

# TAREEK PAR TAREEK: INDIAN LAWYERS IN POPULAR HINDI CINEMA

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*Few would quarrel with the influence and significance of popular culture on society. However culture is vaporous, hard to capture, harder to gauge. Besides pure democracy, the arts remain one of the most effective and accepted forms of societal indicia. A song, dance or a painting may provide tremendous information on the cultural mores and practices of a society. Hence, in an agrarian community, a song may be a mundane hymn recital, the celebration of a harvest or the mourning of lost lives in a drought. Similarly placed as songs and dance, popular movies serve functions beyond mere satisfaction. A movie can reaffirm old truths and crystallize new beliefs. Hence we do not find it awkward when a movie depicts a crooked politician accepting a bribe or a television anchor disdainfully chasing TRP's. This happens because we already hold politicians in disrepute, and have recently witnessed sensationalistic news stories which belong in a Terry Prachet book rather than on prime time news. With its power and influence Hindi cinema has often dramatized courtrooms, judges and lawyers. This article argues that these dramatic representations define to some extent an Indian lawyer's perception in society. To identify the characteristics and the cornerstones of the archetype this article examines popular Bollywood movies which have lawyers as its lead protagonists. The article also seeks solutions to the lowering public confidence in the legal profession keeping in mind the problem of free speech and censorship. Finally, this article aims to put up a looking glass to lawyers, tinted by drama, action, romance and the frequent song and dance sequences.*

## I. INTRODUCTION: ADMISSION TO THE THEATER OF LAW

Do lawyers have a natural “negative profile”? The question would seem rhetorical when posed to a lawyer trying to arrange a rental

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accommodation or a credit card. Obtaining a credit card<sup>1</sup> or rental accommodation are both facilities which are given on the basis of certain amount of trust. Trust is required, since the payment is deferred for the immediate use of, a financial service<sup>2</sup> or the possession of premises.<sup>3</sup>

Term it as a deficit or a supply problem but trust not forthcoming when the recipient is an Indian lawyer. A lot of times, to escape such profiling Indian lawyers innocuously term themselves as, “consultant(s)”<sup>4</sup>. These are not isolated instances with Indian Lawyers across the bar -

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<sup>1</sup> *Harish V Nair, Banks can't deny loans on basis of job*, HINDUSTAN TIMES (New Delhi) February 9, 2008. See also ICICI Bank, *Scheme Information Document filed with SEBI 33* (2009), available at <http://www.sebi.gov.in/mfsid/icicisidplanc.pdf> (Last visited on December 12, 2010) (noting that, “subsequently the same representative came back to the Complainant's office and returned the application to her, stating that the same had been rejected because of the IT Return showed that the complainant is a lawyer. The said representative returned the complainant's application form, which carried a note stating “Designation–Negative Profile.” She has further alleged that her being an Advocate was the basis for refusal to issue a credit card.”).

<sup>2</sup> DAVID SPARKS EVANS & RICHARD SCHMALENSEE, *PAYING WITH PLASTIC: THE DIGITAL REVOLUTION IN BUYING AND BORROWING* 136 (2005) (outlining the history and development of the credit card industry noting that, “credit card issuers fairly quickly learned the risks of granting unsecured credit, especially to people they didn't know. This was a new form of lending and an especially risky, one as we saw in the previous chapter”); RAJESH CHAKRABARTI & RAJESH KOTHARI, *FINANCIAL SERVICES IN INDIA: CONCEPT AND APPLICATION* 267 (2010) (outlining the growth of the credit card industry in India).

<sup>3</sup> See Kaushik Basu & Patrick Munro Emerson, *The Economics and Law of Rent Control* (World Bank Policy Research Working Paper No. 1968, 1998) (as to the necessity to screen tenants since pro-tenant legislation in force in Indian cities which does not allow the eviction of a sitting tenant and which limits the amount a landlord may increase the rent). See also ROSHNI SENGUPTA, *MUSLIMS ON TELEVISION: NEWS AND REPRESENTATION ON SATELLITE CHANNELS IN TELEVISION IN INDIA: SATELLITES, POLITICS, AND CULTURAL CHANGE* 98 (Nalin Mehta ed., 2008) (*hereinafter* Roshni Sengupta). (Discrimination on the basis of religion is already rampant in many Indian cities with reported instances of, “difficult[y] to rent accommodation as many property owners are reluctant to hire out houses to Muslims.”).

<sup>4</sup> Roshni Sengupta, *Id.* at 98. See also Kamaal Saiyed, *To get job in Surat, Muslim took Hindu name; revealed when he was killed*, INDIAN EXPRESS (Surat) December 29, 2009 (to escape a similar form of profiling and concomitant discrimination Indian Muslims often take Hindu names).

junior advocates, legal officers, corporate lawyers, solicitors, senior advocates facing discrimination and ridicule<sup>5</sup> at cocktail parties, weddings, art exhibitions and other social gatherings.<sup>6</sup> This article argues that the negative perception of lawyers in Indian society is to an extent due to their depiction in popular Hindi Cinema.

The educative power of popular Hindi cinema or Bollywood<sup>7</sup> in India is uncontested.<sup>8</sup> Bollywood ignites trends,<sup>9</sup> trashes reputations

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- <sup>5</sup> See e.g. ANDREW ROTH *ET AL*, *DEVIL'S ADVOCATES: THE UNNATURAL HISTORY OF LAWYERS* (1989); JESS M. BRALLIER, *LAWYERS AND OTHER REPTILES* (1992).
- <sup>6</sup> Marc Galanter, *Robert S. Marx Lecture: The Faces Of Mistrust: The Image Of Lawyers In Public Opinion, Jokes, And Political Discourse*, 66 U. CIN. L. REV. 805, 816 (1998) (“Hundred of jokes about lawyers circulate. A legal journalist recently reported the results of an Internet search that turned up 227 sites devoted to doctor jokes, 39 to accountant jokes, 17 to jokes about salesman and 3,473 to lawyer jokes. Compared with the lawyer jokes of an earlier day, the contemporary corpus of lawyer jokes contains more overtly and aggressively hostile material.”). See also MARC GALANTER, *LOWERING THE BAR: LAWYER JOKES & LEGAL CULTURE* 3 (2006) (opening with quoting a speech delivered by former Chief Justice Mr. William Rehnquist, “*in the past, when I’ve talked to audiences like this, I’ve often started with a lawyer joke, a complete caricature of a lawyer who’s been nasty, greedy and unethical. But I’ve stopped that practice. I gradually realised that the lawyers in the audience didn’t think the jokes were funny and the non-lawyers didn’t know they were jokes.*”).
- <sup>7</sup> Ashish Rajadhyaksha, *The “Bollywoodization” of the Indian Cinema: Cultural Nationalism in a Global Arena*, 4(1) INTER-ASIAN CULTURAL STUDIES 25, 29 (2003) (*hereinafter* Ashish Rajadhyaksha) (on how the term Bollywood came to be coined, “*it was probably invented in a slightly jokey self-deprecating way by the journal Screen in Bombay by its page ‘Bollywood Beat’*”).
- <sup>8</sup> Shashi Tharoor, *Make Bollywood India a Reality*, THE INDIAN EXPRESS (New Delhi), April 19, 1998 (“*In a country that is still 50 per cent illiterate, films represent the prime vehicle for the transmission of popular culture and values*”).
- <sup>9</sup> Dabangg (Arbaaz Khan Productions 2010) (Directed by Abhinav Kashyap) (the movie is notable for starting a trend amongst urban city youths to awkwardly rest their aviator style sunglasses behind their neck); Kaminey (UTV Motion Pictures 2009) (Directed by Vishal Bharadwaj) (people started imitating the lisp of Charlie, a central character in the movie).

and builds stereotypes.<sup>10</sup> Bollywood has often portrayed lawyers with negative attributes. This article examines these lawyer specific stereotypes and the effects of such cinema.

