

Celebration of freedom

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Freedoms need not only be won, they also need to be guarded, nurtured and enhanced.

Anniversaries are useless if they fail to inspire reflective introspection. While celebrating our Independence Day last month, we predictably saw commentators rise above the cynical bustle of everyday political life to project an optimistic long view. Since it is freedom we were debating and celebrating, the good sense of our founders in understanding its true import is worth highlighting. They understood that the American notion of negative freedoms guaranteed by a liberal-democratic state as well as the Soviet ideal of freedom from hunger and want facilitated by an authoritarian state were both impoverished conceptions of freedom. Schooled in the Gandhian concept of swaraj, they understood freedom in a richer, multi-faceted sense: One that insisted upon the civil liberties of liberal democracies but did not shy away from acknowledging the state's role in facilitating access to basic goods such as food and shelter that are essential preconditions to human flourishing. It was a rare case of politicians being a step ahead of philosophers. It would be a few decades before philosophers like Amartya Sen, Joseph Raz and Martha Nussbaum endorsed this approach.

If there is one thing we ought to celebrate, it is the survival, against all odds and in the face of multiple challenges, of this richer notion of freedom in our political discourse to this day. While we furiously debate the scope of the Food Security Bill, no significant right-wing party has questioned the need to have it in the first place. On the other hand, the two main communist parties largely function within the political discipline of a liberal democracy. Counter-examples such as the strident anti-welfarism of the Tea Party movement in the US and the continuing authoritarianism in our neighbourhood only show how remarkable the endurance of this Indian consensus really is. This consensus is also a reason why we should be slow in dismissing all our politicians as corrupt and self-serving.

Freedoms need not only be won, they also need to be guarded, nurtured and enhanced. Ambedkar knew all too well that the constitutional establishment of democratic freedoms was to be a work in progress, not mission accomplished. One effort towards deepening democracy in India is being spear-headed by the National Campaign for the People's Right to Information, the same group that is largely credited with the fruition of the Right to Information Act in 2005. For about a year, the NCPRI, led by Aruna Roy and others, has been campaigning for a reform in the pre-legislative process. Currently, there is too much secrecy around draft Bills. The misleadingly titled Prevention of Torture Bill passed by the

Lok Sabha last year managed to escape public scrutiny because the government kept its contents secret until it was introduced and quickly passed in the House. Some ministers, such as Jairam Ramesh, have published draft Bills for public consultation. But they are not obliged by law to do so.

The NCPRI's proposals will change all that. They demand that every draft Bill and major policy is put in the public domain and available for public comments and consultation before it is introduced in Parliament. Such a process will give citizens a greater say in the laws that govern them. It should also produce better laws, for it is normally easier to make changes in a Bill at the draft stage. It is a better approach to let anyone who cares to engage with the legislative process to do so, instead of holding informal 'referendums' on pending Bills. The former facilitates a nuanced debate instead of seeking yes/no answers, and it strengthens Parliament rather than competing with it for representative legitimacy. As the nation debates the various drafts of the Lokpal Bill, systemic changes which facilitate similar debates for all Bills are long overdue.

While celebrating freedom and democracy, we should also remember that there is more to democracy than majoritarianism or populism. The Constitution guarantees civil liberties such as freedom of speech, association and movement, freedom from torture, arbitrary arrest and arbitrary detention, right to fair trial and due process of the law. These liberties are universal: they do not depend on status, birth or sometimes even criminality: the constitution wisely guarantees the right to fair trial even to a suspect accused of killing hundreds. Little surprise then that these liberties are often unpopular!

Realising that governments will often be tempted to violate these liberties, usually in the name of national security, the founders entrusted the task of guarding civil liberties to the judiciary. They ensured that the judges were unelected and independent, so that they could fearlessly temper popular authoritarian impulses with reasoned counter-majoritarianism. For all the talk of judicial activism, Indian judges have had a mixed record in upholding this constitutional mandate. On the one hand, they have stood up for civil liberties by decriminalising homosexuality, invalidating the dubious narco-analysis test and disbanding the dreaded Salwa Judum. On the other hand, they have balked at Indira Gandhi's Emergency, upheld the terrorising 'anti-terror' laws, and allowed security agencies to kill with impunity under the Armed Forces (Special Powers) Act. It is in this latter category of cases, when the courts play to the gallery, that they fail their constitutional duty to uphold freedom when it is most threatened.

Long before Independence, Tagore understood freedom in all its complexity. Forced to choose between the rational patriot Nikhil and the nationalist demagogue Sandip, Bimala in his novel *Ghore-Baire* (The Home and the World) finds she has 'no patience with patience. She loves to find in men the turbulent, the angry, the unjust. Her respect must have its element of fear'. Sometimes entire populations can feel like Bimala enthralled by Sandip, willing to surrender independent judgment to seductive authority. When we permit the

violation of our fundamental principles with grotesque laws like the AFSPA, we abrogate our responsibilities as thinking citizens and damage the fabric of our democracy. It is time we noticed the hunger strike by Irom Sharmila in Manipur against the AFSPA. While celebrating freedom and democracy, we must renew our vigilance against all crude shortcuts, and recognise with Tagore that 'to tyrannise for the country is to tyrannise over the country.'

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