

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA ORDINARY CIVIL WRIT JURISDICTION)**

PUBLIC INTEREST LITIGATION

WRIT PETITION (C) NO. _____ OF 2018

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

NIKHIL BHALLA

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

MEMO OF PARTIES

1) Nikhil Bhalla,

121A, Express View Apartments,

Pocket-C, Sector 105, NOIDA

...Petitioner

VERSUS

1. Union of India

Through The Secretary

Ministry of Information and Broadcasting Room No. 655, A Wing

Shastri Bhawan, New Delhi-110001

2. Secretary, Ministry of Electronics and Information Technology

Electronics Niketan, 6, CGO Complex,

Lodhi Road, New Delhi – 110003

3. Netflix Entertainment Services India Llp Company

Level 3, The Capital, G - Block, Bandra Kurla Complex Plot No. C-70,

Bandra (East) Mumbai Mumbai City MH 400051 IN

4. Phantom Films Production Pvt Ltd.

Through its Directors

803 & 804, 8th Floor, CTS No. 737/9/12, C & D Grandeur, Veera Desai
Road, Oshiwara, Andheri (W), Mumbai Mumbai City MH 400053 IN

5. Anurag Kashyap

Bungalow No 40, Aram Nagar Part 1, Seven Bungalow, Andheri West,
Mumbai – 400061, Maharashtra, India

6. Vikramaditya Motwane

803 & 804, 8th Floor, CTS No. 737/9/12, C & D Grandeur, Veera Desai
Road, Oshiwara, Andheri (W), Mumbai Mumbai City MH 400053 IN

7. Nawazuddin Siddiqui,

Zohra Aghadi Nagar, J & K Cooperative Housing Society, Versova,
Ground Floor, Yari Road, Versova, Andheri (West) Mumbai

THROUGH

Place: New Delhi

Shashank Garg, Advocate

Date: 11.07.2018

268, Ground Floor, Uday Park

New Delhi-110049

**IN THE HIGH COURT OF DELHI AT NEW DELHI
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**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING FOR
MANDAMUS AND/OR CERTIORARI AND/OR PROHIBITION
AND/OR ANY OTHER LIKE WRIT, ORDER OR DIRECTION
AGAINST THE FAILURE OF THE RESPONDENT IN
DISCHARGING ITS STATUTORY DUTIES AND SEEKING
DIRECTIONS**

To,

The Hon'ble Chief Justice of Delhi High Court and

His other Companion Justices of the Hon'ble High Court of Delhi

The humble Petition of the Petitioner above-named:

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner does not have any personal interest, or private motive in filing the present Writ Petition. There is no civil or criminal proceeding involving the Petitioner, which has or could have a legal nexus with the issues involved in the Present Writ Petition.
2. That the facts stated in the instant Writ Petition were brought to the Petitioner's knowledge through the domain of public knowledge. To this effect, the Petitioner has personally seen the show streaming on Netflix to gain further knowledge and to determine the depth of the matter.
3. That the Present Writ Petition is being filed under Article 226 and 227 of the Constitution by concerned citizen to invoke the extraordinary powers of this Hon'ble Court, in the interest of securing justice to the general public of the country and especially members/supporters of All India National Congress whose revered figure Shri Rajiv Gandhi is sought to be defamed in the name of artistic freedom and who are incapable of accessing the courts themselves. It is most humbly submitted that Shri Rajiv Gandhi was a leader who sacrificed his life for the nation. He was a statesman, an internationalist, a people's leader. In 1991 the Indian government awarded Shri Rajiv Gandhi the Bharat Ratna, the country's highest civilian award. He sought to carry forward the message and efforts of Mahatma Gandhi for upliftment of poor and weaker sections of society. It is pertinent to state that Rajiv Gandhi Khel Ratna Award in Sports and Games is the highest sporting honour of the Republic of India.
4. That the Order sought in the present petition will affect the general public

and the Respondents. To the best knowledge of the Petitioner no other person will be affected.

