

STREETS OF *FIRE*: SHIV SENA AND FILM CENSORSHIP IN CONTEMPORARY INDIA

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“If we had a provision in our Constitution for ‘reasonable’ regulation of the press such as India has included in hers, there would be room for argument that censorship in the interests of morality would be permissible.”

– Justice William O. Douglas, United States Supreme Court.¹

I. INTRODUCTION

In 1997, Richard Gere created both Hollywood and Bollywood headlines when he kissed Indian actress, Shilpa Shetty, in public.² While Gere’s actions created a stir in Tinseltown, the American response paled in comparison to that of India: “Gere’s embrace and kiss . . . sparked several noisy demonstrations by hard-line Hindu groups and a flurry of legal complaints, which ended with a judge in Jaipur issuing an arrest warrant for the two stars for violating obscenity laws.”³ Although Gere’s faux pas occurred off the silver screen, the controversy is indicative of the contentious relationship that exists between the Hindu right-wing and the motion picture industry.

The Hindu right-wing, specifically a subgroup known as Shiv Sena, has leveraged India’s governmentally-endorsed censorship regime to enforce its political and religious agenda.⁴ This has commonly manifested itself in the form of “street censorship,” consisting of violent, socially aberrant behavior aimed at influencing the decisions of the Central Board of Film Certification (“Censor

1. *Kingsley v. Regents of the Univ. of New York*, 360 U.S. 684, 698 (1959) (as quoted in *Abbas v. Union of India*, A.I.R. 1971 S.C. 481 (India), available at <http://www.cscsarchive.org:8081/MediaArchive/medialaw.nsf/%28docid%29/12FCA97F56513370E525685200375D7C> (last visited Jan. 4, 2012) at para. 41.

2. Stephen M. Silverman, *Richard Gere Apologizes for Kissing Bollywood Star*, PEOPLE (Apr. 27, 2007), <http://www.people.com/people/article/0,,20037090,00.html>.

3. *Id.*

4. Jim Yardley & Hari Kumar, *Bollywood and Politics Collide in a Red-Carpet Standoff*, N.Y. TIMES, Feb. 12, 2010, at A4.

Board”), India’s censoring body.⁵ In some instances, these actions have been successful in limiting the exhibition of controversial films.⁶ Shiv Sena’s behavior is an alleged cinematic and legal injustice because it results in the de-secularization of India’s censorship practices.⁷ Consequently, instead of a secular body determining a movie’s exhibition, it becomes the decision of a political party.

This Article will analyze the behavior of Shiv Sena in light of India’s secular censorship legislation. Contrary to current academic criticism, I opine that despite the many perceived injustices, the only unlawful aspect of Shiv Sena’s behavior is the use of violence. However, I will ultimately join the academic critics by advocating for the termination of India’s censorship regime based on an economic rationale.

II. FACTUAL BACKGROUND

Shiv Sena is an Indian political party that was founded in 1966.⁸ It is politically characterized as part of “the Hindu Right or Hindu Nationalists, [who] are a nationalist and right wing political movement devoted to creating a Hindu State in India.”⁹ Shiv Sena currently holds a total of fifteen seats in the Indian parliament, “the supreme legislative body of India.”¹⁰ They currently have eleven seats in the *Lok Sabha* house¹¹ and four seats in the *Rajya Sabha* house.¹²

5. Anjali Monteiro & KP Jayasankar, *A New Pair of Scissors: The Draft Cinematograph Bill 2010*, ECON. & POLITICAL WEEKLY, July 17, 2010, at 21.

6. Yardley & Kumar, *supra* note 4.

7. SOMESWAR BHOWMIK, CINEMA AND CENSORSHIP: THE POLITICS OF CONTROL IN INDIA 90 (1999). *See also* Ravi Nair, *Confronting the Violence Committed by Armed Opposition Groups*, 1 YALE HUM. RTS. & DEV. L.J. 1, 3 (1998).

8. Press Trust of India, *MNS carbon copy of Shiv Sena, says Bal Thackeray*, HINDUSTAN TIMES (Apr. 28, 2010), <http://www.hindustantimes.com/MNS-carbon-copy-of-Shiv-Sena-says-Bal-Thackeray/Article1-536631.aspx>.

9. Ratna Kapur, *Postcolonial Erotic Disruptions: Legal Narratives of Culture, Sex, and Nation in India*, 10 COLUM. J. GENDER & L. 333, 374 n.101 (2001).

10. *Parliament*, NATIONAL PORTAL OF INDIA, <http://india.gov.in/govt/parliament.php> (last visited Jan. 8, 2012).

11. *Fifteenth Lok Sabha Party Wise*, NATIONAL PORTAL OF INDIA, <http://india.gov.in/outerwin.php?id=http://loksabha.gov.in/> (last visited Jan. 8, 2012).

12. *Alphabetical Party Position in the Rajya Sabha*, NATIONAL PORTAL OF INDIA, <http://india.gov.in/outerwin.php?id=http://rajyasabha.gov.in/> (last visited Jan. 8, 2012).

Shiv Sena has gained a reputation for violent political demonstration.¹³ This is a tactic that the group uses to impose its conservative religious agenda upon the Censor Board and Indian society. The theatrical releases of three films are of specific importance to this Article: (i) *Fire*,¹⁴ (ii) *Girlfriend*,¹⁵ and (iii) *My Name is Khan*.¹⁶ The events surrounding their respective releases demonstrate the violent nature of Shiv Sena's political agenda and this group's ever-present, but waning, influence over the exhibition of specific movies.¹⁷

Fire was released in 1996¹⁸ but not theatrically in India until November 1998.¹⁹ The film soon became a target of Shiv Sena because the group believed the story, which focused on the "erotic love that develops between two sisters-in-law living in a joint family household in contemporary New Delhi,"²⁰ constituted "an inauthentic cultural representation" of the Hindu family.²¹ Not only were the protagonists Hindu,²² but they were "named after two revered Hindu goddesses," Radha and Sita.²³ Shiv Sena reacted initially by vandalizing theaters in Bombay.²⁴ The violence soon spread to other Indian cities.²⁵ The outcome of this aberrant behavior was intimidation. Shiv Sena used violence to bully theaters and dissuade them from showing the motion picture.²⁶ It also intimidated the Censor Board into re-reviewing the movie in hopes of banning its release.²⁷ Ultimately, Shiv Sena's efforts were un-

13. Jim Yardley, *Security and Eager Crowds Greet Bollywood Film*, N.Y. TIMES, Feb. 13, 2010, at A7.

14. Madhavi Sunder, *Intellectual Property and Identity Politics: Playing with Fire*, 4 J. GENDER RACE & JUST. 69, 79 (2000).

