

ARNAB GOSWAMI'S ARREST: POLITICAL OR POLICING & JOURNALISM?

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ABSTRACT

The sudden arrest and alleged assault of Republic TV's Editor-in-Chief Arnab Goswami by the Raigad Police in Maharashtra has brought to the forefront concerns about India's long-cherished freedom of speech and whether it is losing its pride of place in the Constitution. Throughout India's well-established democracy, courts have accorded the highest respect for protecting this right enshrined in our Constitution under Article 19 (1)(a). Yet, the detention of one of India's most celebrated journalists — in a case of abetment to suicide of architect Anvay Naik in which the Raigad Police previously found no illegality — raises several issues of propriety.

INTRODUCTION

The Republic TV Editor-in-Chief Arnab Goswami was arrested from his Mumbai house on 4th November, 2020 by the police. Ever since the journalist was lifted from his house, there was confusion behind the reason of his arrest. Mumbai Police, however, has confirmed that Goswami has been arrested in connection with the case related to the suicide of an architect and his mother in 2018. The matter has to do with non-payment of dues. Anvay Naik and his mother allegedly committed suicide over non-payment of dues by Goswami's Republic TV, an official had revealed.

The Alibaug police had registered a case of abetment to suicide the same month but the case was reportedly closed by the Raigad police in 2019. But in May this year the Maharashtra government ordered a fresh investigation into the case against Goswami and two others by the state Criminal Investigation Department.

The Home Minister had then said that Naik's daughter had alleged that Alibaug police did not investigate the non-payment of dues from Goswami's channel. She had claimed that this reason drove her father and grandmother to commit suicide in May 2018.

Republic TV in its report claimed that Goswami was "assaulted and dragged" during the arrest. Goswami reportedly said that police also physically assaulted his mother-in-law and father-in-law, son and wife.

Images showed scuffles taking place between Mr. Goswami and the police.

Republic TV has accused the police of "manhandling" Mr. Goswami's family members. But the police then accused Mr. Goswami of misbehaving with them. They registered a police complaint against him for allegedly assaulting a female police officer.

The Editors Guild of India urged the authorities to "ensure that Goswami is treated fairly and state power is not used against critical reporting by the media".

A host of senior leaders and federal ministers belonging to the BJP have also criticized his arrest, saying it was "an attack on the media's freedom of expression".

But the main opposition Congress party, which is a coalition partner of the Shiv Sena in Maharashtra, has accused the BJP of "selective outrage". The party said BJP ministers do not speak out when journalists are harassed and arrested by states where it's in power.

WHAT IS THE CASE?

Interior designer Anvay Naik, along with his mother Kumodini Naik, were found dead at their bungalow in Alibaug in May 2018. The police said Anvay, had committed suicide, the post mortem report of Kumud indicated that she had been strangled and did not commit suicide.

Police believed Anvay killed her before committing suicide. Following that, the police registered an accidental death report and a case of murder. While Kumodini's body was found on the ground floor sofa, Anvay was found hanging on the first floor by the caretaker of the bungalow.

Why was an FIR registered against Arnab Goswami?

The police had found a suicide note written in English in which Anvay said he and his mother decided to take the extreme step on account of payments due to them not being cleared by the owners of three companies – television journalist Arnab Goswami of Republic TV, Feroz Shaikh of IcastX/Skimedia and Niteish Sarda of Smartworks.

The three firms owed Naik's company, Concorde Designs Pvt Ltd, Rs 83 lakh, Rs 4 crore and Rs 55 lakh respectively, the note added. An officer said that during the investigation they found that Anvay was in heavy debt and was struggling to repay money to contractors.

The Raigad police also found that Naik had an NC registered against a contractor in Mumbai after the latter had threatened him to repay the money he had taken. Goswami had however denied this charge and said that he had made the payments.

Threatening legal action under civil and criminal law, Republic's statement said ARG Outlier Media Pvt Limited had paid 90 per cent of all dues over two years ago. It said it had since made "repeated attempts" to make a final settlement, and had the full correspondence to prove its claim.

The dues, it added, were transferred to the bank account of Anvay's company in July 2019, but returned because the account was "inoperative".

WHAT HAPPENED TO THE INVESTIGATION IN THE CASE?

The local Raigad police that had been investigating the case closed the case in April 2019 saying that they did not find evidence against the accused named in the suicide note, including Goswami. However, in May this year, Anvay's daughter approached the Maharashtra Home Minister Anil Deshmukh seeking the case be reopened. Maharashtra Home Minister Anil Deshmukh had tweeted in May, "Adnya Naik had complained to me that Alibaug Police had not investigated non-payment of dues from Arnab Goswami's Republic which drove her entrepreneur father and grandma to suicide in May 2018. I've ordered a CID re-investigation of the case."

