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Provincial Autonomy (1937–1939) and Free Speech Controversies

Issues of free speech continued to be important after the grant of provincial autonomy (in keeping with the Government of India Act of 1935) and the formation of elected Congress ministries in seven out of eleven provinces of British India in 1937.[1] In the words of historian Sunil Chander, Congress ministries had to perform a 'delicate manoeuvre': 'to combat the [political] militants, they required the support of the authorities and to challenge the Raj, they required the support of the militants'. While performing this balancing act they also had to be 'seen as being uncompromisingly nationalist'.[2]

In late December 1937, the (now Congress-run) UP government issued a statement warning political activists not to use 'irresponsible language'. A newspaper that supported this decision commented that it could 'understand the embarrassment of a Government which in the interests of law and order feels compelled to enforce a law which it has been all along the pride of its members to violate and disobey'.[3] Noting the growing indiscipline among party members, and the increasing 'spirit of license' manifesting itself in violent speech and action, the article continued:

[1] The Congress emerged victorious in all provinces of British India except Assam, Bengal, Punjab and Sind.

[2] Sunil Chander, 'Congress, the Raj and Conflict in Provincial Autonomy, 1937–39' in *Oxford University Papers on India*, vol. 1, part 2, ed. N.J. Allen et al., 74–96 (New Delhi: Oxford University Press, 1987), 83.

[3] *National Call*, 30 December 1937, *Towards Freedom 1937–47*, vol. 1: *Experiment with Provincial Autonomy 1 January–31 December 1937*, ed. P.N. Chopra (New Delhi: Indian Council for Historical Research, 1985), 1310–1312.

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> A person who talks in terms of fiery extremism at one time may be a hero but at another time he may be worse than a traitor to his party, and a dangerous associate. We do not wish to suggest that just because Congress ministries govern seven provinces, we should cease to think progressively or even in radical terms…. But just because our nominees are in power, we must not say or do things which impair discipline, and militate against peace, law and order. If we do so we betray our utter incompetence to govern ourselves.… We may criticise them [Congress ministries]. We may guide and advise them. We may at times even oppose them. But at no time and on no account must we embarrass them.[4]

Reading this newspaper's comment against the grain, it is clear that tendencies that were tolerated or encouraged by the Congress-as-opposition returned to haunt the Congress-as-government. In a mirror image of the protagonist of George Orwell's story 'Shooting an Elephant' (whose actions were forced by what he thought the 'natives' expected of a white man) Congress ministries were constrained on the one hand by what the white man they had replaced thought of their administrative abilities, and on the other by negative comparisons with repressive actions of those they had just replaced. Seditious speech was an important arena where these tensions became apparent; this chapter will excavate these fault lines.

According to Gerald Barrier, the difference between Congress ministries and their British predecessors with regard to control of the press during the period of provincial autonomy was one of degree rather than of kind. He argues that Indian ministries were somewhat more tolerant of criticism, but 'when necessary, political pressure and inherited British assumptions on maintaining peace and order overrode theoretical commitment to freedom of the press'. Barrier has also highlighted that Congress ministries were as intolerant to communal propaganda as their British predecessors.[5] On occasion, British officials found it ironic when demand for bans emanated from Congress ministries, which had—before assuming power—railed against all kinds of bans.[6]

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[4] Ibid.

[5] Barrier, *Banned*, 140–142.

[6] In 1937, after the Madras government asked the GOI to ban the import of a nudist journal titled *Health and Efficiency*, not only did the GOI not ban it (as they judged it not legally obscene), but a HD official found it 'interesting' that a Congress

The lead up to, as well as the operation of, provincial autonomy brought several free speech dilemmas and paradoxes to the fore. The assumption of state power, however partial, by an opponent of the colonial state, but under the overaching framework of colonial rule, was a unique situation, and provides the historian distinctive insights into the challenges of free speech. This was a trial run with significant implications for the future of free speech in independent India. This chapter delves into the history of two distinct episodes: the chequered history of the Congress Pledge between 1937 and 1943, and the dilemmas of Congress leaders while dealing with issues of free speech during the period of the Congress ministries (1937–1939), including the 'Parmanand case'.

'Seditious Formula' as 'Solemn Creed': Banning the Congress Pledge

A close reading of official correspondence reveals both uncertainty and difference of opinion among colonial administrators (within and among different provinces) and the dilemmas behind what may otherwise appear as, and has certainly been interpreted as, 'colonial repression', without room for debate and doubt. The case discussed in this section is a vivid illustration of the ambiguities of colonial repression.

Less than a week before the planned commemoration of 'Independence Day' by the Congress on 26 January 1937, the GOI telegrammed a note to all provincial governments suggesting that the words of the Congress Independence Pledge of 1930 were 'definitely seditious', and asking them (if they believed the pledge was likely to be read in their province) to ban it. Provincial governments were urged to consider the impact of this ban on the forthcoming elections, and reminded that Nehru's action was 'a challenge to Government which should be met'. The GOI also thought it desirable that the notification banning the pledge be accompanied by an explanation of why it was banned, and a statement of the government's intention to take firm action, as this would act as a deterrent. On the other hand, explained the GOI, 'mere academic advocacy of Independence need not be regarded as seditious'. The GOI note cited in particular the following extract from the pledge as an

government wanted to use the SCA 'to prohibit the importation of literature which admittedly does not offend against the law'. Note by J.A. Thorne, 21 December 1937, GOI Home Judicial, f. 372/37, 1937, NAI.