15. Lawrence Van Gelder, *Arts Briefing*, N.Y. TIMES, June 15, 2004, at E2.

16. Yardley, *supra* note 13.

17. Barry Bearak, *A Lesbian Idyll, and the Movie Theaters Surrender*, NEW DELHI JOURNAL, Dec. 24, 1998, at A4. As early as 1998, Barry Bearak noted that Shiv Sena's popularity was waning with "disaffected Hindu slum dwellers." *Id.* The influence referred to in this scenario is not political influence, but the ability to prevent the demonstration of a film.

18. *Fire* (1996), THE INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0116308/> (last visited Jan. 4, 2012).

19. Sunder, *supra* note 14, at 77.

20. *Id.* at 76.

21. *Id.* at 79.

22. *Id.*

23. *Id.* at 76.

24. *Id.* at 79.

25. Sunder, *supra* note 14, at 79.

26. *Id.*

27. *Id.* at 88-89.

fruitful from a governmental perspective because *Fire* was eventually re-approved for theatrical exhibition;²⁸ however, its labors were successful from an extra-governmental perspective because it limited the release of the film through violence.²⁹

Girlfriend was released in 2004.³⁰ Like *Fire*, the film focused thematically on lesbianism, telling the story of “a man [who] comes between two lesbian lovers, hence forming a triangle with bleak consequences.”³¹ Also like *Fire*, violence followed theatrical release of *Girlfriend*, and “nearly 100 of [Shiv Sena’s student wing] smashed windows and burned effigies at a theater in Mumbai.”³² However, despite the repeated hostility, the movie continued to play in theaters.³³ According to film analyst Shubra Gupta, “[T]he film’s popularity has soared since the protests. Crowds have been thronging cinemas to catch the film before any withdrawal ‘Now people’s curiosity has been aroused and they’re rushing to see what the fuss is about.’”³⁴ Shiv Sena brought the same level of controversy to *Girlfriend*, but its level of success was muted in comparison by the irony of curiosity, subsequently boosting ticket sales.³⁵

My Name is Khan was released in 2010.³⁶ Unlike *Fire* and *Girlfriend*, Shiv Sena did not attack this film for its subject matter, which told the story of a Muslim man with Asperger syndrome.³⁷ Shiv Sena targeted this film because of its Muslim star, Shah Rukh Khan.³⁸ Mr. Khan was in a feud with Bal Thackeray, the head of Shiv Sena, that stemmed from Mr. Khan’s comments surrounding cricket.³⁹ Mr. Khan criticized the Indian Premier League for failing to select any Pakistani players in their cricket

28. *Id.*

29. *Id.* at 79.

30. *Girlfriend* (I) (2004), THE INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0414714/> (last visited Jan. 4, 2012).

31. *Id.*

32. Van Gelder, *supra* note 15.

33. *Id.*

34. The Associated Press in New Delhi, *Lesbian Love Affair Outrages India’s Hindu Hardliners*, THE GUARDIAN (June 17, 2004), <http://www.guardian.co.uk/world/2004/jun/17/filmnews.india>.

35. *Id.*

36. *My Name is Khan* (2010), THE INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt1188996/> (last visited Jan. 4, 2012).

37. *Id.*

38. Yardley, *supra* note 13.

39. *Id.*

draft.⁴⁰ Mr. Thackeray interpreted Mr. Khan's comments as political, subsequently "demand[ing] an apology from Mr. Khan, saying he had insulted Mumbai, given the 2008 terror attack here by militants trained in Pakistan."⁴¹ Although this debate centered on sport, the event is indicative of the historical tension between Shiv Sena and Muslim Indians.⁴² True to form, Shiv Sena reacted violently.⁴³ However, unlike past events, Indian authorities met the political party's threats head on, making "precautionary arrests of an estimated 2,000 party members."⁴⁴ Authorities also preemptively stationed police outside of selected theaters.⁴⁵ While some cinema closures and incidents of violence were reported, the release was generally peaceful.⁴⁶

III. SUMMARY OF PRIOR LAW

Before one can understand the perceived injustice created by Shiv Sena, it is first necessary to understand the authority for India's censorship regime and the secular roots of its cinematic laws. These can be found in two pieces of legislation: (i) the Indian Constitution, and (ii) the Cinematograph Act of 1952.

Indian censorship is an interesting phenomenon because it appears to be based in legal hypocrisy. India is a democratic society that guarantees freedom of speech,⁴⁷ which is provided by Article 19(1)(a) of the Indian Constitution.⁴⁸ However, India also has a pre-censorship regime that can require a filmmaker to edit his or her creation as a condition precedent to theatrical exhibition.⁴⁹ Despite this seeming contradiction, these competing doctrines can coexist because India's freedom of expression is not absolute, but

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40. *Id.*
 41. *Id.*
 42. *Id.*
 43. *Id.*
 44. Yardley, *supra* note 13.
 45. *Id.*
 46. *Id.*
 47. BHOWMIK, *supra* note 7, at 74.
 48. INDIA CONST. art. 19, § 1(a).
 49. BHOWMIK, *supra* note 7, at 21.

qualified.⁵⁰ Article 19(2) of India's Constitution generates this qualification.⁵¹

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] 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.]⁵²

Therefore, Article 19(2) opens the floodgates for legislation aimed at protecting any of these enumerated interests.⁵³

What Article 19(2) does not state is that India's qualified free speech is arguably secular.⁵⁴ The following language was proposed during the drafting of Articles 19(1)(a) and 19(2): "Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libelous or defamatory, matter actionable or punishable" ⁵⁵ In particular, the term "blasphemous" was excluded from the final draft.⁵⁶ Author Someswar Bhowmik notes the importance of this omission, specifically as an expression of the secular policy prevalent in the newly created Indian government.⁵⁷ Thus, it is implied that the nonreligious policies are inherently transferred to the censorship laws generated from this free speech provision.⁵⁸ Other Indian constitutional provisions further support Mr. Bhowmik's contention. "The preamble of the Indian constitution openly declares India as a 'sovereign socialist secular democratic republic'. . . . In the Indian context, secularism implies equality of rights for all regardless of religion, the exercise of religious freedom and tolerance, and the rejection of discrimination based on religion or belief."⁵⁹

50. *Abbas v. Union of India*, A.I.R. 1971 S.C. 481 (India), available at <http://www.cscsarchive.org:8081/MediaArchive/medialaw.nsf/%28docid%29/12FCA97F56513370E525685200375D7C> (last visited Jan. 4, 2012) at para. 41.

51. INDIA CONST. art. 19, § 2.

52. *Id.*

53. BHOWMIK, *supra* note 7, at 75.

54. *Id.* at 90.

