

PARODY OF NATIONAL ANTHEM: RAM GOPAL VARMA KI NAYI AAG

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This paper seeks to explore the legality of parodying the national anthem through an analysis of a recent Hindi movie, Rann's version of the Indian National Anthem. I argue that the given situation falls outside the purview of the Emblems & Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971, the two Acts which were quoted by the Censor Board while removing the song from the movie. In the absence of a law prohibiting the same, the restriction is invalid and violative of free speech. Even if a separate law were enacted to govern the case of parody of a national anthem, it is likely to be still held violative of Article 19 (1)(a), as it would not appertain to the grounds on which speech may be restricted under Article 19 (2).

*Jana Gann Mana Rann Hai
Is rann mein zakhmi hua hai bhaarat ka bhaagya vidhaata
Punjab Sindh Gujarat Maratha
Ek Doosre Se Ladd Ke mar rahein hain
Is desh ne humko ek kiya
Hum desh ke tukdey kar rahein hain
Dravid utkal banga
Khoon bahaa ker, ek rang ka kar diya humne tiranga
Sarhadon pe jung aur
Galiyon mein fasaad danga
Vindh himachal yamuna ganga
Mein tezaab ubal raha hai
Mar gaya sab ka zameer*

*Jaane kab zinda ho aagey
Phir bhi tava shubh naame jaage
Tava shubh aashish maange
Aag mein jal kar cheekh raha hai
Phir bhi koi nahi sach ko bachaata
Gaahe tava jaya gaatha
Desh ka aisa haal hai lekin
Aapas mein ladd rahein neta
Jana gann mangal daayak jaya hai
Bhaarat ko bacha le vidhaata!!!
Jaya hai – ya yeh – marann hai
Jana – gann – mana – rann hai*

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English Translation

*India is wounded
 Each of her factions are fighting amongst themselves
 Independence united her people but greed is dividing it
 The blood being shed has turned the tricoloured flag into just one colour- the
 colour of blood
 She has been infested with wars and riots
 Only God can save her from this mess
 Truth screams as she burns
 But there is no one to hear her cries
 The infighting continues
 The leaders bicker amongst themselves*

*While the country is in shambles
 God, please save India
 Is this the beginning of the end?¹*

I. INTRODUCTION

Ram Gopal Verma (RGV), in the trailers of his now released film *Rann*, had used a parody of the National Anthem which was subsequently removed following the Central Board for Film Certification's refusal to air the trailers of the movie with the song in it, since in their opinion, it tampers with and distorts the National Anthem. RGV approached the Supreme Court; however they declined to give any relief and asked him to approach the Appellate Body constituted under the Cinematograph Act first.

This series of events has brought to the forefront the controversy regarding treatment of national anthems both in India as well as abroad. It raises the question about whether Indian law permits a parody to be made of the national anthem and whether prohibiting such a parody is a violation of the fundamental right to the freedom of speech and expression. Although this particular situation has been doused with RGV agreeing to remove the controversial trailers and even taking down his official website and releasing the movie without the controversial song, questions still remain about what would happen if such a situation arose again in the future and whether singers and film makers would have to desist from using the national anthem in their work. This paper seeks to find the answers to the above questions in light of the legal provisions regulating the use of the national anthem in India. It also looks at how other countries have addressed similar issues regarding their respective national anthems.

To do this, I will first delve into the background of the national anthem discourse and then examine the past judgments of the Supreme Court in context

¹ Available at <http://movieflakes.blogspot.com/2009/05/rann-jana-gana-mana-rann-lyrics-and.html> (Last visited on April 21, 2010).

of the RGV controversy. I will analyze decision in the present case from a legal and political point of view, particularly focusing on the right to freedom of speech and expression under Article 19(1)(a), the fundamental duties enshrined within Article 51A, The Emblems and Names (Prevention of Improper Use) Act, 1950 and The Prevention of Insults to National Honour Act, 1971. Finally, I will look at similar cases which have risen the world over and the stance the courts have taken in other countries.

