like landmines that naïve idealists and careerist apologists for the status-quo tend to tread. What certainties? That the Maoists are bad? Or the state is only driven by corporate interests? Or that the Maoists do good, and the government has never done any good in 60 years? Or that the Salwa Judum are just state-backed vigilantes whose sole purpose is to uproot the tribals from their lands?

To look at Dantewada clearly one has to look through a myriad shattered crystals.

A lot depends on where you stand. Are you standing between a crying mother and the barbed wire across which state officials are conducting an autopsy on her son whom they shot dead? Or across from a young boy whose leg was filled with shrapnel from a Maoist grenade? Or in a police van getting beaten up by the police for reporting on the burning of a village?

You report the details, caring little for abstract politics or the power struggles in the upper echelons of society that are so cut off from the realities of human suffering. Every time a politician opens his mouth, his statements reek of irrelevance when set against the bloodshed. And the war goes on; the unimaginable terror in central India does not fuel anti-war sentiment in anyone but a small minority of citizens. The mainstream media happily propagates war. A mention of the burning of villages to a senior sub-editor of a newspaper is met with citations of the Jnaneswari massacre or the killing of 76 jawans. Do atrocities justify atrocities? Is war the only solution to atrocity? The state and media do not allow you to humanise any aspect of conflict. War is a business, and business is devoid of sentiment. Dead jawans don't appear on TV to say war is bad, yet we need war to

avenge our dead jawans.

While state atrocities are overwhelming, the justifications for Maoist terror appear shallow especially when read in the context of the dynamics of power. Yes there is indeed structural violence, and the breakdown of democratic space contributes to the downward spiral of violence and counter-violence. But power is structural violence too.

The word 'revolution' is as casually used and as ambivalent as the term 'democracy'. We notice quite easily that for millions of Indians neither has ever existed, for the country has never quite rid itself of its colonial past. All this is clearer in central India, and in the actions of the state against islands of popular resistance in places such as Narayanpatna, Lohandiguda, Kalinganagar, Kashipur, Jaitapur, Jagatsinghpur and Sompeta where police firing and arbitrary arrests have been and continue to be perpetrated with impunity.

A journalist has few choices. Write what the state wants you to write and stay alive, especially if you're a local journalist who lives in the war zone. Write the truth, publish the report and believe that the government and the rest of the country will be sympathetic to the concerns of the people; after all, we are a democratic nation. Dissent, if voiced sharply



The parents of 19-year-old Channu Mandavi wait for the police to release the body of their son who was gunned down on April 12, 2009, in a fake encounter

Javed Iqbal

enough, will draw in opposition parties, generate public debate, and lead to an eventual victory for the people. Or else the journalist believes that if there is no democracy then there is no such thing as journalism. Then the rulebooks become pointless and have to be thrown out.

In 2010, when the central government finally started to pay attention to what the state of Chhattisgarh was doing to its people in Dantewada, it initiated Operation Green Hunt — a consent-seeking name for the actions of the Chhattisgarh state over the past five years. All attempts to bring the truth to the public consciousness, and to the attention of the powers-that-be, culminated in a minister declaring that he'd wipe out the Naxalites and then bring development.

It's done wonders for my career though. Thank you, Mr Chidambaram. After Operation Green Hunt I became one of the first English daily journalists working in the area.

After months of reporting on atrocity after atrocity committed by both sides, I have found myself witness to one of the greatest crimes in the country. Of course, I had always questioned the myth of conflict journalism — the belief that news of atrocities would lead somebody far away, in a position of power and motivated to stop them, to intervene, to help end the war. That is pure fantasy. The war continues...

After a point it's not about writing the truth but living with it.

I have been documenting the end of an entire community in the name of profit, development and the big (fake) picture: the so-called greater good of superpower India. Human suffering is all too real and inevitable, but to go through life without realising that much of it is unnecessary is tragic.

The adivasis don't have to lose their forests, and the soldiers don't have to die.

As a journalist, you're supposed to walk away, go home, chew on the fat of life, and call 'it' — death, war, destruction and bottles of beer — nothing but a job. That's very convenient especially if you don't want to challenge the status-quo. Is that what conflict journalism is supposed to do? Or are those the natural demands of the nature of truth?