55. *Id.* at 88-89.

56. *Id.* at 89.

57. *Id.* at 89-90.

58. *Id.* at 78.

59. Smita Narula, *Overlooked Danger: The Security and Rights Implications of Hindu Nationalism in India*, 16 HARV. HUM. RTS. J. 41, 59 (2003).

The Indian government capitalized upon the newly minted free speech qualifications by enacting the Cinematograph Act of 1952. Section 5-B sets forth the “principles for guidance in certifying films,” which echoes the language of the aforementioned Constitution in making motion picture certification (approval for demonstration) contingent upon maintenance of protected state interests:

A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of . . . the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offense.⁶⁰

Even though this provision covers a variety of protected areas, defining a specific state interest can still be a complicated endeavor. This is especially true in areas of religious concern. In India, where the majority of the population is Hindu, the line between secular and religious state interests can be blurry.⁶¹ It is in this gray area that controversy is created surrounding film censorship because, despite its secular roots,⁶² it can be used to support religion as a protected state interest. “[F]or example, seven Indian states banned the movie *The Da Vinci Code* on the ground that the movie’s message that Jesus could have married Mary Magdalene and fathered a child with her and their descendants live today would offend their Christian populations.”⁶³ Although this author did not divulge the rationale behind the Censor Board’s decision, “public order, decency or morality” all could have justified such a limited release.⁶⁴ This cross-pollination between religion and protected state interests is highly relevant to the debate surrounding Shiv Sena. Not only is Hinduism “the dominant religion in India,”⁶⁵ but it is also the basis of Shiv Sena’s political agenda.

The Censor Board generates its censorship authority explicitly from the Cinematograph Act of 1952—specifically Section 3, Part 1

60. The Cinematograph Act, No. 37 of 1952, INDIA CODE (1952).

61. *Hinduism: The world’s third largest religion*, RELIGIOUSTOLERANCE.ORG, <http://www.religioustolerance.org/hinduism.htm> (last visited Jan. 4, 2012).

62. BHOWMIK, *supra* note 7, at 90.

63. Claire Wright, *Censoring the Censors in the WTO: Reconciling the Communitarian and Human Rights Theories of International Law*, 3 J. INT’L MEDIA & ENT. L. 17, 45 (2010).

64. The Cinematograph Act, No. 37 of 1952, INDIA CODE (1952).

65. *Hinduism: The world’s third largest religion*, *supra* note 61.

of the Act created the Censor Board.⁶⁶ “For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the official Gazette, constitute a Board to be called the [Board of Film Certification].”⁶⁷ Section 8, Part 1 of the Act created the Censor Board’s legislative authority.⁶⁸ “The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Part.”⁶⁹ Finally, Section 4, Part 1, Subpart iii gives the Censor Board editorial power, allowing it to “direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under the foregoing clauses.”⁷⁰

The Supreme Court endorsed the Censor Board’s practices of pre-censorship in the *K.A. Abbas v. The Union of India*. Mr. Abbas produced the documentary *A Tale of Four Cities*.⁷¹ This 1968 film chronicled the wealth disparity between leaders and commoners in post-Freedom Movement India.⁷² Given its edgy content, the film’s release was limited.⁷³ Mr. Abbas subsequently brought suit challenging the Censor Board’s pre-censorship of his work and its decision to limit the film’s demonstration to adults.⁷⁴ The Court held:

With this preliminary discussion we say that censorship in India (and pre - censorship is not different in quality) has full justification in the field of the exhibition of cinema films. We need not generalize about other forms of speech and expression here for each such fundamental right has a different content and importance. The censorship imposed on the making and exhibition of films is in the interests of society. If the regulations venture into something which goes beyond this legitimate opening to restrictions, they can be questioned on the ground that a legitimate power is being abused. We hold, therefore, that censorship of

66. BHOWMIK, *supra* note 7, at 77-78.

67. The Cinematograph Act, No. 37 of 1952, INDIA CODE (1952).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Abbas v. Union of India*, A.I.R. 1971 S.C. 481, available at <http://www.cscsarchive.org:8081/MediaArchive/medialaw.nsf/%28docid%29/12FCA97F56513370E525685200375D7C> (last visited Jan. 4, 2012) at para. 3.

72. *Id.*

73. *Id.* at para. 5.

74. *Id.* at para. 5.

films including prior restraint is justified under our Constitution.⁷⁵

The Court also held that the Central Government is authorized to create the guidelines for such censorship.⁷⁶ However, according to the High Court of Judicature at Bombay in *Anand Patwardhan v. Gopel Saksena*, the Censor Board cannot arbitrarily censor submitted works. “It is well settled that even in matters of passing administrative orders the same should be supported by reasons. Furnishing of reasons reflects the application of mind and non furnishing the same makes orders amendable to the vice of the non application of mind.”⁷⁷ This meshes nicely with the underlying policy in *K.A. Abbas*, which promotes qualified free speech.⁷⁸ “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.”⁷⁹

The final determinations of the Censor Board are communicated to the general public through its rating system.⁸⁰ India, like the United States,⁸¹ attaches a rating to exhibited films. However

75. *Id.* at para. 43.

76. *Id.* at para. 44.

77. *Patwardhan v. Saksena*, Writ Petition No. 2209 of 1987, par. 6, available at http://www.patwardhan.com/Censorship/judgments/Judgment_Bombay%20Our%20City.htm (last visited Jan. 4, 2012). “We must judge the film in its entirety from the point of view of its overall impact...The standard to be applied by the Board or Courts for judging the film should be that of an ordinary man of common sense and the prudence and not that of an out of the ordinary or hypersensitive man.” *Patwardhan v. Union of India*, Writ Petition No. 767 of 1992, par. 17, available at http://www.patwardhan.com/Censorship/judgments/Judgment_In%20Memory.htm (last visited Jan. 4, 2012).

78. *Abbas v. Union of India*, A.I.R. 1971 S.C. 481, par. 51, available at <http://www.cscsarchive.org:8081/MediaArchive/medialaw.nsf/%28docid%29/12FCA97F56513370E525685200375D7C> (last visited Jan. 4, 2012), at para. 51.