Adnya had also alleged that the police had not investigated the angle of Rs 83 lakh that Goswami had not paid her father that drove him to commit suicide.

A court at Alibaug in Maharashtra while refusing to remand Republic TV Editor-in-Chief Arnab Goswami in police custody in a 2018 abetment to suicide case observed that the arrest of Goswami and two other accused "appears to be prima facie illegal".

Chief Judicial Magistrate Sunaina Pingle after perusal of the case diary and other relevant documents on Wednesday noted that the prosecution failed to prima facie establish a link between the deceased and the accused persons.

The magistrate noted that the chain of circumstances, the reason behind the deaths of Anvay Naik and his mother Kumodini Naik, and its connection with the accused persons are not established by the prosecution.

"There is no cogent evidence submitted that warrants this court to remand the arrested accused to police custody," the court said.

The magistrate in the order noted that if the police case is to be accepted that Anvay Naik took the drastic step of committing suicide due to non-payment of dues by Goswami and the two

other accused, then the question arises as to why his (Anvay Naik's) mother Kumodini Naik committed suicide.

"Did she (Kumodini) die by suicide? There is no clear answer to this by the prosecution. The police have been unable to establish a link between the deaths of Kumodini Naik and Anvay Naik and the three arrested accused," the court said.

While refusing to remand the three accused in police custody, the court also noted that the police have not been able to specifically point out the so-called lacunae in the probe done by the previous police team in 2018 in the case.

The magistrate in the order also said the case was investigated by the police in 2018 and an 'A' summary report seeking closure of the case was submitted before the court concerned in 2019.

"The said closure report was accepted by the magistrate in 2019. Since then neither the prosecution nor the complainant challenged the closure report in the sessions court or High Court," the court said.

The court further said the Alibaug police did not seek the magistrate's permission before reopening the case. "The investigating officer on October 15, 2020, only submitted a report to the magistrate informing that certain fresh material has come to the fore in the case. There is no record to show that the magistrate permitted reopening of the case," the court said.ⁱ

While the Home Department had transferred the case to CID in May this year, officers outside Arnab's residence Wednesday said the very court where the Raigad police had filed a closure report had given permission to Raigad police to reopen the case now. CID officials said they have no case against Goswami.

This has no links to the cases Goswami faces in connection with Mumbai police. A team from Mumbai Police went to his residence on Wednesday morning to assist the Maharashtra Police.

WHAT CASES DOES HE FACE IN MUMBAI?

Republic has been named in the TRP scam where the channel along with five others was allegedly involved in making payments for boosting TRPs. Republic has denied the accusation.

An FIR has been registered against Goswami for ‘incitement to disaffection’ over a show in which the channel said that several officers in Mumbai police were against action of commissioner Param Bir Singh.

Arnab Goswami and the Congress have been at loggerheads since early this year when he was booked for making inflammatory comments against party president Sonia Gandhi.

The Congress is a partner in the Maha Vikas Aghadi government led by Shiv Sena chief Uddhav Thackeray, which includes the Nationalist Congress Party.

Goswami had also alleged the Congress was involved in an attack on him in Mumbai.

In June, the Mumbai Police summoned Goswami for another round of interrogation when a complaint was filed against him in April for allegedly creating communal disturbance through his TV show over the gathering of migrant workers in Mumbai’s Bandra. The complainant had alleged that Goswami tried to spread hatred against Muslims.

The Supreme Court had, in May, quashed the multiple FIRs against Goswami, except for the one filed against him for a debate on the Palghar incident.

The Bombay High Court in June stayed two FIRs filed against Goswami, and said no coercive steps should be taken against him until further orders.ⁱⁱ

Goswami had approached the Supreme Court against these FIRs and was asked to approach the Bombay High Court that is currently hearing the matter. He was also issued a show cause notice by the Maharashtra Legislative Assembly for initiation of breach of privilege motion against him for reportage related to the case of actor Sushant Singh Rajput’s death. Goswami challenged this too in the Supreme Court.ⁱⁱⁱ

POLITICS INVOLVED

The arrest of Republic TV’s Arnab Goswami on 4th November, 2020 drew immediate condemnation from ministers in the Narendra Modi government, BJP leaders and supporters at large. That was to be expected.

However, in our polarized times, we don't expect liberals to stand up for the freedom of a very illiberal hate-monger. Yet, we see so many liberals condemning Goswami's arrest as an assault on freedom of speech and expression, as well as obvious political vendetta. Many liberals have made the point that they don't agree with Arnab's witch-hunt journalism but he doesn't deserve to be arrested.

