

Of edicts then and now

In a democracy, it is not national pride but freedom of speech that is non-negotiable



PASSING BITE

RUCHIR JOSHI
is a writer, filmmaker and columnist

My parents in their twenties were part of the 'ladhat', as the non-violent Independence movement was called in Gujarat. Non-violence did not always mean proffering yourself to be beaten up by the police, though my parents were involved in that as well. By the early 1940s, the 'ladhat' also meant running clandestine networks, manning safe houses, working secret printing presses, and broadcasting from illegal radio transmitters. In 1942, when Gandhi gave his 'Quit India' call, my mother joined the thousands courting arrest in demonstrations. My father, a little older, had been given some responsibilities in the organisation. As the police crackdown widened after the ar-

rest of the top leadership of the Congress, my father was informed that his name was on the list of arrest warrants. He was ordered to go underground, proceed to a safe house in Mount Abu, and stay there until further orders.

In those days Mount Abu was favoured as a somewhat cool R&R station by British army officers stationed in Gujarat and Rajasthan. In town, a Parsi gentleman ran a solitary cinema showing English films. The evenings hanging heavy, my father took to going to the movies. In terms of spy craft, an anti-Raj activist with an alias watching films surrounded by *angrez* officers might not have been a very good idea. But, while my father believed in the general principle of non-violence, he was not a physical coward, and while none of his contemporaries would have called him a hothead, he did have a temperament that wasn't exactly designed for lying low, and trouble ensued after a few screenings. In those days, every film show was followed by a clip of the fluttering Union Jack accompanied by the British Empire's national anthem, 'God Save the King'. The audience was supposed to stand respectfully as the clip



*K. MURALI KUMAR.

played. My father always refused to stand up for this, and on one occasion a British officer noticed. As my father was leaving, the officer snapped his cane across the path, demanding to know why he hadn't stood up for the anthem. My father kicked the cane out of the way. A ruckus began, only for the Parsi owner to intervene and quickly hustle my father away. "Please!" he said.

"Come and see any film you want, for free! I'll put you in a box by yourself and you don't have to stand up for the anthem. I just don't want any trouble in my hall."

Right to free speech

Arguing in favour of the edict that all Indians must stand for the national anthem in cinema halls, the Additional So-

licitor General, Tushar Mehta, told the court this month that "national pride is non-negotiable". He is wrong. The government of Maharashtra that brought in the adjunct to the already absurd Prevention of Insults to National Honour Act, 1971, is also wrong, and the Supreme Court that upheld this law for the whole country will no doubt soon change its wise mind. For, what is actually non-negotiable under the Constitution and in India's democracy is the fundamental right to free speech and, should I want, that right allows me to express an absence of pride in my country. I don't have the right to stop others from standing up as the national anthem plays, but in a civilian, non-official sphere, neither does anyone else have the right to make me stand for the national anthem.

My parents, and millions of others, did not fight for a country where a person can be beaten up by vigilantes, jailed, or even fined for not standing up for the national anthem. That was the kind of Empire from which they were trying to break free. If I feel the flag is currently being misused by the army or the government, I have a right to not sa-

lute it; if I perceive it as such, I have a right to sit out the static anthem dance of pseudo-patriotism. If I don't want to say "Bharat Mata Ki Jai", or "Jai Hind", or even "Long Live the Secular Republic of India", I'm within my rights to refuse and the law is obliged to protect me. Or it should be.

Given the current atmosphere in parts of the country where all sorts of self-important bullies have nothing better to do than create a fuss if they see someone not standing up for the anthem in a cinema hall, people have been discussing ways to counter the Anthem Edict: enter the hall only after the anthem, walk out for a call of nature just as it starts, stand up but facing away from the screen (the law doesn't specify which direction you have to face), or sing the anthem loudly while saluting, pushing the boundaries of absurdity. Others have simply just stayed seated, ready to take on the consequences. Had my father been alive, I know this is what he would have done. Leave him aside, I'm sure that Gandhi would not have stood up under such draconian pseudo-nationalist orders and neither would have Tagore.

It's a bad law, just dump it

Why won't the government repeal the retrospective tax amendment?



