‘YOU CAN SEE WITHOUT LOOKING’:
Reconsidering Freedom of Expression in the Cinema

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I

Report in *The Times of India*: ‘The controversy around the film *Fire* took a new turn on Sunday with Shiv Sena chief Bal Thackeray stating that he would withdraw his objection to the movie if the names of the main protagonists were changed.

"Let them change (the names) from Radha and Sita to Shabana and Saira or Najma", he said in a tersely worded statement.

"Why is the entire film shown against the backdrop of a Hindu family? Why have the names Radha and Sita been given to the lesbian partners in the film? (...)

Mr Thackeray’s son Uddhav said, "None of those who are now crying hoarse about freedom of expression protested when the government banned Salman Rushdie’s *Satanic Verses* and a ‘fatwa’ was issued...This double standard exposes the hypocrisy of those opposing us for our stand on Fire, he observed"[1].

Shabana Azmi: “Mr. Bal Thackeray must be chuckling with glee at how cleverly he has taken the wind out of the sails of those stupid few clamouring for the right to freedom of expression with his latest diatribes against the film, *Fire*. [B]y attempting to communalise the debate on Fire, Mr. Bal Thackeray wants to take the spotlight away from the main issue—the vandalism by the Shiv Sainiks, the use of force and violence as premeditated act to disrupt the screening of a film running to full houses for three weeks duly passed by the Central Board of Censor Certification. And the subsequent endorsement of violence by the Maharashtra Chief Minister, Mr. Manohar Joshi”[2].

Report in *The Hindu*: "Declining to go into the merits of Fire, (Mr. Mukhtar Abbas Naqvi, Minister of State for Information & Broadcasting) said he could unhesitatingly say that lesbianism may be a subject for discussion among liberated and progressive women but not among the large body of Indian women. Mr. Naqvi indicated that he did not give much importance to the views of the National Commission for Women because it was not a representative body. He declined to discuss the reported unhappiness of Ms Asha Parekh, Chairperson of the Censor Board, over the Government's stand. He denied that the authorities had failed to curb graphic scenes of rape in Indian films. To another question, he said he did not support attacks on cinema theatres by the Shiv Sena followers"[3].

II

Fire: Opening shot: a slow track left over vivid yellow mustard fields, to A. R. Rehman's score evidently borrowed from the film *Bombay*. It dissolves on a MCU of a woman telling a singsong story to little Radha:

> A long time ago there were people who lived high up on the mountains.
> They had never seen the sea.
> They were very sad.
> Then an old woman in the village said don't be sad.
> You can see. You just have to see without looking.
> Radha, do you understand? (NB: This is an exact quote).

Opening surprise: the film was in English. Convent school, nursery rhyme. Moment of wonder: can one element within realist construction, if suppressed, serve to heighten every other effect? The language? The intonation? Not here: the fields evoked *DDLJ*, everything was rhetorically, externally, addressed with little diegetic integrity—the score and the postcard, the hill men, the old woman and the sea. The English was just another uncritical element in that list, no more, no less. Next shot 2 Man eating apple at (slow pan right) full frontal shot of Taj Mahal. Taj Mahal! Wife enjoying story of tourist guide in pidgin telling the love legend of Mumtaz. Husband is not interested in wife. The

legend is a commentary on their domestic relationship. Each sentence in this list hammered home like a caption on a photograph. One slight problem did ensue: this viewer assumed, for some intractable reason, that the rest of the story was probably set in Agra—apparently it is Lajpat Nagar, Delhi, but you wouldn't know that unless you did of your own knowledge. This film is not subtle. If it wants you to know something it makes sure. Two shots later: wife dances in solitude performing for camera (surface of star), husband goes off to see his girlfriend…

III

'You have to see without looking': can you also speak without saying? This essay is premised on my sense that these days a major, and largely new, argument is being put in place around our constitutional right to freedom of expression. It suggests that, for perhaps the first time in independent India, there is greater clarity—and perhaps some consensus—around what we might call the aesthetic interpretations of Articles 19(1) (a) ("All citizens shall have the right to freedom of speech and expression") and 19(2) (”reasonable restrictions on the exercise of the right...in the interests of the sovereignty and integrity of India"[4]). This new consensus, shared it seems by otherwise implacably opposed political positions, appears to be opening up a whole new field for working out old questions of artistic freedom and the restrictive State.

Consider this: the current symbol of threatened freedom, Deepa Mehta's film, and the symbol historically enshrining that threat, the Censor Board, are for the first time ever in India on the same side of the fence : both united, if unwillingly, against the Hindu right represented by Bal Thackeray. When Shabana Azmi argues—justifiably—that the film has been 'duly passed' by the CBFC and it thereby receives the right to be publicly screened, she is also pointing to the seriously compromised nature of what should have been, in the current political arena, an ally. It is well known that in numerous instances during the nefarious reign of the former CBFC chief, Shakti Samanta, the Board routinely abdicated its own right to be the sole arbiter of what was fit for public screening by asking the police, the Home Ministry and, in at least one extreme instance, Bal Thackeray

himself (Mani Rathnam's *Bombay*, 1995), to decide on its behalf. And in the current controversy, when the BJP government asked the CBFC to 'review' its earlier decision on *Fire*, Samanta's successor, Asha Parekh, is clearly, and embarrassingly, incapable of asserting, if she should wish to do so that she stands by the Board's first decision and that the film—whatever we, or anyone else, might think of it—continues to remain fit for public screening.[5]

Now consider Thackeray's own position in all this. You only need to equate word 'State' with the concept 'Bal Thackeray' in Article 19(2) for much of the confusion to be resolved. Indeed, it is impossible to arrive at a coherent explanation of what's going on these days, or to account for the helplessness or embarrassment he has caused as much to previous Congress governments as to his own SS-BJP coalition, if one does not recognise that Thackeray in all his recent pronouncements is speaking as though he *were* the Indian State. If he *had* been, things would have been conceptually easier: he would then, in his comments on *Fire*, be simply following explicitly stated constitutional procedures and imposing 'reasonable restrictions' on the right to freedom of speech and expression bearing in mind the problems the film might cause to 'public order, decency or morality'. It seems to me that the explanation for this shift in authority is not to be found in Azmi's sarcastic allusion to the mundane fact that Thackeray runs the present government of Maharashtra, or that he is part of the current ruling coalition in New Delhi. The answer has to be cast over a longer time frame, has to address his claim that he represents the authentic Indian State-note how mutually hurled accusations around authenticity have dominated at least a part of the *Fire* controversy[6]; speaks as a 'true' pre-Independence nationalist might in the face of discredited colonial authority, or as a film protagonist who rejects the law of the State, represented by corrupt judges or khakhi-clad extras who arrive in the last shot of the film, in favour of a more primordial law of the kin. How, in the current situation, he gets round to doing that—in the sheer mechanics of his mode of functioning—is, I believe, an integral part of the overall debate that *Fire* has generated around constitutional rights.

Whose freedom are we talking about, and what form of expression is this freedom expected to guarantee?—these, surely, are important questions in any debate around how Article 19(1)(a) manifests itself in this controversy. Let me suggest, in getting to what I consider the core issue, that what is at stake here is not so much the freedom of speech and expression—although, as I shall show below, *Fire* evokes a long line of recent legal judgements explicitly around Article 19(1)(a) and (2)—but is, rather, to do with the freedom of representation. In making this suggestion, I shall try and invoke a conceptual tradition in which linguistic and political senses of the term intersect with each other. I suggest there is a necessary caveat built into the Article itself which allows a transference of some kind, which has suddenly acquired a critical political meaning: here the real right at stake, as many judgements on the issue show, is not so much Deepa Mehta's right t0 express her ideas on film—nobody is really stopping her from doing that, not even Thackeray really, and certainly not Censor Board—but rather the Indian *people*'s right to *receive* this expression once it has been sanctioned by the Indian State as fit for its public. It makes sense, then, to explore the link between the freedom of expression and its manifestations in terms of representation and reception, and perhaps address just how Indian law allows, and accounts for, this transition.