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example of why it needed to be banned: 'The British Government in India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses and has ruined India economically, politically, culturally and spiritually.'[7]

As far as the GOI was concerned, similar sentiments when uttered in speeches by Nehru and others could have—and had—been ignored, but the pledge needed to be banned because '… there is an essential difference between the use of isolated expressions by an individual in the course of an electioneering speech and the public recitation of a seditious formula as a solemn creed, accompanied by a pledge, as the central function of a formal Congress ceremony'.[8]

The same words uttered in different contexts or by different numbers of people attracted different penalties. The Home Member, Sir Reginald Maxwell,[9] was of the opinion that since few attempts had been made by the Congress to give publicity to the pledge after 1930, Nehru had chosen to challenge the GOI via the pledge in 1937 so as to 'enhance the prestige of the Congress on the eve of the elections'.[10] As in the case of censorship of 'obscene' publications, in the case of seditious publications and speeches too, it was the context—and not content alone—that determined whether or not they invited proscription.

There was lack of communication among provinces over the question of banning the pledge; in any case, all provinces did not think alike. The pledge was banned first by the Bombay government, which referred to it by its first few words: 'We believe that it is the inalienable right of the Indian people'.[11] Within a few days, the governments of UP, Central Provinces (CP), North

[7] It was to be banned under the IPA of 1931, and action against persons who publicized it was to be taken under section 124A of the IPC or section 5 of the Criminal Law Amendment Act of 1932. HD's 'Instructions with Regard to Celebration of Independence Day', 20 January 1937, Extracts from GOI Home Political, f. 4/1, 1937, *Towards Freedom 1937–47*, vol. 1, 52–53. See the full text of the 1930 Congress pledge in Chandra et al., *India's Struggle for Independence*, *1857–1947*, 268–269.

[8] Note from R.M. Maxwell to R.T. Peel, 26 January 1937, *Towards Freedom 1937–47*, vol. 1, 74–76.

[9] Sir Reginald Maxwell joined the ICS in 1906 and served the Bombay government. He was appointed Private Secretary to the Governor of Bombay in 1929, and also served as the Home Secretary in the Bombay government.

[10] Note from R.M. Maxwell to R.T. Peel, 26 January 1937, *Towards Freedom 1937–47*, vol. 1, 74–76.

[11] Bombay government notification, 22 January 1937, *Towards Freedom 1937–47*, vol. 1, 60. The pledge had been published in the *Bombay Chronicle* on 18 January 1930.

West Frontier Province (NWFP), Orissa, Delhi, Madras and Bengal too had banned the pledge. In its notification, the Orissa government gave the following reason for the ban: '… the reading of the pledge would be a direct challenge to the Government which could not be ignored.' The notifications were accompanied by action, as offices and homes of a few provincial Congress committee leaders were searched.[12] At this stage, the Governor of Madras, Lord Erskine, communicated to the Viceroy, Lord Linlithgow, some of the ideological and practical problems attendant in banning the pledge in that province. Lord Erskine's Executive Council had initially decided that it was unwise to ban the pledge for various reasons: one, because it would give 'prominence to a document that would otherwise pass unnoticed'; two, because banning it would be termed a repressive measure and the Congress would gain political capital from this during the elections; and three, since Nehru as Congress president had been saying similar things without any interference from the authorities, it therefore seemed unfair to 'prosecute the minor fry'. Erskine informed the Viceroy that although Madras had initially decided not to ban the pledge for these reasons, it was forced to do so when Bombay banned it, so as to display uniformity on this issue. The episode prompted the Governor to suggest to the Viceroy that it would have been better if this important decision, a 'reversal of policy', had either been taken centrally or by all provinces at the same time. Erskine's complaint against the Home Department (HD) was that its orders were too vague, and that news of the ban in other provinces only reached Madras via newspapers.[13] This correspondence bears eloquent testimony to the challenges of implementing bans at an all-India level.

The Governor of UP, Sir Harry Haig, also revealed in a letter to the Viceroy that his Executive Council too had felt that banning the pledge would go in the Congress' favour during elections, and that it was an action better avoided. It was, therefore, only to conform to the other local governments' decision that UP had decided to ban the pledge. Haig admitted that he personally had changed his view regarding Congress propaganda: he had earlier considered it'vigorous' but not dangerous, and now considered dangerous enough to deserve being banned. The change was caused by reports reaching him of the success of Congress propaganda in UP; apparently, Congress volunteers there were preaching the end of the British government within two months, and

[12] *The Pioneer*, 26 January 1937, *Towards Freedom 1937–47*, vol. 1, 71–74.