II. NATIONAL ANTHEMS: SACRED TOTEMS?

In order to put the entire controversy in context the author will first analyze national anthems *per se*. What is it about national anthems that nations strive to cloister them in sanctity? National anthems are psychological dynamos which routinely succeed in getting whole countries to rise to their feet.²

An anthem is defined as ‘poetry; a song, as of praise or gladness... which is technically a hymn.’³ It is usually seen that those countries which were formerly under colonial rule and won their independence have national anthems; such is the case with India too. In this sense, national anthems symbolize togetherness and are songs which are celebratory in nature.

Over the years however they have become revered and are treated like the sacred totems of ancient tribes, almost being worshipped. As a result, there has come to exist a strong social taboo against desecrating of national anthems. From this evidence, it might be concluded that a national anthem, once established, seems to enjoy a sort of magical immunity. It ensconces itself as an indelible part of the cultural repertoire – resistant to mockery, to erasure and to contradictory impulses.⁴

III. HISTORY OF NATIONAL ANTHEM CASES AT THE SUPREME COURT

In India, though there have been few cases relating to the National Anthem, they have all ended up at the Supreme Court. *Bijoe Emmanuel v. State of Kerala*,⁵ dealt with whether a person is bound to sing the national anthem even if it goes against one’s religious principles. In *Shyam Narayan Chouksey v. Union of India*⁶ and *Karan Johar v. Union of India*,⁷ the question was whether the audience in a theatre was required to stand if the National Anthem was played during the

² Rukmini Bhaya Nair, *Singing Nations Into Being*, available at http://www.india-seminar.com/2001/497/497_rukmini-bhaya_nair.htm (Last visited on April 14, 2010).

³ THE SHORTER OXFORD ENGLISH DICTIONARY, Volume 1 A-M, (1961).

⁴ *Supra* note 2.

⁵ *Bijoe Emmanuel and Ors. v. State of Kerala* AIR 1987 SC 748, ¶ 7.

⁶ *Shyam Narayan Chouksey v. Union of India* AIR 2003 MP 233, ¶ 5.

⁷ *Karan Johar v Union of India* (2004) 5 SCC 127, ¶ 2.

course of a movie. While in *Sanjeev Bhatnagar v. Union of India*,⁸ the question was whether the word 'Sindh' should be removed from the National Anthem given the fact that the song was composed pre-partition and Sindh was now a part of Pakistan. As is evident, none of these cases have dealt with the legality of actually changing the words of the National Anthem except perhaps *Sanjeev Bhatnagar* and that too was in a different context from the present RGV case which changes the words of the anthem for a movie whereas *Sanjeev Bhatnagar* dealt with the actual changing of a word in the National Anthem. Though the two cases are quite dissimilar, it is interesting to note the stance taken by the Union of India in *Sanjeev Bhatnagar*, where it contended that the National Anthem is not open to mutilation,⁹ but did not cite a statutory provision, a judicial precedent or any other persuasive authority in support of that stance. It contended that the song is a literary creation which cannot be changed,¹⁰ and that every word placed therein is carefully in position in the whole composition.¹¹ The Court upheld this view¹² without delving into why the song enjoys such a privileged position and is not open to any change. The judgement is merely a reiteration of the submissions of the Union of India and seems to be hastily delivered in order to get rid of the case and brush contentious issues under the carpet. These issues have however resurfaced in the RGV case.

A. THE RGV CASE

In the RGV Case, it was the Censor Board¹³ which first refused to allow the airing of trailers of the film *Rann* on the grounds that the song would be violative of The Emblems and Names (Prevention of Improper Use) Act, 1950 and The Prevention of Insults to National Honour Act, 1971.¹⁴ An analysis of these statutes shows that the given situation will fall outside the ambit of both.¹⁵

⁸ *Sanjeev Bhatnagar v. Union of India* AIR 2005 SC 2841, ¶ 8.