At this point it must be declared that the present study though not globally novel, is locally unique.<sup>11</sup> The burgeoning literatures on the intersections of law and cinema have been limited to Hollywood movies and US jurisdictions.<sup>12</sup> This article hopes to add to this growing field of study with a study of Bollywood,<sup>13</sup> the sociological depiction of an Indian lawyer and the legal apparatus which aids in this depiction.

<sup>10</sup> Agneepath (Dharma Productions 1990) (Directed by Mukul Anand); Shahenshah (Film Vision 1988) (Directed by Tinnu Anand); Arjun (Cineyugg Entertainment 1985) (Directed by Rahul Rawail); (these are a random assortment of the hundreds of Bollywood movies where police enforcement is shown to be slothful, building a stereotype that the police always reaches the scene of the crime after the criminals have fled).

<sup>11</sup> Michael H. Hoffheimer, *Rule of Law in Bollywood Translations of Devdas and Parineeta*, 3(2) FLA. ENT. L. REV. 1 (2009) (examines law and legal institutions though the various Bollywood renditions of Devdas and Parineeta. The examination of lawyers is merely incidental); Michael H. Hoffheimer, *Bollywood Law: Commercial Hindi Films with Legal Themes*, 98(1) LAW LIB. J. 61 (2006) (the mother goose of legal scholarship on lawyers in Bollywood, however this article merely discusses the themes and recommends twenty Bollywood titles for addition to law library film holdings).

<sup>12</sup> See e.g. Haddad, *Silver Tongues on the Silver Screen: Legal Ethics in the Movies*, 24 NOVA L. REV. 673 (2000); David Kendall et al, *Real to Reel – Images of Ethics and Professionalism in the Courtroom*, ABA Section of Litigation Annual Conference, April 16 – 18, (2008) available at [www.abanet.org/litigation/prog.../2008\\_sectionannual/026.pdf](http://www.abanet.org/litigation/prog.../2008_sectionannual/026.pdf) (Last visited on January 16, 2010); Epstein, *Law in Film/Film in Law*, 28 VT. L. REV. 797 (2004) (US law review articles on movies and law number in the hundreds with some US Law schools even offering it as a seminar course). See also ROSS D. LEVI, *THE CELLULOID COURTROOM: A HISTORY OF LEGAL CINEMA* xvii (2005) (“So let us define the universe of our study of legal cinema. Our examination of legal cinema shall be limited to American, English language films that intend to present some commentary on America’s criminal or civil legal system...”); BERGMAN & ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996); ANTHONY CHASE, *MOVIES ON TRIAL: THE LEGAL SYSTEM ON THE SILVER SCREEN* (2002).

<sup>13</sup> See Shubha Ghosh, *Gandhi and the Life of the Law*, 53(4) SYRACUSE L. REV. 1273 (2003) (One does find the rare instance in academia, though by large Bollywood lawyers have been ignored as even a topical article on the subject notes that, “Gandhi was the only serious candidate I could find.”).

Another caveat which needs to be drawn is to the selection of Bollywood and to the exclusion of others. Bollywood though the predominant<sup>14</sup>, is not the only movie production center. India is a culturally rich and diverse country and has several vibrant local clusters of content production. Local language movies are most actively produced in Bengal, the Uttar Pradesh and Bihar region, Andhra, Karnataka, Tamil Nadu.<sup>15</sup> However, Bollywood is chosen and these local production centers are omitted due to their limited reach and local audience.

In order to advance its arguments Part II lays down certain basics. It firstly examines the power of the cinema and secondly the historical status of Indian lawyers. Part III of the article shortlists four popular recent Hindi movies which depict lawyers to be its lead protagonists. These movies are then textually examined and the protagonist's character is profiled, over and above which the key theme of the movie is examined. Part IV studies rulings when advocates have approached courts to stem the proliferation of these negative stereotypes. Finally, Part V concludes with suggestions to improve the public perception of lawyers through more authentic and simpler flows of information from lawyers themselves. This liberal approach of positive information flows from lawyers is advocated keeping in mind the tension between the competing interests of the stature of lawyers and free speech for motion pictures.

It is sought to be reminded that this article has a modest goal. It only studies the stereotype of the Indian lawyer and not the Indian judicial

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<sup>14</sup> Ashish Rajadhyaksha, *supra* note 7 at 20. (“Bollywood admittedly occupies a space analogous to the film industry, but might best be seen as a more diffuse cultural conglomeration involving a range of distribution and consumption activities from websites to music cassettes, from cable to radio.”)

<sup>15</sup> See Ministry of Information and Broadcasting, *Central Board of Film Certification Annual Report (Highlights)*, 2009 available at <http://cbfcindia.gov.in/CbfcWeb/fckeditor/editor/images/Uploadedfiles/file/Publications/ANR2009-ch0-hl.pdf> (Last visited on January 14, 2011). See Grady Hendrix, *SUPERSTAR Rajinikanth!*, SLATE September 27, 2010, available at <http://www.slate.com/id/2267820/> (Last visited on January 14, 2010) (Tollywood or Tamil Nadu comes a close second to Bollywood. However, there are exceptions such as the Tollywood actor Rajinikanth who are crossovers and are popular across regions and demographics.)

system, the Indian judge or the Indian bailiff. The article, rather than completely blaming Bollywood for the negative stereotypes seeks to etch out the depicted stereotypes. Also, the article does not discount other contributing factors such as ethical violations commonly committed by lawyers, but only seeks to argue that cinema is culpable to a reasonable extent in promoting them.

## II. EAGLES AND VULTURES

This part satisfies two inquiries linked to the premise of this article. The first pertained to the historical image and public perception of the Indian lawyer. This part hopes to answer (*at least in part*) whether the hostility towards lawyers in India is newfound or has existed for some time. The second leg of this part examines the effect of movies and whether they are mere representations of obvious and existing mores or they also instruct us to take fresh subject positions.

### A. *The First Thing*

Though movies are relatively a modern contraption,<sup>16</sup> literature is littered with the instance of unethical or the immoral lawyer.<sup>17</sup> This even pre-dates<sup>18</sup> Shakespeare's admonishment of the profession,<sup>19</sup> most frequented in reference to lawyers from any of his prose spanning the

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<sup>16</sup> See J. P. Singh & Kate House, *Bollywood in Hollywood: Value Chains, Cultural Voices, and the Capacity to Aspire*, 13. Paper presented at the International Studies Association Annual Convention (2010) (“1913 witnessed the release of D.G. Phalke's *Raja Harishchander*, the first Indian feature film with a production cycle that lasted seven months and 27 days”).

<sup>17</sup> See Henry B. Cushing and Ernest F. Roberts, *Law and Literature: The Contemporary Image of the Lawyer*, 6 VILL. L. REV. (1961).

<sup>18</sup> James A. Brundage, *Vulture, Whores and Hypocrites: Images of Lawyers in Medieval Literature*, 1 ROMAN LEGAL TRADITION 56 (2002) (reviews classical roman literature in which lawyers have been termed *inter alia*, “vultures in a toga”).