[13] Letter from Erskine to Linlithgow, 24 January 1937, Erskine Papers, *Towards Freedom 1937–47*, vol. 1, 67–69.

impressing villagers by promising (and giving in writing) starkly reduced rent demands in the event of a Congress victory in the elections.[14]

Nehru's reaction to the banning of the pledge was almost triumphant. The sudden banning, by provincial governments, of a pledge that had been in circulation for seven years signified to him that the growing mass enthusiasm about the Congress had 'upset the nerves of these governments'. Attracting a ban was, therefore, an index of the powerful appeal of the Congress. He suggested that the ban be respected, the pledge in question not be used, but that during Independence Day meetings 'a brief pledge reiterating the old pledge should be taken'. Nehru urged people to respect the ban as 'for the present, it is not our policy or desire to commit breaches of such orders….'[15] For people familiar with the general drift—if not the exact words—of a pledge in circulation since many years, a commitment even to mere 'reiteration' could evoke powerful sentiments against the British without falling afoul of censorship laws. What may be interpreted today as a subtle strategy of resistance was interpreted then by the GOI as an admission of weakness on Nehru's part. According to an HD official, '… the Congress do not at present feel strong enough to defy the Government, or at any rate it does not suit their plans to provoke a conflict at the present moment.'[16]

While Nehru accused the GOI of using accusations of 'sedition' to express its hostility towards the Congress, particularly in UP, the GOI considered the election campaign there as 'a pretext for preaching sedition on a wide scale'.[17] After the elections of 1937 and the formation of Congress ministries in seven provinces of British India in July 1937, Nehru wrote to the Chief

[14] 'This, I fear', wrote Haig, 'is how the ideas of democracy are presented to the ordinary voter.' Letter from Haig to Linlithgow, 26 January 1937, Linlithgow Papers, *Towards Freedom 1937–47*, vol. 1, 76–78. Sir Harry Haig joined the ICS in 1905, and before he was appointed Governor of UP in December 1934, he had served as Private Secretary to the Viceroy (1925), Home Secretary, GOI (1926–1930), and Home Member, GOI (1930–1934).

[15] Nehru's instructions regarding Independence Day Pledge issued at Kanpur on 24 January 1937, and reported in the *Hindustan Times*, 25 January 1937, *Towards Freedom 1937–47*, vol. 1, 69.

[16] Letter from R.M. Maxwell to R.T. Peel of the India Office, 26 January 1937, *Towards Freedom 1937–47*, vol. 1, 74–76.

[17] The GOI's views on this matter come through clearly in extracts from 'Confidential Appreciation of the Political Situation in India', issued on the authority of the Secretary of State for India, 17 February 1937, Cabinet Papers 24/268, *Towards Freedom 1937–47*, vol. 1, 141–142.

Commissioner of Delhi (where the pledge had recently been banned) pointing out the ironic situation: while seven provincial governments had accepted office on the basis of the pledge, and were committed to the sentiments it expressed, the same pledge was banned in Delhi. In other words, when what was once considered 'seditious' became 'official', at least in the majority of British India, did it cease to be seditious? Another related problem, in Nehru's opinion, was that books that contained the pledge had also been seized by the police. As he put it:

> This Independence pledge appears in various books which give a historical record of recent political events in India. I do not know how far these books also come within the ban, but I am informed that some of these books have also been seized by the Police. This suppression of historical and current literature seems to be extraordinary. History, if it is to teach anything, must deal with the facts as they are and not with distorted versions of it. As some of our official Congress publications give this Independence pledge, I shall be grateful to you if you will let me know what your present policy is in regard to them.[18]

The story of the pledge did not end in 1937. The outbreak of the Second World War in 1939 complicated matters further; among other things, the Congress ministries resigned in protest against India's participation in the war. In January 1941 an official Press Adviser of the GOI passed an item in the *Hindustan Times* containing the Congress pledge as well as Gandhi's instructions as to how Independence Day was to be celebrated.[19] At the same time, the Press Adviser had blocked the publication of Gandhi's instructions regarding the non-payment of fines, as this was considered a 'prejudicial report', which could be blocked under the Defence of India Rules. This, to the HD, illustrated the dilemma of 'treating anti-war campaign as distinct from political movement for Independence for which Congress stands'. In any case, in 1941, caught up in a World War, the Viceroy was keen to avoid a

[18] Extract from letter from Nehru to Chief Commissioner Delhi, 1 October 1937, *Towards Freedom 1937–47*, vol. 1, 993–994.