Journalism's only been around for a couple of hundred years or so. Truth and the demand for truth are older. They belong to the first time a caveman wondered why another caveman was stealing his food and calling it 'development'. As for mainstream corporate journalism, prostitution has been around longer and is a more legitimate profession with more ethical constraints. What may we say of the ethics and norms enforced by the *Time* magazines of the world, who use the photograph of a girl with a severed nose to propagate a war? Are these the ethics required of journalists working in the 'developing world'? The same 'developing

world' that is trying to exist against the very forces whose wars *they* propagate? The photograph of a defaced Aisha Bibi, unsurprisingly, won the World Press Photo award for Photo of the Year even as photographs of children blown apart by predator drones don't seem to win awards. An ethic to vie for.

To them, the Third World is a vicarious frenzy, the ultimate downer, humanity's hellhole. Go to the Congo, go to Rwanda, write about a million rapes, murders, and every detail of bloody mayhem and unimaginable poverty. Fit all this into a narrative that says the Third World can never govern itself without the help of the West, the World Bank, the IMF, the UN, and foreign intervention. They've been saying that about the Middle East since the Balfour Declaration. Now, thanks to one street vendor who burnt himself on the streets of Tunisia, they are eating their words.

Our media hasn't the maturity to think about whether adivasis can govern themselves or not, but they happily follow the inherited ethics of corporate journalism without much ado: neutrality, distance and objectivity. And that is a joke because they're *not* neutral, they're too distant from the ground, and they're definitely *not* objective. Nowhere in the press are the causes of the insurgency ever spelled out to the world. Nowhere are the combatants on both sides (by both media) looked at as human beings.

I can't live with the truth that journalism is a bullshit profession if truth has been transgressed. When war is the message of the messengers, in a world that is already stricken with terror and fear. And we are at love-war with ambivalent language — there are those who call murders encounters, pogroms riots, genocide development, and hatred patriotism; and there are those who call revolution social transformation. Truth is too often packaged as propaganda. One becomes only too aware that reports on atrocities are used by the 'other' side to propagate *their* war, and they call it a people's war — this is the strangest contradiction of anti-war reporting.

Does a journalist only subsist within words and images? When we need not words but actions to ensure that a spade is called a spade, that a rose is a rose is a rose? In a world where acts of terror are far more vitriolic than words of love, is the message the only purpose of a journalist? To write, to protest, to write and keep writing?

Truth is, I don't know.

Javed Iqbal is a journalist who has been reporting on tribal issues in Chhattisgarh, Orissa, Maharashtra and Andhra Pradesh. He worked for The New Indian Express from November 2009 to April 2011, documenting state and Maoist atrocities in undivided Bastar district of Chhattisgarh, and people's movements in Orissa. He has also written extensively on people's movements and slum politics in Mumbai

Virtual democracy?

Should India celebrate the fact that we have only 11 officially banned websites compared to 12,000 in Pakistan? Or worry about the increasing desire of the government to control Net freedom and push through the new IT notification that proposes to ban online content that “threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order”?

KETAN TANNA

IN THE LAST WEEK OF JANUARY 2011, a group of country analysts working on ‘Freedom on the Net-2011’, a report on Internet and digital freedom published by USA-based Freedom House, gathered at a hotel in Kuala Lumpur. Among those present at the meetings were analysts from Pakistan, China, Indonesia, Malaysia, South Korea and Thailand. I was the analyst for India. As it happened, seated next to me was the Pakistani analyst who had done considerable work in the field of Internet freedom. Opposite me was the analyst for China.

We had gathered to review a ratings exercise on how each country performed on various parameters of Internet freedom that had been compiled as part of a larger report on the state of Net freedom for various Asian countries. Each country analyst had to give a country briefing and arrive at a country score in conjunction with Freedom House officials and invited experts.

The Pakistani analyst was clearly upset at the deteriorating level of Internet freedom in his country. He said that in the past three to four years — under the rule of then President Parvez Musharraf and now under President Asif Ali Zardari — the authorities had adopted various measures to control cyberspace and the sharing of information online. He pointed out that in recent years they had — via government order or court decisions — blocked access several times to various Web 2.0 applications such as the video-sharing website YouTube, the photo-sharing application Flickr, and the social networking tool Facebook.

For an Indian, anything that happens in Pakistan is of great interest and I was closely following each word of my Pakistani colleague. Let me call him Junaid, as I’m not allowed to reveal his identity. Junaid started recounting the abysmal level of Internet freedom in his country and the fear of intimidation and surveillance in general. That the situation was bad became evident when he declined to be identified publicly as the author of his report for fear of repercussions.