<sup>19</sup> 2 HENRY VI, 4.2.78 (“*the first thing we do, let's kill all the lawyers*”). See also PAUL M. LISNEK, *THE ART OF LAWYERING: ESSENTIAL KNOWLEDGE FOR BECOMING A GREAT ATTORNEY* 12 (2010) (“*Regardless of Shakespeare's actual intent, though, it is clear that lawyers will forever have their characters maligned and purpose denigrated by non-lawyers (and playwrights, of course)*”).

thirty seven plays.<sup>20</sup> However, this long historical aversion for legal pleaders present in western legal cultures and sociological studies cannot be instantly supplanted for India.

India for centuries has been aloof from the Anglo-Saxon system of laws as well as the adversarial system of argument.<sup>21</sup> Representative pleading and formalized lawyering is a rather post-colonial phenomenon.<sup>22</sup>

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<sup>20</sup> See DANIEL KORNSTEIN, *KILL ALL THE LAWYERS?: SHAKESPEARE'S LEGAL APPEAL* 22 (2005) (“*Shakespeare’s antilawyer line, once heard, clings to the mind like a burr. It has been repeated so often that many who have never read any Shakespeare know the quotation.*”); Damodardass Agarwal v. R. Badrilal, AIR 1987 AP 254 (holding that an advocate has no lien over the case documents of his client against the payment of fees due. The court remarked that, “*It is true that the peculiar performance of the profession cannot be understood by a layman and the indictment against this profession is from the beginning of the history. Even in 16th century, the great Poet Philosopher Shakespeare in Henry Sixth spoke through his character ‘Dick the Butcher’ who said: ‘The first thing we do, ‘let us kill all the lawyers’.*”). *Contra* William Shakespeare, *Hamlet* Act 1 Scene IV (“*there is something rotten in Denmark*”). See Sunil Batra v. Delhi Administration, (1980) 2 SCR 557 (Initially introduced by Krishnaiyer, C.J in the law reports it is also quite popularly used by judges to describe state malpractices); Raja Khan v. U.P. Sunni Central Waqf Board, S.L.P. (C) No. 31797 of 2010 (SC) (unreported) (Recently the quote was used by Katju, J. in relation to the functioning of the Allahabad High Court. It is to be noted that the quote is pointed towards state institutions and is yet to be popularly applied for lawyers in general).

<sup>21</sup> P.N.K. SAHAY, *A SHORT HISTORY OF THE INDIAN BAR* 20 (1931) (the first regulation of legal pleaders of *vakils* (colloquial term for an Indian lawyer) was in Bengal in 1793).

<sup>22</sup> IVANB SZELENYI & BILL MARTIN, *THE LEGAL PROFESSION AND THE RISE AND FALL OF THE NEW CLASS* in RICHARD L. ABEL, *LAWYERS IN SOCIETY: COMPARATIVE THEORIES* 269 (1989) (“*According to Gandhi, the modern profession of lawyers emerged in India, and possibly elsewhere, when technically trained lawyers began to perform the task of representing as a source of livelihood. Representation was not unknown in pre-colonial India — close kin were allowed to represent a party in court — but such representation neither were paid for their services nor were technically competent or entitled to participate in the process of finding truth. They merely helped to present the facts. Only the king or the judge had both the technical knowledge and the power to find the truth.*”). See also Ludo Rocher, *Lawyers in Classical Hindu Law* 3(2&3) *LAW & SOC’Y REV.* (1968).

Hence, in the early 20<sup>th</sup> Century one would not find an action such as *Jarndyce versus Jarndyce*,<sup>23</sup> a lawyer such as Mr. Tulkinghorn,<sup>24</sup> or even a court such as the Supreme Court of India.<sup>25</sup> Moreover, it has been pointed out the Indian legal system though Anglo-Saxon in its origin has metamorphosed into a completely indigenous system.<sup>26</sup> Even, if there has been any transference of an image or a stereotype of the Indian lawyer from the colonial period, it has undeniably been a positive one. The positives come from the ubiquitous presence of Indian lawyers in the struggle for independence from her majesty's rule.<sup>27</sup>

One only notices a general concern as to lawyer's ethics and eroding public confidence around the mid 1980's.<sup>28</sup> This is proposition is

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<sup>23</sup> See CHARLES DICKENS, *BLEAK HOUSE* (1853) (“*Jarndyce vs. Jarndyce drones on. This scarecrow of a suit has, in the course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it.*”).

<sup>24</sup> *Id.* See also A. E. DYSON, *BLEAK HOUSE: ESTHER BETTER NOT BORN?*, IN DICKENS *BLEAK HOUSE: A CASEBOOK* 244, 252 (1969) (“*A man of power, infinitely malign and corrupt... he is the presiding genius of evil in Bleak House*”).

<sup>25</sup> Supreme Court of India, *Supreme Court of India Website: History* (2010) available at <http://supremecourtsofindia.nic.in/history.htm> (Last visited on January 14, 2010) (“*On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being.*”).

<sup>26</sup> Marc Galanter, *Indian Law as an Indigenous Conceptual System*, SOCIAL SCIENCE RESEARCH COUNCIL (India), *Items* 32 (3/4):42-46 (Dec., 1978).

<sup>27</sup> See Samuel Schmitther, *A Sketch of the Development of the Legal Profession in India*, 3(1-2) *LAW & SOC'Y REV.* 379 (1969) (“*this satyagraha broke the grip of the planter on the peasants of the and proved to the country what great public service could be achieved by well-motivated lawyers working together for the cause of human rights*”). See also LALIT BHASIN, *LAWYERS IN THE FREEDOM STRUGGLE OF INDIA: CONGRESS CENTENARY CELEBRATION COMMITTEE* (1985) (nearly half of the 184 lawyers listed who participated in the freedom struggle came to occupy important political positions in the Indian government post-independence).

<sup>28</sup> See e.g. JOGINDRA SINGH GANDHI, *LAWYERS AND TOUTS: A STUDY IN THE SOCIOLOGY OF LEGAL PROFESSION* (1982); C. RAMA RAO, *PROFESSIONAL ETHICS & ADVOCACY* (1987); CHUNI LAL ANAND, *PROFESSIONAL ETHICS OF THE BAR: POPULARLY KNOWN*



further supported if one looks at the body of work of the Law Commission of India. The Law Commission in tendering its Seventy Fifth Report titled as, “*Disciplinary Jurisdiction under the Advocates Act*” in 1978 held a positive view about the legal profession.<sup>29</sup> The report authored by Justice H.R. Khanna was optimistic of the legal profession and the individuals practicing law. It quoted passages from the *Mahabharata* and Francis Bacon as to how advocates are presumed to be acting in accordance with the professional standards prescribed for them.<sup>30</sup>

Much seems to have changed in decade. In 1988 though the Law Commission innocuously titled its hundred thirty first report as, “*the Role of the Legal Profession in Administration of Justice*”,<sup>31</sup> it was damning indictment of the Indian lawyer.<sup>32</sup> The report attempted an empirical study through a questionnaire requesting respondents to reply to queries such as, “*is the feeling rampant throughout the people who have to deal with the legal profession, that legal profession is an impediment, roadblock and obstruction to justice*”<sup>33</sup>; and “[i]n what sense — if at all the contemporary legal profession has fallen in popular estimation?”<sup>34</sup>. The Law Commission was not singing a *capella*, and a ready background score had already been composed by

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AS LEGAL ETHICS (1987). Also see Krishna Mahakan, *Dinner Lawyering*, THE HINDUSTAN TIMES, October 10, 1983 (“*The later in this damage is the dinner lawyering being indulged by some influential seniors by inviting judges to their homes alongwith politicians and key government personnel.*”).

