

PUCL

PEOPLE'S UNION FOR CIVIL LIBERTIES

332, Patpar Ganj, Opp. Anand Lok Apartments, (Gate No. 2), Mayur Vihar-I, Delhi 110 091

Founder: Jayaprakash Narayan; **Founding President:** V M Tarkunde

President: Ms. Kavita Srivastava (Rajasthan); **General Secretary:** V Suresh (Tamil Nadu);

E.mails:<puclnat@gmail.com>

Please visit our website: www.pucl.org

12th October, 2023

“Dissent is the beating heart of a democracy”

PUCL : “Withdraw the prosecution against Arundhati Roy & Showkat Ali”.

The PUCL condemns the decision of the Delhi Lieutenant-Governor Vinay Kumar Saxena to grant Delhi Police sanction to prosecute writer Arundhati Roy and Sheikh Showkat Hussain, (former Professor of International Law at Central University of Kashmir), in a 2010 case for offences under sections 153A, 153B and 505 of the Indian Penal Code. The complaint itself pertains to speeches by Arundhati Roy and others at a convention on Kashmir, ‘Azadi: The Only Way’, organised in New Delhi in October 2010.

It is baffling that a 2010 related case is now on the front burner, with sanction being granted by the L-G, almost thirteen years after the alleged incident. The case itself pertains to speech which allegedly fell within the IPC provisions relating to ‘promoting enmity between different groups,(Section 153-A), ‘imputations or assertions prejudicial to national integration’ (Section 153-B) as well as statement conducing to mischief (Section 505). According to the LG, though her speech fell within the understanding of sedition (Sec 124-A), sanction to prosecute for sedition was not given as ‘the Supreme Court on May 5, 2022, in another case has directed that all pending trials, appeals and proceedings with respect to the charge framed under Section 124A (Sedition) of IPC shall be kept in abeyance and thereafter the three-Judge Bench headed by CJI had referred the matter to Constitution Bench on September 12, 2023’

A mature constitutional democracy ought not to prosecute speech, which by itself has no direct causal connection to violence or disorder. It is shameful that an FIR was even registered for speech which by all accounts did not incite or provoke any form of violence.

It does great disservice to the Modi government’s belief that India is the ‘mother of democracy’, when the ‘mother’ prosecutes one of her most illustrious children. Arundhati Roy is one of India’s most eminent writers who has used her writing to amplify the concerns of those whose voices are ignored or muted. In her writing be it on the Indian nuclear tests, the dams on the Narmada or of the US war on Iraq she has sought to remind Indians and indeed the inhabitants of the world of the human costs of nuclear technology, development and war.

Her voice matters in contemporary India because her essays though crafted in a highly individual, poetic and literary voice, ‘*rose from the heart of a crowd*’. She characterised her own writing as not ‘neutral commentary’, but rather as ‘*just another*

stream that flowed into the quick, immense rushing currents that I was writing about.' By writing about issues which the powerful would rather forget, she forged her 'contribution to our collective refusal to obediently fade away'.

As a writer she has been unafraid to tackle difficult and controversial issues. In a constitutional democracy, such voices even if they shock or disturb the government ought to have free play, because dissent is the beating heart of a democracy.

Mahatma Gandhi spoke about the importance of dissent most powerfully during his prosecution for sedition in colonial times:

"Section 124-A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. 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 violence..."

'Speech' in Gandhi's words, should have the 'fullest expression', with the only limit point being the promotion of violence. The jurisprudence of the Supreme Court also limits the understanding of sedition to speech which directly results in or incites violence. In *Balwant Singh v. State of Punjab* in 1995, the Supreme Court adjudicated the question as to whether shouting slogans including, "Khalistan Zindabad" in a crowd the day Indira Gandhi was assassinated amounted to sedition. The Supreme Court noted, 'We find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded.' The Supreme Court went on to chastise the policemen who filed the case, stating that, 'It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them'

Indian democracy is not so fragile as to be threatened by the expression of a dissenting opinion. The LG granting sanction to prosecute is a particularly egregious and constitutionally suspect exercise of state power as is evidenced by the fact that even thirteen years post the utterance of the words those words have not resulted in any violence.

Arundhati Roy is being prosecuted for 'worrying the edges of the human Imagination' for writing as if 'the only thing worth globalizing is dissent' and believing that dissent is 'India's best export'. This is a tragedy for a country which prides itself as being the 'mother of democracy'.

The PUCL demands that the prosecution be withdrawn with immediate effect against both Arundhati Roy and Sheikh Showkat Hussain.

Kavita Srivastava, President

Dr. V. Suresh, General Secretary

People's Union for Civil Liberties