5. The Petitioner has been regularly and responsibly practicing in courts of Delhi for about 12 years. The Petitioner does not seek any pecuniary benefit, cost or penalty in his favour. Though the Petitioner is quite sanguine about the merits and bonafides of the instant Petition, the Petitioner takes full responsibility for the instant Petition and also undertakes to pay any costs if so imposed.
6. The Petitioner has not filed any representation before any authority.

BRIEF FACTS

7. That the Petitioner is presently the chief coordinator for Delhi Pradesh Congress Committee (Legal & Human Rights Dept.) at Delhi High Court and has been an ardent follower of Shri Rajiv Gandhi.
8. That the Respondent No.1 is the Ministry of Information and Broadcasting is a branch of the Government of India which is apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India.
9. That Respondent No.2 is a part of the Union Government of the Republic of India. It was carved out of Ministry of Communications and Information Technology on 19 July 2016. It is empowered to block information/websites/URLs under Section 69A of the Information Technology Act, 2000.

10. That Respondent No.3 is an American over-the-top media services provider headquartered in Los Gatos, California and is a popular online streaming media platform.

11. That Respondent No. 4 is a production house that has produced the series “Sacred Games”.

12. That the Respondent No. 5 is the director of the series “Sacred Games”. That the Respondent No. 6 is also the director of the series “Sacred Games”. That the Respondent No.7 is a renowned Bollywood Actor and is in lead role in the series “Sacred Games”.

13. That the Respondent No.3 has on 6th July 2018 released a thriller series titled as “Sacred Games” which is based on a book by Mr. Vikram Chandra. The said show has been released across 190 countries on Netflix. A copy of the article dated 09.07.2018 from huffington post showing that the series has been dubbed in four languages and released in 190 countries, is already receiving widespread publicity is annexed herewith and marked as **ANNEXURE-P1**.

14. That the series “Sacred Games” has been produced in partnership with Respondent No.4 and directed by Respondent No.5 and Respondent No.6 starring Respondent No.7 , Saif Ali Khan and Radhika Apte. That the series is starring Respondent No.7 as Ganesh Gaitonde who narrates his journey from Maharashtra’s hinterlands to becoming a mobster, the said series consists of gruesome graphics, non-obscure references to India’s political history and religion. Further, the show has

made multiple references to Indian history and the role of politics in shaping it. All the scenes are depicted by a realistic description with the use of an archival footage to show the Indian political history.

15. It is submitted that the show 'Sacred Games' has inappropriate dialogues, political attacks and even speeches, which are derogatory in nature and harms the reputation of the former Prime Minister Shri Rajiv Gandhi.

16. That the show has incorrectly highlighted a direct reference to our former Prime Minister Mr. Rajiv Gandhi with the most controversial political issues involving Shah Bano case making derogatory remarks stating that India's former Prime Minister Rajiv Gandhi overturned the ruling of Shah Bano case and depicting him as cruel and a pervert.

17. That not only references but direct accusations and allegations has been made about the former Prime Minister Mr. Rajiv Gandhi as being perpetrator in Bofors Scam when in fact he was cleared by the Indian Courts in 2004 of such accusations. Such direct accusations and allegations are malicious, slanderous and demeaning the reputation of Shri. Rajiv Gandhi. Further, the sentiments of the general public and especially the followers of Shri Rajiv Gandhi have been hurt because of these dialogues and incorrect deliberate portrayal of his political history. A copy of the news article dated 04.02.2004 showing that the court cleared ex-prime minister Rajiv Gandhi of any wrongdoing in Bofors matter is annexed herewith and marked as **ANNEXURE-P2**.

18. That the show incorrectly depicts historical events of the country like Bofors case, Shah Bano case, Babri masjid case and communal riots, which is maligning the reputation of the former Prime Minister Rajiv Gandhi and also defames him internationally.

19. That the abusive statements made by Respondent No.7 in the show against former prime Minister are extremely derogatory, inappropriate, controversial and defamatory. Further, these scenes in the show are aimed and targeted at the former prime minister to invite hate and contempt against him and hence, this show has transgressed the right to freedom of right to expression and squarely falls into the ambit of reasonable restriction.