79. *Id.*

80. Anita Ramasastry, *Cinematic Sex and Censorship in Indian Film*, 33 HARV. INT’L L.J. 205, 206-07 (1992).

81. *Safeguarding Artistic Freedom*, MOTION PICTURE ASSOCIATION OF AMERICA, <http://www.mpa.org/ratings/ratings-history> (last visited Jan. 4, 2012). The American film industry has a self-rating system imposed by the Motion Picture Association of America (“MPAA”). *What’s In A Rating?*, MOTION PICTURE ASSOCIATION OF AMERICA, <http://www.mpa.org/ratings/how-to-read-a-rating> (last visited Jan. 4, 2012). “Every film is assigned a rating (G, PG, PG-13, R or NC-17) that indicates the degree of caution parents should exercise in weighing whether a movie is suitable for children.” *What Each Rating Means*, MOTION PICTURE ASSOCIATION OF AMERICA, <http://www.mpa.org/ratings/what-each-rating-means>

the Indian ratings, called “certificates,” are different in name and substance.⁸² There are four types of certificates: “U”, “UA”, “A”, [and] “S.”⁸³ The “U” certificate denotes “unrestricted public exhibition.”⁸⁴ The “A” certificate denotes “restricted to adult audiences.”⁸⁵ The “UA” certificate denotes “unrestricted public exhibition subject to parental guidance for children below the age of twelve.”⁸⁶ Lastly, the “S” denotes “restricted to specialized audiences such as doctors or scientists.”⁸⁷ A motion picture’s certificate is crucially important to the discussion of Shiv Sena and its “street censorship”⁸⁸ because this group has chosen to attack controversial movies, such as *Fire*, when they receive a less restrictive certificate.⁸⁹ A more lenient certificate subsequently allows these films to be viewed by a wider audience.⁹⁰ By focusing on India’s rating system, Shiv Sena can use it as a tool to limit the release of movies⁹¹ that contrast its political and religious agenda.⁹²

(last visited Jan. 14, 2012). “G” means “General Audiences. All Ages Admitted.” “PG” means “Parental Guidance Suggested. Some Material May Not Be Suitable For Children.” “PG-13” means “Parents Strongly Cautioned. Some Material May Be Inappropriate For Children Under 13.” “R” means “Restricted. Children Under 17 Require Accompanying Parent or Adult Guardian.” “NC-17” means “No One 17 and Under Admitted.”

82. *Film Certification*, CENTRAL BOARD OF FILM CERTIFICATION, http://cbfcindia.gov.in/html/uniquepage.aspx?unique_page_id=20 (last visited Jan. 4, 2012).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. Monteiro & Jayasankar, *supra* note 5, at 21.

89. Sunder, *supra* note 14, at 78. *Fire* was initially given a “U” rating. *Id.*

90. *Id.*

91. *Id.* at 80.

92. It is important to note that, “[w]hile the [Censor Board] is a powerful organization, its rulings are not absolute. Several IPD [Independent Political Documentary] filmmakers have waged successful campaigns to have bans or edits of their films lifted.” John Fischer, *Oppression: Indian Independent Political Documentaries and the Ongoing Struggle for Viewership*, 1 THE COLUM. UNDERGRADUATE J. S. ASIAN STUDIES 41, 51 (2009). Filmmaker Anand Patwardhan has made a practice of advertising his fight against the Censor Board, posting the various court rulings relating to his films. See generally *High Court and Supreme Court Judgments on Anand’s Films*, THE FILMS OF ANAND PATWARDHAN, available at http://www.patwardhan.com/Censorship/judgments/Index_judgements.htm (last visited Jan. 4, 2012).

IV. ANALYSIS

The battle between Shiv Sena and the Censor Board is cinematic in and of itself. The lines of conflict between the parties are bright and their respective value systems so divergent that it creates a natural appearance of right verses wrong or good verses evil. From this perspective, it is easy to condemn Shiv Sena's behavior as undemocratic. First, this group appears to be de-secularizing India's censorship regime when it influences the Censor Board's decision-making process. This manifests itself through the limited exhibition of films that do not comport with Shiv Sena's philosophy. Second, Shiv Sena conducts its campaign in a violent and oppressive matter. Regarding de-secularization, Shiv Sena's actions are consistent with Indian law. This group has a constitutional right to convey its political and religious beliefs.⁹³ It also has the right to be protected from undesirable cinematic content by the Censor Board.⁹⁴ However, regarding Shiv Sena's use of violence, these actions are unconstitutional.⁹⁵

A. De-Secularizing Indian Censorship

The Cinematograph Act of 1952 mirrors India's constitutional language regarding the regulation of speech. Like its parent document, the Act limits censorship power to issues that affect⁹⁶

93. INDIA CONST. art. 19, § 2.

94. The Cinematograph Act, No. 37 of 1952, INDIA CODE (1952).

95. This Article only focuses on Shiv Sena's policies and actions as they relate to motion pictures. This Article should not be viewed as an endorsement of either Shiv Sena or its ideology, which it most certainly is not. Shiv Sena's value system is both controversial and violent. Critics, such as Ratna Kapur, view its mission as an assault on minority culture. Ratna Kapur, *Joseph C. Hostetler-Baker & Hostetler Visiting Chair, Joseph C. Hostetler-Baker & Hostetler Lecture: The Fundamentalist Face of Secularism and its Impact on Women's Rights in India* (Oct. 6, 1999), in 47 CLEV. ST. L. REV. 323, 325 and 327 (1999). Ms. Kapur describes *Hindutva* not as a Hindu ideology, but an attempt of "complete assimilation of the religious minorities." *Id.* at 327. However, it is important to note that despite Shiv Sena's controversial political agenda, the Supreme Court of India has endorsed its ideology through "a series of decisions, collectively known as the *Hindutva* cases." *Id.* "Although the [Supreme] Court found several of the accused [Shiv Sena] – guilty of appealing to religion to gain votes, and promoting religious hatred, it also held that "*Hindutva*"...simply represented a 'a way of life of people of the subcontinent.'" *Id.* Therefore, despite the controversial and violent nature of its ideology, the permissibility of Shiv Sena's behavior and beliefs needs to be evaluated within the confines of the Indian legal system.

