

OPINION

What self-styled nationalists could learn from the Hindu Right's own past record on free speech

Here's a reality check: Syama Prasad Mookerjee and NC Chatterjee drew unapologetically upon a Western liberal tradition while making a strong case for the right to free speech.

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Published Jan 27, 2016 · 05:30 pm



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Last week, senior journalist Siddharth Varadrajan was “**held hostage for around half an hour**” inside the office of the Allahabad University vice chancellor by Akhil Bharatiya Vidyarthi Parishad. He was not allowed to address a symposium, following protests that charged him of being “pro-naxal” and his ideas as “anti-nationalist”.

One might add this to a long list of ways in which the Hindu right has responded to inconvenient or inoffensive speech in recent years: legal action, the threat of legal action, political lobbying,

protests, boycotts, physical violence of all kinds. In pointing this out, one should not forget that all but the last are perfectly legal, and that the Right hardly has a monopoly on their use. But their deployment certainly does not suggest an ideological commitment to free speech as such:

Subramanian Swamy is an interesting, ambiguous, exception.

It was not always thus: in the 1950s, the Hindu right played an important role in the development of Indian free speech doctrine, and in political activism to highlight its importance. Interestingly, it articulated this importance in the language of the Western liberal tradition. Those on the Hindu right today who equate being “pro-naxal” with being “anti-national” might be interested to learn that in the 1950s at least some of their ideological forebears explicitly defended the free speech rights of communists, and allied with them in the common cause of defending civil liberties, regardless of party-political affiliation or ideology.

Background

The most visible legal challenge by the Hindu right to restrictions on speech came from the *Organiser* in a case called ***Brij Bhushan and another vs. State of Delhi*** (the “another” was its editor, KR Malkani; Brij Bhushan was its printer and publisher). The case was decided in May 1950, along with a case involving a magazine called *CrossRoads*, explicitly communist in its sympathies, founded and edited by Romesh Thapar – later founder-editor of *Seminar*, brother of Romila Thapar. Because the Court’s reasoning in *Brij Bhushan* was an application of its decision in ***Romesh Thapar vs. State of Madras*** (often known as the *CrossRoads* case), the *Organiser* case is not much studied, even by lawyers. But its story is worth an independent retelling.

In order to understand that story, one must begin with an incident in 1949 in Khulna district of what was then East Pakistan. A police squad had gone to a village called Kalshira to arrest suspected communists. While it did not find any communists, it was alleged to have mistreated women in what was a predominantly Hindu village. This led to a clash with the villagers in which two policemen were killed. A larger party of police, along with a militia aided by local Muslims, retaliated by destroying houses and assaulting villagers in the area.

Some of these villagers then escaped to West Bengal, carrying with them accounts of harassment and violence. The recounting of Muslim violence in East Bengal led to anti-Muslim riots in early February, allegedly fomented by the Hindu Mahasabha. These in turn led to the migration of Muslims out of West Bengal to East Pakistan, and a fresh cycle of anti-Hindu riots in Dhaka, followed by further migration to West Bengal. In August 1950 the Government of India claimed that between February 7 and April 8, 1950, over eight lakh Hindus had left East Pakistan for India, and over three lakh Muslims had left in the reverse direction.

