

NOTE

The Katju-Mishra Judgement

H Dhawan and P Singh write:

The recent Supreme Court judgment (Arup Bhuyan v/s the State of Assam) passed by the bench of Justice Markandey Katju and Justice Gyan Sudha Mishra stating "Mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence" has been widely hailed by human rights bodies including PUDR for valid reasons. It also stresses upon Section 25 of the Evidence Act which mandates that if not supported by material evidence, confession to the police is inadmissible in court. In so doing, it takes into account the gruesome forms of torture a person is subjected to in custody, which, the Court said, can force a person to 'confess to almost any crime'. The judgement terms such statements, brought forth by arm-twisting, 'extra-judicial'. This verdict could have a significant bearing on the cases of Piyush Guha, Narayn Sanyal, Binayak Sen and several thousand others who continue to face incarceration in jail on insubstantial grounds.

The criticism of this judgement by the Congress-led Government and the BJP, and their stated intent to file a review petition before a larger bench of the Court, warrants complete censure. The concern expressed by the BJP was that in the light of this judgement only specific acts of crime would have to be proved. This takes the country back to the premise upon which draconian laws like UAPA and CSPA have been successful in criminalizing legitimate activities: the presumption that an accused is guilty until proven innocent. The spurious argument being given by the Congress and the BJP that the judgement is a threat to national security feeds into the State-encouraged paranoia among the general public. This anxiety regarding public security is being conveyed by the same State that is waging war against its own people and has caused insecurity amongst its citizens not just in terms of their physical safety but in the form of inflation, unemployment and a consistent misappropriation of public funds, to name a few.

Proscription of organisations only serves to curtail constitutional rights like freedom of association, expression and conscience as well as discourages the sustenance of a congenial atmosphere for debate and discussion. When the articulation and propagation of one's beliefs and ideologies is prevented, organisation banned and its membership criminalised the suppressed dissent festers into antagonism against the suppressors, in this case, the State. Unmindful of these fall-outs, when the State decides to ban organisations, it displays the perverse logic of a Government which grants patronage to majoritarian fascist organisations such as the RSS and Shiv Sena to propagate and practise divisive politics. And treats heinous crimes by its members as crimes of individuals not of or by the organisations a principle which both the Congress led UPA Government and the BJP are reluctant to follow for others.

In the light of the aforesaid judgement, the government must discontinue the prohibition of lawful activities by outlawing groups and organisations. Laws like UAPA and CSPA, that strengthen the State's hand in arbitrarily targeting groups and individuals working for the safeguard of democratic rights and constitutional freedoms, be revoked to restore a functional democracy. □□□