20. For the convenience of this Hon'ble Court the Petitioner is producing hereinbelow the derogatory and abusive scenes from the show with the timing/duration of such scenes in a tabular form:

Episode No.	Dialogues/Controversial Remarks	Timing/Duration
Episode-2 'Halahala'	In vernacular: "साल था 1985, माँ मरी तोह बेटा PM बन गया. PM बनके बोफोर्स का घोटाला किया. अपुन सोचा जब देश में PM का इमान नहीं, तोह अपुन सीधे	31:14- 31:02

	<p>रस्ते चल के क्या करेगा."</p> <p><i>"In 1985, mother died and her son became the prime minister. He got involved in the Bofors scam. I thought if the Prime Minister was dishonest how could I walk on a straight path."</i></p>	
<p>Episode 4 'Brahmahatya'</p>	<p>"राजीव गाँधी भी ऐसा ही किया था- शाह बनो को अलग जलाया, देश को अलग. उन्नीस साँ छयासी में शाह बनो को तीन तलाक़ दिया उसका पती. वो कोर्ट में केस लड़ी, जीती, लेकिन वह प्रधान मंत्री, राजीव गाँधी, वो फत्तू, बोला चुप बैठ औरत और कोर्ट का फैसला उल्टा कर दिया और शाह बनो को मुल्लों के सामने फेका. इस्पे इसको हिन्दुओ से बोहोत गाली पड़ी, और उनको खुश करने के लिए टीवी पे रामायण शुरू किया. हर संडे सुबह पूरा देश चुपक के टीवी देखता".</p> <p><i>"Rajiv Gandhi did the same thing, he dealt with Shah Bano and the country separately. In 1986, Shah</i></p>	<p>40:50 – 40:22</p>

	<i>Bano's husband divorced her. She took him to court and won the case. But our former PM, Rajiv Gandhi, a pussy overturned the court's judgment and threw Shah Bano to the Mullahs. The Hindus criticized him for this, he had the Ramayan show aired on TV to please them."</i>	
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A copy of the screenshots showing these dialogues as subtitles in the show alongwith the visual excerpts from the show in pendrive are annexed collectively herewith and marked as **ANNEXURE-P3 (Colly)**.

GROUND:

The present Writ Petition is being filed on the following amongst other grounds:

- a) Because in the in the garb of creativity, the Respondents have taken undue liberty and has completely distorted the historical facts which directly impacts the reputation of Shri Rajiv Gandhi and is highly slanderous. It is submitted that the portrayal of historical figures especially a former prime minister has to be done in a historically accurate manner and creativity cannot be used as a pretext to malign or sully their image.

- b) Because it is reprehensible that in order to earn some profit the producers have stooped to such a level wherein they have projected former prime minister in the bad light when in fact he is a role model to millions of Indians.
- c) The Respondent No.3 is engaged in a business / enterprise which owing to its mass appeal / base has the potential of influencing the thought, behaviour and conduct of the citizens, especially the future generation of this country. Even if parts of this show are fictional, it does not change the fact that the actual file footage of Shri Rajiv Gandhi has been shown to portray as if it was a narration of facts and events of those times.
- d) Because the inaction on the part of the Respondent No.1 and 2 in not taking a proactive step to control and regulate the online streaming platforms the issue has led to the violation of Fundamental Rights guaranteed under Article 19 and Article 21 of the Constitution of India.
- e) Because there is an inseparable interconnection between freedom of speech and stability of society i.e. stability of a nation-state and that ours is a nascent republic which is yet to achieve the goal of a stable society and we cannot afford to, in the name of freedom of speech allow anything to be beamed in every home without regard to its impact on society. Especially when it concerns the former prime minister of our country who is a hero to millions of people.