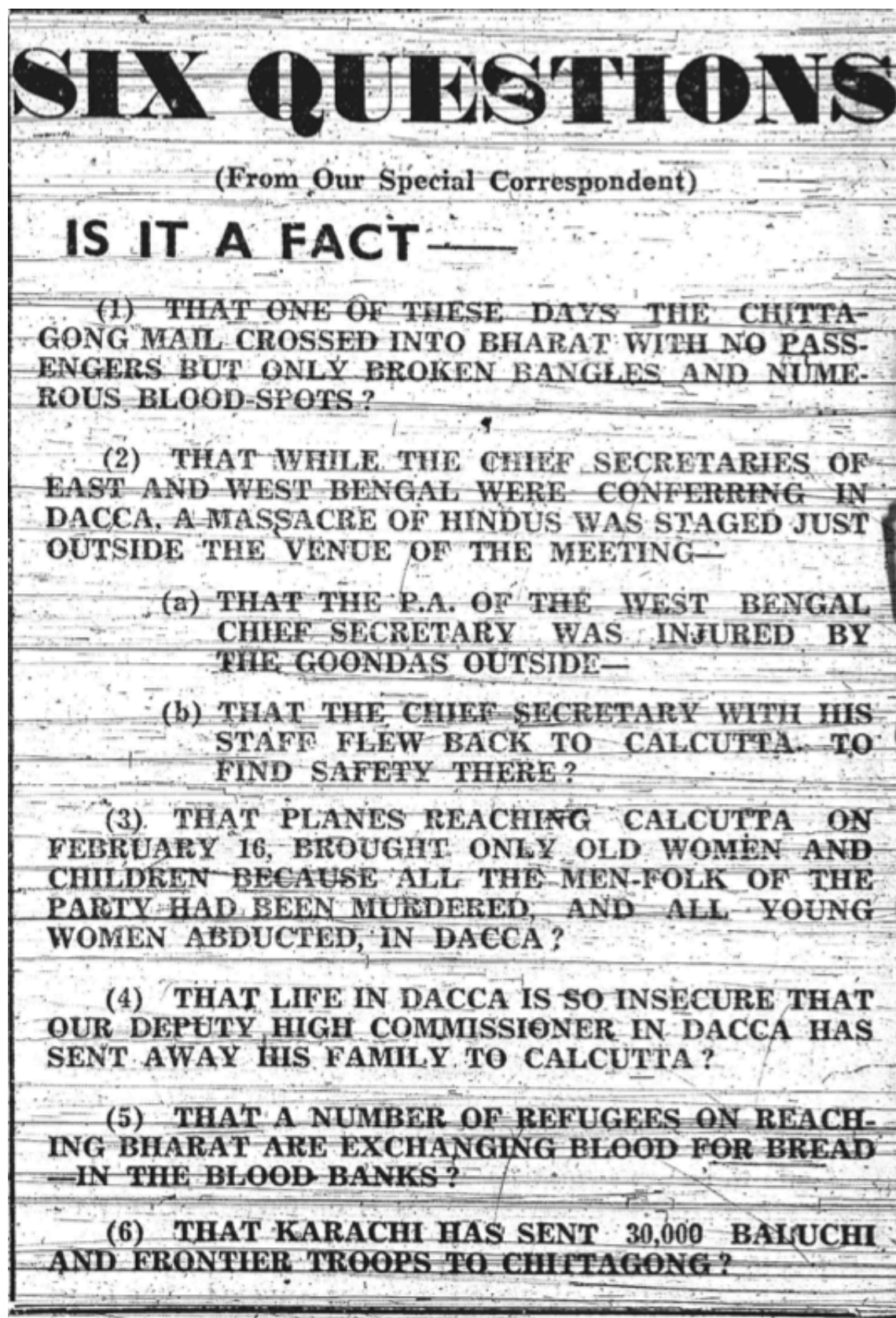
As Srinath Raghavan points out in his wonderful book, *War and Peace in Modern India*,

Jawaharlal Nehru faced enormous pressure from within his party, as well as the country as a whole, to take “strong steps” in response to the situation in East Pakistan – including the possibility of going to war if necessary, or if not, to force a transfer of populations between the two countries, accompanied by an exchange of land. Nehru was opposed to war for a number of reasons, though he did not rule it out: while he was confident of the prospects of a military victory, he thought it would be disastrous from the point of view of protecting the rights of Hindu minorities in Pakistan, who would face the brunt of retaliatory violence. He also argued that India’s responsibilities towards protecting Muslims in India did not diminish with Pakistan’s treatment of Hindus in its territory.

In the end, after a great deal of diplomacy as well as some military manoeuvring, he persuaded his Pakistani counterpart, Liaquat Ali Khan, to sign a joint declaration in April, affirming a joint intention to protect minorities, restore communal harmony, and provide help both to migrants and refugees who wished to return. The Nehru-Liaquat Pact was seen as unsatisfactory by some of Nehru’s opponents like Syama Prasad Mookerjee, who resigned from the Cabinet in protest.

