

PUC

PEOPLE'S UNION FOR CIVIL LIBERTIES

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PUCL: Condemns the Conviction of Medha Patkar for Defamation Repeal Defamation in Bharatiya Nyaya Sanhita (BNS) as a colonial vestige

The PUCL is shocked at the conviction by a Delhi Court of Medha Patkar, one of India's most renowned social activists, for defamation u/s 499/500 IPC and sentence of five months imprisonment combined with a fine of Rs. 10 lakh rupees imposed against her. The case itself was filed in 2000 and relates to a press note, the contents of which are allegedly defamatory to V.K. Saxena who then headed the National Council for Civil Liberties of Ahmedabad and is now the Lieutenant Governor of Delhi.

The press note in English dated 25 November 2000 was titled "true face of patriot" and is extracted in the trial court judgment as below:

"V K Saxena, one who is pained by the Hawala transactions himself came to Malegaon, praised NBA and give a cheque of 40,000. Lok Samiti naively and promptly sent the receipt and the letter, which shows honesty and good record keeping then anything else. But the cheque could not be encashed and got bounced. On enquiry, the bank reported the account does not exist." The cheque, press note, came from Lalbhai Group. What is the connection between Lalbhai Group and V K Saxena? who among them is more patriot?"

The trial court found that the above statement was a 'direct attack on the personal character' and 'loyalty' of the complainant to the 'nation'. The court was also of the opinion that, 'such allegations are particularly grave in the public sphere, where patriotism is highly valued, and questioning someone's courage and national loyalty can cause irreversible damage to their public image and social standing'.

Based on this finding, the trial court convicted Medha Patkar. A close reading of the judgment of the trial court indicates that there are a number of legal infirmities which will obviously be tested in the appeals court, right from the question of whether there was an 'intention to defame' the complainant on the part of Medha Patkar to questions around whether the witnesses of the complainant were interested witnesses. However, apart from the merits of the legal case, (to test which the appropriate forum is the appeals court) what is essential to appreciate is the wider context, in which this complaint on defamation was made, which can be teased out from the judgment itself.

Trial pending since 2002 against VK Saxena of assaulting Medha Patkar

The judgment indicates that V.K Saxena has had an FIR filed against him for assaulting Medha Patkar. The court has recorded that, 'the complainant in his cross admitted the proceedings of prosecution for assault as pending between him and the accused.' The court records that, Medha Patkar had stated that, 'since year 2000 the complainant has been running a campaign of spreading

false and defamatory statement and advertisement. She added that he had even physically assaulted her in year 2002 and an FIR regarding the same was at the stage of evidence in the Magistrate Court, Ahmedabad, Gujarat.’

A reading of the judgment indicates that this defamation complaint is not a stand-alone complaint by an aggrieved individual but rather embedded within the larger history of the anti-dam agitation in Gujarat headed by the Narmada Bachao Andolan and the attempt by the state to suppress it using various instrumentalities.

The Narmada Bachao Andolan (NBA) is one of India’s oldest peoples movements, and led by Medha Patkar, has been exposing the severe environmental impacts of big dams, especially on the Narmada river. The NBA has courageously brought to light the displacement of adivasis from their land and mobilized the people against a form of development which has done injustice to India’s poorest people. In their continuing struggle the NBA has faced enormous pushback both from the state as well as corporate interests.

Prosecution of Medha Patkar: A SLAPPS Prosecution to silence and stifle rights defenders

The critical question is why was such a case of criminal defamation filed at all? The filing of the case of defamation against Medha Patkar is nothing but a weaponisation of law meant to silence, censor and intimidate viewpoints which challenge the dominant understanding of development. This phenomenon of seeking to control dissent through a heavy handed use of the law is a well-known strategy used by corporations as well as states and has been characterised as ***SLAPPS***, which stands for ‘***Strategic Litigation Against Public Participation***’. SLAPPS suits, world-wide, have been filed against citizen defenders, rights activists, environmental defenders and others getting them caught up in a web of litigation which is time consuming, expensive and diverts attention from fighting battles for social and environmental justice.

The conviction of one of India’s most illustrious activists Medha Patkar for defamation is a timely reminder of the serious danger that the criminal law on defamation poses for human rights activists, environmental activists, anti-corruption activists and whistleblowers.

Medha Patkar is a courageous activist who has been undeterred in her spirit which continues to fight for the dispossessed even after the verdict. In fact she sat on a fast unto death, demanding quick rehabilitation of people whose land was to be submerged, which she only lifted upon the assurance of the administrative authorities eight days later.

Medha Patkar represents not only the NBA and the National Alliance of Peoples Movements (NAPM) but also stands in for all the courageous dissenters who seek to speak truth to power. The PUCL stands in solidarity with Medha Patkar in her courageous struggle against arbitrary power.

Repeal sec. 356 BNS: Defamation Offence

The conviction of Medha Patkar was only possible because of the archaic law on defamation.

While it may be the role of the civil law to protect the reputation of an individual, to threaten people with imprisonment though the use of the criminal law for damaging reputation is an abuse of the legal process. It is a travesty that criminal defamation still exists in our statute books as this colonial anachronism has no place in a constitutional democracy.

However the framers of the Bharatiya Nyaya Sanhita, (BNS) which came into force on the 1st of July, 2024 have reproduced Section 499 of the IPC word for word as Section 356 of the BNS, confirming that the decolonial nature of the three criminal laws is nothing but an eyewash.

What is also troubling about the BNS is that if Medha Patkar were to be prosecuted today under the BNS, apart from defamation, she could also be prosecuted under Sec. 113, BNS, which criminalises a terrorist act which is defined quite broadly to include acts affecting "Economic security". Similarly sec. 152 - the new sedition law- criminalises speech about 'subversive activities' and encouraging feelings of separatist activities' and can also be used target Medha Patkar speech and expression. So a campaign against big dams or 'destructive development' projects can be construed as an act affecting economic security or subversive and prosecuted under section 113/152 BNS!!

We are hopeful that the constitutional courts will overturn this unjust conviction of Medha Patkar.

We also demand that the criminal law on defamation, Section 356 of the BNS be repealed.

Kavita Srivastava, (President),

V. Suresh (General Secretary)

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