[19] The article reproduced the text of the pledge, including a line accusing the British government of being based on exploitation, and of ruining India 'economically, politically, culturally and spiritually'. Gandhi added the instruction that there was to be no civil disobedience on Independence Day, so as not to invite disturbance of the meetings. *Hindustan Times*, 13 January 1941. See also GOI Home Political, f. 41/20, 1941, NAI.

showdown with the Congress.[20] Accordingly, the GOI instructed provincial governments that the pledge's publication had been allowed because it had been published before, and because it did not contain any incitement to an anti-war campaign, *even though* it contained seditious passages. During wartime, the offence of sedition has slipped down the hierarchy of offences, making place for the crime of fomenting 'anti-war' opinions and activities. The GOI instructed local governments not to take action against recitation of the pledge so as to avoid a confrontation with Congress, unless there was disruption of peace or eruption of anti-war demonstrations.[21]

In January 1943, the Intelligence Bureau (IB) received information that the All-India Congress Committee (AICC) had issued 'Independence Day Instructions' to all Congress organizations asking them, among other things, to recite a new Independence Day Pledge. This revised pledge asked people to pledge themselves to

> … the early and final overthrow of the usurper authority whose insecure continuance is based on bribe and murder. Until we have rid our country of this shame and horror and until we have created out of our Declaration of Freedom made at the beginning of this Revolution the Republic of India, we shall not rest but suffer and strive and struggle.

The pledge concluded with Gandhi's message of 'Do or Die'. By 15 January, another document purporting to be issued by the AICC had been found in Bihar, carrying a much longer pledge. This pledge blamed the British government for exploiting Indians, reiterated faith in non-violent means, and mentioned that since August 1942 thousands had died, and over a lakh people had been jailed. The Bihar version was similar to the 1942 version of the pledge. The pledge issued in Bombay and Madras was the same as the Bihar version. [22]

As we have seen, a version of the pledge had been banned by the GOI in 1937 under the IPA 1931. In 1943, in changed circumstances, Additional

[20] Telegram R. no. 100-Sc from the Private Secretary to Viceroy (PSV) to HD, 15 January 1941. The telegram ended, 'It would in his [the Viceroy's] opinion be a great mistake to make an issue such as the present [the Congress pledge] the occasion for a show-down with Congress.' GOI Home Political (I), f. 3/7, 1941, NAI.

[21] Express letter no. 3/7/41-Political (I) from HD to Chief Secretaries of all provincial governments, 17 January 1941, GOI Home Political (I), f. 3/7, 1941, NAI.

[22] IB note, 12 January 1943, GOI Home Political, f. 3/3, 1943, NAI.

Secretary Richard Tottenham (who favoured prohibition of the reading of the pledge) was not in favour of banning the pledge itself for two reasons: because the GOI did not have definite information about the form of the pledge and because 'it would be undesirable to give it any kind of unnecessary publicity'. The Home Member, Sir Reginald Maxwell, on the other hand, was emphatic that publication and propagation of the pledge was punishable.[23] The Madras government, on its part, wrote to all editors that since the pledge declared 'open rebellion', it was objectionable and actionable under the Defence of India Rules, and requested them not to publish it.[24] However, the pledge was not formally banned by the GOI.

In its chequered history, the Congress pledge was not banned when it was first adopted and publicized in 1930, then banned in many provinces in 1937; the ban was removed in 1938 when Congress ministries were in office, and nothing done against it in 1938 and 1939 either.[25] In 1943 the GOI attempted to stop the circulation of the pledge without formally banning it. The history of the pledge reveals the tension between the urge to ban and the sure knowledge that a ban would bring the Congress more popularity. Although there were several versions of the pledge, the sentiments expressed in all were anti-colonial; yet it was the context—and not the content—of the pledge that determined the chances of it being banned in any given year.

Ideology versus 'Law and Order': Congress Ministries' Dilemmas

During their period in office (1937–1939), Congress ministries were dogged by the tension between administrative exigencies and ideological commitments. The arena of free speech was one where these tensions were dramatically apparent. Even as Congress governments assumed power, its senior personnel were not very sure of how censorship would operate in this changed context. In September 1937, Hridaynath Kunzru, a member of the Council of State

[23] Note by Tottenham, 3 January 1943. Note by Maxwell, 13 January 1943, GOI Home Political, f. 3/3, 1943, NAI. Sir Richard Tottenham joined the ICS in 1914 and began his career as Assistant Collector with the Government of Madras. In 1936, he served as Secretary, Army Department, GOI.

[24] Government of Madras Public (Press) Department (Deptt) communication no. S/85-3/43, 19 May 1943, GOI Home Political, f. 3/3, 1943, NAI.

[25] Position summarized in telegram R no. 164 from HD to PSV, 13 January 1941, GOI Home Political (I), f. 3/7, 1941, NAI.

wanted to know, for instance, if 'proscriptions of books in the provinces [would] depend in future on the Government of India or on the Provincial Governments'. The Home Member, Sir H.D. Craik,[26] explained that the power of banning was shared: the GOI could ban imported books under the SCA, while provincial governments could use either the IPA 1931 or section 99 CrPC to ban publications. This meant that publications from abroad could be banned by the GOI in India even if they were not banned by provincial governments. When discussing the General Communist Notification of 1932 (banning all publications emanating from or affiliated in any way to the Comintern), P.N. Sapru wanted to know what would be done if there were communist governments in the provinces; the president of the Council of States disallowed the question as it was 'hypothetical'.[27]

There were variations within Congress ministries with regard to repressive measures to be used against radicals. Sunil Chander has indicated that with regard to political militancy the Premiers of Madras and Bombay (C. Rajagopalachari and B.G. Kher respectively) favoured repressive action administered promptly, while those of UP and Orissa (G.B. Pant and Biswanath Das respectively) were more cautious. This difference of attitude was visible to leftists, who considered Madras and Bombay the 'hardest' Congress provinces, while the British found them the 'safest'.[28] The Madras government under C. Rajagopalachari, for instance, prosecuted two Congress Socialists (S.S. Batliwala and Y. Meherally) for seditious speeches in 1937. The latter was let off, and the former sentenced to six months' imprisonment.