⁹ *Id.*, ¶ 10.

¹⁰ *Id.*, ¶ 10.

¹¹ *Id.*, ¶ 14.

¹² *Id.*, ¶ 17.

¹³ The CBFC (Central Board of Film Certification), popularly known as Censor Board is a quasi-judicial body coming under the control of the Government of India. It certifies all films publicly exhibited in India. The Cinematograph Act, 1952, The Cinematograph (Certification) Rules, 1983 and the Guidelines issued under §5B of the Act govern the censorship of films. A Film Certification Appellate Tribunal (FCAT) has been constituted under the Act for hearing appeals against any order of the CBFC.

¹⁴ *Censor Board bans RGV's Jana Gana Mana Rann*, available at <http://www.bigoye.com/news/Censor-Board-bans-RGVs-Jana-Gana-Mana-Rann/89166?page=1> (Last visited on February 22, 2010); *Censor Board refuses permission to air 'Jana Gana Rann' song*, available at <http://timesofindia.indiatimes.com/india/Censor-Board-refuses-permission-to-air-Jana-Gana-Rann-song-/articleshow/4500200.cms> (Last visited on April 22, 2010).

¹⁵ Central Board of Film Certification (CBFC), available at [http://www.indianetzone.com/8/central_board_film_certification_\(cbfc\).htm](http://www.indianetzone.com/8/central_board_film_certification_(cbfc).htm) (Last visited on April 22, 2010).

The Emblems and Names (Prevention of Improper Use) Act regulates the use of emblems and names. This short Act of just nine sections states that it is an Act to prevent the improper use of certain emblems and names for professional and commercial purposes. It defines ‘emblem’ as any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule and ‘name’ as any abbreviation of a name.¹⁶ It prohibits improper use of certain emblems and names for the purpose of any trade, business, or in the title of any patent, trade mark or design without the previous permission of the Central Government.¹⁷ The protected emblems and names have been detailed in the Schedule, they include the name, emblem or official seal of the United Nations Organisation, the Indian National Flag, the President, the Governor, the names “Ashoka Chakra” or “Dharma Chakra”, the name or pictorial representation of Rashtrapati, Rashtrapati Bhavan, Raj Bhavan among others.¹⁸ It also contains penalties for contravention with the provisions of the Act.¹⁹

However the Act does not cover the use of national anthems. In fact, there is no mention of even the word national anthem in the Act, so why this particular Act was used by the censor board is quite puzzling.

The Prevention of Insults to National Honour Act, 1971 has been defined as an Act to prevent “Insults to National Honour”. It seeks to prevent insults to the Indian National Flag and the Constitution of India. The relevant provision under the Act applicable to the present case is §3, which states that whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing shall be punished for a term which may extend to three years or with fine or both. The present case however only deals with changing the lyrics of the National Anthem and using it in a movie; the film makers are not preventing anyone from singing the National Anthem. In fact, by not allowing them to air the song, it is their right to freedom of speech and expression which is being stifled. There is nothing in the song which would interfere with the public order, decency, morality, sovereignty and integrity of India. It is only a film song and only a critique to the current state of affairs being expressed through the National Anthem. Any reasonable person hearing the song would also infer nothing more than that. Therefore it would not constitute a reasonable restriction under Article 19(2).

The only other provisions dealing with the National Anthem are the Orders Relating to the National Anthem issued by the Home Ministry,²⁰ which talk about the correct playing time of the National Anthem, when it should be

¹⁶ §2 (a) & (c), The Emblems and Names (Prevention of Improper Use) Act, 1950.

¹⁷ §3, The Emblems and Names (Prevention of Improper Use) Act, 1950.

¹⁸ See Schedule to The Emblems and Names (Prevention of Improper Use) Act, 1950.