<sup>29</sup> 75<sup>th</sup> Report, LAW COMMISSION OF INDIA, *Report on Disciplinary Jurisdiction under the Advocates Act, 1961* (1978) available at <http://lawcommissionofindia.nic.in/51-100/Report75.pdf> (Last visited on January 14, 2010).

<sup>30</sup> *Id.* at ¶¶19, 20

<sup>31</sup> 131<sup>st</sup> Report, LAW COMMISSION OF INDIA, *Role of the Legal Profession in Administration of Justice* (1998) available at <http://lawcommissionofindia.nic.in/101-169/Report131.pdf> (Last visited on January 14, 2010).

<sup>32</sup> *Id.* at 8 (“*it must be stated that even amongst the bodies representing the legal profession there is a feeling that the legal profession has suffered devaluation in the estimation of the public. Of course, members of the legal profession would hesitate to accept this impalatable fact.*”)

<sup>33</sup> *Id.* at 27 (Question No. 1).

<sup>34</sup> *Id.* at 27 (Question No. 8).

Bollywood.<sup>35</sup> However, before undertaking a review of the dramatic depiction of lawyers let us gauge the effect of viewing twenty-four frames per second at a two hour stretch.

### B. Power Of The Moving Picture

Feminist academic Katherine MacKinnon's book, "*Only Words*"<sup>36</sup> is probably her most accessible and influential work till date. The book captures a passionate and provocative opposition to the constitutional protection for pornography in the United States. Her opposition stems from her thesis that pornography is a form of hate speech, directed towards women. The essence of her argument is that the content of pornographic materials, especially pornographic movies, influence and mold mental attitudes of men facilitating sexual crimes on women.<sup>37</sup>

It is also well documented that not only pornography or a Tarantinian<sup>38</sup> style, blood and guts movie<sup>39</sup> affects and instructs us.<sup>40</sup> It is also the subtle nudges and latent meanings in more mainstream film. If

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<sup>35</sup> Satyajit Bhatkal, *Bollywood Kanoon, Adalat and Vakil*, MID-DAY (July 23, 2007) available at <http://www.bollywoodhungama.com/features/2007/07/23/2869/index.html> (Last visited on January 15, 2010) (The author, a former practicing lawyer and presently a filmmaker states that courtroom scenes which started as far back as 1958 became most popular till the end of the 1980's. The author states, "*In the 90s, Hindi cinema suddenly moved away from blood and gore to candyfloss romance and the courtroom scene was pushed to the periphery. At one time, every big shooting studio had a permanent courtroom set. Now there are just four permanent courtroom sets in Mumbai...*").

<sup>36</sup> See CATHARINE A. MACKINNON, *ONLY WORDS* (1993).

<sup>37</sup> *Id.* at 15 ("*Similarly on the production end, it is not the ideas in pornography that assault women: men do, men who are made, changed, and impelled by it.*").

<sup>38</sup> See e.g. FRED BOTTING & SCOTT WILSON, *THE TARANTINIAN ETHICS* (2001).

<sup>39</sup> Mark Irwin, *Pulp & The Pulpit: The Films of Quentin Tarantino and Robert Rodriguez*, 12(1) LIT. & THEOLOGY 970 (1998) (reviews the movies of Tarantino including the famous Pulp Fiction 'Divine Intervention' scene about which it states, "*[b]oth his gun and the handguns of Jules and Vincent dominate the screen as he tries to kill them, but fails and is instead killed by them. The visual narrative of the scene radiates from the guns, first from the man with the .357 to Jules and Vincent, then from the guns of Jules and Vincent to their victim, and finally, guns put away, to Jules and Vincent as they consider the*

one reads academic literature reviewing the movie, *Fight Club*<sup>41</sup> it terms the movie as promoting misogyny and violence towards women. Closer home there is academic literature linking the steady stream of angry young man movies coinciding with historic levels of unemployment and labor dissatisfaction.<sup>42</sup> There are also criticisms of the depiction of the deeply conventional and cliché upper class Hindu joint family in *Hum Aapke Hain Kaun* which would promote a social static<sup>43</sup> and the popular

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*failure of their opponent to hit either one of them.”). See also Henry A. Giroux, *Pulp Fiction and the Culture of Violence*, 65 (2) Harv. Educ. Rev 299 (1995).*

<sup>40</sup> See *Rakhta Charitra* (Cinergy Pictures 2010) (Directed by Ram Gopal Varma) (a two-part *Kill Bill* style blood and guts biographical film based on the life of Andhra gangster politician Paritala Ravindra who allegedly was assassinated by Gangula Suryanarayana Reddy. Shortly after the release of the movie Suryanarayana himself was shot dead.). See also, Deccan Herald, *Film ‘Rakta Charitra 2’ may have influenced Suri’s killing*, January 4, 2011, available at <http://www.deccanherald.com/content/126320/film-rakta-charitra-2-may.html> (Last visited on January 15, 2010); Times New Network, *Rakht Charitra III is not happening: RGV*, Times of India, January 7, 2011, available at <http://timesofindia.indiatimes.com/entertainment/bollywood/news-interviews/Rakht-Charitra-III-is-not-happening-RGV/articleshow/7229575.cms> (Last visited on January 16, 2010). (Though the police quickly found the killer of Suryanarayana to be his protégé Gangula Suryanarayana Reddy and arrested him. Reddy’s motives for shooting his mentor at a point blank range have to come out yet. It has been widely speculated that Reddy killed his mentor in order to prompt a third installment of *Rakhta Charitra*. These accusations have been denied by the film’s director, though he has pledged not to make *Rakhta Charitra* a trilogy).

<sup>41</sup> M K Raghavendra, *Social Dystopia or Entrepreneurial Fantasy: The Significance of Kaminey*, 44(38) Eco. & Pl. WEEKLY 15 (2010)

<sup>42</sup> ASHWANI SHARMA, BLOOD, SWEAT AND TEARS: AMITABH BACHCHAN, URBAN DEMI-GOD, IN YOU TARZAN: MASCULINITY, MOVIES AND MEN (Pat Kirkham & Janet Thurmin, eds., 1993) (arguing that Amitabh Bachan’s angry young man portrayal in several movies is a product of his ability to “canalize the angers and desires of the newly-formed underclass of slum dwellers who constituted the main audience for Hindi films during the period.”).