Although Nehru in his capacity as Congress president occasionally found attitudes in his own party erring on the repressive side, men on the ground—both British officials in an earlier period and Congressmen in the phase of provincial autonomy—exercised their own discretionary powers when it came to banning, and unbanning, publications.[29] A vivid illustration of this comes from Bombay: during a visit to Bombay, Nehru asked K.M. Munshi, the

[26] Sir H.D. Craik was an ICS officer who served as Chief Secretary, Punjab (1922–1927), Home Member (1934–1938) and Punjab Governor (1938–1941).

[27] Council of State debate, 14 September 1937, extracts in GOI Home Political, f. 27/18, 1937, NAI.

[28] Chander, 'Congress, the Raj and Conflict in Provincial Autonomy', 91.

[29] K.M. Munshi, interviewer not mentioned, 18 October 1966, 3–6, NMML OHP. Speaking of a later period, Munshi (1887–1971) commented that Nehru erred in that he wanted a full-fledged democracy in addition to fundamental rights, as well as supremacy of Parliament; Munshi opined that the three could not exist together.

Home Minister of Bombay, why he had not removed the ban on communists, and why he had not cancelled proscription orders of books. When Munshi replied that there were hundreds of files on proscribed books, and he had to go through all of them, Nehru lost his temper and commented: 'You have already become a police officer!' On the other hand, the Governor of Bombay, Lord Brabourne, told Munshi that communists leaders would be released only 'over his dead body'. Such were the competing pulls and pressures operating on the Congressmen on the spot.

In the self-assessment of Congress leaders immediately after assumption of power, the victory of the Congress had also been the victory of civil liberties in India. In October 1937, for instance, Nehru contrasted the situation with regard to civil liberties before and after the elections. In his opinion, 'It seemed that a heavy burden had been taken away, and people in towns and villages breathed more freely': organizations that were earlier banned were now no longer so, many political prisoners were released, newspaper securities returned, and the 'continuous shadowing of and spying on the people engaged in public work became less obvious'. On the other hand, in his opinion, non-Congress governments in Punjab and Bengal continued suppressing the press: the press was 'terrorized' by demand for heavy securities in both these provinces, and by a strict censorship in Bengal. However, Nehru admitted that even Congress ministries were in some respects helpless on account of the interference of the central government; one such matter concerned the banning of books (or refusal of entry) under the SCA, which provincial governments could not control. As he put it: 'This banning and stoppage of books has been the public scandal in India. The scandal continues.'[30]

Committed to policies enunciated and promised when they were not in power, Congress ministries did in fact remove restrictions on newspapers and associations, and committed themselves to the release of political prisoners. The Secretary of State noted in December 1937:

> Everywhere in Congress provinces, almost complete liberty of speech has been allowed to agitators and, in some cases, restrictions have even been placed on the reporting of their speeches by the police. Where, as in one case in Madras, a speaker has been prosecuted for sedition, the Ministry has been severely criticised. The Ministries thus find their hands tied in using measures to

[30] Nehru's statement published in the *Bombay Chronicle,* 17 October 1937, *Towards Freedom 1937–47*, vol. 1, 1041–1042.

> suppress disorder while, on the other hand, the Left wing Socialists … have been emboldened to conduct open agitation, threatening peace and stability.[31]

The Madras case was a reference to an event in October 1937 when C. Rajagopalachari, the Congress Premier of Madras, sanctioned the prosecution of a member of the Congress Socialist Party (S.S. Batliwala) for 'violent speech'. At the same time, he released two political prisoners held by the government to deflect attention from this prosecution. This created a 'furore' in the Congress, and it was only on account of the support he received from Gandhi and Nehru that this action escaped condemnation.[32]

What Nehru considered the liberty of the press, the colonial state deemed irresponsible license. The Secretary of State noted that after the assumption of office by Congress ministries in 1937 in UP, for example, an anti-police day was held in Kanpur on 24 October, in which speeches were made including 'incitements to murder the police'. In his opinion, these sentiments were not approved of by Nehru or the Congress ministry; at the same time they were either unwilling or afraid to use their powers to curb such activities.[33]

In October 1937, the AICC directed Congress ministries to lift the ban on political literature, which was a reference mostly to communist publications, of which the GOI had been wary, afraid that communist ideas combined with nationalist ones could prove to be a potent and dangerous mix. Soon after, however, the process of backtracking began. Nehru conceded in late October 1937 that although it would be 'perfectly absurd' for the Congress—members of which bore the tag 'seditious' as a badge of pride—to take action against supposedly seditious activities, he could also imagine cases (he listed 'violence against the state' and 'communal violence' as examples) when doing so became inevitable. He hoped that the Congress would take a 'nonviolent approach' in such cases, but also left the door open for state action, 'for fear of a higher wrong'.[34] Writing in the *Harijan* the same month, even Gandhi clarified that

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[31] Secretary of State's 'Appreciation of Political Situation in India', 21 December 1937, Cabinet Papers 24/273, *Towards Freedom 1937–47*, vol. 1, 1287–1289.