For what follows is controversial. In all this, the re-positioning of the symbolic right of the *public* to free expression is precisely the field that, through a series of peculiar slippages, have also made a Bal Thackeray possible. *L'etat, c'est moi*—Thackeray, as simultaneously citizen calling upon the State to protect his right to freedom of expression, as well as State and Public, is clearly making a set of his own representations here, which include, first, his personal right second, his moral right as the 'true' Indian State, and finally the rights bestowed upon him by the presumed mandate of the people on whose behalf he claims to speak. Each of these is supposedly an independent field of operation: how do they come together in forming a speaking subject? The deeply vexed problematic that has riven at least the Left movement in India in much of this century, of how explicitly representational practices as in any form of artistic expression may be mapped onto ideological institutional or political modes of organisation has, it seems, entered a new era, as we see in the often uncannily similar

ways in which a secular, modernist and internationalist film, filmmaker and film star, defend their work and a Hindutva zealot defends his rights to impose control.

IV

Speech and the Speaking Subject: We need to examine, with some care, the consequences of these shifts upon radical practice. Freedom of speech, at its most basic, invokes an individual right; a standard textbook on the Indian Constitution defines it as the 'right to express one's convictions and opinions freely'[7]. Through this century this individuated right extended into a series of add-ons which logically furthered this right into a public arena and, in the process, defined the on-the-ground meaning of a *second* set of rights: those of the recipients of someone's expression, or the public's right to be protected from the consequences of that expression.

So the law book goes on to show how this right would extend to the 'expression of one's ideas by any visible representation, such as by gestures and the like. [E]xpession, naturally, presupposes a second party to whom the ideas are expressed or communicated', and so, to express oneself meant for instance, to publish one's views, put them out into the market, or to mechanically delink the thing expressed — by 'mouth, printing, picture or in any other manner addressed to the eyes or ears'— from the one who speaks. In all this, as the matter spills away from the individuated speaker who is expressing his/ her thoughts, and into the category of the public sphere where a second set of contrary rights emerge of those who receive this speech, I think two points need to be made which are important to assert in today's times.

First, and critically, this system functions best when the thing expressed traces a logical, and visible, relation to its source of expression. In turn, the source of expression is best understood as such, in the sense of Article 19(1)(a), when the source replicates the individuated paradigm of one expressing one's convictions 'freely'—in other words, when the speech invents, traces a link to, an author. And second, when the recipient of this speech performs no actions other than to receive. This terrain of the functioning of

the Constitution, where the right functions primarily on the restrictions placed upon recipients of speech—where published expression either incites violence amongst recipients, or tends to 'deprave and corrupt those whose minds are open to...immoral influences'[8]—is a colonial legacy, its pre-Independence versions such as the Defence of India Rules (1939) geared to address questions of sedition[9] or the Penal Code of 1860 used for obscene literature[10]. Clearly this liberal-humanist tradition of law cannot easily account for forms of representation that do not yield an ideologically coherent source of speech, such as, for instance, a 'representation (that) does not re-present an "original"' but instead 're-presents that which is *always already represented*'[11] (emphasis mine).

Thus cinema: the quintessential mode resisting 'objective reality' and thus also resisting a speech mode relating the recipient to the object, an institution that constantly elides what Metz calls its 'biographism'[12] in favour of the filmic text in all its productive complexity, the cinema has for some years now posed not only the most spectacular legal cases invoking 19(1) but also presented some of the greatest problems to the deployment of the freedom of expression principle. It has, in the process, effectively devised a (highly problematic) way of making sense of the constitutional right that, nevertheless, usefully allows us to understand not only some critical problems for the institutionalisation of the cinema but also of related political moves such as those that Thackeray's recent postures open up.

Several efforts have been made to define the difference the cinema makes to the legal deployment of 19(1). So Chief Justice M. Hidayatullah, passing judgement on what is still the landmark case on freedom of expression in the cinema, that of K. A. Abbas vs Union of India, says:

> ...it has been almost universally recognised that the treatment of motion pictures must — be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture, its versatility, realism (often surrealism), and its coordination of the visual and aural senses. The art of the cameraman, with trick photography Vistavision and three-dimensional representation thrown in, has made the cinema picture more true to life than even

> the theatre or indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their belief than mature men and women. They also remember the action in the picture and try to emulate or imitate what they have seen[13].

More ‘true to life' and *therefore* ‘able to stir up emotions’. This was the first instance in Indian cinema where legal language accounted for issues that have been more recently explored in Indian film theory: issues arising out of the growing perception of the cinematic institution as primarily the organisation of *spectatorial* activity. The legal acknowledgement of a spectator more emotionally stirred by the cinema than by any other mode of address, and further, of the spectator who can ‘emulate or imitate’—who, in short, acts upon what is received and is, therefore, no more restricted to passive recipient, has had major consequences. From crackpot litigation by people with hurt feelings to Shiv Sena vandalism, this field of spectatorial response has become the dominant theatre of operations for Article 19(1)(a).

Let us, on the other hand, return to the Abbas judgement to see what this, and subsequent judgements, have done to the *first* part of the Freedom of Expression tug-of-war: the speech itself, and its authorial underpinnings. .

Abbas, as he shows in his autobiography, had made *A Tale of Four Cities* (*Char Shaker Ek Kahani*, 1968)—the censorship of which was the crux of the petition - for a specific purpose. It appears that, in a meeting of the G. D. Khosla Enquiry Committee on Film Censorship (1968), of which Abbas was a member, the Chairman of the Censor Board denied that there was any political censorship: ‘They never had any social or political themes to which anyone might object. They only knew dancing, singing and hipswinging. That provoked me to challenge the statement’, he writes[14]. The twists and turns by which the challenge was assembled is worth noting: Abbas made the documentary, screened it for the Khosla Committee and the Censor Board and when, as

expected, his brothel scene was objected to by the latter, filed a petition with the Supreme Court. When the government relented and offered an unchanged version of the Universal certificate, Abbas amended his petition to be ‘able to challenge pre-censorship itself as offensive to freedom of speech and expression and alternatively the provisions of the (Indian Cinematography) Act and the rules, orders and directions under this Act, as vague and arbitrary’[15]. He did this, he says, because he ‘wanted to put the censorship machinery in the docks’[16].

What did he achieve? Concretely, as it happens, the Abbas judgement led to the instituting of a Censorship Appellate tribunal consisting of ‘eminent persons’ and thus independent of the government, a landmark in the history of film censorship in India. There are, however, three less obvious consequences to Abbas’ intervention, which are mostly evident in the later legal deployments of this judgement.

To begin with, the intervention itself, and the manner in which it was made, was clearly intended to resuscitate a particular, and rather special, concept of the cinematic author. This category bears scant relation to, say, Bresson’s use of the term ‘Cinematographer’, since by definition it can, initially at least, only be applied to certain kinds of films. It is well known that in several official film bodies, it is assumed that the filmic author functions in certain given ways, works with certain kinds of budgets, is backed by organisations like the ‘script committee’ of the NFDC, all of which have over the years been vigorously critiqued by independent filmmakers. This critique does not in any way reject the fact that filmmakers do express themselves in their work, and that their expression seeks the protection of the Constitution. Rather, it points to the manner in which this category, as speaking subject, allows a retroactive trajectory from film to speaker, and on the way marks a few further key intermediary categories.

One of these is the well known fiction of the ‘average viewer', a further proxy for the speaking subject. Indeed, Hidayatullah responds with gratitude to Abbas' voluntary effort to legally manufacture an author entirely suited to the classic conditions under which Article 19(l) functions at its best, by suggesting that the term allows the court to

overcome what he calls the ‘void for vagueness’ doctrine. Hidayatullah argues that this doctrine has taken censorship ‘to the verge of extinction’ in the press, art and literature ‘except in the ever-shrinking area of obscenity’. ‘Regulations containing such words as ‘obscene’, ‘indecent’, ‘immoral’, ‘prejudicial to the best interests of the people’, ‘tending to corrupt morals’, 'harmful' were considered vague criteria'[17].

