

FOR LIBERTY'S SAKE: ON THE SCOPE OF ARTICLE 32 IN THE ACTIVISTS CASE

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The Supreme Court's intervention following the [arrest of five prominent activists](#) by the Pune police last month has been truly extraordinary and raises the bar for protection of personal liberty. The court has granted them the rare relief of remaining in house arrest while it examines the charges against them. It has reserved its decision in the case and now must decide on one of the following courses. They are: to allow the police in Maharashtra to pursue its investigation against the activists for allegedly being members of the outlawed Communist Party of India (Maoist) and joining a conspiracy against the government, to set them at liberty on the ground that this is a trumped-up case, to order a probe by an independent team. The story so far has thrown up a legal tussle between the Centre's contention that it is probing a terrorist conspiracy involving Maoist insurgents and their urban supporters and the counter-argument that this is a thinly disguised crackdown on political dissent. The petitioners, led by historian Romila Thapar, have questioned the motivation for the police raids on the residences of these activists and a few others in a coordinated operation across several States. They want those arrested to be released and demand an independent investigation. The Maharashtra and Union governments have sought to defend the arrest and prosecution, contending that the case is based on incriminating evidence seized during the probe and has nothing to do with the ideology or the political views of those under investigation.

Bhima-Koregaon and the fault in our laws

In entertaining this petition, the Supreme Court has set the stage for an examination of some fundamental questions at the intersection of criminal procedure and constitutional law. The procedural question is whether in a criminal matter the court can entertain a petition under Article 32 of the Constitution, under which the Supreme Court enforces fundamental rights, for which the accused are expected to seek their remedy under the Code of Criminal Procedure. The substantive question is whether the court should intervene when the liberty of citizens and their right to dissent are sought to be denied by arbitrary police action. Observations that "dissent is the safety valve of democracy" and "personal liberty cannot be sacrificed at the altar of conjecture" indicate the court's thinking. It is against this backdrop that the Bench has decided to examine the case diary to see whether the charges have some basis. The government may have reason to worry about a precedent being set, whereby every accused can rush to the Supreme Court immediately on arrest. At the same time, one cannot wish away the peculiar circumstances in which a case relating to violence at a Dalit commemoration dramatically morphed into a Maoist plot. Further, it is unusual, and even suspicious, that one city's police is investigating a crime that supposedly spans several States and involves purchase of arms and providing strategic inputs to armed rebellion, instead of handing it over to a national agency.

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