

THE ARREST OF ACTIVISTS – IT IS AN ATTACK ON FREEDOM OF SPEECH OR IS IT JUSTIFIED IN THE NAME OF NATIONAL SECURITY?

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The Constitutional Law was created for the betterment of its citizens. The provisions have been created to meet the present conditions seeing the country's scenario but now the same is being scrutinized or in other words been misused in the name of justice and good conscience. Taking the current issue on board i.e. whether the arrest of activists is an attack on Freedom of speech or is it justified in the name of National Security? - cannot be considered as either a boon or a bane.

The Constitutional Law of India guarantees the fundamental rights to the citizens of the country, dealt in Part III from Article 12- Article 35 engraved in the Constitution of India. 'Fundamental Rights' being the basic rights of the common people cannot be destroyed in the name of politics, societal evils etc. The crucial rights which indeed can be exploited in the name of national security to protect the sovereignty and integrity of the country is the 'Right to Freedom' - Article 19 of the Constitution of India, which includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence and right to practice any profession or occupation, right to life and liberty, protection in respect of conviction in offences and protection against arrest and detention in certain cases. The constitutional provisions i.e. Article 19(1)(a) 'freedom of press' is recognized by the activists too. Taking into consideration, the freedom of speech and expression includes right to impart and receive information which in turn includes freedom to hold opinions. This right enables an individual to participate in public activities. The phrase, 'freedom of press' has not been used in Article 19 but the activists as well as most of the scholars and industrialized jurisdiction throughout the world recognize that freedom of expression which includes freedom of activists.

Now the question that arises whether the arrest of activists is an attack on the freedom of speech or is it justified in the name of national security can be briefly explained to the readers by talking about the imposition of reasonable restriction in the name to protect the sovereignty and integrity of the country. The restriction like such are meant to be imposed in the interests of public order, security of state, decency or morality but not by curbing the fundamental rights of the individual guaranteed by the Constitution of India i.e. freedom of activists, the people who tries to give justice to the victims from the evils of the society or to bring a favorable change in the order of the society for the betterment of the present as well as future generation. The best example of such a statement can be – ‘The Nirbhaya rape cum murder’ case¹, where a medical student was gang-raped to death brutally so as to satisfy the undesirable needs of the offenders and thereby the activists play a crucial role to curb such an obnoxious and unbearable act.

The statement, ‘the arrest of activists is an attack on the freedom of speech or is it justified in the name of national security’ can be supported with a landmark case i.e. Shreya Singhal vs Union of India², a judgement by two- judge bench of the Supreme Court of India in 2015, on the issue of online speech and intermediary liability in India. The Supreme Court struck down Section 66-A of the Information Technology Act, 2000, relating to restrictions on online speech as unconstitutional on grounds of violating the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India. The court further held that the Section was not saved by virtue of being ‘reasonable restrictions’ on the freedom of speech under Article 19(2). This case makes it crystal clear to the readers view that, above all lies the decision of the apex court i.e. the Supreme Court whose main aim is to deliver justice and that such reasonable restrictions would not impose without giving a wheelful justification as to why the basic rights guaranteed to the citizen of the country has been taken away merely on the ground of reasonable restriction.

A case supporting freedom of press which includes freedom of activists is Kishori Mohan vs State of W. B³, the Supreme Court explained the difference between three concepts: law and order, public order, security of State. Anything that disturbs public peace and or public tranquility disturbs public order. A law punishing the utterances deliberately tending to hurt the religious feelings of any class has been held to be valid as it is a reasonable restriction aimed

¹ December 16, 2012.

² AIR 2015 SC 1523.

³ AIR 1972 SC 1749, (1972) 3 SCC 845, 1973(5) UJ 98 SC.

to maintain the public order. Thereby, such freedom can be curbed in the name of national security to its valid justification for imposition of restriction.

There have been cases reported where the freedom of expression by the activists has become a gateway to the prison world. One such instance has been recorded in a case reported in the State of Tamil Nadu on June 29, 2017. The case was about the social media posts against politicians and government policies landing people behind the bars. Previously such arrests were made under Section 66-A of the Information Technology Act, 2000- punishment for sending offensive messages through communication services. However, irrespective of the Section been struck down in Shreya Singhal's case the policemen continue to arrest people for social media posts.

Taking constitutional provisions into consideration, the arrest can be made only on three grounds i.e. if the suspect will run away, will threaten the witness and/ or tamper with evidence. Such grounds or essential ingredients for the arrests of activists are clearly not abided by the policemen so as to show superiority of power and authority over the voice for justice other than the justice delivered by the procedure of court.

There are certain legal provisions in Criminal Law which is used as tool to limit the peaceful expression in India. Such laws are established to harass journalists, restrict activities by non-governmental organization (NGO's), arbitrarily block internet sites or take down content and target vulnerable sections of the society such as religious minorities, marginalized communities, women etc.

The recommendations pertaining to this issue would be – firstly, to set up a committee for settling the matters involving peaceful expression which does not harm the sovereignty and integrity of the country. Secondly, to give a proper training to the policemen especially with regards to the ground rules for arrest of activists and not to exercise their power over vulnerable sections of the society. Thirdly, to enlighten the lament activists about the rights available to them at both national and international level (International Conventions) and lastly to bridge the gap between the legal provisions in India and human rights available in the International Covenant on Civil and Political Rights.

Humans are regarded as social animals and thereby all of them have a right to express their thoughts and feelings but at a level of reasonable restriction. This paper tries to cover all the

aspects relating to the constitutional provisions and the fundamental rights of the activists by briefly explaining and giving justification to the statements made backed by landmark cases.

Thereby, by concluding I would like to bring to the notice of the readers that though the rights are guaranteed to the citizens at national and at international level, yet it is not been imposed at a proper state further giving rise to mishaps and abuse of provisions established. This can be solved by the people themselves by standing out to secure their as well as the society's interests.

