

Taslina Case: Accountability of Elected Representatives

Author(s): K. G. Kannabiran and Kalpana Kannabiran

Source: *Economic and Political Weekly*, Vol. 42, No. 36 (Sep. 8 - 14, 2007), pp. 3605-3608

Published by: Economic and Political Weekly

Stable URL: <http://www.jstor.org/stable/40276355>

Accessed: 04-09-2017 06:39 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://about.jstor.org/terms>



Economic and Political Weekly is collaborating with JSTOR to digitize, preserve and extend access to *Economic and Political Weekly*

Taslima Case: Accountability of Elected Representatives

Two organisations have filed a petition in the Andhra Pradesh High Court seeking the removal of four legislators and deregistration of their political party for leading an attack on the Bangladeshi writer Taslima Nasreen in Hyderabad recently. The petitioners believe that these men have perjured the constitutional oath taken by all legislators before entering office.

K G KANNABIRAN,
KALPANA KANNABIRAN

The attack on Bangladeshi writer Taslima Nasreen on August 9, 2007 in Hyderabad was greeted with shock and disbelief and was widely condemned by a number of organisations in Hyderabad. Asmita Collective and Women's World India organised a public meeting on August 11, 2007 at the Potti Sriramulu Telugu University where around 25 speakers – mostly writers, journalists and human rights activists – unequivocally condemned the attack and resolved to work towards petitioning the high court for the removal of the legislators guilty of leading the attack.

The Centre for Inquiry, a rationalist organisation led by Innaiah, organised a function for the release of the Telugu translation of Taslima Nasreen's, *Shodh* on August 9, 2007 at the Press Club in Khairatabad. It was a small function only for invitees. Innaiah, chairperson of the Citizens for Inquiry, Volga, award winning Telugu writer and poet, and Taslima were present on the dais. Around noon, after the meeting drew to a close, a crowd of about 20-30 persons from the All India Majlis Ittehadul Muslimeen (AIMIM) crowded around the dais and began hurling everything they could find at Taslima. This assault was aggravated by unrestrained use of the worst kind of verbal abuse, all of which was captured on camera by the electronic media that was present there and telecast several times over. Legislator Akbaruddin Owaisi and former parliamentarian Sultan Salahuddin Owaisi justified the violent

attack and her forced departure from Hyderabad, on television news channels.

The electronic and photographic records of the incident as well as accounts by eyewitnesses point to the fact that the conduct of the four legislators and the members of the two political parties fall within the meaning of offences defined in the Indian Penal Code (IPC), namely, Sections 147 and 18 (rioting with deadly weapons), 323 (voluntarily causing hurt), 427 (mischief causing damage to property), 452 (trespass after preparation for hurt, assault and wrongful restraint), and 506 (criminal intimidation) read with Section 149 of the Criminal Procedure Code. Sections 147, 148 and 506 of IPC are non-bailable offences. The police have also booked cases under these sections and the legislators were produced before the XIV metropolitan magistrate and then released on the same day.

Premises of Constitution

Diversity, pluralism and tolerance are the major premises of our Constitution and the preconditions to national integrity in a plural society like ours. The only medium through which ideas of diversity and dissent may be expressed in a democratic society is through the fundamental right to free speech and expression. In justice Jeevan Reddy's words: "For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is

essential to enable the citizens to arrive at informed judgment on all issues touching them" (Secretary, Ministry of Information and Broadcasting vs Cricket Association of Bengal and Another; 1995 AIR (SC) 1236). Any attempt to abridge this right to expression through recourse to collective violence is an assault on national integrity.

