

Criticism is not sedition

The threat of sedition leads to unauthorised self-censorship and has a chilling effect on free speech



AJIT PRAKASH SHAH

The recent order of a Bihar court directing the filing of an FIR against 49 eminent persons who signed an open letter to the Prime Minister expressing concerns over mob lynching is shocking, disappointing, and completely disregards the true meaning of the law. The FIR was lodged under various sections of the Indian Penal Code (IPC), including sedition, public nuisance, hurting religious feelings, and insulting with intent to provoke breach of peace. But many would agree that the writers of the letter were doing precisely what every citizen ought to do in a democracy – raise questions, debate, disagree, and challenge the powers that be on issues that face the nation.

It is evident that if you take the letter as a whole, leave alone sedition, no criminal offence is made out. Surely, this court decision warrants an urgent and fresh debate on the need to repeal the sedition law, for it has no place in a vibrant democracy.

History of the sedition law

A century ago, debates around sedition were about how the British abused it to convict and sentence freedom fighters. Today, unfortunately, Indians face the same question, except that instead of a foreign government, the country's own institutions appear to be misusing the law. This decision strangely coincided with Mahatma Gandhi's birth anniversary. The soul of Gandhi's philosophy lay in the right to dissent, which is today being systematically destroyed. Now, anyone, be it university students or civil society activists, who utters even a single critical phrase is instantly targeted, without any introspection on why such criticism was voiced at all.

Sedition laws were enacted in 17th century England, when lawmakers believed that only good opinions of the government should survive, as bad opinions were detrimental to the government and monarchy. This sentiment (and law) was borrowed and inserted into the IPC in 1870.

The law was first used to prose-



TILAK'S TRIAL FOR SEDITION IN 1908. THE HINDU ARCHIVES

cute Bal Gangadhar Tilak in 1897. That case led to Section 124A of the IPC (which deals with sedition) being amended, to add the words "hatred" and "contempt" to "disaffection", which was defined to include disloyalty and feelings of enmity. In 1908, upon conviction for sedition in another case, and imprisonment, Tilak reportedly said, "The government has converted the entire nation into a prison and we are all prisoners." Gandhi, too, was later tried for sedition for his articles in *Young India*, and famously pleaded guilty.

Twice in the Constituent Assembly, some tried to include sedition as a ground for restricting free speech. But this was vehemently (and successfully) opposed for fear that it would be used to crush political dissent.

The Supreme Court highlighted these debates in 1950 in its decisions in *Brij Bhushan v the State of Delhi* and *Romesh Thappar v. the State of Madras*. These decisions prompted the First Constitution Amendment, where Article 19(2) was rewritten to replace "undermining the security of the State" with "in the interest of public order".

However, in Parliament, Jawaharlal Nehru clarified that the related penal provision of Section 124A was "highly objectionable and obnoxious and ...[t]he sooner we get rid of it the better."

In 1962, the Supreme Court decid-

ed on the constitutionality of Section 124A in *Kedar Nath Singh v State of Bihar*. It upheld the constitutionality of sedition, but limited its application to "acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence". It distinguished these from "very strong speech" or the use of "vigorous words" strongly critical of the government.

In 1995, the Supreme Court, in *Balwant Singh v State of Punjab*, acquitted persons from charges of sedition for shouting slogans such as "Khalistan Zindabaad" and "Raj Karega Khalsa" outside a cinema after Indira Gandhi's assassination. Instead of looking at the "tendency" of the words to cause public disorder, the Court held that mere sloganeering which evoked no public response did not amount to sedition, for which a more overt act was required; the accused did not intend to "incite people to create disorder" and no "law and order problem" actually occurred.

This same lens must be used to examine the present letter. The law and its application clearly distinguishes between strong criticism of the government and incitement of violence. Even if the letter is considered hateful, or contemptuous and disdainful of the government, if it did not incite violence, it is not seditious. Unfortunately, Indian courts have, especially recently, repeatedly failed

to appreciate this distinction.

The broad scope of Section 124A means that the state can use it to chase those who challenge its power, and the mere pressing of sedition charges ends up acting as a deterrent against any voice of dissent or criticism.