> ...if the law is open to diverse construction, that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where, however, the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution...

How then to revalidate the category?

(Nevertheless Article l9(l)(a) uses words which) are *in the common understanding* of the average man. For example the word ‘rape’ indicates what the word is, ordinarily, understood to mean.[18]

You only get the full force of this argument in a considerably later judgement, of the Supreme Court sitting on Govind Nihalani’s *Tamas*. That petition, and its earlier version in the Bombay High Court, had taken place when one Javed Ahmad Siddique had filed a writ petition arguing that the film ‘is likely to promote...on grounds of religion, caste or community, disharmony or feelings of enmity, hatred of ill-will among different religious, racial, language or regional groups or castes (and) is prejudicial to the maintenance of harmony'[19]. Particular offence was taken at the sequence in which an elderly Hindu tries to teach a young boy how to kill. On the other hand, the Additional Solicitor General asked for an order from the Supreme Court 'to the government to exhibit the film again and again'. Summarising the film's intentions, Chief justice Sabyasachi Mukharji ruled as follows:

> The attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and foment conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value[20].

Who decides that this is so? Mukharji and his predecessors in the Bombay High Court, Justices Lentin and Sujata Manohar, went to some length to explain on whose behalf they spoke.

> The learned judges found that the message of the film was good. They have stated that the film shows how realisation ultimately dawns as to futility of violence and hatred, and how the inherent goodness in human nature triumphs. Dr. Chitale submitted that the judges have viewed the film from their point of view but the average persons in the country are not as sober and experienced as judges of the High Court. But the judges of the High Court of Bombay have viewed it, as they said, from the point of view of 'how the average person for whom the film is intended will view it' and the learned judges have come to the conclusion that the average person will learn from the mistakes of the past and realise the machinations of the fundamentalists and will not perhaps commit those mistakes again[21].

Mukharji, elaborating on this claim, further asserts that the case should be judged from the view of the 'common man' or what he (quoting English law) calls 'the man on top of the Clapham omnibus':

> the effect...must be judged from the standards of reasonable, strongminded, firm and courageous men and not those of vacillating minds, nor of those who scent danger in every point of view[22].

And back to Hidayatullah, now describing part of the story of *A Tale of Four Cities* :

> She sits at the dressing table, combs her hair, glances at the two love-birds in a cage and looks around the room as if it were a cage. Then she goes behind a screen and emerges in other clothes and prepares for bed. She sleeps and dreams of her life before she took the present path. The film then passes on to its previous theme of contrasts mentioned above, often repeating the earlier shots in juxtaposition as stills. *There is nothing else in the film to be noticed either by us or by the public for which it is intended*[23] (emphasis mine).

We can of course argue, as many have done—including A. G. Noorani in his essay, 'Should Judges Judge Movies?'[24]—that judges are not film critics, that they see films only in the ways devised by which film narratives may be brought under the purview of the law. When the *Tamas* judgement re-forged the link between controversial filmic object and speaking voice—('the attempt of the author of this film...')—and in turn extended it to the average member of the public, then went on to reiterate the characteristics of this receiver as well as his legal ID exclusively in terms of the limits placed upon his action by Article 19(2) ; when both Hidayatullah and Mukharji imposed a given way, and no other, by which a film may be seen by this viewer, it would seem that they were aware that all this could not be sustained through ethical—humanist thematics of 'kindness, sympathy and affection' alone. Mukharji invokes, and not for the first or the last time, the special responsibility of the Indian Cinematograph Act, 1952, as being one of

> meeting the explosively expanding cinema menace if it were not strictly policed. No doubt the cinema is a great instrument for public good if geared to social ends and can be a public curse if directed to anti-social objectives[25].

As I say, the argument can be made that a forcible legal curtailing of the viewer's right to respond to a film with the complexity that we, film theorists, know any film to be capable

of, and indeed a further 'policing'— in Mukharji's phrase — of such a way of seeing films, might well be the only possible means by which Article 19(1) can at all be implemented in the cinema. What makes the argument difficult to sustain, however, in the face of the onslaught that *Fire* is currently encountering, is really the subsequent development of the speaker—subject—viewer nexus in recent legal history. I am now referring to a number of recent legal judgements where ordinary citizens have suddenly been attributed a number of rights—and a number of ways in which they have suddenly been presented as capable of action.

So in 1988, it was held that citizens had a constitutional right to show their films—here 'the TV serial *Honi Anhonee* — on Doordarshan[26]. This was repeated with the Cinemart Foundation, makers of the documentary *Bhopal: Beyond Genocide* (Tapan Bose, 1986) who had their film rejected by Doordarshan on the ground that the film — 1. had lost its relevance, 2. lacked moderation and restraint, 3. dealt with sub-judice issues, 4. criticised the State government etc.[27] Cinemart filed and won a case under the Freedom of Speech doctrine. Expanding the same logic, in 1989 lawyer Indira Jaising also invoked Article19 (1) (a) to demand that her freedom of speech expand into her right to speak on Doordarshan, to which the Judge Sujata Manohar said:

> Under Art. 19(1) (a) of the Constitution all citizens have a right to freedom of speech and expression. This right protects freedom of speech on television as much as anywhere else. It was contended by Mr. Nilkanth, learned advocate for the respondents that there is no right of free speech on TV. He said that Art. 19 does not apply to television programmes. Mr. Nilkanth has not cited any authority of law in support of this somewhat alarming proposition[28].

And then came the cricket case. When the Cricket Association of Bengal filed a case claiming their right, and what of the Board of Control for Cricket in India, to sell telecast rights to multinational telecasting outfits, and demanded that they be allowed to use Intelsat, and to allow uplinking equipment-to be imported, no guesses on what category of law was deployed. The CAB / BCCI claimed that if they could not do all of these

things, their right to freedom of expression would be violated. Justice P.B. Sawant, in the most extensive summary of the history of Article 19(1) available, quoted all of the above precedents drawn, among other sources, from the independent documentary cinema and then based his agreement on the fact that ‘sport is an expression of self’. He said in addition, that

> the right of freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers. The right to telecast a sporting event will therefore include the right to educate and inform the present and prospective sportsmen interested in the particular game...An organiser such as the BCCI or CAB which are indisputably devoted to the promotion of the game of cricket cannot be placed in the same scale as the business organisations whose only intention is to make as large a profit as can be made...[29]

Let's keep every irony aside of the situation, of India's biggest and most avowedly commercial sports organisation—whose star cricketers often look more like walking billboards than expressions of any sporting ‘self’—pretending to be an independent filmmaker who in turn pretends to be an ordinary citizen—and rather address the more complex notion of what kind of citizen such a judgement puts in place. It is well known that this judgement's historic declaration, that 'air waves are public property', had deployed the term ‘public’ in a wide—ranging but nevertheless rather specific way:

> The airwaves or frequencies are public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights...The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Art. 19(l) (a) of the Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose[30].

It is not anyone's case that rich sports bodies should not have rights, or that the equality before law principle should not extend even to them; it is, rather, that in discursive terms you do need a concept of the public that is large enough, ambitious and even sufficiently bloated, if you want to accommodate such a citizen as the BCCI within Article 19(1) and still allow this Constitutional right to resemble anything like its original intentions. I suggest that here, and in the short-lived Broadcast Bill of the United Front government which incarnated into policy the terms of this judgement, the 'public' now inflated itself into a number of pretty distinct categories. First, as a thing-in-itself, invoked by the state to justify its own ever—threatened existence and purpose, and then by numerous other agencies, as being 'in the public interest'. A variation on this, of 'public service television', was widely and commonly interpreted as 'Not what the public actually wants, but what the State thinks the public should have' ('You may not like it, but it's good for you'). Second : as public demand for some kind of right to access. But access to what? On the television issue, as Indira Jaising, 'Odyssey' and *Bhopal: Beyond Genocide* had earlier done, both the Air Waves judgement and the Broadcast Bill invoked the right to representation on television. But how, practically, other than TV tycoons demanding their citizen's right to 'have an access to telecasting', political parties wanting their say on DD and independent filmmakers wanting their share of TV time, was the public to have that access? More commonly therefore, this came to be understood as the right to *receive*.