Should I take comfort in the fact that as an Indian not only did I criticise the Indian government and various authorities for trying to slowly encroach upon our Internet freedom, I also downgraded the score of Internet freedom in India by two points from the previous pilot exercise held in 2009-10? I was only too happy to identify myself as the Indian analyst, while the analysts for the reports on Azerbaijan,

Bahrain, Belarus, China, Egypt, Ethiopia, Indonesia, Malaysia, Pakistan, Rwanda, Saudi Arabia, Tunisia, Venezuela, Vietnam and Zimbabwe requested anonymity when the final report was published in April 2011.

The situation worldwide as far as freedom on the Net goes does not look very good. While Estonia, the US and Germany are the top three free countries on the Net, the Freedom House report found that threats to Internet freedom are growing and have become more diverse globally. And that cyber attacks, politically motivated censorship, and



government control over Internet infrastructure are among the diverse and growing threats to Internet freedom.

Key findings of ‘Freedom on the Net-2011’ include:

Explosion in social media has met with censorship:

In response to the growing popularity of Internet-based applications like Facebook, YouTube and Twitter, many governments have started targeting the new platforms as part of their censorship strategies. In 12 of the 37 countries examined, the authorities consistently or temporarily imposed total bans on these services or their equivalents.

Bloggers and ordinary users face arrest: Bloggers, online journalists, human rights activists as well as ordinary people increasingly face arrest and imprisonment for their online writings. In 23 of the 37 countries, including several democratic states (and India), at least one blogger or Internet user was detained because of online communications.

Cyber attacks against regime critics are intensifying: Governments and their sympathisers are increasingly using technical attacks to disrupt activists’ online networks, eavesdrop on their communications, and cripple their websites. Such attacks were reported in at least 12 of the 37 countries covered.

Politically motivated censorship and content manipulation is growing: A total of 15 of the 37 countries examined were found to engage in substantial online blocking of politically relevant content. In these countries, website blocks are not sporadic but rather the result of an apparent national policy to restrict users’ access to information, including the websites of independent news outlets and human rights groups.

Governments exploit centralised Internet infrastructure to limit access: Centralised government control over a country’s connection to international Internet traffic poses a significant threat to free online expression, particularly in times of political turmoil. In 12 of the 37 countries examined, the authorities used their control over infrastructure to limit widespread access to politically and socially controversial content, and in extreme cases cut off access to the Internet entirely.

Where do India and South Asia figure in this frayed and deteriorating scenario? Unfortunately, we did not have analysts from Nepal, Bangladesh or Sri Lanka, so this article confines itself to Pakistan and India. In terms of world rankings on Internet freedom, India ranks 14th and Pakistan 26th.

That India is below Nigeria and above Malaysia is not too flattering if we look at the global rankings. Pakistan has reason to slide down to 26th position with even Kazakhstan above it.

The Pakistani authorities have blocked access to various sites, notably Facebook, due to their “blasphemous” content. Politically motivated censorship and blanket bans have affected a large number of users. There have been several other instances of the blocking of websites. According to the Pakistani analyst, websites that are comprehensively blocked have content which is perceived as ‘anti-military’,

‘blasphemous’, or ‘anti-state’, while the most systematically censored is information disseminated by Balochi and Sindhi political dissidents. For example, the website of the Washington-based World Sindhi Institute and the website *Lal-Masjid* are blocked. In November 2010, the authorities blocked *The Baloch Hal*, the first English language news website focused on Baluchistan, approximately one year after its launch. The Pakistani authorities cited Section 99 of the penal code, which allows the government to restrict information that might be prejudicial to the national interest, to justify their blocking. According to a document submitted to the Lahore High Court during a court hearing, by September 2010 “more than 12,000 blasphemous and anti-state/social websites have been blocked from access”.

Websites banned by the Government of India

In April 2011, an RTI activist from The Centre for Internet and Society managed to get a list of ‘officially banned’ websites in India. The Department of Information Technology has stated that the list includes:

- <http://www.zone-h.org>
- <http://donotdial100.webs.com>
- <http://www.bloggernews.net/124029> (accessible from Tata DSL, but not from others like Reliance Broadband and BSNL Broadband)
- <http://www.google.co.in/#h1=en&source=hp&biw=1276&bih=843&>
- <http://www.cinemahd.net/desktop-enhancements/wallpaper/23945-wallpapers-beautiful-girl-wallpaper.html>
- <http://www.chakpak.com/find/images/kamasutra-hindi-movie>
- <http://www.submitlink.khatana.net/2010/09/jennifer-stano-is-engaged-to.html>
- <http://www.result.khatana.net/2010/11/im-no-panty-girl-yana-gupta-wardrobe.html>
- <http://www.facebook.com/pages/I-Hate-Ambedkar/172025102828076>
- <http://www.indybay.org>
- <http://arizona.indymedia.org>

Should Indians be thrilled that we have only 11 officially banned websites, compared to 12,000 in Pakistan? Should we be thrilled that in Asia we are second in the list of countries that are comparatively free, with South Korea ahead of us?