<sup>43</sup> Rustom Barucha, *Utopia in Bollywood: Hum Aapke Hain Kaun*, 30(15) Eco. & Pl. WEEKLY 801-804 (1995) (contains an argument against art for the sake of art and movies just for the sake of movies when criticizing the theme and the depiction of the upper class Hindu joint family in the movie *Hum Aapke Hain Kaun*. The author notes that, “I would claim that while entertainment can be

depiction of thievery and illegality by movies such as *Kaminey* as promoting kleptocracy.<sup>44</sup>

However, it would be a convenient overestimation to state that the impact of movies on physical action is direct and immediate. This is demonstrated by the debate on the depiction of smoking in Bollywood movies. In 2003 prompted by a WHO report,<sup>45</sup> the smoking on screen debate reached a fever pitch. Critics of this practice argued that it glamorized smoking and encouraged youth to pick up the unhealthy habit.<sup>46</sup> Supporters produced their duly stamped artistic license in defense. Promoted by the debate, the Union Government formed rules banning smoking on screen.<sup>47</sup> These rules were subsequently challenged and ruled by the Delhi High Court to be overbroad and a violation of the constitutional rights providing for freedom to speech and expression.<sup>48</sup>

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*enjoyed as entertainment is does not mean that its apparent 'autonomy' and aura of 'innocence' are entirely free from the exigencies of history and capital that it appears to transcend."*)

<sup>44</sup> M. K. Raghavendra, *Social Dystopia or Entrepreneurial Fantasy: The Significance of Kaminey*, 44(38) ECO. & PL. WEEKLY 15 (2009)

<sup>45</sup> WHO Tobacco Free Initiative, *Bollywood: Victim or Ally?* 14 (2003) available at <http://www.who.int/tobacco/media/en/bollywood-exesum.pdf> (Last visited on January 16, 2010) (“*Most smokers openly admitted that films influenced their habit as it was fashionable; however a few smokers felt they weren't influenced by films in this habit. Smokers also admitted that they copy styles of smoking of different characters/actors in the movies.*”)

<sup>46</sup> See e.g. Deccan Herald, *Remove posters showing Aishwarya Rai smoking cigarette: Doctors*, November 19, 2010, available at <http://www.deccanherald.com/content/114212/remove-posters-showing-aishwarya-%3Cb%3Erai%3C/b%3E.html> (Last visited on January 16, 2010). (States how resident doctors in Bombay hospitals wore black bands against the depiction of the female lead played by Mrs. Aishwarya Rai Bachchan smoking in the movie *Guzaarish*).

<sup>47</sup> The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 (Central Government amending The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 made the rules).

<sup>48</sup> Mahesh Bhatt v. Union of India, (2009) 156 D.L.T. 725 (*hereinafter* Mahesh Bhatt)

Even though the court held that the rules were violative of the fundamental rights and they would impede artistic expression, it cautioned against the unwarranted and advertorial depiction of smoking in movies.<sup>49</sup> The decision did not abate public momentum towards limiting the depiction of smoking on screen. Several prominent actors, some of who were chain smokers in real life, appeared in support of limiting the exhibitionism of smoking and even making pledges to quit smoking.<sup>50</sup> The *sequitor* which can be safely drawn through this discussion is that though movies contain artistic devices which are fictional, it embellishes and exaggerates fact; the mind does not always separate the wheat from the chaff. Though we may consciously resist, the dialogue sinks and the plot sticks.

### III. A PART IN 4 ACTS

Picking up from the previous part which contained an appraisal of the historical regard of advocates in Indian society, its decline, and the influence of Bollywood, this part examines four memorable movies which depict an Indian lawyer to be the main protagonist. The four movies are chosen because they are relatively recent and continue to remain popular and stir public imagination.

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<sup>49</sup> *Id.* at ¶ 55 (“*The concept of censorship itself is a deviation and due care has been taken to incorporate the discouragement of any propagation or advertisement of smoking by incorporating the relevant provisions in the guidelines of the Censor Board. Nothing more is required or permissible in law under the Act or the Constitution.*”).

<sup>50</sup> Times News Network, *Shahrukh trying to quit smoking!*, October 6, 2008 available at <http://entertainment.oneindia.in/bollywood/news/2008/shahrukh-quit-smoking-061008.html> (Last visited on January 16, 2010) (Referring to a ban on smoking in public spaces, the famous actor was recorded as stating, “*he would try his level best to quit smoking. King Khan has welcomed this ban to make India a smoke free country*”). See also Bharati Dubey, *Health experts give thumbs-up as Bollywood stars kick the butt*, THE TIMES OF INDIA, December 12, 2010 (“*...After his recent health scare, Hrithik Roshan has become the latest Bollywood actor to quit smoking. Roshan has also helped friend Arjun Rampal kick the butt. Aamir Khan began the year 2010 by resolving to give up cigarettes,*”)

### A. Act I: *The Immorality of Meri Jung*

The 1980 movie *Meri Jung* (My battle)<sup>51</sup> best captures the stereotype that a successful legal practice is built but on the graves of morals and mortals. The plot of *Meri Jung* dwells on a thirst for revenge of the principal protagonist, motivated by the loss of his father who is falsely convicted of the murder of a wealthy businessman due to the falsification of evidence led by the prosecution counsel. The adolescent metamorphs from a *Dante* to a *Cristo*, growing up to become a rising junior lawyer determined to cock a snoot at the prosecution counsel and exact his revenge by revealing the false conviction of his father.

During the course of the movie, it is shown that the prosecution counsel obtains the conviction through personally falsifying and creating evidence and arranging for the false testimony of witnesses, in order to save the actual killer. It is also depicted that the prosecution counsel even after being fully aware of the innocence of the accused refuses the plea of his wife not to press for capital punishment and accede for life imprisonment. This is not an isolated incidence and the prosecution counsel is shown to regularly fabricate evidence and be an extension of the criminal apparatus. He is also shown to be a misogynistic, deeply egotistical and resorting any form or extent of chicanery to obtain a conviction.

The prosecution counsel is also shown to be eminently successful at the bar and at society. From the blood money he bills, he sips the finest scotch, enjoys the luxuries of a plush office, a foreign car and a sprawling mansion. However, it is the social acceptance and regard for the prosecution counsel which is disturbing. He is shown to be honored and made the chief guest at a function, enjoying access to a tony club and on several occasions referred to as the *master of laws* (literally, not a reference to an academic degree). This is not a mere accident since the success is contrasted against the modest means and the relative anonymity of the counsel engaged in defense of the protagonist's father. Though it is shown that the protagonist is successful and possesses a centered morality, even he is shown to mislead the court to secure an acquittal of an innocent

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<sup>51</sup> *Meri Jung* (N.N. Sippy 1985) (Directed by Subhash Ghai)

man. It would not be presumptive to state that the movie though portraying a cautionary tale against legal malpractices ends up prescribing the very excesses it seeks to prohibit. Meri Jung easily builds synonymy between the success and immorality of a lawyer.

### B. Act 2: *The Prolivity of Damini*

According to conventional wisdom, making a mainstream movie on the theme of gender justice is a project fraught with the peril of commercial failure.<sup>52</sup> However, the 1993 movie *Damini*<sup>53</sup> banked on the growing national consciousness for reforms against the social and legal discrimination against women. Though gender justice was the mainstay of the movie, it also prominently depicted lawyers as being agents of prolixity, delaying the delivery of justice and enhancing the *status quo* of powerful offenders. The principal protagonist of the movie is a lower class Hindu woman by the name of *Damini* who is courted and subsequently marries an upper class industrialist's scion.

Shortly after her marriage during the Hindu festival of *Holi*, her brother-in-law with the assistance of some friends gang-rapes the domestic help. *Damini* witnessing the commission of this offence fetches her husband and they both try to stop him. However, her brother-in-law and his friends commit the rape and then subsequently dump the battered woman on a roadside.

Thereafter when the Police investigations into the rape begin, *Damini* is pressured by her in-laws family (with whom she resides) to misstate that she did not witness the commission of the offence. Torn between family ties and her morality *Damini* has her periods of doubts. Further coercion is shown to be applied to her since she is a woman who

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<sup>52</sup> TEJASWINI GANTI, BOLLYWOOD: A GUIDEBOOK TO POPULAR HINDI CINEMA 130 (2004) (refers to the popular actress of yesteryears, Hema Malini who, "by the late 1980's and early 1990's, [she] concentrated on character roles, frequently with feminist undertones. She directed the film *Dil Aashna Hai* (The Heart is the World) in 1991, but its failure at the box office...").