¹⁹ §5, The Emblems and Names (Prevention of Improper Use) Act, 1950.

²⁰ Orders Relating to the National Anthem of India, available at [http://mha.nic.in/pdfs/NationalAnthem\(E\).pdf](http://mha.nic.in/pdfs/NationalAnthem(E).pdf) (Last visited on April 17, 2010).

played and how it should be played. Even here however there is no mention of a situation such as the present one where the words of the Anthem have actually been changed.

In appeal though the Court declined any relief, it went on to give its opinion on the content of the anthem. The judges opined, “We have read it. It [the national anthem] has been distorted, and it gives a totally negative sense. It seems every line of the national anthem has been filmed wrong. Nobody has any right to tinker with the national anthem”.²¹ Critics however feel that if the judges did not want to interfere in the matter there was no need for them to have added their personal opinions on the matter. They have virtually precluded RGV from approaching the SC if the Appellate Tribunal does not rule in his favour by giving him a preview to what he can expect if he does come to the SC. Further, in light of the comments of the SC, the Appellate Tribunal may feel predisposed to decide the matter against RGV, as the highest judicial authority of the country has indicated its opinion against the song. That would however preclude an independent assessment of the matter. As a consequence, the judges would have decided based on their personal predilections rather than protecting the fundamental rights and analysing the legal provisions involved.²²

B. RGV'S STANCE

RGV maintains that the song in his movie is not the national anthem but just another film song. He has clarified that the song “is not composed to ridicule the national anthem. The national anthem is too big to be distorted by a few words. It would have been an insult if I would have said that *Jana Gana Mana* is a bad song. If I add a few lines to *Jana Gana Mana*, it's automatically not a national anthem.”²³ He says that the song was written in order to show what the national anthem stands for in today's time and for what the country is going through in the wake of increased terror, poverty, riots, debt-ridden farmers suicides, dowry deaths, rapes, murders, drought, famine and flood.²⁴

Lyricist Sarim Momin, defends the song saying, “I wanted to capture the emotions of a situation in the film where the citizens of India are asked to wake up. To wake up and realise that we are not being fair to the country by letting anti-national powers flourish for their personal gains; that we are surrendering the very freedom that we fought for; that we are dividing the country when we should

²¹ *Approach tribunal on Rann song: SC to RGV*, available at <http://ibnlive.in.com/news/approach-tribunal-on-rann-song-sc-to-rgv/93322-8.html> (Last visited on April 22, 2010).

²² *Jana Gana Mana of Indians: Upbeat or 'Rann'?*, available at <http://www.merineews.com/article/jana-gana-mana-of-indians-upbeat-or-rann/15770788.shtml> (Last visited on April 22, 2010).

²³ *RGV's Rann: The Promo*, available at <http://www.bhargavsaiikia.com/2009/05/rgvs-rann-promo.html> (Last visited on April 20, 2010).

²⁴ *Why Jana Gana Mana Rann?*, available at <http://rgvzoomin.com/2009/05/08/why-jana-gana-mana-rann/> (Last visited on April 19, 2010).

actually stand up united for its progress.”²⁵

While recognizing that the fundamental right to freedom of speech and expression is not unlimited, that one has the duty to use it responsibly and that the speech uttered must serve some social purpose, in the present case the lyricist and RGV were not trying to defame the national anthem for the sake of doing so, they were only trying to convey to the viewers that we as a nation have forgotten the true spirit of the national anthem. The new version they created was just to emphasise this and in fact remind us of the true meaning of the national anthem.