In recent years we have witnessed a series of attacks by private groups – mostly belonging to various parties – carrying out assaults on academicians, writers, artists, film-makers, actors and journalists. A few years ago, a historian was faulted for not writing a "correct" history of Shivaji, leading to the attack on the reputed Bhandarkar Oriental Research Institute in Pune and the destruction of valuable manuscripts. Christian representatives went on a representation to the late prime minister Rajiv Gandhi and put pressure on him to ban Nikos Kazantzakis', *The Last Temptation of Christ*. More recently some members of the same community protested against the screening of the *Da Vinci Code*. In Gujarat the Vishwa Hindu Parishad went on a rampage against the art exhibition at the MS University, Baroda, destroying art works of a student, Chandramohan. Earlier, paintings by noted artist MF Hussain met the same fate. Film-maker Deepa Mehta was prevented from shooting her film *Water*, a testimony on the condition of widows in Varanasi, and was forced to shoot it at a secret location in Sri Lanka. Film actors Khushboo and Suhasini were attacked in Tamil Nadu, for speaking on the need for sex education. In August 2007, Shiv Sainiks attacked *Outlook*, a reputed weekly for including Bal Thackeray, among others in the list of "Villains of India". In all these incidents political parties and political leaders have played a key role in fuelling these attacks. Elected representatives who resort to use of collective violence must be debarred from holding public office, mere prosecution for crimes committed being an insufficient remedy.

A handful of persons (to whatever community they may belong) decide what a writer or a poet should write about, what subjects should not be the subject matter of painting or writing. The first question

that should engage our attention in these and other such events is the criminal intimidation against the artists or writers, which must be judged in terms of the liberal values the Constitution incorporates. By the Constitution we have entrusted to the state limited powers, the transgression of which enables us to act politically and also legally. Without dwelling at length on the effectiveness of the existing avenues of redress against the state at this point, it is important to acknowledge that free speech, freedom of association and assembly enable us to act politically against arbitrary actions by the state, even while seeking legal redress through courts, defining rights more precisely in the process.

What should be done when sitting members of the legislature or Parliament direct a mob to physically attack a writer, an artist or any other person? What steps are open to citizens to check such obnoxious conduct of elected representatives? One way of course is to accept it as proof that "people get the representatives they deserve". The more constructive way of looking at these problems is to take

measures to rebuild institutions. The courts may be persuaded to drop their flabby liberal rhetoric and to firm up the jurisprudence on free speech and other rights related concepts. How shall we deal with the political mafia or bandits who get elected to representative institutions at various levels in the state? The challenge is now before the courts to innovatively craft a jurisprudence just as they did in the case of the executive in the 1970s with the doctrine of prospective overruling and the concept of basic structure of the Constitution.

Interesting Steps

In this connection the steps taken by Asmita Collective and Women's World India to experiment in courts are interesting and worth debating.¹ These steps if successful hold the possibility of moulding a political culture and disciplining the conduct of elected representatives. These two groups have filed a petition in the Andhra Pradesh High Court under Article 226 to issue a *writ of quo warranto*

seeking the removal of the four legislators and the cancellation of the registration of the AIMIM party by the Election Commission.

This incident raises several very serious concerns for human dignity, the right of persons to life and liberty, freedom of movement and free speech, besides raising questions related to the conduct of elected representatives arising from their unrestrained use of hate speech, physical assault and death threats. Assaulting a foreign national with a valid visa and forcing her to leave the city is against all norms of democratic functioning and international relations besides being directly in violation of the protections available to foreigners under Article 21 of the Constitution of India especially as laid down in Chandrima Das (2000 AIR(SC) 988). The affirmation of the rights to life, personal liberty, freedom of movement and freedom of expression have been well enunciated in the Indian Constitution and protected by courts over several years.