When liberal journalists or activists are arrested for political vendetta, we don't see Right-wingers being so magnanimous. In different parts of India, so many people are facing cases or spending time in jail just because they had the temerity to oppose the Citizenship (Amendment) Act or CAA, but we don't see a Right-winger condemning this assault on freedom for a mere difference of political opinion.

How many of these people issued even a token condemnation of the repeated arrest and harassment of a good doctor named Kafeel Khan? Rather, they have cheered such arrests. Why is it ok for Umar Khalid to rot in jail while only the arrest of Arnab Goswami is singled out for condemnation, for reminders of the Emergency and lo and behold, "fascism"?

Sushant Singh Rajput left behind no suicide note, Anvay Naik did. Anvay Naik blamed non-payment of dues by Arnab Goswami's Republic TV and two others as the reason for taking his own life. His family has been demanding justice for him.

Goswami has not been arrested for his comments against Sonia Gandhi or Aaditya Thackeray. He's not being arrested for anything he said on his channel about the Palghar incident of the murder of sadhus, which he needlessly tried to communalize. He's not been arrested for his 'witch-hunt' against Bollywood actors. If he was arrested for any of these, you could have said it's an assault on free speech. He's been arrested for alleged abetment of suicide.

When Left-liberals are put in jail as political prisoners, Right-wingers say the law will take its own course. While Arnab's arrest is obviously caused by politics, please also note that the suicide in question took place in 2018 when there was a BJP government in place and the Mumbai Police didn't make much of it then. If Goswami's arrest today in an abetment to suicide case is political vendetta, then his getting away with the same charges in 2018 can be called political protection.

India has now officially descended into legal harassment and politically motivated cases from both sides of the political divide.

When a journalist in Yogi Adityanath's UP was booked and accused of criminal conspiracy for exposing how a government school was serving roti and salt for mid-day meals, where were our Right-wingers and their concern for press freedom? Why is the BJP not reminded of the Emergency when a journalist in BJP-ruled UP is killed for reporting on a land dispute?

Smriti Irani says Arnab Goswami's arrest is "fascism" but we didn't hear anything at all from her when a journalist in Tamil Nadu was arrested for his Covid-19 coverage. Where was Prakash Javadekar's concern for press freedom when journalists in Kashmir were detained and allegedly assaulted by police during the Covid lockdown? When a journalist in Gujarat is arrested and charged with sedition merely for a speculative story that the state may see a change of chief minister, how many people demanded universal condemnation?

It is inexplicable why Arnab Goswami deserves greater freedom than Parashar Biswas, a journalist in Tripura who was beaten up after criticizing Chief Minister Biplab Deb's threat to the media on his handling of Covid-19 pandemic.

It makes sense for liberals to condemn the arrest of Arnab Goswami because they have been consistently condemning legal action as a form of political vendetta, the suppression of free speech, and the chilling effects on freedom of press.

Liberals spoke up for the journalist who was only doing his job in trying to cover the Hathras gangrape and murder recently. When Right-wingers speak of Arnab Goswami's freedom, they reek of hypocrisy, because for them freedom of speech is dependent on the person's politics. Liberals, however, are condemning Arnab Goswami's arrest because they are in principle opposed to putting political opponents in jail.

If the Right-wing may please agree with this principle and start demanding the release of political prisoners regardless of political ideology, we'd be a freer, better, saner country.^{iv}

POLICING & JOURNALISM?

The sudden arrest and alleged assault of Republic TV's Editor-in-Chief Arnab Goswami by the Raigad Police in Maharashtra has brought to the forefront concerns about India's long-cherished freedom of speech and whether it is losing its pride of place in the Constitution.

Throughout India's well-established democracy, courts have accorded the highest respect for protecting this right enshrined in our Constitution under Article 19 (1)(a). Yet, the detention of one of India's most celebrated journalists — in a case of abetment to suicide of architect Anvay Naik in which the Raigad Police previously found no illegality — raises several issues of propriety.

A bench of the Supreme Court headed by Chief Justice S.A. Bobde, while hearing the matter in which the Maharashtra government opposed a Bombay High Court order that stayed a probe into two First Information Reports (FIRs) filed against Republic TV, had earlier observed that “some people were targeted with greater intensity and needed more protection”.

The FIRs pertained to Goswami's observations during his television programme on the Palghar lynching incident and migrant labourers gathering in large numbers in Mumbai's Bandra area. While nobody is above the law, the wisdom of the Supreme Court's observation appears to have been borne out by the latest sequence of events in Goswami's case.

Arnab Goswami's lawyer has alleged that the TV anchor was denied access to his legal team, and that the police used force during the arrest. Moreover, reporters who were trying to cover the event were reportedly stopped by the Raigad Police.