C. IS THE FUNDAMENTAL RIGHT TO SPEECH AND EXPRESSION BEING CURTAILED?

Article 19(1)(a) guarantees to all citizens of India, the freedom of speech and expression which may be subject to certain restrictions enumerated under Article 19(2). The instances where the freedom in 19(1)(a) can be curtailed by a law include interests of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The case of a mere parody of the national anthem clearly would not fall within any of these exceptions. Changing a few words of the National Anthem does not affect the sovereignty and integrity of India, security of the State or friendly relations with foreign states nor is it a threat to public order, decency or morality. In the specific context of RGV's case, it is meant to be only a film song which serves as a wakeup call for the citizens of India. It is merely the lyricist's critique to the National Anthem. Its sentiments are purely nationalistic and patriotic. Therefore prohibiting the song from being aired would be a gross violation of Article 19(1)(a).

Ideas that are not in conformity with the mainstream also need to be protected under Article 19(1)(a).²⁶ In the present case this pertains to the changing of the words in the National Anthem. This view was upheld in *S. Rangarajan v. P.J.Ram*,²⁷ the SC approved the observations of the European Court of Human Rights, that freedom of expression protects not merely ideas that are accepted but those that offend, shock or disturb the State or any other sector of the population. Further in *Anand Chintamani v. State of Maharashtra*,²⁸ the Supreme Court upheld the 'right to criticise'. In this case, it was held that acceptance of the viewpoints of those whose thinking may not accord with the mainstream are cardinal values which lie at the foundation of a democratic Government.

²⁵ *Devansh Patel, The Truth Behind Rann's Controversial Song*, available at <http://entertainment.oneindia.in/bollywood/features/2009/rann-lyrics-controversy-130509.html> (Last visited on April 26, 2010).

²⁶ *Anand Chintamani v. State of Maharashtra* 2001(3) ALLMR 151, ¶ 19.

²⁷ *S. Rangarajan v. P.J.Ram* 1989 (2) SCR 204, ¶ 46.

²⁸ *Supra* note 26, ¶ 19.

RGV eventually replaced the song with Vande Mataram in the movie but he says, “I was not okay with taking it [the song] out. But it was better to take it out instead of fighting with the censors and delaying the process, so we replaced it with ‘Vande Mataram’. I did not change my mind (about the song), I was made to change my mind. Otherwise, the censors wouldn’t have given the certificate.”²⁹ When a well-established and experienced film maker of India is expected to bow down to pressure and make statements like these it really leads one to reflect that if a film maker like RGV cannot exercise his fundamental rights freely, the chances of an ordinary citizen to criticise and comment are even more limited. For future artistes who seek to convey a social message through creative tools, this judgment can potentially have a *chilling effect*.³⁰

D. ARTICLE 51A: ARE FUNDAMENTAL DUTIES LEGALLY ENFORCEABLE

Article 51A enumerates the Fundamental Duty of every citizen to abide by the Constitution, National flag and National Anthem. Mention of this provision has been made in almost all the cases regarding the National Anthem which have come before the Supreme Court. The duty as such is not legally enforceable but if the State makes a law to prohibit any act or conduct in violation of any of the duties, the courts would uphold that as a reasonable restriction on the relevant fundamental right.³¹ No such law has been made by the State pertinent to the present case.

While recognizing that even without a law fundamental duties control the scope and meaning of fundamental rights, fundamental duties are usually regarded as directory in nature and are used to interpret ambiguous statutes.³² The Emblems and Names (Prevention of Improper Use) Act and the Prevention of Insults to National Honour Act are by no means ambiguous statutes. They do not at all envisage the type of situation which has arisen in the present case. Therefore Article 51A will have hardly any bearing in the present case.

Even if the duty were legally enforceable,³³ RGV’s actions in the present case do not amount to a violation of Article 51A since the song in question is not the national anthem but a film song which uses some words of the national anthem.

²⁹ ‘Rann’ of Business and Conscience in India, available at <http://www.my-india.net/movies/2010/01/rann-of-business-and-conscience-in.shtml> (Last visited April 22, 2010).

