

## Hypocrisy on free speech

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***Both the Indian left and right have double standards, those in the middle must stand up***

A valid argument can be made about the Indian establishment's instinctive use and misuse of colonial era laws like sedition, but not if it is partisan. For it is disingenuous to claim, as some have, that somehow it is only now that the government is clamping down on free speech. Have we forgotten so quickly the 2012 arrests of a cartoonist for sedition and college students for 'offensive' social media posts?

Since the protest rallies at Jawaharlal Nehru University last month, the nation has been embroiled in an angry debate about freedom of expression. This is a debate worth having, indeed it is necessary, but it needs rescuing from the political agendas of both extremes of the right and the left.

First, however, it is important to understand the historical context of this debate. And to understand that free speech and sedition need to be considered in conjunction with blasphemy, the lack of reverence for God and religion.

The modern concept of free speech evolved over several centuries in Europe, when scientists and philosophers loosened the grip of the church on everyday life with their stunning discoveries and compelling arguments for reason and rationality. In the process, blasphemy, earlier the most heinous of crimes, came to be considered as merely distasteful, rather than criminal.

Of course, even today theocratic states like Saudi Arabia and Pakistan treat blasphemy as a crime punishable by death. But most democracies do not, and have either repealed blasphemy laws or no longer implement them, with varying degrees of freedom. For over two centuries, it is the US that has gradually developed the gold standard of these freedoms.

The US constitutional guarantee of free speech, backed by many court rulings, is near absolute, with two narrowly defined exceptions. Those exceptions impose restrictions on child pornography and the leaking of classified information compromising national security.

However, even burning the national flag has been held by the US Supreme Court to be permissible as an aspect of freedom of expression. And even when such inflammatory acts as burning holy books are threatened, the government can do little. Though there are laws against inciting violence, courts have ruled that there must be imminent, "clear and present" danger for the authorities to intervene.

The US has also had several sedition laws since its inception, but many have been repealed over the centuries, or overruled by courts. Those that remain are tightly defined, differentiating opinion and speech from action. A typical example is a 1957 US judgment “that teaching an ideal, no matter how harmful it may seem, does not equal advocating or planning its implementation”.

Those distinctions between speech and action are crucial to our debate in India. India’s Supreme Court too has ruled in similar vein, holding that sedition was only applicable if there was “an incitement to violence” or “public disorder”, and that even pro-separatist slogans for Khalistan did not qualify .

The consensus among free nations today is increasingly in favour of either repealing sedition laws, or at least tightly limiting them to actions, not speech, aimed at overthrowing the state or physically facilitating rebellion or secession. India has faced such challenges within living memory , which is why it is understandable that the topic triggers raw emotions. Nevertheless, it is perfectly possible to be both revolted by some of the slogans at JNU, but still support free speech. That was Voltaire’s principle, exemplified in a 1770 letter, “I detest what you write, but I would give my life to make it possible for you to continue to write.”

The catch lies elsewhere, in that India’s free speech rights are nowhere near absolute. The Constitution itself mentions a broad array of restrictions, including security , foreign relations, public order and morality . And though courts have repeatedly supported free speech and stretched its limits, they have also reinforced boundaries.

Groups from both the left and the right have cited free speech to advance their agenda, while also clamouring for restrictions when it doesn’t suit them. On the left, for instance, some of the very people who castigated me for simply proposing a debate on Rajya Sabha’s powers, and even moved a privilege motion against me, are now championing free speech at JNU, apparently without irony .

Similarly , there are reports of both left and right wing student groups blocking guest speakers, and film screenings, at JNU, Allahabad University and elsewhere. Both sides accuse sections of the mainstream media of bias, and being “embedded“ in the other side’s ecosystem. Both sides also seem to have a love-hate relationship with social media, seeing it as a leveller that enables their stories to be told, but also of it being misused by the other side’s supporters.

Across the spectrum many believe that some subjects are taboo, especially regarding religious sentiments. The free speech debate is complicated by the broad range of taboos, as also the hypocrisy in supporting free speech on others’ taboos but not one’s own.

But free speech is not really free if it is sanitised. A crucial difference is the distinction between speech and action. And support for it should be on principle, with narrowly defined exceptions, instead of tribalism. India needs a larger group in the middle to stand up for this