This wasn't the old pluralist everybody-entitled-to-what—they-want formulation. Rather, I suggest, this notion of active reception—as-production—of *spectator as author*—can only be understood as the furthest, and final, transference of the nexus of object tracing itself back to speaker—a concept of audience as producer that, one must add, is entirely compatible with the mode of television broadcasting[31].

V

The Recipient: *The Public*: In such a situation, how are we to arrive at valid arguments around the right to both expression and reception that can validly counter threats such as *Fire* currently faces from the Shiv Sena? By describing it as a great movie? More

fundamentally, why has the *cinema*—which, we have argued, can be elusive to the speaker-of-conviction category that Article 19(1) (a) envisages and sets out to protect—become so basic to understanding the constitutional right itself in a judgement as politically pivotal as the Air Waves one? How today do the two sets of rights, of speaker/object — and its proxy in various categories including filmmaker / film / plot / idealised viewer — as versus emotionally stirred up recipient capable of action—square up? Or is it that, far from equating with each other as the Constitution would intend, the divisions are now virtually unbridgeable?

Justice Sawant, like his predecessors, acknowledges that there is something special here, which needs explanation, and tries to address the issue as follows:

> The court's commitment to 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. (However), though the movie enjoys the guarantee under Article 19(1)(a) there is one significant difference between the movie and other modes of communication. Movie motivates thought and action and assures a high degree of attention and retention... It has a unique capacity to arouse and disturb feelings… [H]owever, the producer may project his own message which the others may not approve of it. But he has a right to 'think out' the counter—appeals to reason. It is a part of democratic give-and-take...The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community.[32]

We now come to the second half of the tug-of-war: the recipient, and his trajectory from Hidayatullah's 'average viewer' of 1971 to Sawant's 'public' of 1995.

For various contingent factors, which may have to do with both the nature of the film industry and its extraordinary reach through the sub-continent, the legal deployment of Article 19(1) and its filmic version (Section 5B(1) of the Cinematograph Act, 1952) has always discursively privileged the filmic spectator rather than the filmmaker. As

such, in one sense at least the law's understanding of film spectatorship has been more aligned to film theory's comprehension of the term than legal comprehension of authorship has ever related to the filmic auteur. Indeed, at times film censorship anticipates film theoretical concerns in India in relation to the spectator, as the Khosla Committee shows in its competent review of this history. Khosla's chapter on the 'Principles of Censorship', for instance, says that

> The impact of the film is so vivid, so immediate and so penetrating and the extent of identification with the episodes displayed on screen so complete that all but a few of the more cultured and balanced of individuals can discount the compulsive or 'persuasive force of what they see...The written word is understood only by a small fraction of our people, the spoken word reaches even fewer persons, but the film contains an immediate appeal for everyone, men, women and children, whether literate or illiterate, intelligent or unintelligent...This circumstance places the film medium in a class by itself...[33]

The Committee wisely and creditably assumes that the filmic spectator is a rather wider category than merely that of 'reasonable, strongminded, firm and courageous men', goes on to inquire into how spectatorial activity may be comprehended as something existing rather than invented for purposes of providing a POV for legally authorised film watching. The problem that arises is the familiar one of methodology. In a chapter entitled 'Audience Reaction', Khosla depends on a 1957 Bombay—based survey carried out by the CBFC with the help of the Tata Institute of Social Sciences, and one carried out by the Indian Institute of Mass Communication for the Committee. Neither get very far—the CBFC finds out that over 80% of the people questioned see Hindi films, over half at least once a month or more. It also finds out that people are not often honest about admitting that they liked films, or why they liked them: the strange problem of young people asserting that they 'dislike films dealing with love and romance' was 'probably due to (their) reluctance...to admit their liking for erotic subjects'[34]. The IIMC goes into the question of how patterns of spectatorial behaviour depend on age and gender. In

general, it is recognised that the cinema affects people's habits and behaviour, manners, fashion, and sometimes gives rise to immoral practices.

The problem, clearly, seems to lie in the gulf between the textualised spectator-the average individual and the person whose view Messrs Lentin and Manohar claim to adequately represent—and the actual viewer who can, it appears, only be understood if at all through market—research surveys. On the other hand, the legal imposition of Hidayatullah's average viewer upon the entire mass of India’s film audiences goes alongside a textual imposition on how a film should be read, and both impositions are explicitly policed by the Cinematograph Act. What's happening here is something for which Madhava Prasad provides a comprehensive explanation:

> The… mode identified with Hollywood, and… which serves as an ideal that the popular Hindi film sometimes strives to emulate, arises in the context of a desacralized social order where the free individual is the elementary unit. Here the determining factors include the organisation of society into a self—reproducing value—generating order, a mode of regulation of the free circulation of individuals by means of a symbolic equality and citizenship. The realist imperative in this context consists in according primacy to the features of a rationally-ordered society—relations of causality, progression along a linear continuum marked by motivation, credibility, and action submitted, in the ultimate instance, to the narrative possibilities arising from the operation of the rule or law. [T]his form of realism, contrasted with the melodrama of the standard Hindi film, bestows an immanent unity (as opposed to a unity that derives from a transcendental plane) on its content. Coming into its own with the consolidation of the modern state, it is distinguished by a transformation of the field of perception such that the spectator’s gaze is attracted by the unfolding of a sequence of events focussed around a central character, and whose meaning is constructed through the diegesis, under the aegis of legality[35].

Prasad's account of the ‘realist imperative’ performs the useful function of outlining, for perhaps the first time in Indian film theory, the mechanics of how textual reading joins with the transformation of a perceptual field exemplified by the spectator’s gaze; his work thus not only explains the privileged role of certain actual realist films (*Tamas* itself being a classic instance), but also—and crucially—demonstrates how this rule of law could then be applied to the reading of all films. As such he produces a theoretically coherent account of what’s really going on in both the Abbas and *Tamas* judgements, in their recounting of what these films are about, who is supposed to be watching them, and how the meaning in the entire cinematic transaction is taking place ‘under the aegis of legality’.

Through the 1980s, Indian law adhered steadfastly to such a reading of the cinema. As a result it also possesses an honoured and creditable record for defending authorial rights, in judgement after judgement and in films ranging from Raj Kapoor’s *Satyam Shivam Sundaram* (1978) to Anand Patwardhan’s In *Memory Of Friends* (*Una Mitterandi Yaad Pyari*, 1989)[37]. Unfortunately, and despite so much legal text on the ‘impact’ of cinema on viewers’ emotions, on the unprecedentedness of 'movie’s capacity to arouse and disturb feelings’ (Justice Pathak), and despite numerous petitions by people invoking just this capacity of cinema, legal recognition of spectatorial rights has been poor. This is ironic, given the attention that so much legal literature has paid to the cinema’s impact on its public, but the reason is not difficult to find. The legally privileged perception of the cinematic institution, according primacy ‘to the features of a rationally-ordered society’ and ‘along a linear continuum marked by motivation, credibility, and action submitted, in the ultimate instance, to the narrative possibilities arising from the operation of the rule of law’, all of which is crucial to bringing cinematic expression within the ambit of l9 (1), veers by its very nature towards a narratively constructed speaking subject. This is a non-variable category that spectators of the cinema have necessarily to assume, and to replicate if they are to become legally visible at all.