Challenging the law

Even the threat of sedition leads to a sort of unauthorised self-censorship, for it produces a chilling effect on free speech. This misuse must be stopped by removing the power source itself. The law must go, as has happened in the U.K. already. No government will give up this power easily, and logically, one would turn to the courts for help. Unfortunately, although I have been part of it, the judiciary seems less and less of a protector of our rights, having let us down on civil liberties often lately. Arguably, it is time for the people, for civil society, to challenge the law directly. There needs to be a concentrated movement from the ground up. What form such a direct challenge should take cannot be said, but we must protect our right to dissent as fiercely as we protect our right to live. If we fail to do so, our existence as a proudly democratic nation is at risk.

Ajit Prakash Shah is a former Chief Justice of the Delhi High Court and Chairman of the 20th Law Commission of India

Acts of violence, acts of grace

During Gandhi's 150th birth anniversary year, India has an opportunity to show its humane side

UDAY BALAKRISHNAN

Since Mahatma Gandhi's assassination on January 30, 1948, the world has witnessed some horrific instances of mass violence as well as a few remarkable acts of contrition, forgiveness and grace.

First, consider the inhumanities inflicted on people. The 1958-1961 famine during Chairman Mao Zedong's time killed 20-40 million, according to some estimates, in the People's Republic of China. The 1971 campaign of the Pakistani Army in East Pakistan resulted in the deaths of an estimated three million Bengalis. The Cambodian genocide (1975-79) saw two million Cambodians killed. And the mass killings of 1994 in Rwanda left a million Tutsis dead.



nation of an exceptional act of repentance by a head of state.

After laying a wreath at a memorial at the Jewish Ghetto in Warsaw on December 7, 1970, German Chancellor Willy Brandt, in a typically Gandhian gesture, spontaneously got down on his knees for half a minute. In that moment of atonement he unreservedly assumed responsibility for the Holocaust and lifted a terrible burden off Germany's shoulders. Brandt's 'Warsaw genuflection' led to the memorial in Berlin and

contributed years later to German Chancellor Angela Merkel's magnanimous 2015 gesture allowing a million refugees, fleeing lands overrun by the Islamic State, into Germany. Ms. Merkel's decision, taken in the face of a Europe hit by multiple attacks by Islamic militants and steeped in Islamophobia, ranks as the most courageous humanitarian decision any leader has ever taken.

Missed chances

However, there were missed chances too. Presented with an opportunity to stand up for the Rohingya, Myanmar's Aung San Suu Kyi has chosen to prevaricate and even justify their persecution in her country. Neighbouring countries, such as India, are also turning their backs on the Rohingya refugees.

The biggest tragedy is unfolding in India. The ham-handed application of the National Register of Citizens in Assam is forcing hundreds of thousands into internment camps indefinitely with no hope of repatriation to Bangladesh from where they are said to have fled many years ago. Now there is the threat of the NRC being extended across the country. India has an opportunity to end this farce by giving citizenship to all those identified as foreigners everywhere, if required by proportionately assigning them to all states of the Union for voting rights. In the 150th year of Gandhi's birth anniversary it even has the right occasion to show such grace.

The German acceptance of responsibility for crimes against the Jews was no less impressive. In a prominent part of Berlin, in a space spread across 200,000 sq ft, one can 'experience' the world's largest and most powerful monument to national penitence. Opened in 2005, the German memorial to the Jewish dead resembles a vast graveyard of unburied coffins – a reminder to all Germans of the crimes perpetrated against the Jews by their ancestors. That the German government supported this vast memorialisation is unique in history and a logical culmi-

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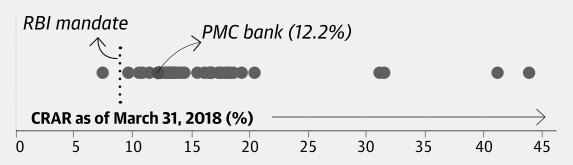


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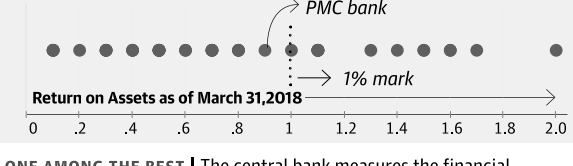
Stress signals

Only a few declared indicators of the Punjab & Maharashtra Cooperative Bank (PMC) signalled bank failure, before the RBI placed restrictions on the bank. A closer look at PMC's lending portfolio might have highlighted the trouble earlier

