

## A new initiative to defend free speech in India

Hartosh Bal explains the role of the new Freedom Trust in the context of India's media environment, and how they hope to defend freedom of expression.



On the evening of 21 August 2014, the Indian government barred the release of the film *Kaum de Heere* (Diamonds of the Community). Based on the 31 October 1984 assassination of former Prime Minister Indira Gandhi by two Sikh guards who were part of her security detail, the film was set for release the next morning.

While the title of the film was provocative, it was also not far from the facts. In June 1984 Indira Gandhi had sent the Army into the Golden Temple complex, the holiest shrine of Sikhism. The two guards were not alone in their anger, and have been posthumously hailed as martyrs by the Sikh clergy at the same shrine.

The movie had already obtained the clearance necessary for screening in India from the Central Board of Film Certification (CBFC). However, the Home Ministry, which looks after internal security, intervened, and a decision was taken to bar the release after another screening attended by officials of the Information and Broadcasting (I&B) Ministry, the Home Ministry and the CBFC.

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“We saw the film and decided that it will not be released tomorrow,” CBFC Chairperson Leela Samson said. “Because of the law and order situation that might result from the showing of the film and based on the ministry of Home Affairs report, the Home Ministry, the CBFC and I&B officials have decided that, she added.”

It was an argument that many believed had already been settled. In 2011, the film 'Aarakshan', dealing with affirmative action programmes for India's outcastes, was banned on similar grounds in Utar Pradesh. The matter went up to the Supreme Court which noted, “It is for the state to maintain law and order effectively and meaningfully. We feel reservation is a social issue and in a vibrant democracy like ours, public discussion is necessary. Such discussion on social issues bring about awareness for effective working of the democracy... Once an expert body has cleared a film, the state cannot overrule the law and order to stall its screening in theatres.”

While the spirit of the judgment may apply to Kaum De Heere, unfortunately the law does allow the central government to do what a state government cannot. Under the Cinematograph (certification) Rules, 1983 framed ‘in exercise of the powers conferred by section 8, of the Cinematograph Act, 1952’ the central government is allowed to direct the Chairman of the CBFC to re-examine certified films.

According to the rules, the final decision on the government's request lay with the chair, who in this case happened to be Leela Samson, one of India's foremost classical dancers. She was an unlikely candidate for imposing censorship, but then she owed her appointment to the previous Congress-led government for whom Indira Gandhi remains an icon.

On her first day in her new job. Samson had promised a balanced approach. “I believe any art form must have creative freedom, but at the same time, must be socially responsible,” she said. “I don't think anyone will feel that I've curbed their creative freedom. There won't be interference, but there will be responsibility.” The problem is that the imprecise idea of social responsibility can easily be interpreted in a manner that suits the government of the day.

Time and again, as in 2011 the higher courts have ruled against bans and censorship, but there always seems to be yet another rule the government can invoke when necessary. Prakash Jha, director of Arakshan, is a filmmaker who fought the matter in court, but this is a rare case. Most others are constrained by the fact that for their next release they have to go back to the same organizations they have to challenge in court. The situation is no better even without the constraints of censor boards. The worst of the recent cases of censorship are the result of many publishers who can afford to fight the legal battle citing the complexity of the Indian legal system as an excuse to justify their capitulation to those who call for a book ban or demand alternations in a text.

Just like most filmmakers, publishers are worried about the threat to their income if they take up positions that may go against the views of the government of the day. In February 2014, Penguin

India agreed to cease publishing Wendy Doniger's book *The Hindus: An Alternative History*, after settling a four-year-old lawsuit initiated by an 84-year-old retired school teacher Dinanath Batra. Batra heads the Shiksha Bachao Andolan Samiti (The Committee for the struggle to save education), affiliated with the right wing Hindu nationalist organization, the RSS, which exercises a great deal of control over the Bhartiya Janta Party (BJP).

The victory against Penguin followed by BJP's ascent to power in India in May has only emboldened Batra. Megha Kumar, a historian currently at the University of London was among those who have been targeted by Batra. She describes the sequence that led to her publisher succumbing to Batra:

"My book *Communalism and Sexual Violence: Ahmedabad since 1969* was printed by Orient BlackSwan in mid-April 2014, and thereafter released online and sold.... the book was printed following a thorough peer review and systematic and rigorous copy-editing between June 2013 (when the first draft of the manuscript was submitted) and March 2014 (when the book went to press).

However, on May 19, 2014 the publisher sent me a letter stating that they have received a legal a notice from Mr Dina Nath Batra's lawyer accusing them of publishing a book -- *Plassey to Partition: A History of Modern India* by Sekhar Bandopadhyay -- that is defamatory and derogatory to the RSS. In light of this legal notice, the publisher had decided to undertake 'a pre-release assessment of books that might attract similar reactions'. One of these books is mine."

The publisher added: "In this context, we have been advised by our legal counsel, not to release your book till such comprehensive assessment has been made and advice obtained. In view of the same, the Board of Directors has no option but to withhold releasing your book for the present".

Batra's uncontested successes have ensured a climate of self-censorship in the publishing world, with insiders privately conceding that the vast majority of publishers have already sifted through the list of forthcoming release to ensure there is nothing there that could invite Batra's wrath.

There has been very little institutional resistance to such encroachment on the freedom of expression. A recently launched chapter of PEN, Delhi, has been largely ineffective. The PEN model that envisages closely working with publishers on such issues is a non-starter in India, where it is not physical threats or brute intimidation by the government that challenges freedom of expression.

Rooted in the ills of corporate control, this assault against books and cinema also extends naturally to a larger assault on free expression that includes journalism. Journalists critical of those in power have found themselves without a job, as corporate owners worry about taking on the government. Institutional safeguards within media organisations have collapsed leaving individuals very little space to contest the direct influence of corporate groups that own these organizations.

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For a few of us, writers, journalists and lawyers, the only reasonable way of resisting this process is to contest this in the public space, intervening legally where we can find grounds to do so. This is not just a matter of challenging people like Batra to substantiate their claims in court, but extends to intervening on behalf of journalists where a clear case exists to establish that managements have been acting to silence inconvenient views. This is the reason we have come together to form The Freedom Trust.

We welcome people who can contribute in terms of expertise or resources but above all we need people who are willing to fight this battle. What we can try and ensure thanks to lawyers who are willing to devote their time pro bono for the cause is that such people should not be deterred by possibly prohibitive legal costs neither should they feel isolated. But we cannot substitute for individual filmmakers, writers, artists and journalists who feel the need to wage this fight. Our aim is to provide the means for such individuals to see this fight through to the end.

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