

The point and the counter point: JNU slogans

*[I received many rejoinders to my article (blog post) titled “Spreading Confusion through JNU issue”. Below are given two responses from **Mr. Bharat Suri** in full, with his permission. My comments are included in the text—in red colour.*

I am writing within the text because of lack of time. And uploading the pdf file because do not know how to use highlighting and font colours on the blog; don't even know if it is possible.]

Bharat Suri Thanks Richa, definitely important to engage with the issues brought out by this piece, and although I agree with Shruti entirely about the legality of the current issue, the moral predicament Dhankar **rakes up** could go on to decide the future of sedition law in the country, and therefore must be thrashed out. While I agree that laws of sedition are archaic, I am not entirely sure whether they can be entirely removed in India at the moment, for while the passions run far too high, and sentiment hurt at the drop of a hat on the one hand --- making a case for sedition laws to be removed --- speech and acts are used in hurtful manners deliberately in order to incite tempers, if not violence, on the other --- making a case, at the very least, for a diluted form of hate speech law, if not sedition, that does not allow such comments to be made, at least in public. This last word is interesting, we'll come to it.

As things stand, like Shruti mentions, with respect to the context of this case sedition should not have been charged, especially if only on the basis of video evidence appearing after the fact that in fact shows no (physical) violence taking place --- when we know very well the police was there on the 9th and made no arrests, unfathomable why they had to three days after the fact, inexcusable.

Now taking a general situation and not this particular one I had some conceptual issues with respect to the role of the state in what Dhankar says:

"the oppressed as well as their supporters, should know that declaration of armed struggle is breakdown of the constitutional system and declaration of **was** [war] on the nation. It is a declaration that we no more accept the constitution, that it has failed, that we are not bound by it. Once you do that, talk of 'constitutional right for armed struggle' is imbecile talk. Therefore, support of armed struggle and remaining within the constitutional limits is contradictory. Those who want to support armed struggle should know that they are declaring the constitution useless, they have no constitutional right to support armed struggle to break the country. And they should know that there are people who still have confidence in the democracy and the constitutions; therefore, the state has the duty to protect these citizens. Conclusion that a democracy will fight back tooth and nail does not require much brains. Declaration of war will get what it wants: a war."

[Most of these questions are matters of detail. And will hardly effect the position taken in principle.] At which exact point does the state enter? [When struggle breaks out.] When does speech about an 'armed struggle' become a 'declaration' of armed struggle, or do we make no distinction between speech and declaration? [I don't say that at all. I am talking of declaration, meaning having firm evidence of initiated action as well.] What constitutes 'declaration' --- does declaring this to my friends in my house (privately) with no actual plans for carrying out an armed struggle also constitute a declaration of armed struggle? [No one said that. But if a war is going on and you declare to your friends that you want to join it or want to start supporting in material terms; then you need to be **watched**.] Does that mean I become enemy of the state? [Not by declaration in this case, but by joining or sending money to buy arms or sending arms, you do.] What if I am sitting in a classroom of my publicly funded university and discussing with my teacher, trying to convince her that we should take down the state --- is that unconstitutional? [Why should it be? Who said that? This is another confusion: a slogan is not a discussion. Most often, though not always, a slogan communicates either warning, or intention or support.] Do I become enemy of the state numero uno in this case? [No one said that. No you do not. Also, this kind of rhetorical question hardly constitutes any argument.] Who decides, and how do they, where private ends and public begins, what is incitement what is not? [Public means where the audience is not selected and everyone is welcome to listen if not to participate. Your this comment is public; if it were an email it could have

been private. Situations like a seminar and students' meeting in a university restricts audience in a certain sense but not for the purpose of keeping the ideas from generally being known or being spread; the reasons for restriction are elsewhere. So they are public, and not private. I am not sure what the legal definition of public is, but it is not a hard question at all.]

The larger question --- does my support, through my feelings or thoughts or speech of an armed struggle automatically mean that for me the constitution is useless, and do I cease to remain a citizen for the state? [This looks like asking a question to divert attention from the issue. This question does not arise in any interpretation of my article. Feelings and thoughts on side, and speech on the other are not the same. I never said in my article that even when a person starts an armed struggle s/he ceases to be a citizen. All I said is that s/he has abandoned constitution, and talking of constitutional 'right to armed struggle' is a contradiction.] If I lose my temper and call for bringing down the state on a mic, in a public park, the state will arrest me? I expected my state to be far more mature than that, maybe I am wrong. [Irrelevant. We all want our state to be mature. I even want it to be even somewhat affectionate and indulgent.]