What I am suggesting, basically, is that the constitutional right to freedom of speech constructs a speaker (author) and a recipient: the legal construction of author is considerably friendlier to the filmmaking agency than the idea of the recipient of speech is to film spectators, if we are to have the broad concept of audiences that Khosla, for instance, tries to cover. I have shown, above, that the narratively constructed spectator, attributed a gaze whose 'meaning is constructed through the diegesis, under the aegis of legality', has been a highly negotiable entity—we have seen that such a category of the *cinematic* public has been deployed to chronicle the rise of a new kind of *consumerist* public seen to be distinct from, and superior to, the State, since 'State control really means government control', in the Air Waves judgement[38]. I suggest now that even as this move has taken place, the possibility of any legal mode of addressing spectatorship with the complexity that it deserves in relation to spectatorial speech-rights has only become increasingly remote. It is worth speculating on whether spectatorial rights, in the sense in which some recent film theory understands the term[39], *can at all* be translated into legal language.

It is not that the courts are unaware of this problem. In the *Tamas* instance itself, Justice Mukharji wonders as to whether the Censor appellate tribunal, designed to address the grievances of filmmakers, could also include spectator grievances:

> It is true that the remedy of an approach to the Appellate Tribunal is available only to persons aggrieved by the refusal of the Board to grant a certificate or the cuts and modifications proposed by it. It is for the consideration of the Central Government whether the scope of this section should be expanded to permit appeals to the Tribunals even by persons who are aggrieved by the grant of certificate of exhibition to a film on the ground that the principles laid down for the grant of certificates in Section 5B have not been fulfilled[40].

The closest that any case has got to admitting the problem is Raj Kapoor vs. Laxman[41], again dealing with his *Satyam Shivam Sundaram*. There the petitioner, a spectator who had objected to the religious-sounding title, had filed a case that the 'fascinating title was

misleading, foul and beguiled the guileless into degeneracy'. The Magistrate's court, in an unprecedented departure that even the High Court endorsed, had overturned Censor Board's clearance and asked that the film be withdrawn from circulation. In the Supreme Court, Kapoor—who evidently didn't withdraw the film—claimed that, in assuming that he had been protected by the Censor Board's giving him an A certificate, he 'did not know' that he was committing a crime. Eventually things went Kapoor's way, but in conclusion Krishna Iyer went on to say that:

> Prosecutions like this may well be symptomatic of public dissatisfaction with the Board of Censors not screening vicious films. The ultimate censorious power over the censors belong to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated, the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within. Corruption at that level must be stamped out[42].

As in question over 'access' to (express their views on versus rights to receive) television, here too, in the cinema it appears that the field of spectatorship can shift, acquire various kinds of citizenship privileges, provided they are seen as receivers ; the moment they are seen as capable of action, this right to freedom of expression becomes problematic. In other words, while the question of how to apply l9(2) to film viewers is clear, 19(1)(a) has remained an ever-increasing problem.

After the news came that the Censor Board has passed *Fire* a second time round without cuts, the nationwide distributor of the film, Harish Sugandh of Friends India, was quoted as saying, 'We will only release the film again in India if the Shiv Sena allows us to do so', and that the decision of the CBFC was 'not enough'[43].

VI

Representation/Re-presentation: Perhaps a more promising line of argument will open up if we re-phrase the question itself. Instead of asking the question, how is Hidayatullah's

'average man' through whose gaze the filmic diegesis constructs its meaning, to be translated (legally, institutionally) into the Indian spectator-at-large, what are the difficulties of doing so, etc., perhaps we could move from another premise.

This premise could assume, from its inception, that whatever the nature of consciousness the spectator of cinema would bring about, it is *not* that of the legally constructed 'individual'. Subjectivity in the cinema, we know, has been a difficult category, its manifestations worked out through a series of reductions ('spectator withdrawing himself into a pure instance of perception'[44]) and expansions (the interactions of the four looks in film), so that pulling out of this welter an 'I' that in any sense resembles what I am socially supposed to be is virtually impossible if the film is to have any impact on me at all. This is established film theory, which I shall try and elaborate in a moment[45].

Let us for now map the debate around the spectator onto a different political history, by taking the question of how film audiences express themselves into the dense thicket of theory which maps the speech of the subaltern. This history must begin with Ranajit Guha's famous early formulations that posit a distinct form of consciousness to the non-elites of history: a 'negative' consciousness that expresses itself through certain kinds of action, defines its domain in ways that include those of 'analogy' and 'transference'[46]. The articulation of subaltern history is at once present in all elite discourse (such as for instance colonial records, where one can 'read the presence of a rebel consciousness as a necessary and pervasive element'[47]), and at the same time *elusive* to that discourse.

So Guha shows that on the one hand peasant rebels do act, often with violence, but in ways that tend to confound any analyst trying to figure out how their actions can further their political self-interest. On the other hand, for reasons including both geographical and class heterogeneity, the subaltern classes tend to be evasive to coherent political representation. The further claim that *any* kind of apparently progressive representation 'on behalf of' the peasantry ends up only charging old feudal formations

with new social responsibilities[48] clearly has this virtue that, regardless of whether it is true or false, it points up to the political but also formal pressures to which the practice of representation is itself subject.

In her commentaries on this work, Gayatri Spivak draws upon Marx to demonstrate that there are two distinct forms of representation involved: one chaotic, typically resisting a speaking source, and usually seen by standard historiographic means of understanding as constituting failure. And a second, involving the political representative of the subaltern as much as it does the historian of this phenomenon, where the representation works as a substitute, or slippage. In the failure of a community to behave as a class which can represent its interests politically, comes another form of representation — produced, in its classic form in France by 'historical tradition' and the French peasant's belief that 'a miracle would occur, that a man named Napoleon would restore all their glory'. The small peasant proprietors 'cannot represent themselves; they must be represented. Their representative must appear simultaneously as their master, as an authority over them, as unrestricted government power…'[49].

In order, then, to be alive to such slippages, when the historian seeks to represent these forms, the historian's own declared 'interest' becomes a crucial issue. The risk of essentialising such consciousness can, she says, only be strategically overcome through. some kind of 'affirmative deconstruction' demonstrated by the historian's own 'scrupulously delineated political interest'.

> For the true subaltern group, whose identity is its difference, there is no unrepresentable subaltern subject that can know and speak itself; the intellectual's role is not to abstain from representation. The problem is that the subject's itinerary has not been traced so as to offer an object of seduction for the representing intellectual [50].

The alternative means of restoring the subaltern subject-position in history, that of establishing an 'inalienable and final truth of things', inevitably tends to 'objectify the subaltern and be caught in the game of knowledge as power'[51].

Back to the cinema for a moment. In speculating on the elusiveness of spectatorial rights to legal definition, let us see how the prior articulation, of re-presentation works in the cinema itself. In mapping the field thus, it may then be possible (not in this essay, where I shall only make the suggestion for future research) to start with such categories in asking just why the cinema proliferated so quickly among the colonial Indian non-elites in Guha's sense. There may be other answers to be found that might also explain the cinema's centrality to freedom of expression in Indian law, but the one that I would like to bring out is the difficulty, the *anxiety*, that such a 'consciousness' imposes upon whatever is mandated to speak for or represent it.

In the cinema this anxiety is repeatedly shown up by the insecure presence of an authorial third look—the look of the 'character', or individual protagonist, the representative of the people—consistently subordinated to a far more dominating and pervasive set of spectatorial transactions. Elsewhere I have suggested that these transactions may be understood as constituting some kind of traffic between the viewer's second look ('I see') and the fourth (where the exchange between what I see and how I am seen is yet again made to succumb to my control by an explicitly extra—diegetic gift of the cinematic apparatus, making subsidiary the role of the film narrative to this apparatus and its symbolic reduction to the screening conditions of a movie theatre, such as the placement of the projector and the role of the film frame). I have argued that such a pressure, which the Indian cinema demonstrates more strongly than any other that I know, also allows a rethinking of the very status of diegetic action within the cinema as a whole[52].