ON THE OTHER HAND

RAGHAVAN SRINIVASAN
is the Editor of The Hindu Business Line

India Inc. doesn't like it. Foreign investors hate it. But the taxman, to steal a phrase from McDonald's, is clearly "lovin' it". Which is why, just when we thought that the fires lit by the retrospective amendment to tax laws had finally been doused by the soothing assurances of Prime Minister Narendra Modi and Finance Minister Arun Jaitley, the Income Tax authorities once again fanned the embers back into the flames this week, by slapping a whopping ₹30,700 crore penalty on Cairn Energy, the erstwhile U.K. parent of India's largest private sector crude oil producer, Cairn India.

This is just the penalty. With the original tax demanded, the total jumps to over ₹40,000 crore, an amount large enough to make governments sit up and take notice. Explanations 4 and 5 to Section 9(I) (i) of the Income-Tax Act, 1961 (Indirect Transfer Provisions), as amended in 2012 – otherwise known as India's infamous "retrospective tax amendment" – is back in business with a bang.

Still in the statute books

That the tax authorities are persisting with their demands – firing off demands to the two high-profile assesses who have run afoul of the retrospective amendment: the Netherlands-based telecom major Vodafone PLC and the U.K.'s Cairn Energy – like clockwork every year is not in itself surprising. The retrospective amendment has made such demands legal. And as Mr. Jaitley himself has admitted candidly, a tax officer who does not pursue a legal demand, that too of such proportions, is liable to get into trouble with the Comptroller and Auditor General of India and with his own internal vigilance department.

No, the issue is not that the tax authorities are persisting with their ef-



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orts to collect the money. The issue is why the retrospective amendment is being allowed to continue in the statute books, that too by a government which has more than once asserted its determination to root out "tax terrorism", and has rolled out the red carpet to foreign investors with its 'Make in India' initiative.

For those who may have forgotten, or been too distracted by more pressing matters of state like Sonu Nigam's tansure, here's a quick recap. Both the Vodafone and Cairn cases involve a transfer of ownership of an Indian entity by way of an overseas transaction involving parties which did not fall under Indian tax jurisdiction. In the Vodafone case, Vodafone International Holdings B.V., a Dutch company, acquired 67% of an Indian company, Hutchinson Essar Limited, by buying 100% stake in CGP Investments (Holdings) Limited, a Cayman Islands-registered company, which owned the Indian assets of Hutchison Essar.

In the Cairn case, the assets held by Cairn India Holdings had to be transferred to a company registered in India, which was done by Cairn India (an Indian entity) buying the entire stake in Cairn India Holdings from Cairn U.K. Holdings.

In both cases, the tax authorities argued that though the deal was between two overseas entities, the shares derived their value from assets held in India, and hence were liable for capital gains tax. The retrospective amendment itself came about after the Supreme Court struck down the demand in the Vodafone case. The gov-

ernment then amended the law to allow indirect transfers which derive substantial value from assets located in India to be subjected to tax.

Changing rules

There are two problems with this. The first is that the amendment was used to nullify a judgment of the Supreme Court. The second, and by far bigger problem, is that the amendment kicked in with retrospective effect from April 1, 1962.

Most foreign investors would, naturally, like to pay little or no tax, but actually have no quarrel with even a punitive or confiscatory tax regime, provided they can factor it into their business models. The problem arises when, after having started doing business, the rules are changed, with implications on business already done in the past.

The amendments would not have created anything like the controversy they generated, or caused as much damage to India's reputation as a safe destination for investments governed by the rule of law, if they had been made with prospective effect. Instead, any deal done after April 1962 is fair game. And as long as the provisions exist, the babus will try to use it.

The demands have already cost India dear. It is fighting two international arbitration battles under provisions of bilateral investment treaties with the Netherlands and the U.K. and may well lose both. This will lead to significant quantifiable financial damages, quite apart from the non-quantifiable losses of potential investments missed out.

Finding stories among the shelves

You never know what you'll stumble upon in a bookshop



WORD COUNTS

MINI KAPOOR
is Ideas Editor, The Hindu

World Book Day falls today, and it is tempting to draw up an itinerary for armchair travel based entirely on bookshops to be visited around the world. The great bookstores are informed so much by the landscape they inhabit – but curiously they are also in and of themselves special zones permitting a unique discovery of new and familiar texts. The importance of bookshops has been variously explained, as noble sites that expose us to diversity in an ecosystem that otherwise predisposes us to limited algorithm-based choices; that uphold the freedom of expression by allowing the trade of certain texts below the censor's radar; and that connect us to a whole chain of creation.