The *Organiser* case

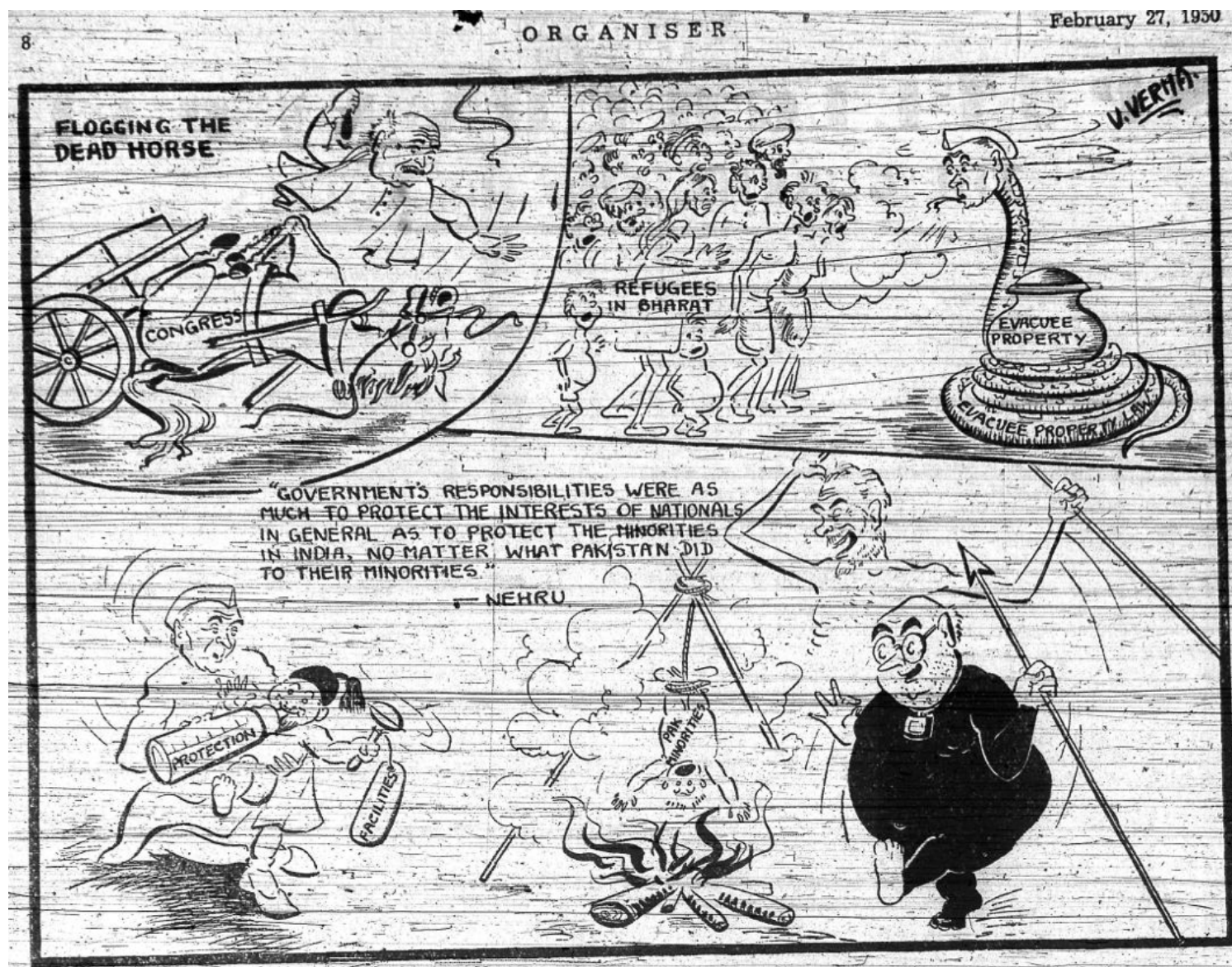
It was in this atmosphere of calls to war with Pakistan and violence against Muslims in West Bengal that the *Organiser* published, on February 27 1950, a front-page article entitled “Six Questions.”



Another article, “Villains versus Fools,” criticised the government for wanting to administer claims to Muslim evacuee property on an individual basis rather than disburse it to the most needy Hindu refugees. It proceeded to question Muslim loyalty more generally:

“it is easier for a camel to pass through the needle’s eye than for a Leaguer to be loyal to

Bharat. Wolves in sheep-skin are Wolves all the same.”



Malkani was called to explain himself to the Central Press Advisory Committee for these three articles. He protested in an editorial two weeks later:

We owe it to the public to lay before it official acts of harassment of the press for publication of undisputed facts in a manner which has not disturbed, and is not likely to endanger, the public peace. To threaten the liberty of the press for the sole offence of non-conformity to official view in each and every matter, may be a handy tool for tyrants but only a crippling curtailment of civil liberties in a free democracy.

In March Malkani was served with a “pre-censorship” order under the East Punjab Public Safety Act, 1949, requiring him to submit all “communal matter and news and views about Pakistan” for prior scrutiny before publication. He published the order in the March 13 issue of *Organiser*, writing

Facts are sacred. To withhold their publication because they are unpalatable would be to play false to Truth. If the administration earnestly wants ugly facts not to appear in the press, the only right and honest course for it is effectively to exert itself for the non-occurrence of such brutal facts.