Let us now move back, using this insight that the cinema demonstrates, back to politics. Let us return to the question asked at the beginning of this essay: how does a Bal

Thackeray work out his role as simultaneously representative of State, citizen and the public? Clearly there is a slippage here, but how does it actually work?

I start with an issue of *Marmik* in 1966[53]. This was two years before, but in the same political context from which both the Abbas judgement and the Khosla Committee come. Thackeray defined a set of do's and don't's for *his subaltern classes*:

> 1. The Marathi man shall help other Marathi men and ensure their prosperity.
> 2. A Marathi man shall never sell his goods to a non-Marathi, and if any one comes to know that this is happening, he shall inform the nearest Shiv Sena shakha.
> 3. The Marathi shopkeeper shall buy his supplies only from Marathi suppliers.
> 4. Marathi employers shall only hire Marathi employees.
> 5. All young Marathi children shall learn excellent English, and shall learn English steno-typing.
> 6. All Marathi festivals should be vigourously celebrated by Marathi men and their friends.
> 7. Udipi hotels should be boycotted and no Marathi man shall take his custom to a non-Marathi shop. (etc).[54]

From the very inception of the Shiv Sena, in its first-ever public meeting at the Shivaji Park on the 30th October, 1966, incitement to random violence, explicitly endorsed by Thackeray, has always been a central feature. That very evening there was an apparently unplanned attack on Udipi restaurants situated in Dadar and assaults on pavement food vendors, setting in place an unfailing routine for SS rallies ever since. Parallelly, from the 1960s to the 1990s, there was also a formalisation of the shakha as a law court of some kind dispensing its own justice. It seems important to emphasise the apparently obvious fact that the two initiatives—the one of endorsing 'spontaneous' violence, the other of formalising the law-dispensing authority of this subaltern—seemed not to contradict each other. So in 1995, after he became Chief Minister, Manohar Joshi still defended the parallel law courts, saying:

> Where justice was not available, the Shiv Sena had no alternative but to start their parallel law courts. Now that there is a government that will offer justice to the average janata, the question of running courts in shakhas does not arise...
>
> Question: Are you claiming that the Shiv Sena has never indulged in goondaism? There is a general fear that, now that the Shiv Sena has come to power, goondaism and dadagiri will only increase.
>
> Manohar Joshi: The Shiv Sena has occasionally, when the situation demanded it, indulged in goonda acts, I don't deny this. But I would call that 'rebellion' (*bandakhori*). Once the limit of injustice is reached, even the cat retaliates by grabbing your throat...The conditions in the state so far have been so extreme that it was inevitable that the Shiv Sena would rebel. Our opponents later described this rebellion as goondaism[55].

A larger question perhaps worth asking might be whether all alternate systems of dispensing law, from those set up in CPI—led insurrections in the 1940s to the 'People's Courts' of the CPI-ML, have functioned by keeping intact the necessary randomness of subaltern violence — that elusive subaltern claim to self-representation to which Guha points — as scrupulously as the Sena shakhas did ; and if not, how then they found means of dealing with the problem.

Let us continue the argument, having made the premise that Thackeray_maintains, keeps alive above all else, the twin conditions of subaltern action in Guha's work: the failure of the subaltern to perceive itself, for whatever reason, as a class, and as a consequence the necessarily dispersed and, to the outsider, unpredictable nature of its self-representation. Let us move on to the second area, where Thackeray seems—and with greater success than anybody else in recent Indian politics —to trace onto this first category of re-presentation a second, that of Bonaparte-type representation.

I refer to the twin myths of 'historical tradition' crucial to the Sena's operation: the symbolic of Shivaji, and that of 'Maharashtra-ness'.

> 'While Shivaji looted the (colonial forts of) Surat, the Shiv Sena loots vegetables in an Udipi hotel'—*Navakal* editorial[56].

It is worth mapping out the broadest contours of these twin symbols, for it is indeed the case that both are, have been since Independence, unassailable in Maharashtra. It is also, however, the case that both formations are clearly of nationalist origin and as such do not necessarily translate well into the conditions of the 1960s in Bombay. The Shivaji legend at its most popular is traceable mainly to the work of the filmmaker Bhalji Pendharkar, more than half of whose work dealt with life in the times of Shivaji and whose definitive biographical *Chhatrapati Shivaji* (1952) has been the main source of popular imagery of the 18th Century Maratha king. There is, for instance, the obvious resemblance, of the Shivaji-on-horseback statue dominating Bombay's Shivaji Park to the actor Chandrakant in the movie. The two other figures who have contributed immensely to this legend are the novelist Ranjit Desai (famously the novel *Shriman Yogi*, but also *He Bandha Reshamache*, *Garudjhep* and *Pavankhind*, the last named in fact filmed by Pendharkar in 1956), and historian Babasaheb Purandare, known for his two-volume biography *Raja Shivachhatrapati*, 1965, and more so for his public discourses on Shivaji that often reached a near-devotional fervour[57].

I believe I am correct in suggesting that an adequate representation of the tenor of all this literature can be found in the following dedication at the opening of *Chhatrapati Shivaji* :

> This is not demonstration of art, nor is this mere entertainment. To the original revolutionary (*adi-krantikarak*), keeper of the Hindu dharma, founder of our freedom, to Shri Shivaraya, this is a puja assembled in his praise (bhakti). How can I pretend to make the claim that I have picturised all of his pure character? Taking inspiration from the birds that search for an end to the limitless sky, this picture is dedicated to him of whom it speaks[58].

Nothing could be further in tone from the Shiv Sena's invocation of its patron saint. This entire tradition of Shivaji literature invokes a *devotional* relationship with the icon, for which the paradigm had to be—via Mahadev Govind Ranade and Tilak (notably the latter's instituting of the Shivjayanti festival)—that of the *varkaris*, pilgrim—devotees of the saint poets. Its political articulation through this century in Maharashtra has been the religious—nationalist Hindu Mahasabha, founder of the concept of the 'Hindu Rashtra', as against say the RSS, founded in Nagpur in 1935 by K. B. Hedgewar[59].

Despite the sometimes chilling precedent that Veer Savarkar provides for Thackeray's recent postures, it is worth remembering that Hindutva as such is only a very recent development in the Shiv Sena's long career. Such a construction of the devotional spectator, which the Shivaji *utsava* of May 1906 had inaugurated, complete with icon and religious worship, was one to which popular Hindu-nationalism in Maharashtra was committed, and it is this tradition that is especially in evidence in Purandare's work. By 1956, these symbols were hardly useful to the particular issues that the city of Bombay posed to the Samyukta Maharashtra movement. In 1956 the dominant issue for State nationalism was whether Bombay, with its cosmopolitanism, dominated by Parsee industrialists, Gujarati and Bohra traders, and its huge white-collar class, should be a part of Maharashtra. It is also worth remembering that neither then nor since have these minorities been politically mobilised; that the dominant feature of 'hurt marathi pride' was portrayed in terms of *economic* job-opportunity; and finally that the dominant political presence in the city was its communist trade union.

The tradition of 'Maharashtra-ness' intersects with these nationalist symbols in part, at least, by stressing their *ruralist* content, the 'essence' of the State's identity being presented as its villagers. Vyankatesh Madgulkar's classic *Mandeshi Manse* (1949) complies a series of character sketches of marginalised Marathi peasants and was written precisely to contribute to the inventing of a Maharashtrian imaginary. The publisher's preface to Madgulkar's poetic non-fiction says:

> Of the Marathi prose literature coming out of the freedom movement, *Mandeshi Manse* is an important part. In these character sketches are present the old stories, but also the essence of life in the tradition of the 'new novel' (navakatha). As the dawn emerges from darkness, as the bud blossoms into a flower, with the same ease these stories blossom into the Marathi essence[60].

This tradition, traceable to the late 19th Century, implicates the state Congress (whose power base in Vidarbha and Marathwada has been the peasantry) as much as it does the socialist tradition out of which Madgulkar, too, emerges. In Bombay in 1956, none of these traditions, nor the organisations that grew out of them, contributed much to Samyukta Maharashtra, to the urban situation, and to the face-off between the Communist unions and the Shiv Sena[61].

