

The Jawaharlal Nehru University affair

Udit Bhatia discusses the Indian government's use of colonial-era laws against sedition and its failure to protect protestors taken into police custody.



On 9 February 2016, three years after the hanging of Afzal Guru, who had been convicted for waging a terrorist attack on the Indian parliament, a protest was organised at Jawaharlal Nehru University (JNU). The name of this event was *The Country Without a Post Office*, based on the poem by Agha Shahid Ali of the same title. There were a lot of aspects to this issue: raising a voice against the death penalty, standing for the right to self-determination for Kashmir and questioning the controversial execution of Afzal Guru. This event, which was organized by the Democratic Students' Union, the university's left-wing organisation, was vehemently opposed by the members of the Akhil Bharatiya Vidhyarthi Parishad (ABVP), a right-wing student organisation. According to ABVP members, slogans like "Pakistan zindabaad" (long live Pakistan), "Bharat tere tukde honge, inshallah, inshallah" (India, by the will of god, you will disintegrate) and "Bharat ki barbadi tak jung

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rahegi” (the fight will continue till India's destruction) were chanted at this event. However, according to many other students, the above slogans were being chanted by none other than the members of ABVP themselves. A video was also circulated to support this claim. The ABVP had previously reached out to the university's administrators, demanding a withdrawal of the permission for organising the event and the administration had done exactly that just five minutes before the event. JNU student union president Kanhaiya Kumar was arrested by the police, along with other organisers who were later released on bail.

The ensuing series of events raised a serious question about freedom of speech in India. At first, it is necessary to understand the Indian law concerning sedition. According to the Indian constitution, freedom of speech is a fundamental right. However, this freedom is not absolute and can be subjected to reasonable restrictions as mentioned in the constitution, i.e. in the interest of the sovereignty, integrity and security of the state. Some of these provisions are found in Section 124 of the Indian penal code, under which sedition is a criminal offence. According to this section, “whoever, by words, either spoken or written, or by signs, visible or otherwise, creates or attempts to create discontent or disaffection towards the lawfully elected Government shall be punished”.

Mohandas Gandhi once said, "Section 124 (A), according to which I can happily declare myself to be a traitor, is a major political tool in the Indian penal code to suppress the freedom of the citizens. Attachment or love towards the nation cannot be produced or controlled by the law. What according to law is an offence, is for me the most important duty as a citizen of this nation."

Today, ironically, the struggle for freedom of speech is being fought at the university which is named after Jawaharlal Nehru, under whose leadership various restrictions on freedom of speech were imposed. According to provisions passed in the constituent assembly, restrictions can be imposed on freedom of speech in case of defamation, contempt of court, violation of decency or morality norms, and jeopardizing the sovereignty and integrity of the state. Leaders like Somnath Lahiri, Sardar Hukum Singh and Pundit Thakurdas had objected to this provision. According to them, such laws were invoked by the British crown before the independence of India to imprison freedom fighters. This provision was changed by the first amendment to the constitution (1951) by adding the word "reasonable" before "restriction", and "public order" in the list of reasonable restrictions on freedom of expression. At that time, Shyama Prasad Mukherji opposed this amendment and raised his doubts on Nehru's "reproving intolerance". Under the leadership of Nehru, this provision was again amended in 1963 to restrict freedom of speech that could endanger the sovereignty and integrity of India.

While talking about sedition laws, it is imperative to consider the rulings by the Indian supreme court in the case of *Kedar Nath Singh vs the state of Bihar*. The court ruled that sedition laws can only be applied if the speech leads to violence or disturbs the public order. In *Indradas vs the state of Assam* and *Aroop Bhuyan vs state of Meghalaya*, the court again clarified its position on this law. For sedition charges to be applicable, the speech would have to incite people to commit crimes imminently. In March 2015, in the case of *Shreya Singhal*, the court once again differentiated

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between advocacy and incitement. According to these judgements, merely advocating violence and opposing the state is not a crime. In spite of this, the police repeatedly file cases against people under section 124(A), even when the speech only raises some controversial topics but not incitement to commit violence or crime. In reality, these laws are used as a political tool by politicians. By virtue of the fact that the accused would have to spend some time in the prison and would have to deal with prolonged court proceedings, this law is used as an intimidation device against the people opposing the government's policy to make them toe the line.

In this whole incident, the attitude and tone taken by the media was also shocking. Many reporters, while propagating extreme nationalism, launched a defamation campaign against the protesters. Truth or facts seemed to have little space in this brand of journalism. Upon scrutinising the comments made by the media on Umar Khalid, a JNU student and principal organiser of the protest, many channels proclaimed that he was associated with the extremist group Jaish-e-Muhammad. Umar Khalid is a known atheist and communist student leader. It seems that he was only accused because of having a Muslim name.

When Kanhaiya Kumar was being presented for hearing at Patiala House court in Delhi, he was physically assaulted, in two separate incidents, by the lawyers present in the court. Despite the Supreme Court's order and a team being constituted by it to look over the security arrangements, the Delhi police failed to fulfil its responsibility to provide security. In fact, the team constituted by the court itself narrowly missed being a victim of violence from the lawyers. During this whole incident, a video also emerged showing O. P. Sharma, Member of Legislative Assembly for the governing party BJP, assaulting a leader of Communist Party. On being asked about it, he responded by saying that if someone supports Pakistan then he deserves being subjected to this kind of violence. On one hand, the police claimed to arrest students in the interest of the nation, on the other hand it failed in its duty of protecting citizens in custody.

The only silver lining in this whole unfortunate incident has been the response by the students and teachers of JNU. They have peacefully raised their voice protesting the criminal charges on Kanhaiya Kumar and other students. In this struggle, they have gained support throughout the world. Students and faculty at Oxford, Cambridge, Harvard, Columbia, Yale and many other universities have condemned the attack on freedom of speech in India.

After Narendra Modi came to power in 2014, there was a heated debate on intolerance in India. Some people claimed that people expressing their concern about intolerance were part of a conspiracy to defame the country and government. However, in light of the events at JNU in 2016, their argument does not hold much water. The law on sedition owes its roots to the British, who used it against freedom fighters during colonial rule. While the British government allowed a Scottish referendum on independence in 2015, demanding the same for Kashmir is considered seditious in India. Using a law which harks back to the period of colonisation to restrict the freedoms of citizens in a democracy raises many questions.

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This article is a translation of the original article which appeared in Hindi.

Published on: May 27, 2016