

Mobs and magistrates must be on different sides

Nitin Pai

M F Hussain painted Hindu goddesses in the nude in the early 1970s. The paintings did not become controversial until 1996. It took people 26 years to take offence. That's unusually long as far as the business of taking offence—spontaneous or organised—goes. Hussain, into his 80s then, was already a public figure, and his works were famous long before they became offensive. That his paintings should provoke police complaints and criminal proceedings so long after the offence begs the question what happened in those 26 years to change the way people viewed his art.

In a breath: Salman Rushdie. When India, under the Rajiv Gandhi government, became the first country to ban *Satanic Verses*, it breathed life into the demon of competitive intolerance that now haunts contemporary Indian society. No artist, no writer, no actor and no scholar, no matter how obscure, is free from the risk that someone or the other would take offence. Not only does the offending artist risk being put behind bars, there is a risk of physical violence by self-appointed defenders of public morality. To be sure, the statutes that allow the government to ban books and movies have existed since British times—and indeed, are a relic of the British raj which sought to impose both Victorian mores and colonial rule to suppress its Indian subjects. But before *Satanic Verses*, they were largely used to hide the government's and politicians' dirty linen. Now they are even being used to ban the *Santa and Banta Joke Book*.

The banning of *Satanic Verses* sent a clear signal to all that religion could be

used, very conveniently, to suppress freedom of expression. In India's political culture—since dominated by weak and infirm governments—the power to deny fast became the currency of power (ergo, the common *minimum* programme).

And what better way to demonstrate political clout than by gathering up a mob organised around chauvinisms of various kinds? Competitive intolerance has reached a head under the current UPA government. It has on the one hand routinely succumbed to the intolerant, thereby increasingly their numbers. On the other, it has failed miserably to ensure the security of the victims of intolerance, such as Taslima Nasreen, M F Hussain and Chandramohan Srilamantula. (Victims they are, even if they are no saints. They need not be. And if the charge against them is that they court controversy to sell their wares, then isn't it better we prevent our taxes from being used as marketing expenses?)

It is a commonplace argument—pervading both the corridors of power and middle class drawing rooms—that India needs a balance between freedom of expression and maintenance of law and order. It is even enshrined in our laws—the government can censor, impose bans and even arrest people for offending others. But the fact is that the balance has always come at the cost of freedom of expression, especially in recent times. Writers usually suffer, while rioters often get away.

In any society, it is not hard to find intolerant people who wish to impose their chosen intolerance on the rest. The trouble is, in India, laws give license to

such individuals and groups. Flaunting intolerance has become a symbol of demonstrating political clout, because it is so easy to do. Everyone gets into the act and a lot of time, energy and money is wasted in issuing warrants, passing resolutions and yes, in publishing condemnations. The state itself—and increasingly under the UPA government—has, in addition to caving in to intolerance, frequently indulged in unnecessary conscience-keeping that is at once laughable and abominable.

Raj Thackeray obviously know this. His recent invective against 'North Indians' living in Maharashtra is only the latest escalation in a grand arms race being played out across the length and breadth of the country. If the political system rewards those who mobilise people along parochial lines, the popular media obfuscates divide-and-rule politics by wrapping it in the language of vote-banks, secularism and social justice. So the juggernaut of competitive intolerance rolls on, unchecked.

So doesn't this mean that we need curbs on freedom of speech? Couldn't much of the violence been prevented if Raj Thackeray's party magazine had simply been banned and television news channels censored?

Not quite. Newspaper reports and incessant coverage by television channels only brought the drama into our drawing rooms. But the banning of its house publication would not have deterred Mr Thackeray's *sena* in its mission, for the action channel for political mobilisation and street violence works independently.

On the contrary, laws abridging freedom of speech have created incentives for the political use of intolerance. It is, of course, possible to make a perfectly reasonable case that free speech is a

fundamental human right, non-negotiable and India can never be said to be completely free until all constitutional and legal impediments to free speech are dismantled. However, since much of the justification for constitutional and legal curbs on the freedom of expression is due to arguments of 'public interest and welfare', it is important to examine whether those assumptions are valid.

Like in any arms race, there are two stable states in the game of competitive intolerance: first, when no player is intolerant; and second, when every player is intolerant. The first option is not available to India, for a lot of water has already flowed under the bridge. Unsurprisingly, as borne out by current events, we are rushing headlong towards the second.

In other words, once the intolerant among us realised that there were positive returns to be had for their intolerance, the arms race accelerated. In fact, the argument for 'balance' was lost the moment this race started, for every escalation is uniformly an assault on freedom of expression. India has travelled a long way from banning the *Satanic Verses* to the (possible) banning the forwarding of Sardarji jokes by SMS.

A few months ago, *The Economist* had a report on Oxford Union's decision to invite a white supremacist politician and a Nazi apologist for a debate. This, naturally, attracted a lot of opposition. "On balance", it wrote, "the Oxford Union members who had voted to stage the debate had a better case. Free speech, they argued, is like a muscle which needs to be exercised to remain useful; the extremes of its terrain must be staked out to stop it shrinking. That seems a better attitude than Austria's, which by imprisoning (holocaust revisionist scholar David Irving) boosted

his notoriety (and his appeal to the Oxford Union). It is also preferable to that of the British government, which pursues the impossible goal of protecting the feelings of Muslims, gays and other groups who officially loathe each other.”

It stands to reason, as *The Economist* argues, that attempting to protect everyone from being offended is futile. In fact it is becoming clear that violence will continue to the extent that the violent know there is space to get the government to do their bidding.

The ‘balance’ argument fails not merely at an intellectual-philosophical level, but on the ground. It works this way: Faced with a choice between taking ‘action’ against an offending writer or facing down a mob of rioters, it is likely that a rational government official—from district magistrate to home minister—will choose the former. It works this way because the government official has the choice. This choice offers those charged with maintaining law and order a

convenient escape route. The Maharashtra state government, for instance, could pretend to be taking ‘action’ by arresting Mr Thackeray and Abu Azmi for their incendiary speeches, after the damage had been done.

The only way to maintain law and order is to bring the violent to justice. But after the drama of Mr Thackeray’s arrest, the Maharashtra state government is unlikely to pursue the task of going after the thugs and their local leaders with any seriousness.

The upshot is that doing away with restraints to freedom of expression is not merely a matter of principle. Because those restraints often come at the cost of leaving criminals unpunished, getting rid of them is a practical necessity.

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