

Noted activists discuss their concerns over India's Daughter in a letter to NDTV

March 5, 2015



The BBC Documentary India's Daughter which has been banned by the Indian Government was the subject of a letter sent to NDTV by noted women activists.

Following is the full text of the letter:

5th March, 2015

To,
Dr. Prannoy Roy,
Co-Founder and Executive Co-Chairperson,
NDTV, New Delhi.

Dear Dr. Prannoy Roy,

On receiving a letter from Ms. Indira Jaising and others, on 3rd March 2015, which raised legal and ethical objections with respect to the telecast by NDTV of Leslee Udwin's film "India's Daughter" a DVD of the said film was sent by you to Ms. Jaising. Indira Jaising invited us to view.

Before articulating our concerns about the film, we would like to restate the legal objections, raised in the letter of 3 March to NDTV.

It was pointed out that the interview with Mukesh Singh, which is replete with explicit derogatory statements, falls within Section 153A (1) (a) of IPC which reads:

Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of

enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities

The right to freedom of speech and expression is not absolute. It is subject to the restrictions contained in Article 19 (2) of the Constitution, namely decency, morality and contempt of Court. At present, the defendant's appeal against conviction and death sentence is pending before the Supreme Court, therefore, airing the documentary would amount to gross contempt of Court. Section 2(c) of Contempt of Courts Act 1971 states:

“Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Therefore, to project the discussion on this film as being posited between ban and no-ban lobbies, is misplaced and seeks to evade the complex issues that is involved.

We have always upheld freedoms and civil liberties, and hence we write this letter to seek a postponement of the telecast, till the appeal and all other legal processes and proceedings relating to the 16 December 2012 gang rape and murder case have concluded.

As held by the Supreme Court of India in Sahara India Real Estate Corp. Ltd. vs. Securities & Exchange Board of India reported in 2012 (10) SCC 603:

“ In our view orders of postponement of publication stroke publicity in appropriate cases as indicated above, keeping in mind the timing (the stage at which it should be ordered), its duration and the right of appeal to challenge such orders is just a neutralising device when no other alternative such as change of venue or postponement of the trial is available as a preventive measure to protect the press from getting prosecuted and also to prevent administration of justice from getting perverted or prejudiced,”(emphasis added).

In the light of the above, we would like to emphasize that all marginalized communities have a stake in the rule of law and in maintaining the integrity of the judicial processes.

This communication, we are sending after viewing the documentary film, which ironically, you had proposed to telecast on 8th March 2015, on the occasion of International Women's Day. We are writing to you to express our serious concerns about some aspects of this film which, as a responsible channel, we fully expect that you will take on board and postpone the broadcast of this film, till all legal processes and proceedings pertaining to the 16 December 2012 case have concluded.

1. After viewing the film we are of the considered view that the film infringes upon and compromises the rights of the rape victim and the accused men. It must be underlined that the appeal in the case of 16 December 2012 gang rape and murder is still pending before the Supreme Court of India. This film clearly constitutes an obstruction in the administration of justice, and therefore violates the law. The film carries the potential to prejudice the outcome of the legal proceedings. Our objection to it being telecast during this period stems from our deep commitment to defending the human rights of all and upholding the rule of law.

2. This film thwarts the sanctity of the evidence recorded in the trial thereby threatening to jeopardise the rights of the victim and the accused.

3. The film maker has in an interview on your channel on 4 March 2015, argued strenuously that she has diligently complied with all the conditions laid down by the prison authorities. The relevant question is, does the film infringe the rights of the rape victim, the accused and women against whom the hate speech is being targeted. Simply because the prison authorities and the state have been derelict does it give the film maker license to violate Indian law and constitutional rights.

4. The centerpiece of the film is an extensive interview with Mukesh Singh, one of the convicted accused in the crime of gang rape and murder on 16 December 2012. It is necessary to find out how Mukesh Singh's "informed consent" was sought and given for this interview, as claimed by the film. You would appreciate the vexed nature of assuming free, informed and voluntary consent of a man who is in custody in a jail, convicted of death sentence.

5. While interviewing Mukesh, the film maker also pans the camera to show all the other convicted co-accused lodged in Tihar Jail. It would be pertinent to ask if their informed and voluntary consent has been obtained, and are they aware of the detailing of the crime by Mukesh Singh in this film, where he exculpates himself while making incriminatory statements against the other accused.

6. The film also carries an extensive interview with the lawyer M. L. Sharma, the defense counsel for Mukesh who is heard, again and again, advocating a misogynist perspective, that treats women not as rights bearing persons or equal citizens, but as objects deserving of sexual assault if they transgress patriarchal norms and rules. Advocate M.L. Sharma, wearing the lawyer's black coat, likens women to flowers and diamond, and asserts that if the diamond is out on the street, then the dogs will get hold of the diamond. Another defense lawyer asserts that women should not step out of the house after 6.30pm, and further, that if his daughter were to exercise sexual autonomy outside the bounds of marriage he would himself drag her to his farmhouse and set fire to her.