Stories from bookstores

As Bob Eckstein, the author and illustrator of the lavish *Footnotes from the World's Greatest Bookstores*, writes: "Bookstores are emotional places both for their patrons and for the employees. They are built on the sweat and tears of hardworking people, each bookshelf lined with the lifework of hundreds of artists. Each of those books represents endless hours of grind and toil... The bookstore is also a hangout, a place of solace, a community center, and a venue for cultural entertainment. There are many who absolutely live for bookstores, and even those who aspire to live in a bookstore..."

It is great fun then to go scope the terrain outside India (we need a volume that does proper justice to this country's amazing stores) in Eckstein's company, as he collects stories from some intriguing bookstores. There's a story from the iconic City Lights of San Francisco, the first store in the U.S. to sell only paperbacks. A store-hand recalls getting a letter from a woman say-



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ing she had left her father's ashes at different spots in the poetry room: "She said it was her father's favourite place in the world and she was comforted by knowing he was there."

A bookshop as a final resting place is evidently a rather popular idea. Michael Cunningham, author of the homage to Virginia Woolf, *The Hours*, reportedly expressed a desire to be buried under Three Lives & Company, a 600-sq-ft shop in New York City's Greenwich Village – "but the owners at the time told him they weren't zoned for that."

Over in Wordsworth Books, a Cambridge, a Massachusetts landmark that shut down in 2005, the owner recounted the case of a man called Ed who "did smell like something long dead": "He lived under our staircase for 20 years and some cold nights, inside the store. Employees brought him food and shoes. I'll tell you, it wasn't always good for business, but that's what we did."

In Reykjavik, Iceland, a country which reads the most number of books per capita, the chess champion and enigma, Bobby Fischer, frequented the Bokin bookstore once he settled down in the country after renouncing his U.S. citizenship. He'd have his mail delivered to the shop and often himself fall asleep there.

However, no tour of the great bookstores, to reside in or otherwise, is complete without Paris's Shakespeare and Company. In another collection of stories about bookstores, *The Bookshop Book*, Jen Campbell revisits its well-told story. The original store

opened by Sylvia Beach, who published James Joyce's *Ulysses* when nobody else would dare, shut in the 1940s when a Nazi soldier got angry when she wouldn't sell him *Finnegans Wake*, and threatened her shop with terrible reprisal. She spirited all her volumes out double-quick.

Shakespeare and Company was revived when George Whitman so renamed his existing shop in Paris after Beach's death, and in time encouraged writers and other kindred souls to sleep among the shelves. "His only demand was that those who stayed pen their autobiography on a sheet of paper and give it to him before leaving." Whitman's daughter, named Sylvia for obvious reasons, is now said to be collecting these stories for a history of Shakespeare and Company.

Who moved my book?

But don't just look out for reclusive geniuses and remains or dozing bodies of readers. There are other ways to find clues about who's been about among the volumes. Jen Campbell talks to the Scottish crime writer Ian Rankin. When he's in a bookstore, he says, "I also get to eye up the competition." Seeing a load of Scandinavian crime novels on display, he'll put some of his books in front. "You can always tell when you're travelling, which authors have been through the airport bookshops before you, because their books are the ones facing out on all the shelves."

Do venture into your neighbourhood bookshop soonest to tease out special stories.

Mistaking symbolism for service

For Swachh Bharat Abhiyan to become successful, the recognition that civic cleanliness matters needs to translate into a citizens' movement



SERENDIPITIES

KEERTHIK SASIDHARAN
is a writer and is on Twitter @ks1729

Every so many days, Prime Minister Narendra Modi reminds us about Swachh Bharat Abhiyan. To this end, he has often communicated the (un-audited) achievements of his government and the urgency of the issue. Last week, on the 100th anniversary of the Champaran Satyagraha, Mr. Modi argued that there was now a need for a 'swachhagraha', by which he presumably meant a commitment to cleanliness as a way of being. Much as 'truth' in satyagraha is not reducible to a simple act of fact-verification but is an outcome of private strivings, 'cleanliness' in any idea of 'swachhagraha' is arguably not an one-off activity. Civic cleanliness becomes an emergent characteristic that a society arrives at by internalising a set of actions, duties, and processes till the collective memory of the nation can imagine things in no other way.