96. BHOWMIK, *supra* note 7, at 92-96.

“[the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or . . . defamation or contempt of court or is likely to incite the commission of any offence.”⁹⁷ Additionally, the Act does not include the word “blasphemous” as a condition of its editing criteria.⁹⁸ This is a significant omission because, like the Constitution, it is an indication of the secular intent of the legislation.⁹⁹ Shiv Sena’s ideology, *Hindutva*, contradicts this secular agenda, by “seek[ing] to establish a Hindu state in India.”¹⁰⁰

Critics have viewed Shiv Sena’s intimidation tactics as an infringement upon this secular independence. Specifically, when this political party is able to affect the theatrical release of a film, critics such as Madhavi Sunder, impute this action to the state.¹⁰¹ “Shiv Sena asserted ownership of and the right to control the meaning of Indian culture through their protests.”¹⁰² It is irrelevant that it did not have an official role in sanctioning these films.¹⁰³ Shiv Sena’s “extra-legal” actions are still viewed as part of the state’s efforts because, as a political party, it was able to influence (specifically limit) the theatrical release of these motion pictures – a function normally reserved for the statutorily authorized Censor Board.¹⁰⁴ In reference to the release of the movie *Fire*,

Here, the Shiv Sena asserted ownership of and the right to control the meaning of Indian culture through their protests, and implied that Mehta [the director of *Fire*], a member of the Indian diaspora^[105]] and thus tainted by unsavory Western ideas, did not have a license to such a reproduction of Indian home life.¹⁰⁶

97. The Cinematograph Act, No. 37 of 1952, INDIA CODE (1952).

98. BHOWMIK, *supra* note 7, at 89-90.

99. *Id.*

100. Kapur, *supra* note 95, at 325.

101. Sunder, *supra* note 14, at 90. Ravi Nair also cites a similar observation, “by turning a blind eye to the perfidious activities of upper-caste Hindu fundamentalist and communal (i.e. sectarian) organizations such...Shiv Sena...the government indirectly sanctions these organizations. Nair, *supra* note 7, at 3.

102. Sunder, *supra* note 14, at 90.

103. *Id.* at 89.

104. *Id.* at 89-90.

105. “The Indian Diaspora is a generic term to describe the people who migrated from territories that are currently within the borders of the Republic of India. It also refers to their descendants.” *The Indian Diaspora*, NATIONAL INFORMATICS CENTRE, <http://indiandiaspora.nic.in/> (last visited Jan. 4, 2012). Deepa Mehta resides in both Toronto and New Delhi. Bearak, *supra* note 17.

106. Sunder, *supra* note 14, at 90.

Consequently, this can be viewed as an injustice to cinematic laws and Indian legislation at large, through the suppression of minority culture.¹⁰⁷ Shiv Sena is making the censorship process Hindu, when it should be governed with secular intentions.¹⁰⁸

Professor Ratna Kapur offers a conflicting view of Shiv Sena's political tactics. Her article does not address its behavior towards motion pictures, but is helpful in understanding the mindset of the political party. She views Shiv Sena not as an outward opponent of equality, but a disingenuous proponent.¹⁰⁹ In certain instances, "[t]he Hindu Right [has] positioned itself as the great defender of free speech from the threat of fundamentalist censors."¹¹⁰ By cherry-picking certain causes, the Hindu Right is able to feign secular support in order to enforce its own political and religious agenda. For example, "the Hindu Right is trying to project itself as the guardian of the rights of Muslim women, both within India and in surrounding Muslim countries."¹¹¹ By deviating from party lines, the Hindu Right creates the appearance of tolerance and equality. However, the tangential effect of these efforts is to undermine the Muslim community and garner further support for Shiv Sena's own agenda, which opposes such religions. In comparison to the minority community oppressing these women, "the unstated norms of the Hindu majority are seen as neutral" thus reinforcing majoritarianism.¹¹²

Ms. Sunder and Ms. Kapur have presented two conflicting interpretations of Shiv Sena's attack on secularism—one passive and one aggressive. The coexistence of these differing approaches is elucidating because they demonstrate the true character of the party's behavior – political advocacy. In the context of Indian constitutional law and the Cinematograph Act of 1952, this should not be considered an injustice because being a political advocate is different than being a final decision maker of a movie's exhibition.

107. *Id.*

108. Ms. Sunder's position about extra-legal censorship was secondary to the paper's larger argument. "This Article is less concerned with whether the film was censored by legal or extra-legal means than it is about the discursive censorship engendered by a propriety approach to cultural representation." *Id.* at 89. Although this is only a secondary argument, it still represents a perceived potential injustice in the Indian censorship regime.

109. Kapur, *supra* note 95, at 331.

110. *Id.*

111. *Id.*

112. *Id.* at 330.

To impugn a political actor for successfully influencing the democratic process discounts the way in which the decisions were made. Indians have the right to protest.¹¹³ They also have a qualified right to freedom of speech.¹¹⁴ A democracy is susceptible to the interests of its constituents by political design. Shiv Sena was not a decision maker in the censorship process. They were extra-governmental actors, using the political infrastructure to advance a party position. To say that it has “asserted ownership of and the right to control the meaning of Indian culture” does not afford enough credit to the Indian government.¹¹⁵ It also affords too much credit to Shiv Sena, whose efforts are not as influential as Ms. Sunder conveys.

To assert ownership and impute the actions of Shiv Sena to the state would imply that it was successful in its approach. At the time Ms. Sunder’s article was published (fall 2000), the “Firestorm” surrounding *Fire* was still relatively fresh.¹¹⁶ In this instance, Shiv Sena was relatively successful. Shiv Sena deterred individuals from viewing the film, bullied theaters into shelving its exhibition, and muscled the Censor Board into second-guessing its initial approval of the movie.¹¹⁷ Current India appears to be a different place. Examining the reaction to *My Name is Khan*, Shiv Sena appears less potent. It was able to deter some theaters, but “[b]y afternoon, many theaters began showing the film to packed audiences.”¹¹⁸ Given this recent lack of success, it is difficult to impute Shiv Sena’s actions to the government. Therefore, there is no injustice to Indian society in advocating their political agenda, contrary to the position advanced by academic critics.

B. *The Indian Bandh*

Although Shiv Sena has the right to express its controversial political viewpoint, Indian law tempers the way in which it may be communicated. Shiv Sena’s protests can be categorized as a *bandh*

113. INDIA CONST. art. 19, § 1, cl. b. This is the right “to assemble peaceably and without arms.” The injustice in Shiv Sena’s execution of this right will be discussed later.

114. INDIA CONST. art. 19, § 2.

115. Sunder, *supra* note 14, at 90.

116. *Id.*

117. *Id.* at 88-89.

118. Yardley, *supra* note 13.

or “shutdown strike,”¹¹⁹ a practice rejected by the Indian Supreme Court.¹²⁰ Consequently, Shiv Sena’s injustice is created not by the imposition of its Hindu beliefs, but by the burden of the group’s crippling strikes which “interfere[s] with the exercise of the fundamental freedoms of other citizens.”¹²¹ The injustice is not religious – it is constitutional.