³⁰ Chilling effect is any practice or law that has the effect of seriously dissuading the exercise of a right, such as freedom of speech. It may prompt self-censorship and hamper free speech. See <http://law.jrank.org/pages/5198/Chilling-Effect-Doctrine.html#ixzz0ljACHDP4> (Last visited April 21, 2010). See also Frederick Schauer, *Fear, Risk and the First Amendment*, 58 B.U. L. REV. 685 (1978).

³¹ MP JAIN, *INDIAN CONSTITUTIONAL LAW* 1396 (5th ed., 2006).

³² *Id.*

³³ The duty would be legally enforceable if we were to accept the position argued by Shubhankar Dam, *Strikes Through the Prism of Duties: Is there a Fundamental Duty to Strike Under*

He has not disrespected the national anthem in any way. He has merely rendered his own interpretation of the anthem.

E. LAWYERS SUPPORT RGV

Senior lawyers of the Supreme Court too support RGV's version of the song and state that he has not violated any law because there exists no such law for him to violate. Senior lawyer Pinki Anand says, "I don't see why justice is going to the roads. When there is no punishment for the act according to the law, nothing can be done about it. I have heard the song and there is no dishonour to the national anthem."³⁴

Senior advocate Jayant Bhushan too reiterates this stance when he says, "Freedom of speech is important. One should not be too sensitive. I don't think the filmmaker has dented the national anthem by just changing a few lines. The dignity of the national anthem is not so fragile."³⁵

F. POLITICAL UNDERTONES

Apart from the legal implications that arise due to the controversy what makes it even more interesting are the political undertones at play here. The double standards of the Censor Board are evident in the present case. It was they who took action and refused to air the promos of the movie; however they haven't always exercised such harsh measures in relation to other movies. Examples of movies which have used the National Anthem with a few words changed or which have shown Indian national symbols in bad light have been cited below.

In the movie *Rang De Basanti*, there is a scene in the film where Alice Patten (for her documentary film) and Soha Ali Khan are taking auditions for picking up the respective historical martyrs, who laid their lives for the freedom of India. A young boy actually raps the first line of National Anthem 'Jana Gana Mana...' along with 'Vande Maataram...' not once but twice in the film but the Censor Board seems to have ignored it. One of the reasons which have been put forth are that Sharmila Tagore, the head of the Censor Board is also Soha Ali Khan's mother and may not have wanted her daughter's film to run into any sort of controversy.³⁶ In *Kuch Kuch Hota Hai*, there is a scene where the UK anthem

the Indian Constitution?, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=953787 (Last visited April 21, 2010), where he takes the position that since there is no provision that restricts the enforceability of fundamental duties they may be regarded as directly enforceable.

³⁴ *Ram Gopal Varma hasn't done anything punishable, say lawyers*, available at <http://blog.taragana.com/e/2009/05/20/ram-gopal-varma-hasnt-done-anything-punishable-say-lawyers-4906/> (Last visited on April 22, 2010).

³⁵ *Id.*

³⁶ *Rang De Basanti makes a mockery of the National Anthem*, available at <http://blog.mid-day.com/blog.php?user=johannybombay¬e=1892> (Last visited on April 22, 2010).

can be heard. There is also a reference to the fact that the kids at the summer camp should be made to sing praises of Britain rather than India. This portrayal of UK's anthem and history being lauded over India's was also not objectionable to the Censor Board.

In *Kabhi Khushi Kabhie Gham*, Kajol's son's character forgets the National Anthem during a school function and says the word 'sorry' in between the Anthem. Even though the Censor Board let this pass, persons who found it objectionable did come forward and filed a case against the filmmakers.³⁷ No action was taken by the Censor Board in any of the above cases against the film producers, which only strengthens the fact that there are some other forces at play here other than this sudden reverence to the National Anthem garbed in patriotism.