Before we begin to feel good about ourselves compared to other Asian countries, Indians need to remember that the level of freedom on the Net for India is dropping. In the report entitled ‘Freedom on the Net-2009’, India had a score of 34 (partly free). In 2011, it is 36. The bright side is that though India’s Internet penetration rate of less than 10% is low by global standards, access has expanded rapidly in urban areas, generating tens of millions of new users in recent years. In the past, instances of the central government seeking to control communication technologies were relatively rare. However, following the November 2008 terrorist attacks in Mumbai

and with expanding Maoist insurgency, the need for and the desire and ability of the Indian government to control Net communications has grown.

In 2008, Parliament passed amendments to the Information Technology Act (ITA) which came into effect in 2009 and expanded the government's monitoring capabilities. Pressure has also increased on private intermediaries to remove certain information. Though most requests have targeted comments that might incite communal violence, some observers have voiced concern over certain removals being unnecessary. The fairness of bidding processes surrounding the allocation of spectrum also came into question in 2010 with the exposure of a major corruption scandal involving the licensing of second-generation (2G) mobile phone services.

As if the amended Information Technology Act were not enough, in April 2011 the Department of Information Technology, Government of India, issued the Information Technology (Intermediaries Guidelines) Rules, 2011. It said that content that "threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order" would be entitled to a ban. Intermediaries which could include YouTube or Facebook or companies hosting websites would have to respond to demands to take down offensive content within 36 hours. The rules have not provided any way out for content producers to defend their work or appeal against a decision to take content down. To be fair, the new rules have also removed liability from Internet intermediaries as long as they are not active participants in creating content that is later deemed offensive.

The new rules also stipulate that cyber cafe owners would be required to "tell users" not to surf websites that contain "pornographic or obscene material". According to the rules notified on April 11, all cyber cafes in the country will have to register with an "agency as notified" by the government. While some of the guidelines deal with the security threat posed by "anonymous Internet users", most aim to make sure that people don't use cyber cafes to access pornographic material. The new rules make it mandatory for users to carry identity cards. Cyber cafe owners have been asked to give user logs to the "registration agency" every month as well as keep these records along with the log of websites accessed at the cyber cafe safe for one year.

When my Pakistani colleague started recounting instances of how bloggers were frequently intimidated and how Internet freedom was under threat in his country, I thanked God that India has a spirited civil society which will not easily be bulldozed into submission by the government with respect to Internet freedom. But with each passing day, Indians are being squeezed into a corner. The desire and the ability of the Indian government to control our freedom on the Net is increasing, and we need to be vigilant about it. Otherwise, India will soon be placed somewhere near Pakistan or, worse, above Saudi Arabia and Iran in the world rankings on Internet freedom.

Ketan Tanna is Editor, Free Press Journal Online, and Features Editor, Free Press Journal

On artistic freedom

Purushottam Agrawal's letter to the Hindi Akademi of the Delhi government criticises political interference in state-sponsored literary awards

PURUSHOTTAM
AGRAWAL

THE HINDI AKADEMI of the Government of Delhi annually honours writers with cash awards. The Shalaka Samman of Rs 150,000 is conferred on a senior writer as a kind of lifetime achievement award. The next category is the Sahityakar Samman. For the year 2008, the jury recommended Shri Krishna Baldeva Vaid for the Shalaka Samman, along with a couple of names for the Sahityakar Samman, and some more for other categories. Shri Vaid is a truly eminent writer. He is known for his penchant for experimenting with language and for probing the matrix of relationships between the sexes.

I was officially informed of the Akademi's decision to confer the Sahityakar Samman on me on January 7, 2010. Soon afterwards, the media reported that a functionary of the ruling party had written to the chief minister of Delhi (in her ex-officio capacity as chairperson of the Akademi) protesting the Shalaka Samman decision on the grounds that Shri Vaid's writings were (according to him) obscene.