The primary issue raised in the petition is the public conduct of elected



GRAMS : 'ECOSOCI', Bangalore - 560 040
 FAX : 91-80-3217008
 Phone: 3215468
 e-mail: registrar@isec.ac.in

INSTITUTE FOR SOCIAL AND ECONOMIC CHANGE

Nagarabhavi PO: BANGALORE-560 072

ADVERTISEMENT NO.NA/3/2007

Applications are invited for one post of Deputy Librarian, with the prospect of the post being upgraded as Librarian. The details are as follows:

1. Qualification:

Essential:

- a. Bachelor's Degree (I or II Class) and Master's Degree in Lib.Sc. or Information Science (I or II Class)
OR
Master's Degree (I or II Class) and B.Lib.Sc. (I or II Class)
- b. Minimum 7 years' experience in reputed libraries

Desirable

- a. Ph.D. or published work of equivalent standard in Library Science or Information Science
- b. Training in computer application for library/information technology

2. Age Limit (as on 30 September 2007)

Normally below 40 years and relaxable by 5 years for candidates belonging to SC and ST. Candidates should furnish certificate establishing their caste affiliation and the fact that they do not belong to an excluded category as per Government of India order. There is no age limit in case of employees of the Institute.

3. Duration: The appointment will be on contract basis for a period of 5 years, including one-year period of probation. Depending on the evaluation of performance, the appointee will be offered a permanent position or her/his contract extended or terminated.

4. Scale of Pay: Rs.12,000-420-18,300 plus allowances as per ISEC rules.

Exceptionally qualified candidates suitable for the post will be offered higher pay, but not exceeding the maximum in the scale of the post.

5. Selection Procedure: Selection will be made on the basis of interview of short-listed candidates. However, mere satisfying the eligibility norms does not entitle a candidate to be called for the interview. Depending upon the number of applications received in relation to number of vacancies, the Institute reserves the right to call only a limited number of candidates after preliminary screening with reference to their qualifications, suitability and post-qualification experience, etc.

The Selection Committee may relax qualifications in exceptional cases and also consider suitable candidates from outside the list of applicants.

The prescribed application form and the full advertisement can be downloaded from the Institute's website www.isec.ac.in. Completed applications with copies of testimonials should be sent in a cover superscribed the application for the Post of Deputy Librarian so as to reach the undersigned on or before 30th September 2007. Applications received after the last date will not be entertained and the Institute takes no responsibility for any delay in the receipt or loss of application in postal transit.

Date: August 27, 2007

Col. Ashutosh Dhar
 Registrar

representatives: members of the AP legislative assembly. Election law in India prescribes procedure for disqualification of candidates during elections in the Representation of People's Act (RPA), 1951 and of elected members on five specifically stated grounds under Article 191 and under Schedule X of the Constitution. The RPA under Section 8 prescribes grounds for disqualification of persons convicted for certain offences from membership of Parliament and state legislature. Schedule X of the Constitution details the procedure for disqualification on grounds of defection. Article 191 also sets out the ground for disqualification of members, but the court has also held that Article 191 does not exhaust the grounds of disqualification of members. Public misdemeanour, which includes rioting, criminal intimidation with deadly weapons and death threats do not find mention as explicit grounds of disqualification, but can be argued into the framework of accountability in wider terms.

There is generally no code of conduct prescribed for elected representatives during their term of office. The only regulation is the oath taken by them before entering office. The prescribed oath for the legislator is found in the Third Schedule and we are of the view that weight should be attached to the oath taken. Legislators solemnly affirm true faith and allegiance to the Constitution and undertake to work for the integrity of the nation. Therefore their conduct, while in office, should abide by the oath. The only punishment for perjury of the constitutional oath in our view is immediate loss of office. "The oath of office insisted upon under the Constitution is the prescription of a fundamental code of conduct in the discharge of the duties of these high offices. The oath binds the person throughout his tenure in that office, and he extricates himself from the bonds of the oath only when he frees himself from the office he holds. Breach of this fundamental conduct of good behaviour may result in the deprivation of the very office he holds" (K C Chandy vs Balakrishna Pillai, 1986 AIR(KER) 116).

The oath stipulated for the members of the legislature shows that they are expected to owe total allegiance to the Constitution and abide by the laws of the land. In 1963, Parliament brought forward the Sixteenth Constitutional Amendment Act, through which it introduced amendments to the sub-clauses that it would be reasonable

restriction to legislate on the freedoms if it is made "in the interests of the sovereignty and integrity of India". A corresponding amendment was introduced in Article 84 and Article 173 and the Third Schedule to the Constitution and the oath as amended read "I solemnly affirm and bear true faith and allegiance to the Constitution as by law established and that I will uphold the sovereignty and integrity of India".