In turn, Thackeray's bypassing of that entire legacy appears to have allowed him an access to Shivaji that needed no longer be one of respectful distance and devotion. The claim that Shivaji was accessible and fully realised in the masculinity of Thackeray's 'sainik' is contrary to the devotional tradition itself, as it marks out for the first time in Maharashtra a political shift away from the peasantry as the state's bastion, as it does a move away from its founding nationalist ideology of the *varkari*, and into a new urban space with a different possibility of subaltern spectatorial action.

> In the context of the development of a strategic, artificial, and second-level 'consciousness, Marx uses the concept of the patronymic, always within the broader concept of representation as *Vertretung*: The small peasant proprietors 'are therefore incapable of making their class interest valid in their proper name...' [I]t is the Law of the Father (the Napoleonic Code) that paradoxically prohibits the search for the natural father. Thus, it is according to the strict observance of the historical Law of the Father that the formed yet unformed class's faith in the natural father is gainsaid[62].

In the process of invoking this patronymic, in tearing the symbolic presence ‘away from its own imaginary and to return it to it as a look’[63], Thackeray—it is important to note - does not bypass the *national*, even if it is true that he bypasses its entire formative legacy in Maharashtra; indeed, to the contrary, I would suggest that what he invokes is, precisely, the *nation*.

And so, in conclusion, I offer the final bit of slippage in the process of representation: his claim that he is the state. Right through the 1960s, he satirised the ‘passive’ Marathi people as incapable of action, implicitly also satirising what Pendharkar for instance evokes as devotional distance. For instance, in 1965, *Marmik* had launched its hugely popular column, in which it would list by name and origin the (mostly South Indian) staff of large companies every week, which it had titled ‘Vacha ani thanda basa’ (‘Read this and sit quiet'). The triple invocation, to the true nation rather than to given nationalism, to the subaltern identity (‘Read this and take action as you know best’), and finally to the patronymic ('Do what ‘I’ tell you') is one to which, it is well known, the government of Maharashtra simply has had no answer. And in what I suggest can only be seen as the flip side, the inverse POV, of the inscribed spectator to the absent all—powerful ‘public’ who come alive only when they watch television, 'Thackeray too has inflated his authorial self and those for whom he speaks into extraordinary dimensions. In the 1960s he attacked South Indians and Communists, then Gujaratis ; in the 1970s he attacked Dalits ; in the early 1980s it was modernists (Vijay Tendulkar, later M. F. Husain) and women’s groups; in the 90s it has been Muslims, Bengalis and Christians. And now, of course, he has attacked Deepa Mehta's film.

This cannot come together as ideology. It can only be explained as a kind of spectatorial practice.

VII

In conclusion: If indeed this is so, and what Thackeray has instituted is finally, and perhaps logically, the condition of ‘true’ subaltern spectatorship, the answer to its

objections to a film cannot then be to replace it with a still truer viewing practice that matches the miracle of a Bonaparte / Shivaji coming to earth with an even more miraculous reinstatement of the historically defined nation state. Still less can it assume the truth of radical practice as a solution.

It has been the contention of this paper that we are currently seeing a face—off between two versions of what should, or could be State action on behalf of its people. Both use the terms of Article l9(l) to further their ends, whether legally so defined or not. The first, a gradual legal enshrining of the new liberalised economy, construes a certain form of 'public' tailored to fit the requirements of privatised, gradually globalised conditions; the second equally inflates the spectator as identical with the 'authentic' censorial look of the nation.

No simple answer can suggest itself in such a quandary. Perhaps the need is to recognise the necessary partisan-ness to partisan struggle, and to sustain liberal State institutions not because they speak the truth, but because fighting on two fronts at once can have devastating consequences whether on the Left or on the Right, and the Left has more to lose in this battle.

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References:

1. News report, *The Times of India*, Bangalore, 14th December, 1998.
2. Shabana Azmi, 'Smokescreen for Hidden Agenda', (*Times of India*, Mumbai, 17th December, 1998).
3. News report, *The Hindu*, Chennai, 215* December, 1998.

4. Article 19(2) includes eight explicit categories under which restrictions can be imposed on speech and expression : 1. State security, 2. Friendly relations with foreign States, 3. Public order, 4. Decency or morality, 5. Contempt of court, 6. Defamation, 7. Incitement to an offence, 8. Sovereignity and integrity of India.

5. As this essay was being written, the news came that the CBFC did review its decision, and passed the film a second time without cuts.

6. So in response to Thackeray's question on why the film uses a Hindu milieu, Deepa Mehta has been quoted by Shabana Azmi as saying, 'The majority of films made in India are set in Hindu households. Besides, I am a Hindu and the particular milieu of *Fire* is a milieu with which I am familiar and feel comfortable portraying. It is like asking Ismat Chughtai (posthumously) to change the milieu of *Lihaaf* from a Muslim household into a Hindu one. Azmi, *ibid.*

7. Durga Das Basu, *Constitutional Law of India*, 7th edition, Prentice-Hall, New Delhi, 1995/98, p. 47.

8. Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 Supreme Court 881.

9. See Emperor v. Sadashiv Narayan Bhalerao—Respondent, A. I. R. (34) 1947 Privy Council 82 (From Bombay 31 A.I.R. 1944 Bom. 255), Lords Thankerton Porter and Simonds; Sir Madhavan Nair and Sir JohnBeaumont JJ., 18th February 1947.

10. See Emperor v. Harnam Das and another - Accused Respondents, A. I. R. (34) 1947 Lahore 383 [C. N. 97.] Cornelius and Falshaw JJ.

11. Tejaswini Niranjana, *Siting Translation: History, Post-Structuralism, and the Colonial Text*, University of California Press, Berkeley, 1992, p. 9.

12. Christian Metz attacks what he calls the 'nosographic' approach that would 'treat films as secondary manifestations...from which it is possible to 'work back' to the neurosis of the filmmaker' (p. 25). He also describes it as an ideology of 'pure creation' that tends to 'neglect everything in a film which escapes the conscious and unconscious psychism of the filmmaker as an individual, everything that is a direct social imprint and ensures that no one is ever the 'author' of his 'works': influences and pressures of an ideological kind, the objective state of the cinematic codes and techniques at the moment of shooting, etc.', He says that such an approach is an attempt at '*diagnosis* applied to *persons*, thus explicitly proclaiming (its) indifference both to the textual and the social'. (pp. 26-27). *Psychoanalysis and Cinema: The Imaginary Signier*, London: Macmillan, 1977/1982.

13. K. A. Abbas v. The Union of India and another, Respondents, AIR 1971 Supreme Court 481. M. Hidayatullah,]. Hereafter referred to as the Abbas judgement.

14. K. A. Abbas, *I Am Not An Island: An Experiment in Autobiography*, New Delhi: Vikas Publishing, 1977, p. 477.

15. Abbas judgement, *ibid.*, para 7.

16. Abbas, *I Am Not An Island*, pg 480.

17. Abbas judgement, *ibid*, para 29.

18. Abbas judgement, *ibid.*, paras 48, 49

19. Ramesh Chhotalal Dalal, Petitioner vs. Union of India and others, respondents. AIR 1988 Supreme Court 775. Sabhyasachi Mukharji and S. Ranganathan, JJ. Hereafter called the '*Tamas*' judgement. Para 4.

20. *Tamas* judgement, *ibid*., para 21.

21. *Tamas* judgement, para 20.

22. *Tamas* judgement, *ibid*., para 13.

23. Abbas judgement, *ibid.*, para 4.

24. A. G. Noorani, 'Should judges Judge Movies?', *Sunday Observer*, Bombay, 1st May 1988, suggests that the *Tamas* High Court judgement was a good one mainly because the judges recognised that what was at issue was not the question of taste but the violation of law.

