



Protecting the dissenters :India's constitutional democracy is predicated on the people's right to call state power to account

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Highlights

- The course of democracy anywhere in the world is defined by events that test the resilience of democracy and also add to it.
- The arrests on August 28 of some of India's most respected human rights activists, known for their public weal, is one such watershed event that will test the will of the Indian people to assert their freedom and the capacity of libertarian institutions to resist the state's onslaught on the republic's core values.

How the arrests could affect the individuals

- While the Supreme Court has interdicted the detention of the accused in jail, their house arrest is only a limited consolation.
- The truth is that the accused will have to face a never-ending oppressive prosecutorial process which, once initiated, consumes life and is destructive of one's pride and dignity.
- Their life's work and the well-documented circumstances of the arrests proclaim their credentials and a presumption of innocence qua the charges.

Right to Disagree

- While an attempt has been made by prosecuting authorities to link the arrests with the alleged "Maoist plot to assassinate the Prime Minister", the case presented to the courts for transit warrants reportedly goes no further than alleging a case of incitement to violence through inflammatory speeches and historical references.
- The allegedly inflammatory exhortation is with reference to a plea to revolt against injustice in the backdrop of the Bhima-Koregaon violence during a Dalit gathering in January this year, which was preceded by a meeting of the Elgar Parishad under the patronage of Justice (retired) P.B. Sawant of the Supreme Court and Justice (retired) B.G. Kolse Patil of the Bombay High Court, both of whom see no legal justification for the arrests.
- The observation in court of Justice D.Y. Chandrachud that "dissent is the safety valve of democracy" is a clear reiteration of the citizens' right to disagree with, denounce, and decry a situation or state of affairs that is unjust and oppressive.
- This is the philosophy that inspired our freedom movement and defines India's

constitutional democracy, which is predicated on the people's right to call state power to account, albeit within the constitutional framework.

An ominous portent

- Unlawful detention with its accompanying injustices, including the innumerable instances of custodial torture, mock the promise of our Constitution and rob citizens of their self-worth and dignity, which are at the pinnacle in the hierarchy of human rights.
- The routine constitutional aberrations under the present dispensation are indeed an ominous portent.
- Charges of sedition against student activists in the past, the persecution of political opponents on trumped-up charges, cases against office-bearers of inconvenient non-governmental organisations, and a brazen display of the state's iron fist are reminiscent of the ways of dictatorial and colonial regimes which had to give way to modern democracies inspired by the cry for freedom in every heart, everywhere.
- A nation born to freedom is expected to vindicate the supreme sacrifices made by its freedom fighters so that we may enjoy the fruits of liberty, of which eternal vigil is the price.
- We cannot ignore the defining lessons of history which find an echo in the immortal words of Dante that "the hottest places in Hell are reserved for those who, in a period of moral crisis, preserve their neutrality".
- Our own struggle for freedom was rooted in the conviction that a nation has a right to revolt, for which our founding fathers adopted peaceful means.
- How, then, can the Indian state, which is anchored in the promise of constitutional democracy and committed to the preservation of fundamental human freedoms, unjustly invoke oppressive laws against its own citizens crusading against social and political inequities — citizens against whom there is as yet no clinching evidence to sustain the grave charges — is the question.
- Considering the stringent provisions of the Unlawful Activities (Prevention) Act under which the rights activists have been charged, it is hoped that the Supreme Court will insist upon utmost circumspection on the part of the prosecuting agencies in pressing ahead with the prosecution.

Conclusion and Way Forward

- A nation that seeks inspiration in its folklore of elevating nationalism associated with poets such as Ram Prasad Bismil, Allama Iqbal, Ashfaqulla Khan, Firaq Gorakhpuri, Ram Dhari Singh 'Dinkar' and Durga Sahay Suroor cannot remain impervious to injustice, social or political.
- We know that tyranny expands in proportion to the space available for its existence.
- By standing up against injustice, we accept the burden of being and, indeed, it is better to be than not to be.