While it is true that many men across the world hold such regressive views, the amplification of the same by this film also serves to push back the work of the women's movement in India, which is engaged in contesting and challenging this mindset. We cannot lose sight of the fact that these unlawful and reprehensible statements voiced by two male lawyers are dangerous, inasmuch as they can be received by people as being the opinion not only of lay persons, but informed by law. Such misogynist statements surround us and we constantly refute them; do we then need this film to add to the cacophony of hate speech spewed against women. By foregrounding these voices the film serves to amplify views that encourage and justify brutal sexual violence against women.

7. The graphic description of the physical harm and injuries caused to the victim is horrific and unnecessary. We are concerned to find that the film maker wishes to show this film to children, and we learn from press reports that it has already been shown to many students in Maharashtra. Our view is that this kind of focus on violence, the lack of regret on the part of the perpetrator, and the detailed description of the torture the victim was subjected to, is actually harmful for young children. The egregious impact of descriptions of violence, verbally or through images, cannot be discounted.

8. Further the film makes a disturbing and direct incitement to violence, by once again focusing on accused Mukesh who states that, "The death penalty will make things even more

dangerous for girls. Now when they rape, they won't leave the girl like we did. They will kill her. Before, they would rape and say, "Leave her, she won't tell anyone." Now when they rape, especially the criminal types, they will just kill the girl. Death." We do not subscribe to the view that death sentence should be awarded for the crime of rape, but it is shocking that the film maker does not see the danger inherent in this kind of incitement to violence and hate speech.

9. Also, in spending so much time on interviewing the rapist Mukesh, and in giving so much attention to the remarks of the lawyer, the film maker seems to be building a narrative of a lack of remorse which, according to her, characterizes 'the rapist' in India. The issue of rape is complex and this singular case does not exemplify the psychological or mental make-up of a rapist.

10. The focusing on poverty and repeatedly showing clips of the slum to which the rapists of the December 16, 2012 belonged, she is strengthening the very harmful stereotype, that rape is only perpetrated by poor men. This kind of profiling is misleading and unhelpful for advancing women's rights.

11. We are also concerned with a larger, and to us, very important question. The unfortunate death of the young rape victim in December 2012, resulted in opening up a major discussion and a serious societal conversation and reflections on ending violence against women, and particularly sexual violence, in Indian society. This film, purporting to contribute to this discussion, in fact does not in any way advance the dialogue and indeed, by focusing on the perpetrator of rape, and a lawyer who advocates violence, it makes a mockery of the International Women's Day marker, on which this film is to be launched. How shocking that on Women's Day, instead of talking about the serious issues of ending all forms of violence against women, we should be listening to hate speech and incitement to violence against women.

12. Hate speech and incitement to violence against any person or class of persons is restricted, and this constitutes a reasonable restriction on the freedom of speech and expression, under the Indian Constitution. Would any right thinking person or responsible channel provide a platform to hate speech that sanctions or condones violence against say Dalits, religious or ethnic minorities? This film gives disproportionate attention and significance to hate speech against women and here lie our deep concerns.

13. Having viewed the film, we are of the opinion that not only does it not meet the objective that it purportedly seeks to advance, in fact to the contrary it gives a platform to canvas misogynist views and hate speech. NDTV has through the evening of 4 March 2015, sought to canvass through its channel, that the film puts the spotlight on the delay and other dysfunctions of the Indian criminal justice system, that aid and abet injustice for sexual violence. Having seen the film we can say with responsibility that the film does not deal with the systemic problems that plague the criminal justice system. Rather we have through our work been highlighting and seeking reform in the legal system for the systemic impunity for violence against women.

14. We also want to make it clear that our concerns do not emanate from the view that the film hurts the image of India. The pervasive violence against women is what tarnishes India. We distance ourselves from the grounds cited by the government for stopping the broadcast of the film.

Dr. Roy, these are issues that should be deliberated by all in India today and in writing you this letter, we would like to assert that we write out of concern, and out of a grounded and longstanding engagement with the issue of sexual violence as part of the women's movement in India. We have also carefully considered the edits in the film proposed by you. However we are of the view that the same do not address the concerns that we have highlighted here. In view of all the concerns expressed above we would like to seek a postponement of the telecast of the film, until all legal processes are duly completed.

Sincerely,

Indira Jaising
Deviki Jain
Vrinda Grover
Urvashi Butalia
Kavita Krishnan
Suneeta Dhar
Navsharan Singh
Nandita Rao

This piece has been taken from Feminist India's website: <http://feministsindia.com/activists-discuss-concerns-over-indias-daughter/>