- f) Because a man occupying the position of a popular bollywood actor should not have made such 'unsavoury comments' and 'abuses' on a leader like Shri Rajiv Gandhi who is revered by millions in the country and was the former prime minister of the country.
- g) Because Respondent No.3 has released the show in more than 190 countries and such scenes will hamper the image of our former prime minister in the international community thereby, defaming him at large.
- h) That in the case of *Secretary, Ministry of Information and Broadcasting, Govt. of India Vs. Cricket Association of Bengal* (1995) 2 SCC 161, it was observed that electronic media is the most powerful media, both because of its audio visual impact and its widest reach covering the section of society where print media does not reach and is also more readily accessible to all including children at home.
- i) Because in *Viacom 18 Media Private Ltd. & Anr vs Union Of India* LPA 374/2013 this hon'ble court held that *"The licensing regime hitherto in force in the country which required entities desirous of setting up any enterprise to obtain prior permission of the Government and required the Government to before granting such permission / licence, satisfy itself that all the systems which the said enterprise required to be in place before commencing operation were in place, for the sake of avoiding delays in granting such permissions / licenses, has been replaced by a self regulatory regime where the Government prescribes the systems which an entity proposing to set up an enterprise in a particular field is*

required to have and though not requiring such entities to obtain prior permission leaves it to them to, if of the view that they have such systems in place, commence the operations. The onus is more on the entrepreneurs, under the new self regulatory regime. Merely because the Government has done away with the system of checks, does not entitle such entrepreneurs to commence an enterprise in a half baked manner. The Respondent has clearly not conducted itself responsibly and has abused the faith reposed in it under the self-regulatory regime.”

j) Because these scenes are not important for showing the theme of the series and if these scenes are deleted then the theme of the series will remain unaffected. It is not the case that abusing the former prime minister or showing him in the bad light is necessary for projecting the theme of the series.

k) It is humbly submitted that fundamental right of freedom of speech and expression granted to the Respondent under Article 19(1)(a) of the Constitution of India, 1950 is subject to certain restrictions, like respect of the rights or reputation of others, Protection of national security or of public order or of public health or morals etc. The catchword here is '*reasonable restriction*' which corresponds to the societal norms of decency. In the present matter, the petitioner is humbly requesting to impose deletions on visuals and dialogues relating to former Prime Minister Rajiv Gandhi which are found to be derogatory.

- l) That under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression on account of 'Public order' which is synonymous with public peace, safety and tranquility. The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbances of the current of life of the community so as to amount to a disturbance of the public order or whether it affects merely an individual being the tranquility of the society undisturbed. Anything that disturbs public tranquility or public peace disturbs public order.
- m) That the videos and photographs from the show are being circulated rapidly over the social media, through Whatsapp, Facebook and other social media websites. This is hurting the sentiments of followers of former Prime Minister Rajiv Gandhi and thus raising an agitation among them. A copy of the article from scoopwhoop dated 09.07.2018 highlighting the objectionable and derogatory dialogues against the former prime minister is annexed herewith and marked as **ANNEXURE-P4**.
- n) That Shri Rajiv Gandhi was one of the most respected Prime Ministers of our country as he conceived India as a global power, an experience we are witnessed to in the 21st century world. He initiated substantial changes in the economic policy framework. The first step towards liberalization of the economy in India, was taken up by him. After he became the Prime Minister, a number of restrictions on various sectors were eased, control on pricing was removed, and stress was given on

increased growth rate and so on. The new reforms led to easier international trade and investment, privatization, deregulation, inflation controlling measures and tax reforms. Liberalization has been the same irrespective of which party headed the government. Beginning in the 80s, the government led by Shri Rajiv Gandhi started well-calculated light reforms. These reforms were to set the firm foundations for future economic reforms. The government slightly reduced Licence Raj and also promoted the growth of the telecommunications and software industries. His policies of de-licensing and reform of major industries resulted in better capacity utilization, capital cost cutting, maximum of capital utilization. He was apt in calculating dividends in pushing the Indian economy on a higher growth path. The early 1990s would prove his foresight to be true. Such a Prime Minister deserves respect for his notable contribution to the country and shall not be shown in bad light internationally.

o) That the politicians have the same respect as enjoyed by anyone else as they are mandated by masses to serve the country especially a prime minister who is in the front when it comes to running countries and solving problems.

