

Discriminative Nature of Democratic System

In a reply given by the Supreme Court of India to an application under the Right to Information Act (RTI Act) has revealed crucial information. 1072 cases relating to bail and suspension of sentence are pending in the Supreme Court as on December 18, 2020. This includes 931 petitions seeking bail/interim-bail and 141 cases seeking suspension of sentence. RTI Application was filed in the wake of the Supreme Court giving the 'urgent listing' to the bail plea of Republic TV anchor Arnab Goswami. (source: livelaw.in)

The information confirms the presence of discrimination in the judiciary system of democratic India. Earlier in November, 2020, Republic TV anchor Arnab Goswami was given interim bail for suicide abetment case on fast track by the Supreme Court after his denial on the Bombay high court. The bail was granted by the supreme court, saying "SC is unhappy that HCs, which are constitutional courts, are not doing enough in matters where personal liberty is denied...," [1]. In contrast, the list of pending bail cases of the supreme court in response to RTI plea reveal the denial of so called 'personal liberty' to others whilst the court has a right to assert the bail grant (for non bailable offence). This 'Selective listing of matters' raises the concern even by the proponents of such a judicial system. Supreme Court Bar Association (SCBA) president Dushyant Dave had written a letter to the top court expressing concern by saying "It is, to say the least, deeply disturbing as to how and why every time Mr Goswami approaches the Supreme Court, his matter gets listed instantly," The letter also reads the "requests from various advocates on record to the effect that the matters filed by them are not getting listed for weeks and months" even though they involve urgent and serious matters – including petitions for bail. [2]

The fast tracked bail grant came amidst the political rival for the arrest between the central government ruling party BJP and Maharashtra government ruling MVA coalition. Several BJP leaders, including the Home minister Amit Shah expressed their support for the editor and condemned the state government for the arrest, making the issue to be political despite the case being personal disputes. On 17/12/2020, 'The Wire' news agency reported that "The Supreme Court has given priority to at least six petitions filed by Republic TV editor-in-chief Arnab Goswami in the last nine months, while many citizens languish in jails waiting for weeks and months to get a hearing". [3]

In the above subject, the Supreme Court that condemns the lower court for denying personal liberty is itself denying the liberty of others by giving priorities to some without the others. It is the nature of democracy to discriminate between wealthy and poor, weak and strong in its economic, social and judicial systems. Despite the claim of equality, disparity exists in democracy, not just because of its corruption, but because of the democracy itself. Democracy gives the rights to enact laws for the feeble human mind who can be influenced by desires, emotions, the surroundings and the political pressure. Accordingly, the laws can be twisted and interpreted in favor of some whilst leaving the others. Thus, one can witness the outright disparity amongst people in the democratic system. Enactment of laws in favor of capitalists, discrimination of strong and weak in the judicial system, applying laws selectively to particular people leaving others, economic disparity between wealthy and poor are all affirms the defects of secular democracy that is prone to change and apply laws selectively and in a discriminatory manner.

On the other hand, in Islam, since the laws emanate from Allah, the one who is beyond the limitedness of creations, its laws are definite, complete and non-contradictory. Allah (swt) says, ﴿الْحَمْدُ لِلَّهِ الَّذِي أَنْزَلَ عَلَىٰ عَبْدِهِ الْكِتَابَ وَلَمْ يَجْعَلْ لَهُ عِوَجًا﴾ "[All] praise is [due] to Allah, who has

sent down upon His Servant the Book and has not made therein any crookedness.” [TMQ 18:1].

Accordingly, selective and discriminatory sharia laws are not even considered to be the implementation of Islamic sharia just as the Jews implemented before. Allah (swt) says, ﴿أَنْتُمْ هَؤُلَاءِ تَقْتُلُونَ أَنْفُسَكُمْ وَتُخْرِجُونَ فَرِيقًا مِّنْ دِيَارِهِمْ تَظَاهَرُونَ عَلَيْهِم بِالْإِثْمِ وَالْعُدْوَانِ وَإِن يَأْتُواكُمْ أُسَارَىٰ فَفَادُوهُمْ وَهُوَ مُحَرَّمٌ عَلَيْكُمْ إِخْرَاجُهُمْ أَفَلَا تُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاءُ مَن يَفْعَلْ ذَلِكَ مِنْكُمْ إِلَّا جُزَاءٌ فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ الْقِيَامَةِ ﴿ثُمَّ﴾ “Then, you are those [same ones who are] killing one another and evicting a party of your people from their homes, cooperating against them in sin and aggression. And if they come to you as captives, you ransom them, although their eviction was forbidden to you. So do you believe in part of the Scripture and disbelieve in part? Then what is the recompense for those who do that among you except disgrace in worldly life; and on the Day of Resurrection they will be sent back to the severest of punishment. And Allah is not unaware of what you do.” [TMQ 2:85].

The Prophet (saw) says, «أَيُّهَا النَّاسُ إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ وَإِنَّمَا اللَّهُ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا» “O people! The nations before were destroyed because if a noble person committed theft, they used to leave him, but if a weak person among them committed theft, they used to inflict the legal punishment on him. By Allah, if Fatima, the daughter of Muhammad, committed theft, Muhammad will cut off her hand!” [Muslim].

Moreover, the Islamic system has placed the absolute authority to the Khalifah bound by unchangeable sharia laws, unlike the separation of powers in the democratic system, by which the Khalifah can efficiently and effectively eliminate the discrimination due to desires, emotions, surroundings and political pressures amongst people. This is what our beloved righteous Khalifah, Abu Bakr Siddiq (ra) used to say when he was given the authority by saying, “...الصدق أمانة، والكذب خيانة، والضعيف فيكم قوي عندي حتى أريح عليه حقه إن شاء الله، والقوي فيكم ضعيف” “...Truthfulness is a trust and lying is treachery. The weak among you is to me strong until I return to him what is rightfully his, Allah willing, and the strong among you is to me weak until I take from him the rights of others, Allah willing...” [Al-Bidaya Wa Nihaya]

“The State is forbidden to discriminate at all between the individuals in terms of ruling, judiciary and management of affairs or their like. Rather, every individual should be treated equally regardless of race, Deen, color or anything else.” [The Draft Constitution by Hizb ut Tahrir, Volume 1]

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References:

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- 2) <https://thewire.in/law/arnab-goswami-supreme-court-petition-selective-listing>
- 3) <https://thewire.in/law/supreme-court-petitions-arnab-goswami-priority>