

RIGHT TO DISSENT: A MORE DEMOCRATIC RIGHT BUT A LESS PRAGMATIC RIGHT

Written by Lokesh Vyas

Student, Institute of Law Nirma University, Ahmadabad

Abstract

The chasm between what I believe and what I express is too wide to bridge. This ever-widening gap leads to the creation of two polarized units who are euphemistically called Self and the Other. The fear of “other” impels one (self) to not to express what one believes which rewidens the gap between two different ideologies. The dissection of ideologies can place in two ways. Either two ideologies create two sects or two sects gives birth to two different ideology. The essay expounds that how right to dissent, a democratic right, is less practicable to be exercised in India. Furthermore, the author attempts to show that how the selection of ideologies does not occur by choice but rather happens by the fear of the ideological group that possess power. The essay highlights the recent incidents of the repression of dissenting voices in India which paved the way for legitimization of violence by state. Here, the question arises that if binary choice exists in the form of self and other, then who is the other and who is self and why it is what it is. The dissection of two polarized entities gives birth to a polemic problem of monopolization of violence which has always been a nightmare for the people who differ the majoritarian opinion. This legitimization of violence further monopolized by the pretext of national security.

“Dissent is the safety valve of democracy. If dissent is not allowed then the pressure cooker may burst.”

DY Chandrachud

Introduction

The recent arrest of five social activists named Sudha Bharadwaj, Varavara Rao, Arun Ferreira, Gautam Navlakha and Vernon Gonsalves,¹ has kindled a debate regarding the freedom of speech among Indian populace and led people to name it a fettered Constitutional right. These arrested people are alleged of having nexus with the Maoist insurgents,² who are often accounted for waging war against India. Furthermore, they have also been imputed for having indulgence in the Bhima-Koregaon,³ but the story doesn't end here.

The act of “*Repression of voice*” mainly a dissenting voice is soaring high day by day in India with recent instances of censorship and intimidation of journalists and activists. The suppression of voice of dissidents is no more a flabbergasting fact in India because of its normalization. Right to dissent, an integral part of democracy is meant to be protected under the aegis of constitutional canons yet the reality portrays otherwise. Such suppression of voice impels a citizen to question the democracy but unfortunately such questioning ends up in becoming the next instance of suppression of voice. It proves that how right to dissent has become a more theoretical and less pragmatic right.⁴ The oppression of voice is not limited to a particular government or ruling party. It occurs whenever the need for suppression is felt by someone in power because no one wants to get jeopardized by the act of other. Therefore, in

¹ *Elgaar Parishad case: Activists' arrest not due to dissent, says SC; rejects demand for SIT*, INDIAN EXPRESS (Oct. 15, 2018, 5.30 P.M.), <https://indianexpress.com/article/india/supreme-court-verdict-on-activists-arrest-elgaar-parishad-case-bhima-koregaon-violence-5377887/>.

² *Arrest of activists shows 'emergency-like' conditions prevail*, TOI, August 29, 2018.

³ Michael Shafi, *Protests in India as rights activists placed under house arrest*, THE GUARDIAN, (Oct. 11, 2018, 3.30 P.M.),

<https://www.theguardian.com/world/2018/aug/29/protests-india-rights-activists-placed-under-house-arrest>.

⁴ Kajal Basu, *A Crackdown on Dissent in India: What's Behind the Recent Arrests of Rights Activists*, THE DIPLOMAT (Oct. 11, 2018, 3.30 P.M.),

<https://thediplomat.com/2018/08/a-crackdown-on-dissent-in-india-whats-behind-the-recent-arrests-of-rights-activists/>.

the act of defending yourself, people end up in suppressing the voice of other without getting implicated. Through this essay, the author attempts to answer the question that whether law is always a yardstick to measure justice and whether it is the only way through which justice can be achieved.

End of the beginners of dissent

The recent incident of the arrest,⁵ of five social activists epitomize the act of suppression of voice. This legitimization of illegit act questions the idea of Justice and liberty enshrined in the preamble of the Indian Constitution. The recent arrest of five activists demonstrated that the idea of constitutional liberty is a mere charade obscured within the mystified conception of Justice. This repression of voice is neither a newborn issue in India nor is it time or place specific issue. It existed every time in society and not a single society in the world has escaped it unwitnessed. Before this recent arrest in August, the same had happened in the June when other set of five activists namely Shoma Sen, Surendra Gadling, Sudhir Dhawale, Rona Wilson and Mahesh Raut were arrested under the UAPA, 1967.⁶ The legal justification for quelling dissenting voice makes one remember the British era when the voice of Indian revolutionaries was subdued by applying legal weapons. But Post-Independence, the same treatment can neither be expected nor be accepted but reality is beyond denial.