Following the protest, the Akademi decided to withhold Shri Vaid's award. This, despite the recommendations in his favour by a jury of writers and literary critics. Thereupon, I wrote to the secretary of the Akademi on March 12, pointing out the implications of this action and underlining the importance of respecting the autonomy of creative pursuits and of the agencies dealing with them. Following my letter, other writers such as the eminent Hindi poet Kedar Nath Singh (who was awarded the Shalaka Samman for 2009) also declined their awards.

The awards were given away on May 11, 2010. An English translation of the letter is given below.

Dear Parichaya Das ji,

I trust this finds you in the best of spirits.

On January 7, I received your letter regarding the Hindi Akademi's decision to honour me with the Sahityakar Samman for 2008. At that point I assumed that recommendations of the jury were implemented as a matter of course, and I conveyed to you my acceptance. However, I now learn from press reports that the Akademi has decided not to confer the Shalaka Samman on Shri Krishna Baldeva Vaid in spite of the jury's recommendation. The reports

Of late, a disturbing rise in the level of intolerance has become visible in our society. This is so not only in the context of creative pursuits but beyond them too. Artists, writers, thinkers and scholars are often physically attacked — sometimes for the so-named ‘offence’ of hurting sentiments, sometimes for hurting morality by their so-called acts of obscenity. Such intolerance can turn democracy into a mere formality. Respect for creativity is an imperative prerequisite for strengthening the temperament and practices of democracy in society

indicate that the Samman is being withheld from Shri Vaid on account of charges of so-called obscenity in his writings.

This disturbs me. Obscenity or propriety in literature and the arts cannot be determined in such a flat and insensitive manner. It is improper to permit extra-literary considerations to override the recommendations of a jury. Such actions manifest a lack of respect due to a senior writer, as well as to the pursuit of creative writing. We often hear well-meaning phrases about the writer’s social responsibility. I feel constrained to point out that institutions representing social and political power and authority should, on their part, respect the pursuit (*sadhna*) of thought, art, literature, knowledge, and their autonomy.

Of late, a disturbing rise in the level of intolerance has become visible in our society. This is so not only in the context of creative pursuits but beyond them too. Artists, writers, thinkers and scholars are often physically attacked — sometimes for the so-named ‘offence’ of hurting sentiments, sometimes for hurting morality by their so-called acts of obscenity. Such intolerance can turn democracy into a mere formality. Respect for creativity is an imperative prerequisite for strengthening the

temperament and practices of democracy in society. We should keep in mind that the official recognition of artists or writers is not an act of charity bestowed upon them, but a token of appreciation for their contribution towards making society more sensitive. Hence while awards given by various Akademis do indeed underline the significance of the awardee’s work, they also help create an atmosphere of tolerance in society at large.

Our society is blessed with an inspiring tradition of respect and even reverence for creative pursuits. It needs to be stressed that the standards of judgement implied in such respect and in the evaluation of a particular work of art have been drawn not from the lowest common denominator of prevalent commonsense, but from the recognition of the autonomy of creative pursuits and their contribution towards making society mature and sensitive. Inherited from an older Indian tradition, this vision was strengthened during our national movement. As a writer and a citizen of India, I am proud to belong to this tradition.

Let us never forget that the various academies of literature and the arts came into existence in independent India on account of the late Jawaharlal Nehru’s active interest. Jawaharlalji’s commitment to the freedom of artistic, literary and creative expression and his insistence on the autonomy of official institutions dealing with such activities is too well-known to bear repetition. A similar approach ought to serve as a compass for the conduct of such Akademis. To withhold an award that has been recommended by a competent jury reflects a flagrant violation of Jawaharlalji’s vision and commitment. It also conveys a disturbing departure from Indian cultural practice and from the values of our freedom movement. It is a departure that, in my view, the Akademi should avoid.

I am grateful for the recognition of my work implied by this Samman, and would have been happy to accept it along with my fellow awardees. However it seems inappropriate for me to accept it now that Shri Vaid is being denied the Shalaka Samman.

