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DEMOCRACY AND FREEDOM OF EXPRESSION AND DISSENT

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Editorial

REPRESSIVE LAWS MANIFEST WEAK STATE

We live in a democratic country. Freedom of speech, expression and association are fundamental rights guaranteed by the Constitution. Articulation and realization of social, economic, cultural and political rights by the citizens will not be possible if these fundamental rights are tinkered with. Democracy is favoured to other forms of governance since it provides space for citizens to dissent without fear or victimization. Informed dissent plays a constructive role in the progress of humankind. Moreover, in a democracy it is anticipated that free speech, association and dissent will produce capable and morally engaged citizenry, challenging undue governmental control to move towards matured polity.

However, freedom of speech and expression are not absolute. 'Reasonable' restrictions can be imposed by the state when there is 'danger' to the interests of the sovereignty and integrity of India, public order, decency or morality, defamation or incitement to an offence etc. Historically, successive governments have habitually abused their constitutional power, in an 'unreasonable' manner, nullifying the latitude of these fundamental rights of citizens.

There had been many instances in which journalists, documentary makers, writers, publishers, artists, peace activists, human rights defenders and innocent people have been targeted and false cases had been filed, causing mental harassment and financial losses. It is felt that in the last decade or so, space for public discourse and dissent has drastically reduced in India. Non-governmental organisations, people's movements and civil society and human rights organizations who have enriched democracy through wide and rich variety of engagements, committed to just, equitable and sustainable development, peace, social justice and gender, class, caste and communal equality are increasingly being targeted. The malicious Intelligence Bureau (IB) report which targeted a number of people's organizations in June 2014 was clearly an attempt to discourage and intimidate those who do not toe the line of the policies of the governments. In response to the IB report, a public statement issued collectively by over 100 civil society organizations categorically stated: "The IB report particularly targets organisations

which question the corporate-led development model and the nuclear policy, and champion environmental and labour rights. We are dismayed by the dubious manner with which the Indian Intelligence Bureau has maligned, demonised and criminalised many greatly respected social activists and groups in this country who have committed their lives for a social cause”.

Learning lessons from the aftermath of the emergency declaration in 1975, no government may dare to invoke the extraordinary provision, Article 352 of the Constitution. This does not mean that in the absence of emergency citizens enjoy fundamental rights. The ruling junta has armed the bureaucracy and police with draconian laws such as the sedition law, the Unlawful Activities (Prevention) Act (UAPA), the Armed Forces (Special Powers) Act (AFSPA) etc to contain the voices of the citizens that challenge the policies and actions of the government. Keeping the dissent at bay seems to be a priority agenda of all incumbent governments. On the contrary, politicians who actually cross the reasonable limits of freedom of speech go scot-free.

The *Indian Express* published two incidents on 13 December, 2014. Jonathan Baud was released by the Kerala High Court after six months of imprisonment by the Kerala police for speaking in a public meeting. Baud was a tourist. At the insistence of the organizers who had organized a meeting in memory of a suspected Maoist, spectator Baud went to the stage and said, “Thank you for welcoming me. I appreciate the democracy in your country”. Baud’s curiosity was good enough reason for the police to arrest him. While quashing the charge sheet the High Court observed, “No doubt, continuance of this prosecution will be a sheer abuse of legal process”. But the fact of the matter is that Baud has suffered imprisonment for six months.

The Indian criminal justice system is so precarious that the innocents go through enormous stress, pain and agony at the hands of the police and the judicial system only to be later reverted by a judicial process after undue delay. About two decades ago, in 1993, Justice M Saldanha in his Bombay High Court judgment on the bail application of Nancy Adajania said that while charging a person, the officers should carefully evaluate the matter. He also said, “Concepts that were considered good in the dark ages are not to be allowed to turn the clock backwards”. The Supreme Court of India, right from *A K Gopalan versus the State*

of Madras (1950), has upheld the constitutionality of the rights of dissent and free expression and has repeatedly pronounced that laws that curb fundamental rights are essentially unconstitutional. However, the bureaucracy and police seem to be carrying on with the 'Police Raj' mindset, unperturbed.

Yet another news item was published on the same day. It was about Sakshi Maharaj. On 12th December 2014, Sakshi described Nathuram Godse, the assassin of Mahatma Gandhi, as a patriot in the Parliament. Names of elected representatives who have been spitting communal venom these days are in the public domain. Who will take cognizance of such unruly speeches? These elected representatives seem to think that they are above the law.

The present government is in absolute hurry to promote corporate-led growth. The dictum of the business-bureaucrat-politician combine is received with red carpet welcome and those who speak out against unethical and corrupt practices of this unholy alliance are branded as anti-nationals. Despite many obstacles, democratic and civil liberty organizations have made significant contribution in strengthening the democratic ethos of the country. The Supreme Court judgement, *Union of India vs Association for Democratic Reforms (AIR 2002 SC2112)* which paved way for the right to know about the wealth, assets, liabilities, education and other such information of the candidates before voting and the Right to Information Act are concrete examples. A state that relies on repressive laws and excesses is obviously a weak state that attacks the poor and the marginalized and serves the rich and the powerful.

This issue of Social Action contains research articles underlining the importance of freedom of speech and expression, association and dissent in nurturing democracy.

Edwin Etieyibo brings out conceptual clarity on the theme by expounding connections between freedom of expression and dissent and democracy from a philosophical perspective. For the flourishing of freedom of expression and dissent, Edwin argues that development of virtues of modesty and deference are needed. The author concludes that if we value democracy and the democratic life and want to realize these it is important that we contribute to the conditions for the thriving of freedom of expression and dissent and to act on it we must develop the virtues of modesty and deference.

A similar ethical concern is also emphasized by Anil Sutar who analyses post-modernist sociologist Ashis Nandy's controversial comments at the Jaipur Literary Festival in January 2013. The author argues that ultimately it is the ethics that makes sense of any academic work and not its ontology or epistemology. When there are conflicting interests of academic freedom and rights of the common people, 'non-maleficence' (do no harm) outweighs the value of 'beneficence'.

"It is not freedom of speech and expression that is at stake today, but democracy itself", claims Ambrose Pinto. Commitment to freedom of expression demands that dissenters are not suppressed by the state unless community interests are endangered. Dissent is not an indication of subversion or disapproval but a sign of acknowledgment that every decision can become the object of revision, even that which is accepted and voted by a vast majority. Democracy, guided by free and responsible debate, is the way forward and authoritarianism or majoritarianism will only derail democratic culture and governance. Johan Dayal takes the argument forward stating that both the Constitution and democracy are under threat and enumerates many challenges faced by the faith-based and civil society organizations and minorities.

The right to self-determination, autonomy and self-rule frame the core of the aspirations of the tribals. Kamei Samson and Alfred Toppo analyse to what extent the voice of the tribal people are listened to by the political class of this country. Samson argues that national security concerns have had overriding effects in the north-east, making tribal self-rule a mirage. Toppo highlights the highhandedness of the state to keep the dissent of the tribals at bay who oppose mindless exploitation of the natural resources. Fabian underlines the lessons learnt from Bababudangiri episode in Karnataka and Paul D'Souza brings out some transforming women narratives from Kutch, 15 years after the earthquake.

Developing democratic ethos depends on nurturing the freedom of speech and expression, association and dissent and not on repressing the genuine voices of the citizens.

Joseph Xavier