25. *Tamas* judgement, *ibid*, para 17.

26. Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410: (AIR 1988 SC 1642).

27. Secretary, Ministry of I & B and others, Appellants vs. Cricket Association of Bengal and others, respondents, along with CAB and another, Petitioners vs. Union of India and others, Respondents. AIR 1995 Supreme Court 1236, P. B. Sawant, S. Mohan and B. P. Jeevan Reddy, JJ. Hereafter referred to as the Air Waves judgement. Para 4.

28. Indira Jaising, petitioner, vs. Union of India and others, respondents. AIR 1989 Bombay 25. Sujata Manohar J. para 13.

29. Air Waves judgement, para 17.

30. Air Waves judgement, para 24.

31. See e.g. Lisa A. Lewis (ed)., *The Adoring Audience : Fan Culture and Popular Media*, London : Routledge, 1992.

32. Air Waves judgement, para 4.

33. *Report of the Enquiry Committee on Film Censorship*, G. D. Khosla, Chairman, New Delhi : Government of India, Ministry of Information & Broadcasting, 1968. Hereafter referred to as the Khosla Committee.

34. Khosla Committee, *ibid.* pp. 70-71.

35. Madhava Prasad, 'The Absolutist Gaze', in *Ideology of the Hindi Film: A Historical Construction*, New Delhi, OUP, 1998, pp. 62-63.

36. See Raj Kapoor and others, Appellants vs. State (Delhi Administration) and others, Respondents, AIR 1980 Supreme Court 258, V. R. Krishna Iyer and R. S. Pathak JJ.

37. See Anand Patwardhan, Petitioner v. The Union of India and others, Respondents, AIR 1997 Bombay 25, A. P. Shah, J.

38. I have dealt with this issue in greater length in my essay 'The Judgement : Re-forming the "Public" ', *Journal of Arts & Ideas*, forthcoming.

39. S. V. Srinivas, for instance, writes, 'it is...possible to argue that historically speaking the promise of the cinema in India has been *democracy*. The heralding of the capitalism in the field of entertainment

inaugurated the discourse of rights resulting in the broadly middle-class demand addressed to cinema halls for better facilities and to producers for better films. The thirties and forties film journals in English and Telugu provide ample evidence of this. Far more important for our purposes is the right of the lower class-caste groups to simply be present in the cinema hall—I have a right to be among the audience, to belong to a public, because I have purchased a ticket. I am not suggesting that democracy was in some magical way intrinsic to the cinema. There was something about cinema—possibly its alienness, its capitalist foundations and relative absence of feudal patronage—that prevented or at least checked the imposition of restrictions despite the possibility of disruptions in caste society', 'Gandhian Nationalism and Melodrama in the 30s Telugu Cinema', *Journal of the Moving Images*, forthcoming.

40. *Tamas* judgement, para 19.

41. Raj Kapoor, Appellant v. Laxman, Respondent. AIR 1980 Supreme Court 605. (From: Madhya Pradesh). V. R. Krishna Iyer and R. S. Pathak, JJ.

42. Raj Kapoor v. Laxman, *ibid.*, para 10.

43. *The Times of India*, Bangalore, 17th February 1999.

44. Christian Metz., *ibid.*, p. 53.

45. See Edward Branigan's *Narrative Comprehension and Film*, Routledge, 1992,. and Paul Willemen's essay 'Notes on Subjectivity', originally published in *Screen*, v. 19, No. 1, Spring 1978. Repr. in *Looks and Frictions*, London/ Bloomington, BFI/Indiana University Press, 1994, pp. 59-60. I must add that I doubt if my colleague Paul Willemen will agree with this formulation as it has been expressed here; yet, in the most basic fashion, his own work on subjectivity, voyeurism and ideology surely demonstrates how little the exchanges in cinema, of reducing oneself to one's gaze, of mandating, of the peep show and the effort to efface oneself in the darker rear seats of an auditorium, can work if the viewer is named as unshakeably the subjective individual of bourgeois society.

46. Ranajit Guha, *Elementary Aspects of Peasant insurgency in Colonial India*, New Delhi: OUP, 1983/92, pp. 19, 23.

47. Guha, *Elementary Aspects of Peasant Insurgency*, *ibid.*, p. 15.

48. Dipesh Chakraborty, asking the question of the jute workers of Calcutta, of how there could be so much militancy but so little organisation, says, 'There was more at work here than the historians have cared to admit or explore. The solution to the paradox of jute workers' organisation is usually sought in economic (or 'structural') explanations or arguments about political repression by the colonial state. Yet surely no amount of economic reasoning or evidence of state-repression will ever explain why even the socialist message of democratic representation was ultimately translated and assimilated into the undemocratic, hierarchical terms of the babu-coolie relationship...'. 'Trade Unions in a Hierarchical Culture: The Jute Workers of Calcutta, 1920-1950'. Ranajit Guha (ed.) Subaltern Studies III, New Delhi: OUP, 1984, p. 151.

49. Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?', in Cary Nelson and Lawrence Grossberg (ed.) *Marxism and the Interpretation of Culture*, Urbana/ Chicago: University of Illinois Press, 1988, pp. 276-

278. She quotes from *The Eighteenth Brumaire of Louis Napoleon*, in *Selected Works*, v 1, Karl Marx/ Frederick Engels, Moscow: Progress Publishers, 1969.

50. Spivak, 'Can the Subaltern Speak?', *ibid.*, p. 285.

51. Gayatri Chakraborty Spivak, 'Subaltern Studies: Deconstructing Historiography', in Ranajit Guha (ed.) *Subaltern Studies IV*, New Delhi : OUP, 1985, p. 345.

52. See my 'The Four Looks and the Indian Cinema', unpublished, 1996.

53. *Marmik* is the Marathi weekly Bal Thackeray started in August 1961, which worked as the platform for mobilising the Shiv Sena, in June 1966. Although it continues publication, it has since been replaced in this function by his daily newspaper *Sammna*.

54. *Marmik*, 19th July 1966, quoted in Prakash Akolkar. *Jai Maharashtra!*, Mumbai: Prabhat Prakashan, 1998 (Marathi). I have translated the potentially more gender-neutral 'manus' as 'man' bearing in mind the Sena's well known investment in masculinity.

55. *Maharashtra Times*, March 19, 1995. Reprinted in Akolkar, *ibid*.

56. *Navakal*, the rival mouthpiece in Marathi for Hindutva, 30"h October 1966 (Marathi).

57. Babasaheb Purandare, *Babasaheb Purandare Yanchi Shibacharitravaril Vyakhyane*, 1969 and *Sioasahira Babasaheba Purandare Yanci Sivacarita Kathanamala*, ed. G. S. Khole, Pune: Indrayani Sahitya, 1987 (Marathi).

58. Opening dedication signed 'Bhalji' to the film *Chhatrapati Shivaji*. This is only an approximate translation.

59. Bhaiji Pendharkar was a founder of the Hindu Mahasabha's Kolhapur office. The impact of the Mahasabha in Maharashtra has often deviated considerably from its 'Hindu-Hindi' framing by Madan Mohan Malaviya that had 'led to its specific appeal (being) largely confined to north India' (Sumit Sarkar, *Modern India* 1885-1947, Macmillan, 1983/86, p. 235). The direct impact of Malaviya's ideology here was the founding of the RSS in 1925. The Mahasabha's own territory has been a looser, less activist, cultural nationalism drawing as much from Tilak as from Tukaram.

60. Vyankatesh Madgulkar, *Mandeshi Manse*, Pune: Continental Prakashan, 1949/1980 (Marathi).

61. See e.g. B.T. Ranadive's comments on this period, *The Independence Struggle and After*, New Delhi : National Book Centre, 1988.

62. Gayatri Spivak, 'Can the Subaltern Speak?', *ibid.*, p. 278.

63. Christian Metz, *The Imaginary Signfier*, *ibid.*, p. 4.