For Mahatma Gandhi, the idea of radical truth-telling was a totalising precondition to political life. Arguably, in Mr. Modi's political vocabulary, cleanliness occupies a similar analytical and emotional perch. It is a private action, a public policy, and an intellectual framework that allows him to draw out causal relationships between India's ills – from lack of toilets for women to river pollution – and India's future. His thesis is that if we can get cleanliness right, much else will follow. A nation, per this view, can't be modern and powerful unless it is clean.

Galvanising citizens

This isn't a new idea. In the 1960s, the former Prime Minister of Singapore, Lee Kuan Yew, took to the streets with a broom to spur the citizens into action. In France, a national zeal for eparations or purifications, including washing away the moral pollution of some who collaborated with the Nazis, took hold after the Second World War. Brothels were shut, soap and detergents entered homes, newly founded women's magazines now exalted clean underwear as much as patriotism. Cleanliness moved from being a moral virtue to a functional attribute of being modern. An elaborate infrastructure of cleanliness, physical and cultural, was pro-



*GETTY IMAGES

duced thanks to what Roland Barthes describes as "a great hunger for cleanliness".

However, in Modi's India, unlike de Gaulle's France, there is no public spur like the Second World War to galvanise an entire country into action. Nor is India a micro state like Lee Kuan Yew's Singapore with the abilities to enforce a penalty-based regime. Instead, among India's great challenges is translating an inchoate recognition that civic cleanliness matters into a programme of collective action. Any and all change can

only come if there is a citizens' movement.

To this end, Mr. Modi seems to have reposed his faith in celebrities to awaken popular consciousness and a top-down state machinery to fulfil targets. Yet, there is pessimism borne out of the recognition that most government projects that rely on repetition of non-technical actions as a critical component for its success are biased towards failure. This may be because of a careerist bureaucracy that lives off perpetually run sanitation projects, misdia-

gnosis of the problem (building toilets doesn't translate to usage), historical neglect (sanitation never figured meaningfully in priorities until the Sixth Five Year Plan), anaemic adoption (1% annual growth in sanitation during the 1990s!), shifting targets of government programmes (schools, households, communities, or Panchayati Raj institutions), failing to think of accountability in terms of end-user behaviour, the gargantuan scale of industrial polluters who are also party loyalists... the reasons are too many. Even despite the claimed success of the Nirmal Gram Puraskar programme, or the number of toilets ostensibly built under Swachh Bharat Abhiyan, it is not hard to think that in absence of an independent audit, such numbers are putty in the hands of bureaucrats.

Political symbolism

To make his case stronger, Mr. Modi has also set aside his complicated ideological relationship and even co-opted the greatest performance artist of political symbolism: Mahatma Gandhi. But the art and artifice of Gandhi's life escapes easy mimicry or glib reductions. Actions that became an inseparable part of Gandhi's being, like spinning a charkha, became the physical manifestation of his personal opposition to the British

Empire and his idea of living truth. This much-emulated 'small' act of resistance was eventually imbued with private meanings by millions who granted his call to action an imaginative potency. Every time Mr. Modi picks up a broom to highlight the importance of cleanliness and to subvert prejudices about those who clean our houses, toilets, and public spaces, he too seeks to extract royalties from the power of symbolism.

Notwithstanding the easy charge of tokenism, what hobbles Mr. Modi's efforts, however, is his addiction to make a spectacle out of his ostensible selflessness. Rarely does he seem to wonder how any celebrity who cleans a street corner for an hour can transform public theatre into something meaningful. If Gandhi's life has any lesson, it is that symbolism can only be transformative if it is sustained. Until the day comes when Mr. Modi's, or any celebrity's, picking up a broom becomes commonplace, an event sans media significance, we'll continue to mistake symbolism for service. The revolution from below that Mr. Modi rightly seeks to inspire with borrowed neologisms like swachhagraha will die under the frenzy of retweets and 'likes', while India will remain wedded to yet another government-sponsored, subsidy-driven, supply-determined sanitation project.