The story of repression of voice is not only restricted to social activists but applies to every Individual who possesses a differing opinion. Such individual can be a lawyer, a poet, a teacher, a politician, a RTI activists or even a sweeper (provided that he gets the opportunity to dissent) but the primarily attacked dissident is a journalist. Journalists becomes the most vulnerable dissident because of their public identity and their unfettered accessibility. From 1998 to 2018, 48 journalists have been sacrificed,⁷ which depicts the fate of people with dissenting opinion.

⁵ *supra* note, 3.

⁶ Manasi Phakde, *Pune police arrested 5 activists in June. What happened to them*, THE PRINT, (Oct. 9, 2018, 1.30 P.M.),

<https://theprint.in/politics/pune-police-arrested-5-activists-in-june-what-happened-to-them/108845/>.

⁷ *48 Journalists Killed in India*, COMMITTEE TO PROTECT JOURNALISTS, (Oct. 9, 2018, 1.30 P.M.),

https://cpj.org/data/killed/asia/india/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&cc_fips%5B%5D=IN&start_year=1992&end_year=2018&group_by=location.

The brutal death of Gauri Lankesh caused a huge uproar in Indian media. But she was not the only victim of such violence.⁸ Before Gauri Lankesh, Narendra Dabholkar, M. M. Kalburgi, and Govind Pansare, were killed with the same modus operandi,⁹ but justice has still remained obscured for them. In the list of dead journalists, the name of two journalists from Tripura named Santanu Bhowmick and Sudip Datta Bhaumik, cannot be forgotten.

The spate of these deaths is the portrayal of our tolerance for the intolerance. This intolerance can go to the extent that mere appreciation of a rival country i.e. Pakistan attracts charges for sedition and such person get the default tag of anti-national.¹⁰ The extension of such incidents can lead to the conviction of 23000 people protesting against a nuclear power plant under the charges of waging war against the state.¹¹ In India, the situation has become so pathetic that writing a story exposing a major privacy breach in a nationwide database of more than 1 billion Indians or penning down a critical report on child trafficking showing link with some politically deemed correct organization attracts chilling penal ramifications.¹² The harassment of Teesta Setalvad, a human rights activist works with survivors of the 2002 religious riots in Gujarat state by conviction or illegal search in her office and home is yet another example of subjugation of voice,¹³ by the exercise of legal weapons. Besides this, censorship of books and movies is another example of suppression of voice in India.¹⁴

⁸ Sudipto Mondal, *Why Was Gauri Lankesh Killed?* THE NEWYORK TIMES, (Oct. 9, 2018, 1.30 P.M.), <https://www.nytimes.com/2017/09/13/opinion/gauri-lankesh-india-dead.html>.

⁹ *Id.*

¹⁰ Soutik Biswas, *Why India needs to get rid of its sedition law*, BBC, (Oct. 9, 2018, 1.30 P.M.), <https://www.bbc.com/news/world-asia-india-37182206>.

¹¹ *supra* note, 9.

¹² Annie Gowen, *In Modi's India, journalists face bullying, criminal cases and worse*, THE WASHINGTON POST, (Oct. 5, 2018, 12.30 P.M.),

https://www.washingtonpost.com/world/asia_pacific/in-modis-india-journalists-face-bullying-criminal-cases-and-worse/2018/02/13/e8176b72-8695-42ab-abd5-d26aab830d3e_story.html?utm_term=.609ad9b9a0dd.

¹³ Fahad Shah, *Silencing dissenting voices in India*, ALJAZEERA, (Oct. 18, 2018, 12.35 P.M.), <https://www.aljazeera.com/indepth/features/2015/11/silencing-dissenting-voices-india-151108082710950.html>.

¹⁴ Ajay Kumar, *Banning books is draconian; govt may use its powers to clamp down but it will be thwarted by technology*, FIRST POST, (Oct. 18, 2018, 12.35 P.M.), <https://www.firstpost.com/india/banning-books-is-draconian-govt-may-use-its-powers-to-clamp-down-but-it-will-be-thwarted-by-technology-5121441.html>.