Further, a critical analysis of the arguments in the Supreme Court portrays the media-political nexus that the movie is trying to show playing out in reality. Arun Jaitley the lawyer on RGV's side is also a politician. He is the Bharatiya Janta Party's (BJP) General Secretary. Asking him to represent RGV was an interesting choice since his party is known to have been constantly against Jana Gana Mana being chosen as the National Anthem. They have since time immemorial been pitting the legendary Rabindranath Tagore's composition against his senior Bankim Chandra's *Bande Mataram* and believe that the latter should have been the National Anthem. Therefore his interests in representing RGV include possibly include a hidden agenda towards his political affiliations as well.

Moreover, even while arguing the case in the Supreme Court one of Jaitley's main contentions was that words of the National Anthem should be allowed to be changed in the same way as certain political parties like the Trinamool and Congress use their symbols on the National Flag instead of the Ashoka Chakra. Here again one sees him, using the Supreme Court as a platform to further his political agenda. However all these arguments were rejected by the Supreme Court.³⁸

IV. INSTANCES FROM AROUND THE WORLD

In this portion of the paper I will look at similar instances as the present one which have arisen in other countries and the legal implications of it.

1. In 1999, the Ministry of Sound in England prepared a dance version of the English National Anthem, "God Save The Queen" and used it as a dance number in discotheques. Their stance was that the National Anthem should adapt to the changing times.³⁹

³⁷ *Shyam Narayan Chouksey v. Union of India*, AIR 2003 MP 233.

³⁸ *Approach tribunal on Rann song: SC to RGV*, available at <http://ibnlive.in.com/news/approach-tribunal-on-rann-song-sc-to-rgv/93322-8.html> (Last visited on April 20, 2010).

³⁹ Jason Beattie, *Long Live Our Cool Regina; Various Reworkings of the National Anthem Could be Doing The Royalists a Favour*, BIRMINGHAM POST, December 11, 1999.

2. In the movie *“Borat: Cultural Learnings of America for Make Benefit Glorious nation of Kazakhstan,”* Sacha Baron Cohen as Borat, had sung the Kazakhstan national anthem parody at a US baseball match. The song was sung to the tune of an off key Star Spangled Banner. The lyrics includes sentences like, ‘Kazakhstan is the greatest country in the world. All other countries are run by girls. Kazakhstan is an exporter of potassium, other countries have inferior potassium. Kazakhstan is home to the Tinshein pool which is thirty feet long and six meters wide.....’⁴⁰

*He received a lot of flak from the Kazakhstan government for his portrayal of Kazakhstan as a backward nation full of dumb people. The Kazakhstan government had threatened to sue Cohen. Then, Cohen (in his Borat avatar) was quoted as saying, “I’d like to state that I have no connection with Mr. Cohen and fully support my government decision to sue this Jew.”*⁴¹

3. In the US, Jazz singer Rene Marie was supposed to sing the “Star Spangled Banner”, the US National Anthem at Denver’s State of the City address. However instead of singing the National Anthem she sang a song known as “The Black National Anthem” to the tune of the National Anthem. She received a lot of flak from residents and officials for her rendition of the Anthem but no legal proceedings were initiated against her.⁴²

4. Currently there is a parody of the Japanese national anthem, *Kimigayo*, on the web. It is titled ‘Kiss Me’.⁴³ Interestingly, the lyrics of this parody song are written in English, not in Japanese, but what is most striking is that every line of this English lyrics sounds similar to the pronunciations of the original Japanese one. Further the meaning of the English lyrics is completely opposite to that of the original Japanese. While the original anthem is a song for praising the “everlasting glory of the emperor’s world”, the problem is that the world still remembers the painful memories of World War II, the Japanese invasions and the massacres executed by the Japanese army under the name of Japanese

⁴⁰ See Martha Bayles, *Cultural Learnings for Make Benefit Glorious Comedy of Sacha Baron Cohen*, available at http://www.claremont.org/publications/crb/id.1354/article_detail.asp (Last visited April 21, 2010). See also Borat Soundboard, available at <http://www.boratsoundboard.net/lyrics-borat-kazakhstan-national-anthem/> (Last visited April 21, 2010).