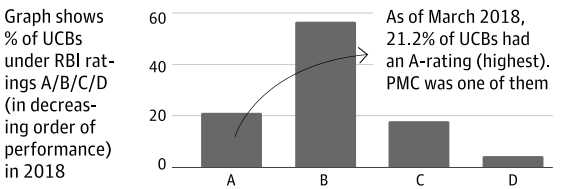
**CAPITAL POSITION** | A key indicator of a bank's health is its capital position, especially its capital-to-risk weighted assets ratio (CRAR) that measures the bank's exposure to riskier loans. The RBI has mandated that banks must maintain CRAR >9%. Among the 54 Urban Cooperative Banks (UCBs), three had a negative CRAR. Among the rest, except for one bank (shown in the graph), the others had a CRAR above the mandated limit



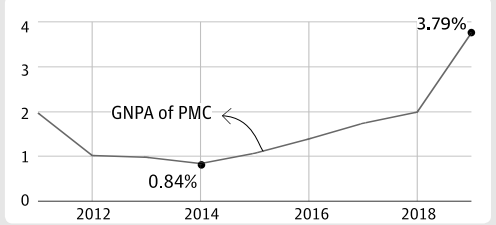
**Profitability** | Bank profitability, another key indicator, is gauged by measuring a bank's Return on Assets (net income by total assets). An RoA of >=1% is considered good. PMC had an RoA of a decent 0.89% as of March 31, 2018. Six of the 54 UCBs had a negative RoA (not seen in graph), while 33 of them had RoA between 0 and 1%. As of March 31, 2019, PMC's RoA fell to 0.75%, a sharp but not an alarming drop



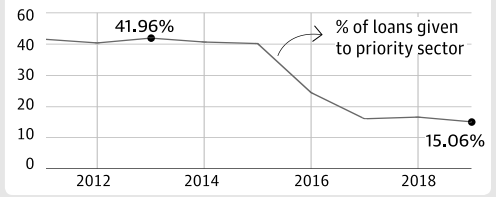
**ONE AMONG THE BEST** | The central bank measures the financial robustness of UCBs using a ratings system which takes into account indicators such as CRAR, net NPAs to total advances, RoAs, liquid-assets to total-assets, and cost to income



**ASSET QUALITY WORSENERD** | The Gross Non-Performing Assets (GNPA) of PMC suddenly peaked in March 31, 2019. It rose to 3.79%, a level not seen in the past decade. The GNPA's are essentially bad loans which the borrower is not in a position to repay at the moment. The banks are forced to set aside a part of their profits as "provisions", a reason why RoA dropped in 2019



**A CHANGE IN LENDING PORTFOLIO** | The PMC's credit portfolio changed dramatically over the last two years. Until 2015, more than 40% of its loans were provided to priority sectors such as agriculture, MSME, education and housing. But after that it reduced and was just over 15% in 2019



**LAST WORD** | The PMC's vital indicators did not point to major trouble until the RBI placed restrictions. A hard look at a surge in bad loans combined with a quick shift towards non-priority sectors could have provided an early hint of the problem

Compiled by Vignesh Radhakrishnan; Source: RBI reports, notifications and statistical returns; and PMC bank's annual reports

FROM THE READERS' EDITOR

Dialogue to bridge divides

Two editorial meetings a month will be opened up to readers in order to expand conversations and build trust



A.S. PANNEERSELVAM

In response to my column, "Breaking silos, regaining trust" (September 30, 2019), a media scholar presented a counterargument. He cited Christine Schmidt's article, "The business case for listening to your audience is still murky (but early results are promising)" in the Nieman Journalism Lab. The thrust of the article is that though newsrooms have increased their levels of engagement with readers, this has not yet yielded results in terms of revenue. The report was based on a study titled "Learning to Listen: Building a culture of engagement in newsrooms" by the Lenfest Institute which is working towards new business models, innovations and diverse audiences for public-benefit journalism. His question was, why should *The Hindu* pursue an idea whose efficacy is yet to be proven?

The idea of constant dialogue did not flow from the fact that the business model is broken; it stemmed from a fundamental concern about the rupture of the public sphere and the corrosive power of disinformation. I draw inspiration from my alma mater, the Reuters Institute for the Study in Journalism (RISJ) at the University of Oxford, which re-defined its mission earlier this year as "exploring the future of journalism worldwide through debate, engagement, and research". According to Rasmus Kleis Nielsen, Director of RISJ, the change in mission was premised on three things: "(1) we don't want to fight yesterday's battles, but will look toward the future, (2) we don't know what that future looks like, or should look like, so we want to explore it by all means available, and (3) we don't believe anyone can succeed on this journey on their own, so we will focus on collaboration and conversation."