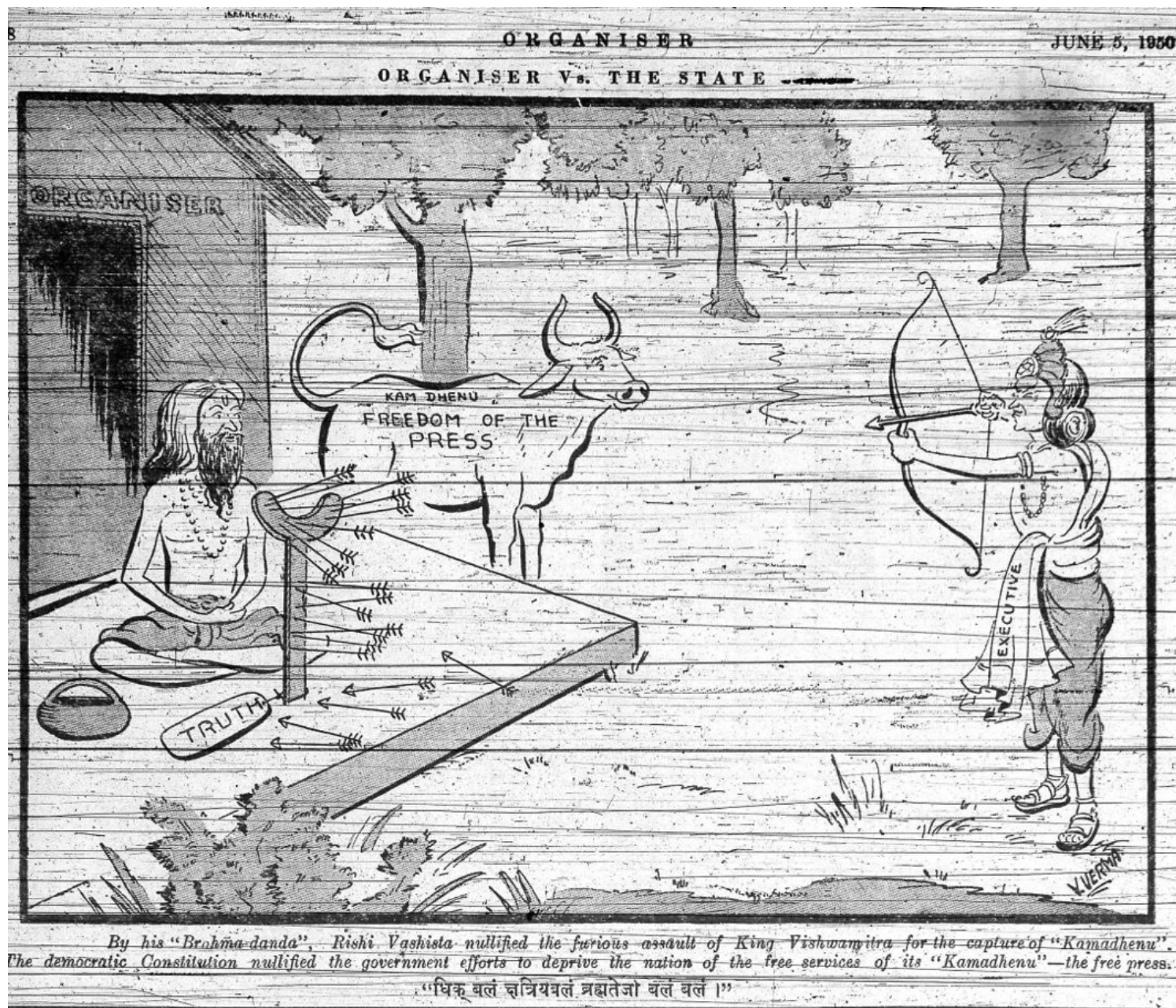
On April 17 the *Organiser* announced that it was challenging the constitutionality of the East Punjab Public Safety Act in the “Supreme Court of Bharat.” A great part of its issue of May 1 was devoted to the case, including a transcription of the oral arguments before the Court. Finally on June 5, it announced on its front page news of “A Great Event”: the Court had declared the relevant section of the East Punjab Public Safety Act unconstitutional. Malkani wrote triumphantly

After a gruelling three months subjection to the galling orders of an over-reaching executive we once again breath[e] the air of freedom. Our felicity is heightened by the fact that the freedom achieved is for the whole nation and not a mere personal salvation. For our freedom marks the guaranteeing of the freedom of the entire press of the Nation. Generations yet unborn will look upon this decision as the corner stone of the arch of liberty for the people no less than for their press. For the press it is a veritable Magna Carta under whose provisions it can go from strength to strength in an empyrean of liberty. We have no words to congratulate the Supreme Court for its supreme sense of duty to uphold the spirit of our Democratic Republican Constitution. We thank them not only on behalf of ourselves but on behalf of the entire national Press of Bharat.