India’s Fundamental Rights are memorialized in Part III of the Indian Constitution.¹²² Among those listed is the “Right to Freedom.”¹²³ First among these is the right “to freedom of speech and expression.”¹²⁴ As discussed earlier in this Article, this same clause generates India’s censorship authority.¹²⁵ Enumerated within that section is the right “to assemble peaceably and without arms.”¹²⁶ Like freedom of speech, this too is an integral part of Indian culture.¹²⁷ “Few democratic rights are more cherished in India, or considered more essential as a release valve for societal pressures, than the right to protest.”¹²⁸ There are various types and terms of Indian protests, but of particular importance to the debate surrounding Shiv Sena is the *bandh*, or “shutdown strike.”¹²⁹

What is interesting about the *bandh* is that while authors, such as Jim Yardley, characterize the right to protest as “essential,” the Indian court has taken an alternative view.¹³⁰ “[A]s strikes, *bandhs* and demonstrations seem to disrupt business and other activities, the Court has not accepted them as part of freedom of speech and expression, even in exceptional cases.”¹³¹ Therefore, the right to protest is similar to the right to freedom of speech in that both are qualified.

119. Jim Yardley, *India’s Protests are Cherished and Maligned*, N.Y. TIMES, Sept. 15, 2010 at A1.

120. Rangarajan v. Government of Tamil Nadu, A.I.R. 2003 S.C. 3032, available at <http://www.indiankanoon.org/doc/704382/> (last visited Jan. 16, 2012).

121. *Id.*

122. INDIA CONST. part 3.

123. *Id.*

124. INDIA CONST. art. 19, § 1, cl. a. The censorship authority is specifically generated from Section 2. INDIA CONST. art. 19, § 2.

125. BHOWMIK, *supra* note 7, at 78.

126. INDIA CONST. art. 19, § 1, cl. b.

127. Yardley, *supra* note 119.

128. *Id.*

129. *Id.*

130. *Id.*

131. Surya Deva, *Human Rights Realization in an Era of Globalization: The Indian Experience*, 12 BUFF. HUM. RTS. L. REV. 93, 128 (2006).

In *T.K. Rangarajan v. Government of Tamil Nadu and Others*, Tamil Nadu government employees were terminated for striking.¹³² The Indian Supreme Court reaffirmed the holding of an earlier court case, *Communist Party of India (M) v. Bharat Kumar and Others*, communicating the illegality of certain shutdown strikes¹³³ In *Communist Party of India*, the court held,

There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a “Bandh” which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13, 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement No political party or organisation can claim that it is entitled to paralyze the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it.¹³⁴

“[T]he bandh, organized to close down all business on a particular day and enforced through coercion, violated the right to freedom of movement guaranteed by Article 19(1)(d)¹³⁵ and the right to personal liberty guaranteed by Article 21¹³⁶ of the Constitution.”¹³⁷ The Supreme Court in *T.K. Rangarajan* reaffirmed this holding stating, “There is no statutory provision empowering the

132. *Rangarajan v. Gov't of Tamil Nadu*, A.I.R. 2003 S.C. 3032, available at <http://www.indiankanoon.org/doc/704382/> (last visited Jan. 16, 2012).

133. *Id.*

134. *Id.* The latter part of the quotation, after the ellipsis, cites *Communist Party of India v. Kumar*, A.I.R. 1997 S.C. 201, para. 17.

135. “(1) All citizens shall have the right . . . (d) to move freely throughout the territory of India.” INDIA CONST. art. 19, § 1, cl. d.

136. “No person shall be deprived of his life or personal liberty except according to procedure established by law.” INDIA CONST. art. 21.

137. S.P. Sathe, *Judicial Activism: The Indian Experience*, 6 WASH. U. J.L. & POL'Y 29, 83 (2001) (the quotation is by Sathe discussing the holding in *Communist Party of India*).

employees to go on strike.”¹³⁸ Therefore, despite the common practice or perception of its rightful place in Indian society, the *bandh* is not a protected practice when it impedes on others’ commercial and fundamental rights. It is a qualified right to strike.¹³⁹

Although the Court’s holding in *T.K. Rangarajan* only addressed the government employee’s right to strike, the holding in *Communist Party of India* is instructive as to how the court views the *bandh*. A court’s decision will be based on larger factors aside from one’s freedom of expression. The court will also examine the *bandh*’s greater effects on society and commerce to evaluate the legality of the action. This is similar to the Court’s stance on freedom of expression regarding film, which contains the caveat that it cannot adversely affect the moral integrity or safety of the population or the state.¹⁴⁰

The actions taken by Shiv Sena in response to controversial motion pictures are superficially different than those employed by the workers in *T.K. Rangarajan* and *Communist Party of India* – Shiv Sena’s are not labor strikes. This distinction would suggest that the case law is inapplicable to this debate because the political party is not participating in a *bandh*. Unlike the striking workers in *T.K. Rangarajan* and *Communist Party of India*, Shiv Sena is solely exercising a constitutional right to freedom of expression.¹⁴¹ Additionally, it can be argued that Shiv Sena is exercising its constitutional right to freedom of religion.¹⁴² However, drawing from the reasoning of both *T.K. Rangarajan* and *Communist Party of India*, the residual effects of this political party’s actions need to be examined, specifically on other citizens’ fundamental rights and commerce in general.¹⁴³ These negative results appear to outweigh Shiv Sena’s fundamental rights in this instance, thus suggesting that their protests are actually *bandhs*.

Shiv Sena’s behavior infringes upon the fundamental rights of other Indian citizens. Although the right to free speech (through motion pictures) is qualified and subject to review by the Censor Board, Indian citizens still have a fundamental right to attempt to

138. *Rangarajan v. Gov’t of Tamil Nadu*, A.I.R. 2003 S.C. 3032, available at <http://www.indiankanoon.org/doc/704382/> (last visited Jan. 16, 2012).

139. *Id.*

140. INDIA CONST. art. 19, § 2.

141. *Id.*

142. Narula, *supra* note 59, at 59.

143. *Rangarajan v. Gov’t of Tamil Nadu*, A.I.R. 2003 S.C. 3032, available at <http://www.indiankanoon.org/doc/704382/> (last visited Jan. 16, 2012).

express their opinions.¹⁴⁴ Even though the Censor Board, through required revisions, may eventually curtail these viewpoints, these citizens still need the opportunity to present their work in its intended form.¹⁴⁵ Specifically in the cases of *Fire*,¹⁴⁶ *Girlfriend*,¹⁴⁷ and *My Name is Khan*,¹⁴⁸ their creators and investors had a governmentally approved right to exhibit those stories, even if pockets of the Indian population disagreed with their respective messages. “No political party or organisation can claim that it is entitled to . . . prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation.”¹⁴⁹ By protesting the theatrical releases and deterring others from hearing the constitutionally protected speech in these films, Shiv Sena is preventing these artists “from exercising their fundamental rights.”¹⁵⁰

Although the potency of its behavior has waned in recent years, Shiv Sena’s actions also have an economic effect on commerce, specifically the motion picture industry.¹⁵¹ For example, Shiv Sena successfully intimidated some movie theaters into closure, halting the release of *My Name is Khan*.¹⁵² Although the adverse consequences of the protests appear to be comparatively less severe than those experienced during the release of *Fire*, the lost sales are still unwarranted and paralyzing. This type of behavior results in a direct infringement upon other Indians’ legitimate commercial rights and endeavors. This includes theater owners and film producers who have invested in the distribution and/or exhibition of motion pictures.