Waging a perception battle

*The Hindu's* Open House has gained momentum because it was the first realisation that in this era of digital disruption, the news media has to wage perception battles in addition to being a carrier of credible news. Face-to-face interactions allow readers to give feedback and suggestions to the editorial team. The Open House also provides an opportunity to explain to readers how decisions are taken in the newsroom. Some of the imaginary tropes created by the virtual

world are countered in these encounters, sometimes to the full satisfaction and sometimes to the partial satisfaction of the participants.

Explaining the craft of journalism

A weekly section called 'Notebook', which is published on the op-ed page, is an attempt by journalists to explain their work; write about the challenges they face, the ethics that govern their work, their dilemmas and their vulnerabilities; and, above all, talk of the sense of satisfaction of informing people. This section resonates well with the readers as reporters display their humility and frailty. It fails to touch minds and hearts the moment journalists begin to pontificate.

Sobhana K. Nair, in "Turning the tables: when respondents ask reporters questions" (July 7, 2019), writes about a dilemma that journalists grapple with during election time. Some of the questions she poses in that short piece are reflective of our troubled times. Ramya Kannan's recollection, "That one phone call" (March 15, 2017), is a poignant reminder that there is a human element in the interactions between journalists and citizens; such relationships cannot be treated as purely cold, professional exchanges of information. Mohit M. Rao's "Covering a tragedy with empathy" (February 19, 2019) explores the tricky question of how to cover tragedies. He asks some pressing questions that haunt responsible journalists: "When does the quest for details become an intrusion into moments of grief? How do we move beyond basic facts and provide a human face to a tragedy in a sensitive manner?" In a sense, 'Notebook' exemplifies the newspaper's commitment to transparency and explains the craft of journalism to our readers.

A new initiative

Moving beyond Open Houses and the 'Notebook' section, the Editor of this newspaper has decided to open up two crucial daily meetings a month to our readers. The first will be the noon editorial meeting during which senior editors discuss the important issues for the day. The second will be the evening news meeting during which they decide what to publish that day and how. From this November, on the first Tuesday of the month, five readers will be invited to attend the noon meeting and five to the evening meeting. Since the idea is to break out of the comfort zone, the Readers' Editor's office will ensure that readers who are sceptical about the newspaper's editorial processes are part of this dialogue.

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The Hindu

FROM THE ARCHIVES

FIFTY YEARS AGO OCTOBER 7, 1969

Pakistan's 'musical chairs' diplomacy

In his address to the U.N. General Assembly last week, the leader of the Pakistan delegation claimed with considerable pride that his country was perhaps the only one at present with the unique distinction of having friendly relations with the United States, the Soviet Union and China, without prejudice to its basic national interest. No other country, whether Communist or non-Communist, aligned or non-aligned, has been able to score this hat-trick in present-day international diplomacy. And with all its lofty ideals and passionate faith in peaceful co-existence, India could not perform such a balancing act even during the heyday of Panch Sheel. With elemental commonsense and outright opportunism, Pakistan has been able to play one Big Power against another to extract the maximum benefit to itself by taking full advantage of the changing power patterns on the international scene. Both Ayub Khan and Yahya Khan have practised the art of double-think, double-talk and double-dealing with consummate skill - and with a calculated display of recklessness to bamboozle their friends and foes alike. For the time being, at any rate, this "musical chairs" diplomacy seems to be paying quite good dividends to Pakistan with Washington, Moscow and Peking openly competing for its friendship.

A HUNDRED YEARS AGO OCTOBER 7, 1919.

Mr. Gandhi's Papers.

Bombay, October 7. – The Office of the weekly paper "Young India" edited by Mr. M.K. Gandhi has been transferred from Bombay to Ahmedabad City. A press has been purchased at Ahmedabad where Mr. Gandhi's new Guzrati weekly paper "Navajivan" and also the "Young India" will be printed. Before the District Magistrate of Ahmedabad Mr. Shankarlal, banker, declared himself as keeper of the press and printer and Messrs. Indulal Yajuiik and Mahadev H. Desai as publisher of the "Navajivan" and "Young India" respectively. The Magistrate has dispensed with security in each case. Mr. Gandhi writes in the "Navajivan" thanking for messages of congratulations he received from all quarters on his birthday. He would have been pleased, he says, if the money spent on letters and telegrams were devoted towards purchasing cloth for the indigent and feeding the poor. He says he appreciated discriminating and wise affection and not blind affection.