The freedom of speech, enshrined in the Indian Constitution, consists of three essential elements. First, freedom of access to all information; second, freedom of publication; and third, freedom of circulation. In short, freedom of speech is regarded as “the mother of all other liberties” in a democratic society.

Time and again, the courts have made it clear that interference by the state machinery to the right to freedom of speech should not be tolerated. To that extent, the recent filing of an FIR by the Maharashtra Police against several employees of Republic TV needs to be carefully examined.

COURT VS STATE

In *D.K. Basu vs State of West Bengal* (1996), a letter written by a non-governmental organisation regarding custodial deaths was treated as a writ petition, the Supreme Court came to the view that there should be some controls on police.

The Court held that a police officer could not act arbitrarily while arresting a person. There are guidelines that police officers have to follow: 1) The person under arrest has the right to meet his/her lawyer; 2) S/he has the right to medical examination every 48 hours; 3) The arresting officer must inform the accused person's relatives regarding the arrest; 4) The accused has to be produced before a magistrate within 48 hours; 5) An entry must be made in the diary regarding the arrest; 6) A police control room should be set up in all the districts and state headquarters, and the information regarding the persons' arrest has to be communicated; 7) All the details, including the memo of the arrest, has to be sent to the magistrate.

In the case of *Anuradha Bhasin and Ors vs Union of India* (2020), the Supreme Court said that "responsible Governments are required to respect the freedom of the press at all times. Journalists are to be accommodated in reporting and there is no justification for allowing a sword of Damocles to hang over the press indefinitely".

In the *Romesh Thapar vs The State of Madras* case (1950), the Supreme Court held that the criteria for imposing restrictions on the fundamental rights given in Article 19(1) are those offences or acts against public order that are "aimed at undermining the security of the State or overthrowing it".

Often referred to as the 'Pentagon Papers' case, the landmark US Supreme Court decision in *New York Times Co. v. United States*, 403 U.S. 713 (1971) defended the First Amendment right of a free press against prior restraint by the government. The US Supreme Court held: "Only a free and unrestrained press can effectively expose deception in government."

Measured by these stringent standards in cases of restriction on freedom of speech, it is clear that the state machinery in Maharashtra has its task cut out in *Arnab Goswami's* case. In response to the cases filed against him, a high court bench had observed that there could not be

sword hanging over the head of a journalist while conducting a public debate. In that backdrop, the action against Goswami smacks of an attempt at curbing media liberty.

In a recent case, the Supreme Court underscored concerns about the growing trend of police summoning individuals for social media posts that criticized political dispensations.

It came following a 29-year-old woman Roshni Biswas, who had challenged the issue of a police summons for questioning her about a Facebook post complaining that large congregations at Raja Bazaar area in Kolkata violated lockdown norms.

The Supreme Court issued a stern warning to the West Bengal Police, which issued summons to a Delhi resident for criticizing the state government for non-enforcement of lockdown norms. Underlining the freedom of speech guaranteed under Article 19 (1)(a) of the Constitution, a bench of Justices D.Y. Chandrachud and Indira Banerjee said: Do not cross the line. Let India remain a free country. We, as the Supreme Court, are here to protect free speech. The reason why the SC was created by the Constitution is to ensure that ordinary citizens are not harassed by the State.”

Though a journalist’s right to freedom of speech is no different from that of an ordinary citizen, the media has always been regarded as the fourth estate of democracy. If this pillar is allowed to be trifled with on flimsy pretext, this will undermine the confidence of the citizens in the judiciary’s capacity to protect our freedom.

By all accounts, therefore, the police high-handedness seen in Arnab Goswami’s arrest needs to be condemned, and swift action is required to redress the situation. Otherwise, our very democratic foundations would appear to be in danger.^v

ENDNOTES

ⁱ Outlook, “Arnab Goswami's Arrest Appears Illegal, Says Court,” 05 November 2020

ⁱⁱ The Print, “This is the 2018 suicide abetment case behind Arnab Goswami’s arrest by AMRITA NAYAK DUTTA 4 November, 2020.

ⁱⁱⁱ The Indian Express, December 23, 2020 by Mohamed Thaver , Edited by Explained Desk | Mumbai | November 4, 2020 9:39:06 am

^{iv} The Print, “Arnab Goswami’s arrest exposes Right-wing hypocrisy on free speech and political vendetta” by Shivam Vij, 4 November, 2020.

^v The Print, “Why Arnab Goswami’s arrest puts India’s long-cherished freedom of speech in danger” by POORNIMA ADVANI, *partner at The Law Point (TLP). & formerly the chairperson of the National Commission for Women.* November, 2020

