

LAWS LIKE OFFICIAL SECRETS ACT CONFLATE INTERESTS OF PARTICULAR PARTIES WITH THE GREATER GOOD

Relevant for: Ethics | Topic: Challenges of corruption

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The greatest failing of Indian public life over the past 70 years is the manner in which the state and forms of government have become identified with the life of the people. We have come to believe that state and society are the same thing and that pronouncements about the public good that emanate from organs of the state summarise ideal citizenship. This is not actually nationalism or patriotism. It is statism and it has had (and continues to have) very significant consequences for public welfare and our inability to differentiate between the interests of a few from that of the many.

Public welfare is best served through the ability of the citizenry to constantly redefine the meaning of the term and to rescue it from the dead reason of legal and civic bureaucracies. Economic welfare, social reform, public justice and individual liberty are topics that are far too important to be left to statist thinking whose *raison d'être* is the consolidation of power with those who already have it. The kinds of laws we have — and the manner in which they are used — provide a good indication of the simplistic conflation between the interests of the state and those of public welfare.

The Official Secrets Act of 1923 (OSA), even though its powers have been curtailed by past court judgments, must be one of the most egregious instances of a law that infantilises common citizens through the notion that they should not question the idea of the “secret” itself. The secret is put forward as a sacred idea that protects us from evil, and the state is the unquestionably best judge of what is good and evil. Secrets as a method of governance exist in societies marked by unquestioning faith. The OSA, a left-over from the despotism of the colonial era, was intended to protect the empire from its enemies but is now a key tool for silencing a questioning citizenry. This law has remained on the book irrespective of the political party in power, reinforcing the parent-child relationship between the state and its subjects.

Why should we not ask what is good for us and why the state should not be open to informed scrutiny? Are politicians the only group equipped to understand what is good for the nation? And, is national life so incredibly fragile as to be splintered into shards of uncertainty by debates over how “threats to national interests” come to be defined?

A close cousin of the OSA — in terms of the inability to distinguish colonial strategies from those required for a free society — is the provision of Indian Penal Code (IPC) that covers “sedition”. Section 124-A of the IPC notes that “Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India” is liable to be punished with life imprisonment. A wide variety of acts may fall foul of this law, including sloganeering by students, not supporting the Indian cricket team in an India-Pakistan match and questioning political strategies that are built on religious divisiveness. In effect, it is a law open to both individual idiosyncrasy as well as party-political vengefulness.

In its 2018 report on sedition, the Law Commission of India suggested that a “healthy debate” on the topic may open it up to more nuanced thinking on its meaning in contemporary India. What might be needed, in addition, is a vigorous debate on the nature of contemporary Indian nationalism, the propagation of unquestioning faith in the state and the spread of these ideas through the most powerful of all methods of dissemination: Popular culture. The sacredness of secrets and the normalisation of “sedition”, though enshrined through archaic legal provisions, have their most powerful impact through everyday repetitions in a variety of media, including advertising. An attention to laws needs to be supplemented by attention to the everyday grounds of belief and behaviour upon which laws stand.

The broader discussion we need to have concerns the nature of public perceptions regarding nationalism, patriotism and our relationship with the state. This is irrespective of the party in power. Support for a change in laws comes from a change in the public mood. The debates we need to have are of the following kind. First, if we allow unlimited scope for the idea that national welfare requires the absolute quarantining of certain forms of state activity from public scrutiny — and that the state is the final arbiter of national welfare — then, is it even possible to recognise that the state is itself formed out of specific actors with short-term goals that may have little to do with collective benefit? Political parties form the state. The idea of the state needs to be differentiated from the goals of those who run it.

Second, what is frequently defined as sedition is frequently a way of rethinking the meaning of nationalism. The colonial antecedents of penal provisions for seditious activity derive precisely from the fright and horror occasioned by this imagination. So-called seditious acts are valuable attempts to unfasten the straight-jacket into which the idea of nationalism has been confined. Why should we not practice the nationalism of anti-casteism, religious diversity and human rights? A nation is not much of a community if it has no capacity for introspection. It then becomes a spectre.

To think of the nation in these ways, however, requires that we do not subsume national life — that is, the life of the people — into that of the state, not imagine the goals of political parties to be the same as those of the state and not allow ourselves to be forever treated as helpless infants who are unable to think for themselves. The overweening state is the real danger to national welfare and requires recalcitrance as civic duty.

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