The spate of all these incidences justifies India's 138th rank in World Press Freedom Index which fell from 136th in 2017.¹⁵

The much trending concept of Left wing and Right wing is prime reason why the repression of dissenting voice takes place.¹⁶ The existence of right wing or rightist ideology is the primary reason for the existence of left wing or leftist because there can never be a left wing without a right-wing ideology. The biggest irony is that this political structure is not static. Today, Bharatiya Janata Party is the ruling party and people supporting it are categorized as rightists but opposing party Congress becomes left wing and the its supporters becomes leftist. Today, BJP is in power but tomorrow it may be some other party and that time that ruling party would become right wing and BJP would become leftist party. Unfortunately, this ever-changing process of ruling ends up in impacting life of innocent people who dare to exercise their fundamental right of freedom of expression.

Weapon of legal Terrorism

Right to speech and expression becomes the most mystified right in the Constitution of India when the we encounter with the incidents of suppression of vice India. Suppression of a dissenting voice by a state suggests the presence of fear of coup or revolution which a state never desires for. No government or political party likes to get questioned by its people because questioning implies the questioning the legitimacy of accountability. The recent arrest of five activists was made under the Unlawful Activities (Prevention) Act, 1967 (UAPA),¹⁷ which authorized the action of raids and arrests by the police without warrant. It would not be a misnomer to call this law a Draconian law as it contains ambiguous provisions with the widest amplitude of applicability. The "Open Interpretative" nature of its provisions unlatches the door of arbitrariness to the dissenting populace. Observing the misuse of Anti-terrorism laws,

¹⁵ 2018 World Press Freedom Index, REPORTERS WITHOUT BORDERS FOR FREEDOM OF INDEX, (Oct. 16, 2018, 12.33 A.M.), <https://rsf.org/en/ranking>.

¹⁶ 'BJP resorts to repressive methods to suppress voices of dissent': Ex-Jharkhand CM on police raids, SCROLL.IN (Oct. 16, 2018, 12.33 A.M.),

<https://scroll.in/latest/892223/bjp-governments-resort-to-repressive-methods-to-suppress-all-voices-of-dissent-ex-jharkhand-cm>.

¹⁷ Unlawful Activities (Prevention) Act, 1967.

Supreme Court in the case of *Arup Bhuyan v. State Of Assam*,¹⁸ clarified that mere membership of a banned organization is not sufficient to incriminate a person under TADA an anti-terrorism law. Further, it said that the accused needs to resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence. However, this ruling doesn't seem to be venerated because even after this observation of court many people have suffered the penal ramification of the anti-terrorist law. The role of judiciary has always been pivotal in such cases yet it cannot directly surpass the provisions of a law. "Getting bail" is not less than a fortunate event when someone is charged under UAPA, 1967 as section 43(5)(D) clearly expounds that the court cannot grant a bail an accused when there is a reasonable ground to believe that he/she has committed the crime under the said act. The provisions of the act are very vague for e.g. section 2(o) categorises questioning the sovereignty and territorial integrity of India as an unlawful activity. Furthermore, section 3 empowers the central government to declare an association as unlawful. Such unbridled empowerment proves to be a virtue for the government to legitimize its arbitrary act.

The Criminal Justice System of India works on the principle of "Innocent until proven guilty" but the said law adopts a different assumption of Guilt until proven innocent. The above are some polemic illustrations of the arbitrary nature of the law however they do overlook the noble intentions behind the enactment of this law. The genuine intention behind the enactment of the law can never remain unappreciated but its applicability is also something which needs to be considered.

These arbitrary provisions enable police and other enforcement agencies to use this law as a weapon to subdue the voice of dissidents thereby providing a legitimate fortification to an arbitrary act.

It is not the only law in India that gives illegitimate power via legitimate means to state but there are zillions of such legal provisions which legitimize the act of suppression of voice.

Conclusion

¹⁸ *Arup Bhuyan v. State of Assam*, AIR 2011 SC 957.

The spate of incident showing the repression of dissent is more pernicious than one envisages it to be. Such incidents are a mark of the shifting of democracy to absolutism. The most obvious reason for the continuance of such incidents is our tolerant behaviour for such intolerance. The ossified tolerance acts as tacit consent to legal terrorism. It wouldn't be wrong to say that right to dissent is a part of right to speech and expression which means the denial of the former results in insult to the latter. Dissent connotes the "idea of less" forming minority but the plurality of dissents can turn the tables by becoming a "idea of majority" forming majority. Therefore, it is high when such repressions needed to be stopped only then a true democracy can subsist. The law cannot always be a yardstick to measure justice nor can it be the only way to achieve justice. If former is true then no law can be arbitrary and if the latter is true then those circumstances wouldn't exist where there is no law thereby injustice would be non-existent. The reality cannot be forgotten and attempts can only be made to reach closer to the utopian reality for which a positive unified action is required.