Dealing with the Discourse on 'Urban Naxals' and 'Anti-Nationals'

What is the issue?

- An Additional Sessions Judge in Punjab sentenced 3 young men to life in prison under an Indian Penal Code (IPC) provision on "waging war against the government of India".
- With constitutional principles being increasingly compromised for upholding the majoritarian rhetoric, it is crucial that courts remain free of the current discourse on 'urban Naxals' and 'anti-nationals'.

Why is the judgement disputed?

- The convicted men did not commit any physical violence, and nobody was harmed in any way.
- They were not caught in possession of weapons too.
- They were not overheard planning any specific terrorist attack, nor were they on their way to commit one when they were apprehended.
- The men were only caught with literature supporting the cause of Khalistan, a few posters that did the same, and some Facebook posts on the subject.
- The Additional Sessions Judge held that Facebook posts amounted to "direct incitement of violence".
- But mere possession of revolutionary literature is insufficient to sustain a conviction and hence, the verdict is likely to be reversed.
- The judgment indicates an apparent disregard for the constitutional and other safeguards enjoyed by a citizen.

What are the safeguards in place?

- **Constitutional** - A key fundamental right - Article 19 guarantees, among other things, the freedom of speech and association.
- The state may impose "reasonable restrictions" upon this freedom.
- But the Supreme Court has articulated the precise circumstances under which such restrictions would be "reasonable".
- **Judicial** - In the famous 2015 judgment in Shreya Singhal case, the court struck down Section 66A of the Information Technology Act.
- [Section 66A provides punishment for sending offensive messages through communication services.]

- The court made it clear that speech could be punished only if it amounts to 'direct incitement to violence'.
- This is decided in relation with the provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Unlawful Activities (Prevention) Act (UAPA).
- The court cautioned that vaguely-worded provisions of these statutes would have to be read narrowly and precisely, and in accordance with the Constitution.
- E.g. “membership” of a banned organisation (punishable under the TADA and UAPA) was to be understood as being limited to “active membership”
- Everything short of that (incitement to violence), including “advocacy” of any kind, is protected by the Constitution.
- **Tradition** - India has long had a notable tradition of civil liberties.
- In the early 1920s, Mahatma Gandhi opined that the freedom of association was truly respected when assemblies of people could discuss even revolutionary projects.
- Simply, in a pluralist democracy, no one set of ideas can be set as the universal truth and enforce its position through coercion.
- Indeed, the Supreme Court’s “incitement to violence” standard is in terms of this basic insight about civil liberties in a democracy.

What is the larger significance of the case?

- In the last few years, a discourse has arisen which projects a set of oppositional ideas as “urban Naxal” and “anti-national”.
- Notably, neither “urban Naxal” nor “anti-national” is a term defined by law.
- These terms have nothing to do with 'incitement to violence' or creating 'public disorder'.
- In this context, the judgment comes in a series of instances when court has abandoned constitutional values in favour of a majoritarian rhetoric.
- So, beyond recognising that the judgment is flawed, it is high time that the higher courts are aware of a dangerous moment for the judiciary.
- It is crucial that the courts remain free of the current discourse that put life and personal liberties of citizens at stake.

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