<sup>53</sup> *Damini* (Aly Morani et al 1993) (Directed by Rajkumar Santoshi) (*hereinafter* *Damini*)

is not financially independent and is wedded into a joint family which will not hesitate to sever its ties with her.

However, prevailing over the doubts and the consequences *Damini* gives her testimony. When the courts take cognizance of the rape, to impugn the testimony of *Damini*, the defense counsel seeks to prove that *Damini* is insane. The defense counsel is shown to be immoral in making this false submission and knowing the effect of his malpractice, stating that he will ensure that *Damini*, “*goes mad in the mad house*”. By producing concocted evidence the defense counsel prevails and *Damini* is committed to a mental asylum. Thereafter an impression is given that the accused brother-in-law is at liberty by furnishing bail, *damini* is committed in a mental asylum and the criminal case is pending with the defense counsel taking repeated adjournments on frivolous grounds.

However, she is able to flee from the mental asylum and comes across a non-practicing lawyer who gives her shelter and security. The lawyer is shown to have lost interest to practice law spending his time in drink and self loathing. His cynicism stems from his inability to bring his own wife’s killer to justice due to the prolixity of the criminal justice system aided by the same defense counsel. Though reluctant in the outset he takes up *Damini*’s brief and cause with a vengeance. He ultimately succeeds to demonstrate *damini*’s sanity, the criminality of the brother-in-law, the culpability of the defense counsel and the family members. However, his path to justice would have ordinarily been long and winding as the defense counsel stated intention to “*weave a complex maze of dates, which makes Daminis counsel forget his way to the court*”. Attempts are made by the defense counsel to take frequent adjournments which include feigning a heart attack. It is the burning sense of justice demonstrated in a three minute monologue by *Damini*’s lawyer which shakes off this anesthesia. The monologue<sup>54</sup> addressed to the Judge captures the essence of the movie, is as follows:

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<sup>54</sup> *Damini*, *supra* note 53. See the video Taarikh Pe Taarikh available at <http://www.youtube.com/watch?v=7EwH444882c> (Last visited January 16, 2010)



“on the first date of hearing, Damini was said to be insane and was sent to a mental asylum where all efforts were taken to make her insane. Before the second date of hearing, Urmi [the domestic help and the rape victim] who was admitted in the hospital was murdered and a case of suicide was made. I have proved that Urmi did not commit suicide, on the contrary she was murdered. Shekhar (Damini’s husband) was also about to state the truth on that date when *Chadha saabh* (the defense counsel) again played his trick, by feigning a heart attack. He took an adjournment, otherwise this case would have been decided on that date itself. And today you are again granting an adjournment. Before the next date of hearing, a truck will run me over and a case of road accident will be made. You will again grant an adjournment to another date and before that next date Damini will be turned mad and then thrown into an asylum. No one will remain, neither a person to fight for truth nor a person to ask for justice. What will remain will be just another date. and this has been happening milords, date after date, date after date, date after date, date after date, has been granted by this court, but justice has not been granted, justice has not been granted, what we have got is just this date. The brokers of law have used adjournments as a weapon against justice. Between two dates of hearing these men, do the brokerage of law, the brokerage. Where witnesses are made, sold, coerced and murdered. And what remains is just another date....”

Again one sees that the crusader of the legal profession is a lawyer, however, for the most part the movie depicts an Indian lawyer to be in the habit of seeking adjournments as a method of legal strategy. It is well documented fact that there are tremendous arrears in Indian courts. However, *Damini* attributes them directly to the unethical practices of lawyers rather than other probable causes such as long appeals process or an inadequate number of courts.

### C. Act 3: *The dishonesty of Kyunki Mein Jhooth Nahee Bolta*

A constant which is visible in Bollywood is its culture of free adaptation where it remixes plots and scripts as well as copies the melodies and the lyrics of popular pop songs. Though these adaptations have western influences or as more popularly defended as “inspirations”, they for the most part synthesize the foreign content to local tastes. The movie

*Kyunki Mien Jhooth Nahee Bolta*<sup>55</sup> is one such work which borrows from two major Hollywood productions, firstly the Jim Carey starrer *Liar Liar*<sup>56</sup> and the Will Smith starrer *Enemy of the State*.<sup>57</sup> Even though there is substantial duplication of the plot and the character sketches of *Liar Liar* and some sequences of *Enemy of the State*, *Kyunki Mien Jhooth Nahee Bolta* remains an Indian production due to the substantial departure it makes in terms of the dialogues and the scripting.

The principal protagonist in the movie is a first generation advocate who does not make a pretense about his ambitions to become wealthy and successful. To achieve his goals he is portrayed as being enthusiastically lying at every opportunity. These character flaws are depicted in a comedic and playful fashion helping the viewer later reconcile to the reformation of this pathological liar. Several instances demonstrate the dishonesty of the protagonist. They commence with him making false submissions in court to ensure the acquittal of a dreaded criminal and the conviction of an honest and courageous social worker who is witness in the same case. To achieve this, the protagonist even lights fire on both his hands and walks menacingly towards the witness.

In the second half of the movie it is shown that the acquitted criminal again murders a man. However, this time the protagonist takes the brief not for the defense but for the prosecution on his wife's insistence. It is revealed that his intentions in taking up the case are far from upright as he plans to intentionally jeopardize. On coming to know of this his wife leaves him along with their child. Coming to know of his father's compulsive dishonesty and facing the prospect of a broken home, the child in true cinematic style makes a wish on a shooting star that his father will state the absolute truth in future. Instantly the protagonist changes his ways and sprouts the truth on every false witness which is produced by the defense resulting in the conviction of the criminal.

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<sup>55</sup> *Kyo Kii Main Jhuth Nai Bolta* (Shobha Kapoor and Ekta Kapoor 2001) (Directed by David Dhawan)

<sup>56</sup> *Liar Liar* (Brian Grazer 1997) (Directed by Tom Shadyac)

<sup>57</sup> *Enemy of the State* (Jerry Bruckheimer 1998) (Directed by Tony Scott)

*Kyunki Mien Jhooth Nahee Bolta* throws up the professional hazard which is associated most with lawyers, an aversion for the truth. A person not schooled in the adversarial system of argument can easily mistake a lawyer's conviction to his brief as being nothing but a lie, since both sides engage lawyers arguing diametrically opposite propositions with the same gusto. Even in the movie, a lawyer's profession is shown much to do with dishonesty than with facts and evidence. The protagonist himself states that his task becomes more difficult when he has to "*fight for the sach (truth), rather than jhooth (lies)*". In the end there is some form of redemption for the principal protagonist, however for about two hours till the end comes he is depicted to be a professional liar. It is doubtful if there is any redemption for the stereotype of the faceless, anonymous Indian advocate.

#### D. Act 4: The Ambivalence of Fox

*Fox*<sup>58</sup> is the most recent movie released in 2009 which is again an adaptation borrowing its central plot from the 1998 Hollywood thriller, *A Murder of Crows*.<sup>59</sup> The movie depicts moments of doubt faced by a successful criminal lawyer who is the principal protagonist of the movie. The protagonist is shown to be a lawyer renowned for exploiting legal loopholes and a, "*messiah to the criminals of the country*". The protagonist deserts his successful legal practice after his client nonchalantly confesses to his guilt in a rape-murder trial.