He concluded with a reference to *CrossRoads* – the first time either of these journals had acknowledged the other’s role in the legal battle for press freedom:

[D]emocracy lives by a free press. The free press is the first casualty of fascist regimes the world over. Democracy lives, so long as press lives to inform, instruct, and organise public opinion. If free press goes democracy too goes even as the day passes with the setting of the sun. That we and our Bombay contemporary should have been the vehicle of this democratic dispensation to the national press is a source of gratification to us.

The *Organiser*’s cartoonist put the matter somewhat differently:



Five takeaways

The *Organiser* and *CrossRoads* cases were followed by a number of High Court judgements across the country invalidating various speech-restrictive laws, including the sedition clause of the Indian Penal Code. The Government reacted by enacting the First Amendment to the Indian Constitution, which reinstated these laws and weakened the constitutional free speech protections guaranteed in Article 19. In the debates around the Amendment, it was Syama Prasad Mookerjee who articulated most clearly the liberal case in favour of protecting free speech.

These events hold at least five lessons for the present. First, one can exercise constitutional rights in ways that are unwise or even morally dubious. I am not sure whether or not *Brij Bhushan* and *CrossRoads* were decided correctly – indeed, I think pre-censorship of the *Organiser* was not

unreasonable in the circumstances. But even if I was convinced of the *Organiser's* constitutional case, I see no reason to celebrate its front-page first-personal reports of Muslim violence in East Pakistan in a communally charged atmosphere, its frankly articulated suspicion of Muslim loyalty, or the general war-mongering of the right-wing press at the time.

Second, the free-speech defence offered by the *Organiser* were not sectarian in spirit (“the freedom achieved is for the whole nation and not a mere personal salvation”). The *Organiser's* lawyer was NC Chatterjee, a Vice-President of the Hindu Mahasabha, but also a member of the Calcutta-based Civil Liberties Committee, set up to defend Communists in the wake of their suppression by the BC Roy government in the 1940s. Indeed, he was actively involved in civil liberties work defending communists throughout his career, and his son Somnath – with his blessings – was later to become a distinguished member of the Communist Party of India (Marxist), as well as Speaker of the Lok Sabha. There is no question that he would have regarded the charge of being a “Naxal” or a “Naxal-supporter” as a reason to *defend* their civil liberties rather than take them away.

Similarly, in reading Syama Prasad Mookerjee's impassioned defences of free speech in the Parliamentary debates around the First Amendment, one cannot help thinking that he would be appalled that those who claim to be his heirs should prosecute someone like Arundhati Roy for sedition in a **speech about Kashmir**. (He might have disagreed with what she said, but I think he would have defended her right to say it).

Third, despite *Organiser's* invocation of Rishi Vashista, the free-speech arguments made by Chatterjee and Mookerjee in Court, in Parliament, and in public, drew unapologetically upon a Western liberal tradition. Indeed, both Mookerjee and Chatterjee were office-bearers of the All-India Civil Liberties Council, which had ties with the International League for the Rights of Man. So much for contemporary fears of “foreign influence”, of either organisations or ideologies! My guess – pending further investigation – is that they would have been mystified that the term “liberal” is currently a term of abuse by the Hindu right.

Fourth, the positions adopted by the parties involved at the time don't align easily with those of their present-day appropriators. It would be easy for the Hindu right today to blame Nehru for the suppression of speech during this period, but it was **Patel as home minister** who was concerned that the *Organiser* and *CrossRoads* judgements would prevent the government from taking action against Syama Prasad Mookerjee for his speeches on Kashmir, and Ambedkar as law minister who made the strongest case for amending the Constitution to reduce free speech protections.

Finally, this episode should make us wonder whether we are well-served by dividing the

contemporary political world into neat, oppositional categories, with “bhakts” and “chaddiwalas” at one end, “libtards” and “sickularists” at the other. There is no question that Mookerjee and Chatterjee were Hindu nationalists, but their relationship to Hindu nationalism was complex: Mookerjee resigned from the Hindu Mahasabha because he felt that Hindus didn’t need a separate political body after Partition and was appalled by the anti-Muslim violence in Calcutta; Chatterjee joined Gandhi at Noakhali, grew disaffected with the Mahasabha after Gandhi’s assassination, and flirted electorally with the Communists for a time.

But I suspect that a certain kind of liberalism – perhaps of a kind unfamiliar in post-Independence India – also ran deep within them. How freeing it would be if our political imagination, and our political vocabulary, had space for figures who exhibit such complexities today.

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