The right to vote has been recognised as a fundamental right under Article 19(1) of the Constitution. The Supreme Court in People's Union for Civil Liberties (PUCL) and another Petitioners with Lok Satta and others and Association for Democratic Reforms vs Union of India and another (2003 AIR (SC) 2363), delineated this right as follows: "The right to vote at the elections to the House of People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting... is a facet of the fundamental right enshrined in Article 19(1)(a)". Every fundamental right has implicit in it a remedy. Implicit in the right to vote, by that token, is the remedy of recall of elected representatives. The conditions of recall do not necessarily have to be confined to the grounds of disqualification stated in the Constitution or the RPA, 1951. Recall is a remedy that invokes not mere disqualification but forfeiture of office for not satisfying the grounds for continuance.

English law provided a proceeding to forfeit the office by a writ of *scire facias* (which was replaced by *quo warranto*), an established medium for the determination that an office held "during good behaviour" was terminated by misbehaviour: "When the framers employed 'good behaviour', a common law term of ascertainable meaning, with no indication that they were employing it in a new and different sense, it might be presumed that they implicitly adopted the judicial enforcement machinery that traditionally went with it" [Berger 2002: 131].

The Supreme Court has observed that "The trite saying that 'democracy is for the people, of the people and by the people' has to be remembered for ever. In a democratic republic, it is the will of the people that is paramount and becomes the basis of the authority of the government. The will is expressed in periodic elections based on universal adult suffrage... The moment they put in papers for contesting the election, they are subjected to public gaze and public scrutiny" (Para 15, 2003 AIR (SC) 2363).

By this token elected representatives become the link between the government and the people and are accountable to the people. In the event of such representatives failing the test of good behaviour during their term the fact of public scrutiny and accountability must lead to forfeiture of office. The law as it stands does not specify procedure to enforce accountability during the incumbent's tenure in elected office, particularly with respect to public misbehaviour. Given this lacuna in the law, the petitioners felt it was necessary to request the court to lay down the law constructively in this particular case, which will also serve as an important precedent for future recourse to remedy should the unfortunate need arise.

Condition of Behaviour

Rioting with deadly weapons, voluntarily causing hurt, mischief causing damage to property, trespass after preparation for hurt, assault and wrongful restraint and criminal intimidation come within the meaning of grave misbehaviour and constitute failure of the public scrutiny test. Since the claim to enjoyment of public office with undiminished perquisites and privileges is on the implicit condition of good behaviour, the petitioners have sought the issue of the writ of *quo warranto* on grounds that the claim to office has now been forfeited through the aforementioned acts of misdemeanour.

The presumption in the holding of elected office is that the tenure is one that is limited by good behaviour, meaning thereby that whatever the period stipulated in law, it does also imply that the office can be forfeited on misbehaviour whether the term is over or not, and the subsequent criminal processes following such forfeiture may follow. That there is no express provision for termination should not become an insurmountable obstacle because the law has recognised time and again that where the end is required the means are authorised, even if not expressly stated. It is also true that the disqualifications specified are not exhaustive. To quote the classic expression of Marshall, CJ: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional" (Mc Culloch vs Maryland, 4 Wheat (17 US) 316, 421(1819)).