Thereafter the lawyer takes a sabbatical to Goa where a he is befriended by a retired stenographer who previously worked in a lawyer's office. The stenographer solicits the opinion of the protagonist on a novel he has recently authored by handing over the original unpublished manuscript. The protagonist finishes reading the manuscript in one sitting being thoroughly engrossed and impressed by it. When he goes to return the manuscript he discovers that the stenographer has passed away due to his old age and does not have any surviving family. Though the movie does not reveal excerpts of the manuscript, it is revealed that the novel

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<sup>58</sup> Fox (Deepak Tijori 2009) (Directed By Deepak Tijori)

<sup>59</sup> A Murder Of Crows (Ashok Amritraj et al 1999) (Directed by Rowdy Herrington)

details serial murders of lawyers. It is also revealed that the book calls lawyers to be, “cunning-foxes” and the cover of the novel has a fox wearing a lawyers robes and a band.

Left with the manuscript, the prospect of success outside the field of law, the protagonist has the manuscript published under his own name. Later it comes to light that the novel contains details of murders of actual lawyers which are not out in the public domain. Thereafter the protagonist is arrested due to the efforts of a high ranking police officer. It is ultimately shown that the police officer himself is the serial killer and commits these murders, through an elaborate scheme of donning makeup to become an aging stenographer. His motivation for killing lawyers comes from a lawyer’s defense of the person who was accused of murdering his wife and child. Justifying his acts to the principal protagonist towards the end he states, that, “*a person who can for money play the game of proving guilty men innocent can do anything.*”

*Fox* juxtaposes the ambivalence of lawyers in accepting briefs irrespective of their personal beliefs with an absence of conviction. These two concepts though similar sounding since they result in the same actions are governed by an entirely different intent. An Indian lawyer is obligated under ethical regulation to accept any brief regardless of personal belief to provide legal representation to a pauper, a terrorist and an industrialist.<sup>60</sup> However, these two concepts are so closely placed that an impression flows that advocates lack personal conviction and would under financial consideration knowingly defend the guilty. Hence lawyers are depicted to be a body of professionals lacking opinion or principles. At best it shows when Lawyers do have principles and if clients don’t like them, then they have others.

#### IV. INCAPABLE OF BEING DEFAMED

The last part studied movies, which promoted lawyer stereotypes of immorality, prolixity, dishonesty and ambivalence. It would seem counterintuitive for a class which is blamed for promoting litigation would

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<sup>60</sup> See Bar Council of India Rules(India), Part VI, Chapter – II Standards Of Professional Conduct And Etiquette, Sec. 15

itself not resort to litigation to stem this regular vilification. Hence, one finds lawyers have at regular occasions filed cases in courts against their unflattering depictions on screen. This part has two limbs, the first examining the legal bar against prohibition of such movies and the second analyzing the justification of commercialization given by the courts in such cases.

#### A. *We Are Anonymous*

The Supreme Court has always been cognizant of the direct link between artistic freedom and the constitutional guaranteed rights of freedom to speech and expression. This concern comes through front and center in the famous *K.A. Abbas* judgment,<sup>61</sup> which remains relevant and cited<sup>62</sup> for carving the boundaries of artistic licenses as well as censors. The case which concerned a constitutional challenge to the pre-release censorship of movies held that censorship did not amount to unreasonable prior restraint. In making such a ruling, the court was careful to qualify its effect and handhold the censor's scissors, stating that,

The line is to be drawn where the average man moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. .... It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censors scissors.

Flowing from this broad liberal mandate one would often find that the censor board passed through movies such as *Damini*, *Meri Jung* and *Kyunki Mien Jhoot Nahee Bolta* without asking for any cuts or alterations.<sup>63</sup> However, this did not stop advocates hoping that the courts would oblige them when the censors did not. A search through the law

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<sup>61</sup> *K. A. Abbas v. Union of India*, AIR 1971 SC 481 (Per. M. Hidayatullah, CJI)

<sup>62</sup> *Directorate of Film Festivals and Others v. Gaurav Ashwin Jain and Others*, (2007) 4 SCC 737; *Director General, Directorate General of Doordarshan and Others v. Anand Patwardhan and Another* (2006) 8 SCC 433

<sup>63</sup> Mahesh Bhatt, *supra* note 48

reports reveals two cases of Public Interest Petitions being filed where in the first, the court was pleased to prohibit the movie<sup>64</sup> and in another to dismiss the petition.<sup>65</sup> The success in the first is partly due to the fact that rather than making general statements it utilized specifics such as the name of the petitioner who is an advocate as well as the actual building of the High Court in which the petition was filed.<sup>66</sup> In the second petition, the reluctance of the courts to interfere with the findings of the Central Board of Film Certification comes through more directly, when it refuses to prohibit the offending movie. Another legal issue which complicates such a remedy is that it is enforced through a public interest litigation, with dismissal or the lack of a public interest inviting the imposition of heavy costs as Courts may seem to hold the petition as “frivolous” and impose a cost as a deterrent to similar Public Interest Litigations.<sup>67</sup>

In such a legal scenario advocates have also approached the courts complaining of defamation. One of the first court cases in this domain

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<sup>64</sup> N. P. Amruthesh v. State of Karnataka and Others, AIR 1995 Kar. 290 (*hereinafter* N. P. Amruthesh) (the case concerned a petition under Article 226 of the Constitution praying for a direction to the censor board that the permission given to exhibit the film “Jackie Chan” be withdrawn as it *inter alia* insulted and defamed advocates.)

<sup>65</sup> P. Kalidass v. Central Board of Film Certification 2004 Indlaw MAD 389(Madras HC) (Concerned a writ petition praying for the court to issue a writ of mandamus directing the respondents to withdraw the exhibition certificate issued to the movie, “Arasatchi”. The petitioner argued that the movies plot revolved around the main protagonist committing serial killings of advocates on the grounds that they through their pleadings assisted the liberty of criminals. The court in dismissing the petition opined that, “the petitioner, merely claiming to be an advocate, cannot approach this Court by filing the above petition stating that he has filed the present petition in the interest of public on the ground that the film tarnishes the image of the advocates. “)

<sup>66</sup> N. P. Amruthesh, *supra* note 65 (The offending portions of the movie *inter alia* included, “lawyers working for bribe.....in the earlier part of the dialogue reference has been made to this Court (High Court) by using the expression that the Ashoka Pillar on Vidhana Soudha in front of this Court”).

<sup>67</sup> *Id.* (“Taking the above facts into consideration, though as we stated earlier this is a case where a cost of Rs.50,000/= has to be imposed, we feel that the petitioner could be severely warned not to file such frivolous petitions in future and, accordingly, he is severely warned.”)

was the case of *Asha Parekh and Ors v. State of Bihar*.<sup>68</sup> The case concerned an application for quashing a criminal complaint that contained allegations that the movie *Nandan*<sup>69</sup> made defamatory statements against advocates. The court extending Salmonds analysis held that Advocates as a class are indeterminable and heterogeneous and hence incapable of being defamed.<sup>70</sup>

The *Asha Parekh* ruling is not an isolated instance with the line of precedent continuing till date.<sup>71</sup> In one such recent case even when the depiction of the lawyer was incredibly virulent, the court quashed the criminal complaint after the accused tendered an apology.<sup>72</sup> However,

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<sup>68</sup> *Asha Parekh and Ors. v. The State Of Bihar and Ors.*, 1977 Cri. L. J. 21 (Pat HC) (*hereinafter* Asha Parekh).