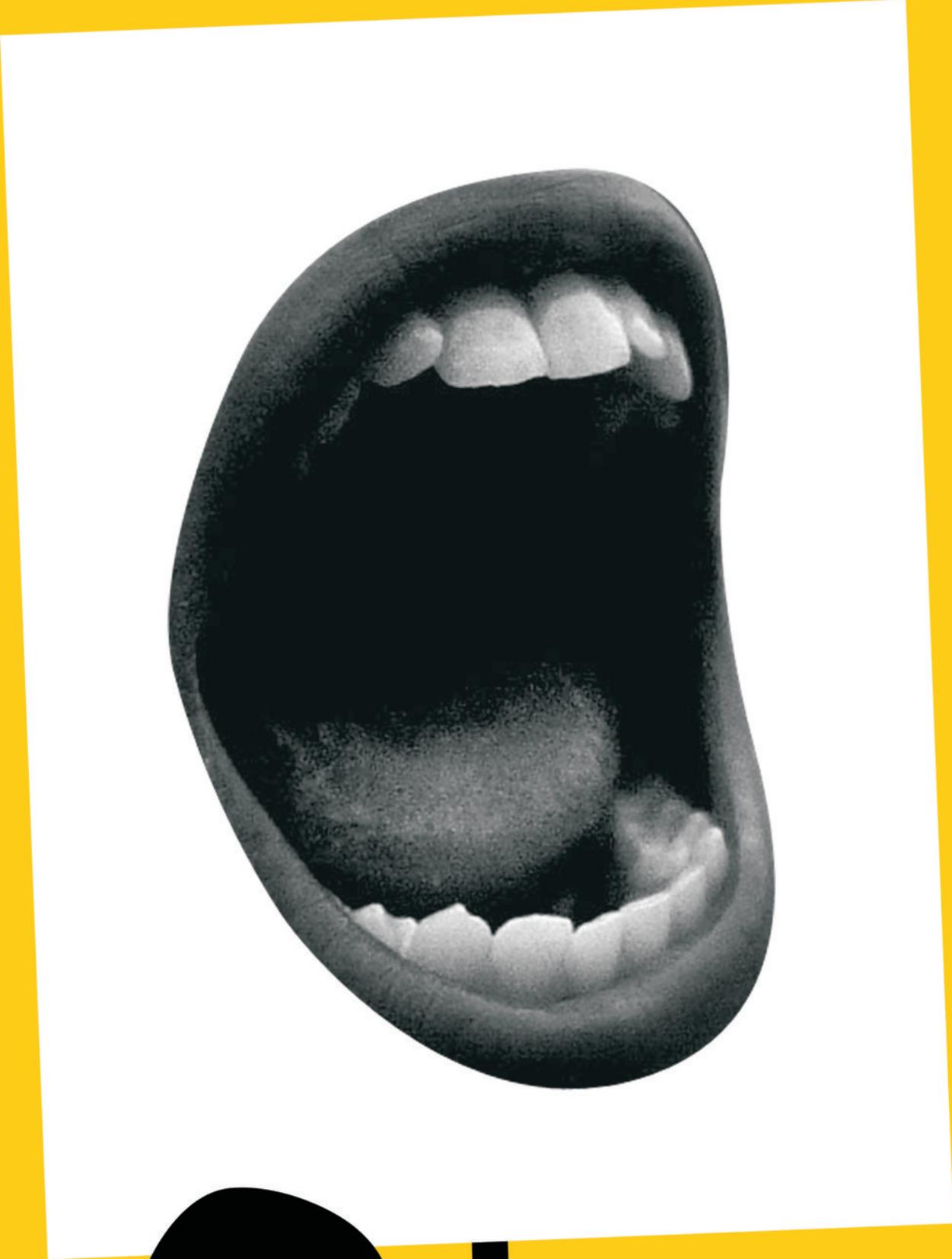
Once again I express my gratitude to the Hindi Akademi and to the jury. I shall accept my award if its recommendations are implemented without extraneous considerations and interventions.

Yours truly,

Purushottam Agrawal

Editorial note: Extracts from this letter and comments on it were published in March 2010 in *Jansatta* and *Dainik Hindustan*. It was also discussed extensively in literary journals and the web

Purushottam Agrawal is a renowned scholar, literary critic, author and public intellectual. He has taught Hindi literature at the University of Delhi and at JNU, and been a visiting scholar at the Collegio de Mexico and the Cambridge Faculty of Oriental Studies. His most recent work Akath Kahani Prem Ki: Kabir Ki Kavita Aur Unka Samay, (2009) has been re-published after wide acclaim



www.infochangeindia.org

News and analysis on social justice and sustainable development in India

Centre for
Communication
and Development
Studies

ccds



301, Kanchanjunga Building, Kanchan Lane
Off Law College Road, Pune 411 004

Tel: 91-20-26852845/25457371

Email: webmaster@infochangeindia.org

Websites: www.infochangeindia.org/www.ccds.in/www.openspaceindia.org