[32] Sunil Chander, 'The Congress Ministries and the British Authorities in the Working of Provincial Autonomy, 1936–39: Aspects of Conflict between the Congress and the Raj', unpublished M.Litt. dissertation submitted to Trinity College, Oxford, 1983 (copy in NMML, New Delhi), 28–29.

[33] Secretary of State's 'Appreciation of Political Situation in India', Cabinet Papers 24/273, 26 November 1937, *Towards Freedom 1937–47*, vol. 1, 1195–1198.

[34] 'On the Congress Attitude to Sedition', *Selected Works of Jawaharlal Nehru, Series 1* (*SWJN1*), ed. S. Gopal (New Delhi: Jawaharlal Nehru Memorial Fund), vol. 8,

'Civil Liberty is not criminal Liberty', as he considered the issue of Congress governments inflicting punishments for activities that interfered with the maintenance of law and order. He sought to make his commitment to non-violence compatible with the state's need to protect itself. In his opinion, civil liberty was the right to say and do what one liked 'within the ordinary law of the land'. He urged that those provisions of the IPC, the CrPC and the Special Powers Legislation enacted by the British for their own protection be 'ruled out of operation' by Congress ministries, but the latter were nevertheless to retain powers to exercise against those who 'in the name of civil liberty, preach lawlessness in the popular sense of the term'. Gandhi continued that although some argued that Congress ministries pledged to non-violence could not 'resort to legal processes involving punishments', 'I have, personally, not found a way out of punishments and punitive restrictions in all conceivable cases'. There was no doubt in his mind that Congress ministers, while exploring the possibilities of 'non-violent punishments', 'cannot ignore incitements to violence and manifestly violent speech, even though they themselves run the risk of being styled violent'.[35] Assumption of state power came with its own set of responsibilities and constraints, and demanded the reconciliation—however uncomfortable—of oft-stated principles with harsher ground realities.

In January 1938, the Congress Working Committee (CWC) passed a resolution outlining broad policies for its ministries to follow when faced with law and order problems. Although the principles of civil liberty and democracy were to guide the ministries, and persuasion was to be the first weapon of choice, 'but in spite of every desire to avoid it, coercive action may become necessary and in such cases Ministries will inevitably have to undertake it. Such coercive action should only be undertaken where there has been violence or incitement to violence or communal strife'.[36]

343. This was a speech made at the AICC session in Calcutta on 30 October 1937 during a discussion on the policy of Congress ministries to tackling sedition and violence. Nehru stated: 'We cannot say straightaway that even when the question of violence in involved, even when the whole policy of the Congress should be to avoid prosecution, even though a person has offended against the law, the right approach to this problem for the Congress Ministry should be a nonviolent approach.'

[35] *Harijan*, 23 October 1937, *Towards Freedom 1937–47*, vol. 1, 1065–1066.

[36] CWC resolution passed on 4 January 1938, quoted in letter from the Secretary of State, Marquess of Zetland, to the Viceroy, Lord Linlithgow, 17 January 1938, Linlithgow papers, *Towards Freedom: Documents on the Movement for Independence in India 1938*, ed. Basudev Chatterji (New Delhi: Indian Council for Historical Research/Oxford

Later the same year, in September 1938, a resolution drafted by Gandhi was passed at the AICC session. This stated that the Congress would support measures by its ministries 'for the defence of life and property', in a context where many people, including Congressmen, were 'found in the name of civil liberty to advocate murder, arson, looting and class war by violent means' and when 'several newspapers are carrying on a campaign of falsehood and violence calculated to incite the readers to violence and to lead to communal conflicts'. The resolution therefore warned the public that 'civil liberty does not cover acts of or incitement to violence or promulgation of palpable falsehoods'.[37] In protest, Congress Socialists walked out of the meeting. At times, the voice of nationalists in power did not sound very different from that of the colonial state.