Even with a strict textual reading, devoid of the court’s qualified interpretation of the right to protest, Shiv Sena’s violent actions violate the Indian Constitution. The Constitution provides the right to assemble, with the qualification that it must be done

144. *Abbas v. Union of India*, A.I.R. 1971 S.C. 481, available at <http://www.cscsarchive.org:8081/MediaArchive/medialaw.nsf/%28docid%2912FCA97F56513370E525685200375D7C> (last visited Jan. 4, 2012) at para. 42.

145. BHOWMIK, *supra* note 7, at 21.

146. Sunder, *supra* note 14, at 78.

147. Van Gelder, *supra* note 15.

148. Yardley, *supra* note 13.

149. *Rangarajan v. Gov’t of Tamil Nadu*, A.I.R. 2003 S.C. 3032, available at <http://www.indiankanoon.org/doc/704382/> (last visited Jan. 16, 2012).

150. *Id.*

151. Yardley, *supra* note 13.

152. *Id.*

“peaceably and without arms.”¹⁵³ It is difficult to characterize any aspect of Shiv Sena’s protests as peaceful. Therefore, its demonstrations against controversial films, under both *T.K. Rangarajan* and *Communist Party of India*, are an injustice to the Indian society because of the degree and manner in which they are accomplished. Shiv Sena’s actions are more than an expression of a controversial and contrarian viewpoint. These protests are shutdown strikes and an imposition on the rights of Indian citizens.

V. PROPOSED SOLUTION: ELIMINATE CENSORSHIP

With Shiv Sena’s violent and illegal behavior as a backdrop, the Indian government needs to address the issue of censorship because it is the vehicle for these aberrant protests. However, it is unclear if the answer should come through legislative reform or some other medium, because there are larger social issues involved with any proposed solution. To further complicate matters, academic critics have consistently chastised censorship, latching onto a variety of reasons to promote its removal.¹⁵⁴ In agreement with its detractors, I propose that India should eliminate its censorship regime. However, this proposal is based solely in economic rationale. Free speech concerns do not factor into this suggested solution because they are antithetical to the Indian democracy.

A. *Freedom of Speech Rationale*

Before understanding why economics should dictate the elimination of film censorship in India, it is first necessary to understand why freedom of speech concerns should not. As previously discussed, the most substantial and relevant contrast between India and other democratic states is the treatment of speech, which

153. INDIA CONST. art. 19, § 1, cl. b.

154. See generally Ramasastry, *supra* note 80, at 207 (blaming censorship as the primary cause of the consistent depiction of rape and violence against women in Indian cinema); Monteiro & Jayasankar, *supra* note 5, at 21 (criticizing the proposed amendments to the censorship laws for their maintenance of the status quo). Arpan Banerjee, *Political Censorship and Indian Cinematographic Laws: A Functionalist-Liberal Analysis*, 2 DREXEL L. REV. 557, 617 (2010) (citing the detrimental effects that censorship has on Indian society, including its film industry); Smita Narula, *Overlooked Danger: The Security and Rights Implications of Hindu Nationalism in India*, 16 HARV. HUM. RTS. J. 41, 41 (2003) (an overview of the general human rights implications of Shiv Sena’s behavior).

is a qualified right in India.¹⁵⁵ It is only within the confines of this governing philosophy that an effective solution can be reached.

Film censorship can exist because Indians have a qualified speech right. This practice was codified into law in the Cinematograph Act of 1952¹⁵⁶ and approved by the Indian Supreme Court in *K.A. Abbas*.¹⁵⁷ Indian censorship laws and practices even predate the modern Constitution.¹⁵⁸ As early as 1920, films were being reviewed for the protection of the Indian state.¹⁵⁹ After the British left India, the modern government chose to continue this practice when it created the aforementioned censorship legislation.¹⁶⁰ Academics have criticized the Indian legislature for its failure to modernize this “outdated” practice, rooted in “Victorian morality and elitist notions.”¹⁶¹ However, the fact remains that despite its unpopularity, censorship is the law in India. Therefore, notwithstanding the scholarly condemnation, the decisions of the governed need to be respected, even if they are contrary to more “modern” conceptions of freedom of speech.¹⁶² Therefore, a freedom of speech argument is unhelpful in advocating against censorship because it contradicts India’s legislative philosophy.

B. *Economic Rationale*

Despite Hollywood’s stronghold on the motion picture industry, Bollywood has gained a significant presence in today’s market. “India is the largest film producer in the world, generating close to 900 films annually This is twice as many films as are pro-

155. *Abbas v. Union of India*, A.I.R. 1971 S.C. 481, available at <http://www.cscsarchive.org:8081/MediaArchive/medialaw.nsf/%28docid%29/12FC A97F56513370E525685200375D7C> (last visited Jan. 4, 2012) at para. 41.

156. The Cinematograph Act, No. 37. of 1952, INDIA CODE (1952).

157. *Abbas*, A.I.R. 1971 S.C. 481 at para. 41.

158. Someswar Bhowmik, *Politics of Film Censorship: Limits of Tolerance*, ECONOMIC AND POLITICAL WEEKLY, Aug. 31, 2002, at 3575.

159. *Id.*

160. *Id.*

161. Monteiro & Jayasankar, *supra* note 5, at 19. “Power in the CBFC [Censor Board] is concentrated in the hands of a small group of politically motivated bureaucrats. A single chairman runs the CBFC with the help of between twelve and thirty-five advisors, all of which are appointed by the State. These officials serve two-year terms and are never held accountable to the electorate. As a result, the CBFC staff is more loyal to the government officials who appoint them than they are to the Indian people.” Fischer, *supra* note 92, at 48.

162. Monteiro & Jayasankar, *supra* note 5, at 19.

duced in the United States each year.”¹⁶³ However, despite India’s dominance in production volume, it trails Hollywood significantly in revenue.¹⁶⁴ Censorship is a cause of this disparity because it decreases the competitiveness of Indian movies abroad¹⁶⁵ and deters foreign filmmakers from entering the Indian market.¹⁶⁶ Therefore, the Indian government should end its censorship practices because of its deleterious economic effects on the Indian motion picture industry.

