Inviting contempt

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The order passed by the High Court of Gujarat directing the Central Government to consider placing a ban on the Narmada Bachao Andolan (NBA) under the Unlawful Activities (Prevention) Act is shocking for more than one reason.

That Courts should at all be willing to entertain writ petitions seeking such directions is, to put it mildly, disquieting. Courts are meant to assist people to exercise their rights, not to direct the government to curb people's rights. In the case of exercise of individual rights, Courts certainly have the power to ensure that exercise of rights by one does not affect the rights of another. But when it comes to exercise of political rights such as the right to associate, assemble and protest peacefully against State policies, the Courts cannot allow themselves to be used by one section of society to curb the political rights of another section whose politics it does not like. 'Reasonable regulation' of the exercise of such rights is the prerogative of the government, and it can be based only on considerations such as public order, and not the government's likes and dislikes of the politics that seeks democratic expression. The role of the Courts in such matters should in fact be to ensure that the government does not pervert this power of reasonable regulation to curb inconvenient politics. That Courts should be willing to be used as instruments for declaring a certain politics as injurious to the public weal and bound to be curbed by the government is the first thing that is objectionable about the judgement.

A few years ago the Kerala High Court declared that giving a call for a bandh is unconstitutional. Lest its meaning be misunderstood on the presumption that Courts are sentinels of rights, the Kerala High Court made it clear that the ruling is not restricted to calls for bandhs which are accompanied by threats of violence, either explicit *or even* implicit. Giving a call for a bandh is per se unconstitutional, threat of violence or no threat of violence, explicit or implicit, said the High Court of Kerala. When this was taken to the Supreme Court, the highest Court of the land agreed with the High Court of Kerala without giving any independent reasoning in the matter, merely saying paragraph by paragraph that it finds nothing wrong with the argument of the High Court.

It was different in the 1960s and 70s, when many restrictive provisions of law impinging on political freedoms were challenged in the Supreme Court. Constitution benches of five or seven judges were constituted to consider the matters in detail, and made a painstaking effort to balance political freedoms and social order. The end result in quite a few cases left something to be desired from the view point of civil rights, but that is a different matter. The Courts at that time were not in a hurry to defend repressive power. Now they appear to be impatient that the State is not being repressive enough, that the State is being `soft', to quote an unfortunate expression

coined by Gunnar Myrdal in a different context, but now used by newspaper editors, academics and even judges to demand/defend tough policing.

Secondly, even assuming that the Narmada Bachao Andolan's politics is bad for the economic development of Gujarat, as alleged by the petitioner before the High Court of Gujarat, does that come within the terms of the Unlawful Activities (Prevention) Act? An unlawful association is one which supports claims of secession of any part of India or disrupts the unity or integrity of India, or promotes hatred or disharmony on grounds of religion, race, language, place of birth, residence etc. By no stretch of logic can an association that organises tribal people to fight submergence of their habitat or their displacement in the interests of 'development' be dragged into this definition, even if we grant for the sake of argument that such a struggle is injurious to development.

Thirdly, even if everything else is granted, is not the banning or not banning of an association a matter of policy to be determined by the executive taking all relevant factors into account? Have not the Courts said so about provision of reservation to backward classes, about abolishing contract labour, and lately in the BALCO case about disinvestment and sale of public sector units? In all these matters the Courts have said that no directions can be issued by the Courts to the Government since these are matters of policy. Is it then permissible to advise the government to place a ban on an association, which too is a matter of policy?

Inconsistencies in judicial pronouncements, and that too inconsistencies that are to the detriment of the poor and the disadvantaged, are increasingly glaring. Small wonder that Courts are becoming touchy about their contempt power. But Courts should realise that what deters people from committing contempt is not fear of the six months' imprisonment that the Courts can at the most give for committing contempt, but a certain respect for the notion of justice. Even those who do not mind risking heavy punishment for rioting in what they believe to be a just cause do not easily lend themselves to committing contempt of Court because of their respect for justice as a notion, an idea, a value. If Courts are careless whether they are seen as just or unjust, we may well see days when people commit contempt of Court as casually as they violate prohibitory orders to take out a procession in defence of their rights.

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