Functionaries of Congress ministries were animated by their desire to not be compared to colonial officials in their functioning. Writing to the Premier of Bombay, B.G. Kher, in April 1939, Congress leader Vallabhbhai Patel suggested that a ban on the Communist Party could only be imposed on the basis of evidence in the form of confidential surveillance reports linking them with violent activities. But the problem, wrote Patel, was: 'We cannot quote such report as evidence against our own people; when we have ourselves in the past condemned such a process when it was so used against us.' Ever the pragmatist, Patel did not think the ban was a good idea in any case, as '…would [it] not be better to let that organization function openly instead of a nominal ban which is not at all effective and which puts you in an embarrassing position'.[38]

Not only the GOI, but even newspapers made (unfavourable) comparisons between Congress ministries and their colonial predecessor. In August 1939, the Bombay government forbade five newspapers (three Muslim-owned and two Parsi-owned) from reporting riots that marked the onset of Prohibition

University Press, 1999), part 1, document no. 1.i.5A., 14. The Secretary of State found this attitude 'unexpectedly reassuring', although he was surprised that the CWC had passed such a resolution. The Secretary of State for India, the Marquess of Zetland, was appointed to that position in June 1935. He had served as Aide-de-camp to the Viceroy between 1900 and 1907 and as the Governor of Bengal between 1917 and 1922. He had authored a number of travelogues on Asia and also Curzon's authorized biography in 1928.

[37] Gandhi's draft resolution on civil liberty, passed on 26 September 1938, *Towards Freedom 1938*, part I, document no.1.ii.10, 102–103.

[38] Letter from Patel to B.G. Kher, 10 April 1939, in *Nehru–Patel: Agreement Within Differences, Select Documents and Correspondences, 1933–50*, ed. Neerja Singh (New Delhi: National Book Trust, 2010), 48–49.

in Bombay. This was pre-censorship, as the papers were forbidden (under section 144 of the CrPC) from carrying any news, articles, or comments on the riots for a period of two months, as well as on any other riots within the two month period, unless the matter was approved by the Public Relations Officer. Additionally, these papers were also restricted from covering protests against the new Urban Immovable Property Tax. A *Times of India* editorial supported the government's first measure (as it was seen as a much-needed effort to dampen communal feeling) but bitterly criticized the second as being an attack on the rights of the press as well as the public to hold up government decisions to scrutiny. The newspaper accused the government of being 'unduly squeamish', the censorship 'unwarranted', and a Congress ministry attacking the liberty of the press most ironic.[39]

It is not surprising that the GOI took a keen interest in the successes—and, more importantly, the failures—of their erstwhile opponents, who became their partners in government in 1937. In this context, what came to be known as the 'Parmanand case' was illustrative not only of the difficulties arising during the operation of provincial autonomy but also of the difficulties regarding practically implementing an abstract principle. What was essentially a conflict over freedom of speech assumed such serious proportions that the UP Governor confided to the Viceroy that he thought there was a 'very definite possibility' that the Congress government would resign.[40] Pandit Parmanand had been sentenced to death by the British in 1915 for participating in an anti-colonial conspiracy, although the sentence was reduced to transportation for life. All other 42 prisoners sentenced with him were released in 1928 except him, as he had 'persistently shown a complete absence of any sign of having reformed'. He was released only in August 1937 after the Congress assumed power in UP. Along with other released prisoners, Parmanand began a tour of UP where he gave speeches that were deemed to be 'progressively more violent'. [41] While the

[39] *Times of India*, 'Bombay Press Ban', editorial, 3 August 1939. For the situation prevailing in Bombay, and B.G. Kher's rule, see Margarita Barns, *The Indian Press: A History of the Growth of Public Opinion in India* (London: George Allen & Unwin, 1940), 428–431.

[40] Letter from UP Governor, Sir Harry Haig, to the Viceroy, 13 December 1937, Haig Papers, *Towards Freedom 1937–47*, vol. 1, 1259–1262. In fact, Haig wrote to Linlithgow detailing the action to be taken if and when the ministry resigned. See letter from Haig to Linlithgow, 14 December 1937, Haig Papers, *Towards Freedom 1937–47*, vol. 1, 1263–1265.

[41] Memorandum from the Secretary of State to the British Cabinet, Cabinet Papers 24/273, *Towards Freedom 1937–47*, vol. 1, 1277–1282. Pandit Parmananda (of Jhansi)

British Governor of UP, Sir Harry Haig, thought his prosecution a necessity, both the UP Cabinet as well as the Congress Premier of UP, G.B. Pant, were in favour of a warning being given instead, as they feared that public opinion would turn against them.[42] Pant assured the Governor that once a warning was given, 'he would not shrink from prosecution, and considered that he would have no difficulty in justifying his position to his followers'.[43] He also told the Governor that he feared that his followers would pass a vote of 'no-confidence' against him if he agreed to the prosecution. He did not want, he said, to be 'drawn gradually into a policy of prosecution for seditious speeches'.[44] In other words, the Congress Premier had to keep his core constituency—the Indian public, as well as Congress workers—in mind when proceeding with penal action. Although even the Governor of UP credited Pant with being committed to the idea of freedom of expression,[45] it is clear from the negotiations over

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is not to be confused with Bhai Parmananda, a prominent leader of the Hindu Mahasabha. For his biographical profile, see Anil Nauria, 'Some Did Not Seek Clemency: Pandit Parmanand of Jhansi', *Indian Express*, 1 March 2001, available at https://www.scribd.com/doc/93896220/Pandit-Parmanand-of-Jhansi (accessed 19 January 2019).