When he himself admits "that it is possible that oppression, atrocities and injustice to a section of people may reach a level when those people come to the conclusion that the armed struggle is the only means left." and calls it a "a

shameful situation for a democracy", but then goes on to defend the state's action to protect 'its' declared citizens --- is he not condoning the wrongful actions of the state???

[No. Only admitting a catch 22 situation, and also admitting no morally defensible solution is available if the oppressed groups **feeling are based on reasonable assessment of the situation**. The state must change at that time. This may happen through peaceful attempts of the citizens or it may have to be done through overthrow, armed one. But in the second option talk of constitution is simply meaning less. This is what I mean.] So 'democracy' created this terrible "misfortune for the people", and because the state has the guns and the mass media mouthpieces the only people who are 'enemies' are those who have NO OPTION (according to Dhankar's own admission) [Not true. My explanation above. I have not talked about enemies and friends.] but to declare an armed-struggle and may be imprisoned for life only because they had "no means left"? [This is what is termed as shameful for one and terrible misfortune for the other. If someone has a solution to this moral dilemma, please let me know. If one picks up arms for what s/he **thinks** is a just cause and picking-up arms was unavoidable; and kills, say, 10 people. The state and the majority of the citizens **thinks** that either the cause was unjust or there were other alternatives; I do not know whether you would like to leave that person free. I will not. And find no moral justification to do so.] Is such a position defensible? [Yes, if the feeling of disaffection is **not based on genuine causes**. No. if the feeling is **based on genuine causes**; but somehow the majority citizens and the state fail to see it's genuinely. But

it may have to be accepted if one does not want to pay the terrible cost of overthrowing everything and recreating the state and constitution all-over again: that is revolution. So one can say: choose between a revolution and compromise which involves injustice for some time, but may give a chance to less costly solution in near future. It is the situation of devil and the deep sea. As I said, I would like to know if someone has a better solution.]

Is that not the biggest contradiction, travesty facing a democratic society purporting to be socially just, contrary to what Dhankar is alluding to? [In the second case above in my comments: Yes, it is. Such a situation is a logical possibility. However, at present that does not seem to be the situation to me in the Indian democracy.] Is that not a specious argument? [No. Not at all. If one reads my responses to your questions. You imagined your questions well, but unfortunately also seem to have imagined their answers to suit your predetermined conclusion. Try again with my answers now. If you have a solution that is more logical and less costly to the oppressed sections of the citizens, please spell out.] He accuses others of confusing and obfuscating --- but did he think to ask what he is doing himself? [Yes, thought and asked. And the answers are provided above.]

No speech or act or practice can be looked at independent of its context, that is what the courts will look at, that is how we must determine morality, or even nationality --- every single day, with each of our acts. [I do not know why this profound (or banal!) principle is quoted here. I

nowhere argued to discount the context. However, would argue against confusing and logically untenable use of context, like the above mentioned explanation of the slogans. However, this principle may not be true regarding morality, but that is not the issue here.]

Mr. Bharat Suri's second response:

At the outset, I want to thank you for taking the trouble to respond to my comments in such detail, with such depth, and for foregrounding the real stakes of the events that unfolded at JNU. Yours is one of the few voices of reason that seems genuinely non-partisan whilst equally scathing in critique to all sides. You have raised questions that all of us must critically engage with, and doubtless I have learnt a lot from reflecting on them.

With respect to my comments, firstly, I would like to mention that the rhetorical questions posed were not meant to obfuscate, but in fact for bringing to light, through examples, how changing of context changes the applicability and interpretation of law and has a bearing on determination of criminality (this was a reaction not so much to your arguments rather against those of the self-proclaimed 'real' patriots who have declared the sloganeers 'traitors' or 'terrorists' guilty of sedition based on the bare act of the constitution without appreciating the history of the enactment of the law and the precedent set by the courts --- you are surely aware of such persons and pieces of writing).

Also, as it was not clear in your post what you meant by 'declaration' such explication of 'context' was necessary. Thank you for the clarification. For me another confusion (or obfuscation) is brought up when you state that "a slogan is not a discussion" (which, obviously, is something that is not debatable), because a slogan, while not a discussion, cannot automatically be construed as a 'declaration of armed struggle' in the terms you define 'declaration'. Certain conditions have to be met for a slogan to be seditious (or such declaration), and this includes incitement to 'imminent' violence. The precedent set by the courts clearly adds this temporal dimension to speech and its consequent action; there should be no temporal disjuncture between word and effect, in other words. Using JNU's example: chanting of "Bharat ki barbaadi tak jang rahegi", "bharat ke sau tukde" as part of a heated sloganeering competition between two parties that did not eventually lead to violence (No arrest was made on 9th of February, police was there, so I am assuming here that they made a reasonable assessment and concluded there was no danger of imminent violence --- arrests would've surely followed otherwise) cannot be construed as 'declaration of armed struggle', based on the way laws exist, and have been historically interpreted, at the moment. Context is not meant as a tool of obfuscation but explication and comprehension of applicability of law. I never suggested if there is such a 'declaration', or incitement of imminent violence against state, sedition does not apply, that would be rather ignorant, idiotic on my part. That slogans, or shouts of 'jang', in and of themselves cannot be conflated with, or automatically assumed to be, such 'declaration' (of