From the perspective of domestic producers, censorship negatively affects the profitability of Indian movies abroad. Because censorship handcuffs filmmakers in terms of permissible content, their themes and images can become watered down.¹⁶⁷ This hurts Indian filmmakers because “a ‘too soft’ or superficial approach to social, religious, or political tensions will bore western audiences” thus limiting their marketability abroad.¹⁶⁸

Censorship also handcuffs domestic producers into portraying certain types content in obscure ways, potentially against the creative interests of the filmmaker.¹⁶⁹ For example, “the use of various suggestive cinematic techniques, including the regular portrayal of rape, may be seen as attempts by directors to circumvent government censure of kissing and other intimate relations on-screen.”¹⁷⁰ Another example is one of the most well known Bollywood techniques, the “suggestive song-and-dance routines” which is also used as a substitute for kissing.¹⁷¹ This too may hurt the reception of the movie because the depiction may seem strange or flawed in comparison to a more direct portrayal of the material.

From the perspective of foreign producers, many are deterred from entering the Indian market because of censorship. This is a detriment to the Indian economy because “the Indian film industry is looking to attract foreign funds and runaway productions.”¹⁷² Like domestic motion pictures, “foreign films imported into India,

163. Ramasastry, *supra* note 80, at 205.

164. Banerjee, *supra* note 154, at 617.

165. *Id.*

166. Timm Neu, *Bollywood is Coming! Copyright and Film Industry Issues Regarding International Film Co-Productions Involving India*, 8 SAN DIEGO INT’L L.J. 123, 151 (2006).

167. *Id.*

168. *Id.*

169. Ramasastry, *supra* note 80, at 205.

170. *Id.*

171. *Id.* at 217.

172. Neu, *supra* note 166, at 127.

dubbed films and video films” must be certified by the Censor Board.¹⁷³ Although standards appear to be slightly more relaxed for foreign motion pictures,¹⁷⁴ they can still act as an impediment to a movie’s success, as evidenced by the limited release of *The Da Vinci Code*.¹⁷⁵ Outside producers are thus hesitant to create films that are predominantly marketed towards the Indian population due to the unpredictability of the Censor Board.¹⁷⁶ The Censor Board can use a variety of reasons to justify the limitation of a theatrical release, including national security or morality.¹⁷⁷ When this factor is coupled with the numerous risks already associated with filmmaking (working with talent, uncertain financial returns, etc.) producers tend to seek opportunities elsewhere, rather than chance a financial failure due to a limited release by the Censor Board.¹⁷⁸

Even with the creative restrictions in place, India has a highly successful film industry, which relies heavily on the exportation of its content.¹⁷⁹ The demand for Indian movies is apparent, but the supply is lacking. For example, “mainstream foreign co-productions with Indian themes such as ‘Monsoon Wedding’ (2001) or ‘The Guru’ (2002) have excelled internationally and triggered an even broader audience interest for India and Bollywood films.”¹⁸⁰ *Monsoon Wedding* grossed \$13.9 million in the United States¹⁸¹ and *The Guru* grossed \$3.03 million within the same

173. Central Board of Film Certification, *supra* note 82.

174. Bearak, *supra* note 17. The reaction to these looser standards has been an influx of soft-core pornography, known as “morning movies” because of their morning show times. *Id.* These relaxed standards come from an Indian governmental practice which allows, “non-resident Indians—those living overseas—to import foreign films to India while paying an import tax of \$15,000 per film.” Ramasastry, *supra* note 80, at 219. Unfortunately for conservative moviegoers, the trend has been towards the importation of adult films, as opposed to other subject matter. *Id.* However, interestingly enough, in a double standard by the government, “American films [are] beamed nightly on television.” Bearak, *supra* note 17. Television audiences are held to a different standard than moviegoers, and are out of the scope of this Article. Monteiro & Jayasankar, *supra* note 5, at 21.

175. Wright, *supra* note 63, at 45.

176. Neu, *supra* note 166, at 151.

177. *Id.*

178. *Id.*

179. Ramasastry, *supra* note 80, at 206.

180. Neu, *supra* note 166, at 126.

181. *Monsoon Wedding* (2001), INTERNET MOVIE DATABASE, available at <http://pro.imdb.com/title/tt0265343/> (last visited Jan. 4, 2012).

country.¹⁸² On an even greater scale, *Slumdog Millionaire* generated \$362 million worldwide.¹⁸³ Although these films were not Indian productions, author Timm Neu's insights are accurate because the extraordinary financial success of these movies speaks to the international community's readiness and willingness to explore diverse themes, and bodes well for the financial success of future Indian productions.¹⁸⁴ One can only imagine how much more successful the Indian motion picture industry will be if the government eases or removes the impediments that prevent filmmakers from portraying content in their preferred manner.

These desirable amendments may soon become a reality. "Last August, as part of his political liberalisation drive, Prime Minister Najib Razak announced that the government will review all its censorship laws, which he said were no longer effective."¹⁸⁵ However, "[w]hat precisely might replace government censorship has not yet been determined."¹⁸⁶

VI. CONCLUSION

Whenever there is an injustice stemming from an institution, it is easy to condemn the entire system and advocate for its removal. Such is the case with censorship. A religiously affiliated political party is manipulating a state authorized practice for its own personal gain. On a superficial level, this behavior is constitutional because this group is advancing a protected point of view in the context of a legally permissible state regime. However, Shiv Sena violates the Indian constitution in the way it conveys its message. Its demonstrations rise to the level of a *bandh*, resulting in the stagnation of Indian commerce through the use of violence, a practice specifically prohibited under *T.K. Rangarajan*¹⁸⁷ Therefore,

182. *The Guru* (2002), INTERNET MOVIE DATABASE, available at <http://pro.imdb.com/title/tt0280720/> (last visited Jan. 4, 2012).

183. *Slumdog Millionaire* (2008), INTERNET MOVIE DATABASE, available at <http://pro.imdb.com/title/tt1010048/> (last visited Jan. 4, 2012).

184. Neu, *supra* note 166, at 126. Timm Neu did not incorporate the film *Slumdog Millionaire* into his analysis. His article predated its release.

185. Lester Kong, *Cheers, jeers greet plan to ease film censorship*, ASIA NEWS NETWORK, Jan. 16, 2012, <http://www.asianewsnet.net/home/news.php?id=26455&sec=3> (last visited Jan. 18, 2012).

186. *Id.*

187. *Rangarajan v. Government of Tamil Nadu*, A.I.R. 2003 S.C. 3032, available at <http://www.indiankanoon.org/doc/704382/> (last visited Jan. 16, 2012).

despite all of the religious and political undertones, the resulting injustice to Indian society surfaces in Shiv Sena's presentation, not in its ideas or the institution of censorship in contemporary India.