[42] Telegram from Haig to Linlithgow, 27 November 1937, Haig Papers, *Towards Freedom 1937–47*, vol. 1, 1199. G.B. Pant wrote to the Governor regretting that the two sides (the Governor and the Cabinet) were not able to reach a mutually acceptable decision on the case, and mentioning that the Congress government was not prepared to take responsibility for the decision taken (to prosecute). Letter from Pant to Haig, 28 November 1937, Haig Papers, *Towards Freedom 1937–47*, vol. 1, 1203.

[43] Letter from Pant to Haig, 13 December 1937, Haig Papers, *Towards Freedom 1937–47*, vol. 1, 1259–1262. The policy of the Congress ministry in UP was 'not to institute prosecutions for seditious speeches without a personal warning having been previously given'. Memorandum from the Secretary of State to the British Cabinet, Cabinet Papers 24/273, *Towards Freedom 1937–47*, vol. 1, 1277–1282.

[44] According to the Secretary of State, Pant emphasized 'his objection in principle to prosecution without individual warning, but declared that where such warning had been given, he would prosecute'. Memorandum from the Secretary of State to the British Cabinet, Cabinet Papers 24/273, *Towards Freedom 1937–47*, vol. 1, 1277–1282.

[45] Haig wrote to the Viceroy that '… he [Pant] has exceedingly strong personal convictions about democratic principles, and actions which circumstances force upon him which are in conflict with his general ideas of the liberty of the subject are extremely repugnant to him. His reluctance [to prosecute Parmanand] should not be attributed merely to fear of criticism; it represents in large part his convictions'.

the Parmanand case that for the Congress ministries it was simply not enough only to be tolerant of expression of opinion, but to be seen to be so.

In the event, even as Haig and Pant were working out a compromise solution, Parmanand was arrested in Delhi for a different offence. After consultation with the Congress high command, the UP government decided not to agree to Parmanand's prosecution on charges of sedition, suggesting instead that he be imprisoned on the basis of the Delhi case. The UP Premier would then issue a warning against violent speeches, but would not be directly blamed for Parmanand's prosecution for another charge, a prosecution that would in any case have the effect of removing him from circulation for a few months at least.[46] Lord Linlithgow could barely conceal his glee at the dilemma caused by violent speeches to his political opponents, who very publicly espoused non-violence:

> I have some reason to believe that Congress themselves feel that this particular case is a bad one from their point of view, that they find themselves (though entirely as a result of their own action) on bad ground, and that they would be not unwilling to compromise, though the position is complicated by Pant's somewhat doctrinaire outlook.… In this particular instance our ground is very good, given the objectionable nature of the speech made by Parmanand which is, I would judge, of such a character as to offend grievously against the Mahatma's non-violent theories, and equally of such a character that the public, whether here or at Home, could not well blame us for taking drastic action.[47]

Even as the Parmanand issue was being resolved, the Congress ministry in UP supported the Kanpur District Magistrate when he prohibited 14 people from making speeches or issuing statements for two months during a period of labour unrest in November 1937. As the UP Governor put it:

> … he [Pant] has an exceedingly vigorous and troublesome left wing opposition. He is prepared, *when in his judgment conditions require it*, to face this opposition, and at present he can, when he faces it, beat it. This was shown in the attack

Letter from Haig to Linlithgow, 24 December 1937. Linlithgow Papers, *Towards Freedom 1937–47*, vol. 1, 1292–1296.

[46] Memorandum from the Secretary of State to the British Cabinet, Cabinet Papers 24/273, *Towards Freedom 1937–47*, vol. 1, 1277–1282.

[47] Letter from Linlithgow to Governor Punjab, Sir H.W. Emerson, 22 December 1937, Linlithgow Papers, *Towards Freedom 1937–47*, vol. 1, 1290–1291.

> made on him over his action taken at Cawnpore. But I think he had to exert all his authority on that occasion.[48]

Freedom of expression, then, was a principle to be trotted out on some occasions, and held in abeyance in yet others. It was an argument summoned by the Congress ministry when the emotive issue of sedition came up, and when public opinion was in favour of the transgression (as in the Parmanand case), but forgotten when its other was required to tackle left-wing ideas (as in Kanpur).[49] At any rate, as the subsequent years were to prove, it was easier for Indian nationalists to uphold the ideal of fully free speech when they were in opposition to the colonial state than when they themselves assumed state power.

[48] Letter from Haig to Linlithgow, 24 December 1937, Linlithgow Papers, *Towards Freedom 1937–47*, vol. 1, 1292–1296, emphasis added.

[49] My interpretation of this episode, though based on the same primary sources as those used by Gyanesh Kudaisya, differs since he takes a much more sympathetic view of Pant's actions. Kudaisya, *Region, Nation, 'Heartland': Uttar Pradesh in India's Body Politic* (New Delhi: Sage, 2006), 236–239.