It is the petitioners' belief that the legislators have morally forfeited their right to hold office and the decision of the court in this regard is awaited. [47]

Email: kaplana.kannabiran@gmail.com

Note

1 Asmita Resource Centre for Women is committed to the securing of equal rights for women under the constitutional scheme and has campaigned for the past 16 years on women's right to free speech and their right against censorship by state and private actors. It has provided counselling and legal aid to women victims of violence; provided training to organisations in rural areas in Andhra on designing and implementing programmes that are gender sensitive; supported networks of persons with disabilities in the state; organised women writers, published anthologies of creative writing by women,

dalit and Muslim writers, and has initiated campaigns on secularism and diversity. Women's World (India) is part of a worldwide network of women writers that works to counter censorship and protects the right to free speech. Formally launched in 2003 it has more than 200 members and was one of the first to protest against the smear campaign against actor Khushboo in Tamil Nadu. It also protested against the ban by the West Bengal government on Taslima Nasreen's autobiography and offered her protection and support after the initial fatwa was taken up by Women's World (International). Writers like Nabaneeta Dev Sen, Jeelani Bano, Mridula Garg, Rukmini Bhaya Nair, Abburi Chaya Devi, Bama are members of the network.

Reference

Berger, Raoul (2002): *Impeachment: The Constitutional Problems*, Harvard University Press.

The Imperial Tongue: English as the Dominating Academic Language

Academic superpowers like the US and the UK have ensured that English is the predominant academic and scientific language and that the curricula are dictated by trends there. While this has created a global academic environment with a common medium of communication, it has been at the cost of other national languages and research topics of local importance.

PHILIP G ALTBACH

English dominates the fields of science, scholarship, and instruction as never before. While it is unlikely that it will achieve the status that Latin enjoyed as the sole language of teaching and scholarship at the 13th century universities in Europe, the Latin analogy has some relevance today. Back then, Latin not only permitted the internationalisation of the universities but also allowed the Roman Catholic church to dominate intellectual and academic life. It was only the Protestant reformation led by Martin Luther, combined with a growing sense of national identity, that challenged and then displaced Latin with national languages. As late as the 1930s, German was a widely used international scientific language and until the mid-20th century, most countries used their national languages for university teaching

and for science and scholarship. French, German, Russian, and to some extent Spanish were, and still are, used for academic and scientific publication and have some regional and international sway. Scholarly communities in Japanese, Swedish and many other languages were active and continue to exist as well. English was the closest thing to an international language, with several major academic systems using it – the US, Britain, Australia, New Zealand, and most of Canada. In addition, the emerging academic systems of the former British empire – especially India, Pakistan and Nigeria – use English as the main teaching and publishing language. But English did not go unchallenged, and national academic communities seemed in general committed to national languages.

Now, English serves unchallenged as the main international academic language – indeed, national academic systems

enthusiastically welcome English as a key means of internationalising, competing, and becoming “world class”. But the domination by English pushes world science toward hegemony by the main English-speaking academic systems and creates challenges for scholars, and universities, that do not use English.

Causes of English Hegemony

It is not hard to see why English is the dominant academic and scientific language. Nations using English, particularly the US, have become the academic superpowers. Size and wealth matter a great deal in determining the academic pecking order. The US alone spends almost half the world's research and development (R&D) funds and is home to a large proportion of the top universities on the world's increasingly influential league tables. The English-speaking academic systems host more than half the world's international students – many of these graduates return to their home countries with a zeal for English and for the foreign universities at which they obtained their degrees. The main scientific and scholarly journals are published in English because their editors and most of their contributors are in the English-speaking universities. Similarly, the large majority of the world's academic web sites and scientific networks function in English.

English is the world's most widely studied second language. This gives it a significant advantage in many non-English-speaking countries simply because of the number of speakers and the fact that it is by far the most widely distributed language. There are, for example, more students studying English in China than are studying English in the US, and more speakers of English in India than in Britain. Further, English has an official status in more than 70 countries. Colonialism provided stimulus for the spread of English (as well as other European languages) as early as the 18th century – to North America, south Asia, and the Caribbean – and later to Africa, other parts of Asia, Australasia, and the south Pacific. Today, no African university offers instruction in any indigenous African language – academic and intellectual life takes place in English, French, Portuguese, Arabic, and Afrikaans, and it can be argued that English has pride of place. British and later American economic and political power spread English as well.