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COUNTERING A POLITICAL ACT THAT HAS A LEGAL GARB

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Aisha Sultana, a film-maker from Lakshadweep, was recently booked for the alleged offences of sedition and statements prejudicial to national integrity. A crime was registered based on a complaint by a leader of the Bharatiya Janata Party (BJP). Ms. Sultana then moved the Kerala High Court for pre-arrest bail. The court allowed interim bail to her on June 17. Ms. Sultana thus got temporary relief from incarceration. The court will pass its final orders in the application shortly.

Ms. Sultana's case is only one among the numerous sedition cases recently registered in the country. In Lakshadweep, people have had sedition slapped against them for putting up placards or posters against the Prime Minister. Ms. Sultana's case also reveals the regime's political strategy to threaten dissidents.

Ms. Sultana is alleged to have used the word 'bioweapon' in a television discussion about the recent developments in Lakshadweep and its draft reforms. She said it while deliberating over the Lakshadweep Administrator's actions and omissions that allegedly contributed to the spread of the COVID-19 pandemic on the island, which was free from the virus in 2020. Ms. Sultana indicated in her petition before the court and to the media that she is apologetic about the word used. In an interview she said that her "bioweapon remark" was a "mistake" and that she was "entrapped".

Hindutva forces have relied heavily on this subsequent posture which she publicly made, to strengthen their stand. They tried to create a false sense of moral victory and legitimacy to back their position, which they thoroughly lack.

Ms. Sultana is not a political activist. And it is probable that she may not be very articulate or even be able to present strong arguments on the affairs of the nation. It seemed like she was partly accusing herself or acknowledging the 'mistake' in some way. This self-accusation was, however, unwarranted. When the purpose of the sedition law is to curtail opposing ideas, her rescission had the effect of legitimising the state's wrongful action.

It's time to define limits of sedition, says SC

Ms. Sultana's case is a case study for those who are concerned about the country's liberal values. The offence of sedition under Section 124A of the Indian Penal Code (IPC) was inserted in the Code in 1870. In the great trial of 1922, Mahatma Gandhi, charged with sedition, described the provision as "perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen". Gandhiji, who himself was a lawyer, made two points in his statement given on March 18, 1922. One, he admitted the charge of preaching disaffection towards the then existing regime. Two, he justified his act and said that it was his duty to do so as it is "a sin to have affection for the system (under the British Raj)". He explained that "Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection so long as he does not contemplate, promote, or incite to violence."

This statement is not only political but also legal. Curiously, this assertion that Gandhiji made in

the court was indirectly laid down as the law by the Constitution Bench of the Supreme Court of India in *Kedar Nath Singh* (1962) which said that incitement to violence is the gist of the offence of sedition**.** This proposition was followed by the top court consistently, till *Vinod Dua* (2021), where the Court said that a journalist cannot be booked for sedition for expressing dissent.

'Criticism is not sedition': SC quotes 1962 ruling

The law was clear even when Gandhiji was convicted and sentenced. Evidently, the charge and the conviction were political, not legal. Even today, the very registration of crimes against political opponents under the draconian laws is essentially a political act, though it takes a legal form. According to the report by the National Crime Records Bureau (NCRB), between 2016 and 2019 there was a 160% increase in the registration of sedition cases whereas the conviction rate during this period fell from 33.3% to 3.3%. Thus, the process itself becomes the punishment.

Therefore, one needs to build up a political defence as well as legal defence against such charges. Litigation is not merely a means for the redress of grievance. When the charges are under ‘political sections’, as Gandhiji eloquently described, they need to be countered by a political praxis as well. Only such a course would expose the egregious motive of the state in accusing its citizens of the offence of sedition without any legal or factual foundation whatsoever. Only such a resistance would be able to re-educate our judicial institutions constitutionally and historically, and to ensure dialogic democracy.

Unfortunately, Ms. Sultana’s subsequent expression of regret does not pass this political test. She could have asserted that the word she used was correct and proper. It was possible for her to justify it as an imagery capable of exposing the regime’s unprincipled approach in Lakshadweep.

Editorial | Media and sedition: On Supreme Court relief to journalists

It needs to be told that the British Raj used the draconian provision only when they alleged that a speech or a writing resulted in violence,or there was at least a remote connection between the overt act and social disturbance. Bal Gangadhar Tilak was tried in 1897 on an accusation that the articles in *Kesari*, a Marathi paper owned by him, incited violence that led to the killing of two British officers. Tilak was convicted and sentenced to undergo rigorous imprisonment for 18 months. In 1908, he was again tried and later sentenced for writing “seditious” articles and by connecting them with certain instances of ‘social disorder’. Post-Independence, in *Kedar Nath Singh*, the accusation among others, was that Kedar Nath, a Forward Communist Party leader, had asserted his belief in a revolution “in the flames of which the capitalists, zamindars, and the Congress leaders of India….will be reduced to ashes....” The Court said that “comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal”. In *Balwant Singh* (1995), slogans for an independent Sikh nation were found to be not seditious for want of the ingredient of incitement to violence. None of these prominent cases relied on the mere use of words to make out the offence.

But after 2014, cases of sedition are frequently and intentionally registered solely based on words spoken, written, or tweeted. This can have a chilling effect on people’s movements. The clear political object behind the invocation of the law is to create an atmosphere of fear. This, in a way, is the price which the country had to pay for the retention of the law of sedition, among other draconian laws. Therefore, the Supreme Court of India and the High Courts should take *suo motu* cognisance of the incidents where the state ostensibly uses draconian laws to suppress criticism and protest. This is difficult, but not impossible. Such *suo motu* proceedings would reflect the kind of judicial activism that our time demands. The organised Bar, especially

at the State level, must perform its libertarian role by constantly demanding for a judiciary that values freedom and acts for it.

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