<sup>69</sup> *Nadaan* (Deven Verma, 1971) (Directed by Deven Verma)

<sup>70</sup> Asha Parekh, *supra* note 68 (“*the alleged defamatory dialogues and scenes in the film in question were not a fling at Advocates in general, but it was only upon such Advocates who had no aptitude for the profession..... The portrayal of an Advocate in the impugned film was only a criticism of such lawyers who were almost a black sheep, for the world “of touts”...”*)

<sup>71</sup> *Shah Rukh Khan v. State Of Rajasthan and Ors.* 2008 (1) R.L.W. 809 (Raj) (Concerning a court room scene in the movie *Ram Jaane* in which the petitioner is the main protagonist. The petitioner commits a triple murder and confesses his crime in court despite the defense by his counsel. During the course of his confession the petitioner states that, “*this lawyer well knows that I have killed the three persons, yet he tries to save me. Why? For the sake of money, no? For the sake of money, he sells his morals. He sells the laws. By selling the laws, you people have turned life into a misery.*” The court citing *Asha Parekh*’s case quashed the criminal complaint).

<sup>72</sup> *A. M. Rathinam v. S. Sellapandian*, CRI. O.P. Nos. 33757/2006 (Mad. H.C) (The case concerned a 482 petition filed to quash criminal complaints filed against the producer, director and the actor of the movie, “*Sivakasi*” alleging that visuals of the movie insulted and demeaned lawyers. The criminal complaints alleged offences under Secs. 499 and 500 of the IPC stating that, “*the legal profession is scornfully ridiculed through an artist appearing in an unusual background of being present in the attire of advocate at tea stalls and platform with a Board hanging ‘cases of pick pocketing, chain snatching and eve teasing consulted here.’*” Subsequently the Petitioners tendered an unconditional apology by way of affidavit and the complaint was quashed.).

the legal bars are not the only reason for courts to dismiss such actions; courts also provide sociological reasons for their rulings. Often these are the rapid commercialization of the Indian bar.

### B. *Welcome To The Commercial City*

Walking through the parking lot of the Supreme Court one is bound to find a row of German luxury cars being polished by chauffeurs to a mirror. Entering the halls one is bound to see Italian shoes, saville row suits and swiss watches. This growing affluence of lawyers has not gone unnoticed with a leading Indian magazine recently running a special feature on rich lawyers terming them as the *new nawabs*.<sup>73</sup> These indicia of economic prosperity most visible amongst a pick of Indian lawyers is often referred to as the growing “commercialization of the bar” and the decline in the, “service ethics of lawyers”.

Through this conventional wisdom Courts seem to draw an inverse relationship between both, negating the possibility of their co-existence.<sup>74</sup> Courts sometimes hold this, “commercialization” to be one of the contributing factors in the decline of the reputation of lawyers in cases which seek a prohibition on movies promoting bad lawyer stereotypes. The theme of commercialization *vis-à-vis* service is instantly transplanted by the courts in such cases.<sup>75</sup> Here courts reason that the fall in reputation is due to a fall in the principles of service which are the direct

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<sup>73</sup> Priya Sahgal & Kaveree Bamzai, *Rich Lawyers: The New Nawabs*, INDIA TODAY, December 4, 2010

(“Now the car park is filled with Bentleys, Mercedes and at the very least, an upmarket Toyota. The symbols of success include a holiday home in Goa, Souzas on the office walls, shopping expeditions to Bond Street (where they can expect to bump into other lawyers”).

<sup>74</sup> Bar Council, Maharashtra v. M. V. Dabholkar, AIR 1976 SC 242 (“Lest there should be lingering doubts, we hold that the canons of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession.”).

<sup>75</sup> Asha Parekh, *supra* note 69



opposite of commercialization. For instance, one sees the Supreme Court in *Tahil Rams Case* state that, “[I] egal profession must give an introspection to itself. The general impression which the profession gives today is that the element of service is disappearing and the profession is being commercialised.”<sup>76</sup> Though outside the scope of this article, a default relationship between commercialization and ethics is problematic and presents an antiquated set of values.<sup>77</sup> Here it will only be tersely proposed that the only reasonable inference to be drawn from the “growing commercialization of the bar” may be a drive for wealth and success or critically an ostentatious display of it, nothing more, and nothing less.

## V. CONCLUSION: THIS MOVIE STAYS WITH US

Going through this article one would feel that the Indian lawyer’s archetype is beyond salvation. The Lawyers robes seem to have been permanently dyed with descriptors such as dishonesty, deceit and immoral profiteering. Each year a new movie opens, portraying lawyers negatively further reinforcing stereotypes. If one looks at the problem carefully it is nothing but a problem of negative information flows. The legal profession which remains deeply textual distances itself from any pictorial or graphic representations. Due to the inherent textual nature of the legal culture it avoids and escapes the populace. Few would doubt that there are more people outside the legal fraternity have watched *Kyunki Mien Jhooth Nahee Bolta*<sup>78</sup> than read *Maneka Gandhi v. Union of India*.<sup>79</sup>

Hence, as one of the first measures to improve the image of the Indian Lawyer more authentic flows of information may be generated by

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<sup>76</sup> *Tahil Ram Issardas Sadarangani and Others v. Ramchand Issardas Sadarangani and Another*, AIR 1993 SC 1182

<sup>77</sup> *Id.* (beyond the judgments cited above, that vocally decry the commercialization of the bar and then link it to a fall in ethics, the author senses a vast undercurrent prevalent on this point which has not been expressed formally and can be formally presented as evidence. However, this opinion is present and exists amongst some sections of the bar as well as the bench.)

<sup>78</sup> *Kyo Kii*, *supra* note 56

<sup>79</sup> *Maneka Gandhi v. Union of India*, (1978) 2 SCR 621

legal professionals themselves. These flows of information are made easy due to the rapid growth of the internet. One sees that the Delhi Traffic Police which has been for long associated with lethargic enforcement and bribery using its Facebook page<sup>80</sup> effectively to change its stereotype. However, one must caution that this form of information flow cannot sustain in the absence of structural change itself. The changes which may be considered may be a more positive appreciation of the market function of law. We should consider alternatives such as lawyers disclosing their fee structure publicly rather than letting them negotiate it in an information asymmetry. Clear regulations also need to be made with regard to advertisements by lawyers. There needs to be clarity as to how much information can a lawyer disclose.

Another way how information can counter information is by public service advertisements which can be sponsored by state bar councils, informing litigants and the general public about laws in an accessible and non-legal manner. There is also a need for making disciplinary action against lawyers more publicized. This is both in terms of making litigants aware of the process through awareness campaigns as well as publishing regular updates and press releases on the pendency and disposal of such cases.

In the end one realizes that the legal profession though interacting heavily with society remains insular. This helps the proliferation of the negative stereotypes of lawyers who do not counter the powerful flows of information. Even though it is accepted that Bollywood remains an overpowering player to match a bar council facebook page, to allow it remain un-rebutted would allow fiction to turn into fact and the lawyer to turn into a consultant.

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<sup>80</sup> Delhi Traffic Police, Facebook Profile available at <http://www.facebook.com/pages/Delhi-Traffic-Police/117817371573308> (Last visited on January 25, 2011).