⁴¹ *Sacha Baron Cohen won’t sing Kazakhstan National Anthem at England-Kazakhstan Match*, available at <http://www.dancewithshadows.com/movies/sacha-baron-cohen-wont-sing-kazakhstan-national-anthem-at-england-kazakhstan-match/> (Last visited on 26th February, 2010). See also Martha Bayles, *supra* note 40.

⁴² *Lara Pellegrinelli Poetic License Raises A Star-Spangled Debate*, available at <http://www.npr.org/templates/story/story.php?storyId=106257394> (Last visited on April 20, 2010).

⁴³ *Parody of the Japanese national anthem, Kiss me Kimigayo*, available at http://www.lifestudies.org/weblog/2006/05/parody_of_the_japanese_nationa.html (Last visited on April 21, 2010).

Emperor. Those in Japan who object to the justification of the past invasions refuse to stand and sing the Japanese anthem. This is a topic with respect to which extreme tension exists in Japan. The parody was invented to save those who are 'forced' to sing in a ceremony. Since the parody song sounds like the Japanese anthem, no one can distinguish which song they are actually singing.⁴⁴

As seen in the above cases legal action in such cases is rare. The persons who sing the National Anthem receive a lot of flak but it is rare for anyone to approach the court against them. The RGV case in this respect is unprecedented not just in India but even across the world. The closest case that the author has found to the present situation arose in 1990 in Germany. In this case, popularly referred to as the *German National Anthem Case*, The defendant was the editor of a Nürnberg city-magazine, which had published a parody on the German national anthem criticizing aspects of modern German life, for example, the pursuit of money, German peep shows, the brutality of hooligans, and militarism. The lower courts convicted the defendant under section 90(a) §1 No. 2 StGB for denigrating the German national anthem. The *Bundesverfassungsgericht*, i.e., the Federal Constitutional Court of Germany held that the parody was an artistic expression in the sense of Article 5 §3 GG.⁴⁵

V. CONCLUSION

The RGV case raises many questions regarding the right to remix or parody the National Anthem and using it in a movie. During the course of the paper, the author has tried to point out that though the authorities concerned are opposed to the distortion of the National Anthem, they have no legal backing for their arguments. The fundamental right to freedom of speech and expression negates all the arguments put forth by the authorities. If the authorities do want to protect the National Anthem from desecration, then it is necessary for Parliament to enact a law which specifically says this; whether that law would violate free speech is another matter. For example in the Republic of Saint Lucia, there exists a Protocol for the National Anthem, it states, that 'the National Anthem should not be parodied in verse or in song, neither should it be played in any tempo other than that officially recognised. In particular, the tune should not be used as a dance number or for the purposes of advertisement'. Even though there are ways of getting over this clause, for example, RGV can say that his song is not the National Anthem at all and therefore would not be covered under the provision, it would be a much more relevant law than the existing ones. Further, it is important to look at the words of the present song. They in no way defile the national anthem, in fact all they do is reflect on the existing situation of the country and

⁴⁴ *Id.*

⁴⁵ Ute Krüdewa, *Political Symbols in Two Constitutional Orders: The Flag Desecration Decisions of The United States Supreme Court and The German Federal Constitutional Court*, 19 ARIZ. J. INT'L & COMP. L. 679 (2002).

ask the citizens to take a stand, to wake up and realize that India is in shambles. The national anthem has been used in order to reinforce this fact.

Finally, in my opinion the National Anthem, for the purposes of parody and remix should be treated like any other song. The sanctity of the National Anthem cannot be so delicate that a few changes of words will make it lose its importance. The National Anthem has suffered more humiliation as a result of this controversy than it would have had the song just been played in the movie. In fact if anything it would have brought the National Anthem closer to the people. The attitude of the authorities in the present case is likely have a potential chilling effect on freedom of speech and the national anthem.