21. That the Petitioners have not filed any other Petition before this Hon'ble Court or any High Court, seeking the same or similar relief. The Petitioners have no other equally efficacious alternative remedy than to approach this Hon'ble Court by way of this Petition.

PRAYER

In view of the facts and circumstances as stated above, it is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:

- i. Issue a Writ/Order/Direction, in the nature of Certiorari or any other appropriate Writ, Order or Direction directing the Respondents that the 'offensive scenes' mentioned in the aforementioned table and the derogatory remarks made directly or indirectly against our former Prime Minister Rajiv Gandhi or his family be deleted and removed from the show *In Toto*.
- ii. Pass such other and further Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN
DUTYBOUND SHALL EVER PRAY.

PETITIONER

THROUGH

Place: New Delhi
Date: 11.07.2018

Shashank Garg, Advocate
268, Ground Floor, Uday Park
New Delhi-110049

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UNION OF INDIA & ORS.

...RESPONDENTS

APPLICATION FOR INTERIM RELIEFS

TO,

THE HONOURABLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH

1. That the accompanying Writ Petition is being filed under Article 226 and 227 of the Constitution by concerned citizen to invoke the extraordinary powers of this Hon'ble Court, in the interest of securing justice to the general public of the country and especially members/supporters of All India National Congress whose revered figure, Shri Rajiv Gandhi is sought to be defamed in the name of artistic freedom. It is most humbly submitted that Shri Rajiv Gandhi a leader who sacrificed his life for the nation. He was a statesman, an internationalist, a people's leader, and can

truly be regarded in the most sincerest of the term, as the builder of the 21st century India. An India of his dream, where development, prosperity, fraternity, secularism, inclusive growth, social justice parity reign supreme. This, true son of Mother India embraced martyrhood in his mission of spreading 'sadbhavna' among his fellow Indians on the 21st May, 1991 in Tamil Nadu.

2. That the Petitioners have stated the relevant facts and grounds elaborately in the Writ Petition. For the sake of brevity, the same are not repeated in the present Application. The Petitioners, however, crave leave to refer to and rely on the same at the time of the hearing of the present Application as if the same formed part of the present Application.
3. That the Petitioners have a prima facie case and the purpose of filing the present petition will be frustrated if the streaming of the series titled 'Sacred Games' in question is not stayed during the pendency of the present case.
4. That no prejudice will be caused to the Respondents if the reliefs prayed for would be allowed. The balance of convenience is entirely in the favour of the Petitioner. Irreparable loss shall be caused to the petitioner in case the show is not stayed.
5. That the present application is filed in the interest of Justice.

PRAYER

It is, therefore, most respectfully prayed that pending final orders, this

Hon'ble Court may graciously be pleased:

- a) Grant an ex-parte ad interim injunction restraining respondents and any other broadcasting agency including Youtube and news channels from streaming, publishing, exhibiting, publically or privately, selling, promoting or advertising anything which will further cause injury to the reputation of former Prime Minister Mr. Rajiv Gandhi.
- b) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

THROUGH

Place: New Delhi

Shashank Garg, Advocate

Date: 11.07.2018

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	been dubbed in four languages and released in 190 countries, and is already receiving widespread publicity.	
9.	<u>Annexure-P2:</u> Copy of the news article dated 04.02.2004 showing that the court cleared former Prime Minister Shri Rajiv Gandhi of any wrongdoing in the Bofors matter as there was no evidence of involvement in the deal by Shri Rajiv Gandhi.	
10.	<u>Annexure-P3 (COLLY.):</u> Copies of the screenshots showing the abusive and derogatory dialogues as subtitles in the show along with the visual excerpts from the show in a pen drive.	
11.	<u>Annexure-P4:</u> Copy of the article from Scoopwhoop dated 09.07.2018 highlighting the objectionable and derogatory dialogues against the former Prime Minister.	
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THROUGH

Place: New Delhi
Date: 11.07.2018

Shashank Garg, Advocate
268, Ground Floor, Uday Park
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