armed struggle) is my limited argument. The valley is replete with these slogans, and sloganeers, which does not mean all those who chant them have 'declared armed struggle' even though they may ideologically support those materially fighting this struggle, because they want 'azadi' from their privations. [This does not constitute an argument for taking these slogans lightly in Delhi. In valley the Indian state may be helpless or may be taking tolerating them for strategic reasons. That does not mean they should be tolerated in the whole nation.] Should/Can they all be charged with sedition? Again the 'context' of their sloganeering determines this. I don't think the state even has the capacity to prosecute all those who chant such slogans in the valley, in fact the sloganeers and their 'cause' (of separation) are supported by parties that partake in India's political process, which is, of course, not the point.

Does chanting these slogans mean automatic support to the cause of the armed struggle? Yes, if not made out of frustration or provocation. Does this alone meet conditions of sedition? No. Does chanting mean intent to incite violence? Not necessarily, determined by the 'context' --- in the case of JNU, for instance, it does not appear to be so (based on the limited knowledge at our disposal) --- first by the police making the arrest and then the courts. Does chanting also mean material support through money, or picking up arms? No, this is a separate issue and can only be determined through evidence (I am assuming a known militant will not be foolish enough to be caught chanting these slogans).

Of course if there is evidence of plotting overthrow of state, such speech is seditious. Does chanting mean constitution has been rendered useless? From the point of view of the sloganeer, maybe --- comments might be made without intent of inciting violence in order to alert the state to their woes (yes, of course, there are other constitutional means available, but they may have failed, which does not automatically imply that sloganeer is declaring arms struggle by virtue of chanting slogans --- again the difference between speech and effect crucial here). But, from the point of view of the state that has no evidence of material support to armed struggle, nor any real or perceived imminent threat of violence (which of course is only established after the fact), unequivocally no! And this is what your analysis has not brought out in my opinion --- the responsibility of the state toward the alienated but not necessarily lost. [I have argued in one of my earlier blogs that a dialogue should be initiated in such situation. And have nowhere argued that such people should be charged with sedition.] Sloganeers (those who are ideologically and not materially involved) are citizens too, they may feel they have no other option but to shout so as to make the state listen, the state must reason with these sorts of sloganeers. Such a process of dialogue cannot proceed by implicating people under sedition, and will only further alienate them. That is an equally dangerous situation in my opinion. Therefore, can chanting without any such evidence, or intent to incite violence be seditious? Absolutely not.

I appreciate your concern with respect to the dangers of condoning these slogans in the garb of the rhetoric/vitriol

flowing from both sides, please let me state that I am equally concerned, and by no means support the use of such inflammatory words veiled by our right to freedom of speech. But I sincerely feel there is great reason behind the liberal interpretation of our sedition laws --- some of those should have come out above, hopefully.

I hope I have managed to demystify my opinions and you do not still think there are any attempts -- unconscious or otherwise -- at creating confusion or obfuscating. Please feel free to publish rejoinders in full or in part or as you see fit. Thanks, Bharat Suri

Response form Rohit Dhankar

All I would say is as follows:

1. Charging the sloganeers with sedition was never my point. It would be both unjust and stupid to my mind.
2. In one of my earlier blog I have argued for dialogue, moral approbation and social disapproval. **And not legal means** against people shouting such slogans unless there are good reasons supported by other evidence.
3. My problem is the ‘air’ in the discourse created that such slogans can be explained away by swallowing obfuscating explanations like “barbadi” means “withdrawal of Indian state from Kashmir”, “Bharat” means Indian forced, “jang” means only protest. This of taking the slogans lightly will come back to haunt us in many ways.

4. The confusion between 'freedom of speech' and shouting anti-India slogans.
5. The view being subtly communicated that moral support to armed struggle can be seen as justified; and its expression commendable revolutionary act. And material support can be seen as acting within constitution.
6. Mr. Bharat Suri's arguments seem to see these concerns and his concern of repression by the state I fully appreciate.

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