

To

**The Hon'ble Chief Justice of India & His Companion Judges**

With grave concern, we members of the Delhi High Court Women Lawyers Forum and the legal fraternity, have watched young Indians, mostly women in their early 20s being arrested over the past few years merely for exercising their fundamental right to freedom of speech and expression, by engaging in democratic protests with no intentions of perpetrating violence and with no intention of inciting violence. The said young women have been arrested under very serious charges of sedition (Section 124A of the Indian Penal Code) and in some cases, a pattern has emerged that as the time for filing of a charge sheet is about to elapse, sections of the draconian Unlawful Activities Prevention Act (UAPA) are invoked to avail of the stringent bail provisions under the said act and to prolong the time period for producing any credible evidence for their detention.

The violence if any (that was widely televised) was not connected with the legitimate causes these young persons have been raising their voices for and are completely unrelated to these young women as there is no evidence at least in the media that suggests their statements had any connection with or they had any intention to incite violence to overthrow the government of India or cause any communal disharmony. It is apparent that they have been made scapegoats to silent dissent.

The recent events where a young environmental activist Disha Ravi (21 years old) from Bangalore has been arrested by Delhi Police in Bangalore and brought to Delhi on 14.02.2021 without following any prescribed legal procedures and without there being any apparent reason for arrest are appalling. The young woman has no criminal antecedent, she was willing to cooperate with the investigation, she is not a flight risk, but most importantly, there is no evidence to suggest that she was working with any banned organizations or doing anything remotely close to inciting violence against the State.

The police officers in question failed to inform the Bangalore police of their intention to remove Disha from their local jurisdiction for investigation related to a case in Delhi. They failed to obtain a transit remand from a Magistrate in Bangalore before bringing Disha to Delhi on a Sunday. Thereafter the link/ duty Magistrate at Patiala House, mechanically granted 5 days police custody, when all the evidence collection is forensic in nature and from electronic devices and no cause for custodial interrogation was shown. In any event arrest of women is supposed to be in the rarest of rare cases and preferably they are to be interrogated in their homes. Disha was denied her lawyer (basic right under Article 22 of the Constitution of India) and while it is widely televised that she presented her own case, the remand order which remanded her to police custody for 5 days (which is fairly long a period to be granted by a link/duty Magistrate) names a legal aid counsel. The remand order records substantial submissions made on behalf of the prosecution but none on behalf of the accused. The Ld. Magistrate failed to take note of the illegalities of her custody and the absence of any evidence that suggested the commission of the offence of sedition. The five-day long remand by Ld. link Magistrate prima facie shows non- application of judicial mind and a mechanical exercise of power; ignoring well settled principles of law and procedure.

The Law of the land as laid out by the Supreme Court unequivocally in *Balwant Singh & Anr vs State of Punjab* [1995 (1) SCR 411] (where the Petitioners were accused of raising pro khalistani slogans on the day of the assassination of the then PM Indira Gandhi) says that raising of lonesome slogans by some individuals does not pose a threat to the Government of India and does not constitute an offence under Section 124A IPC; even though the slogans unequivocally call for the overthrow of the government. Therefore, it seems perverse that these climate activists are arrested for sedition, on the allegation that they may have been influenced by Khalistani sympathisers.

The Hon'ble Supreme Court while upholding the Constitutionality of Section 124A of the Indian Penal Code, limited it in *Kedar Nath Singh vs State of Bihar* [1962 SCR (Suppl.) 2] clearly stating that, "if Section 124A of the Indian Penal Code was interpreted in any other manner, for example to punish speech that merely spreads disaffection or enmity without inciting violent overthrow of the government it would be unconstitutional." Despite such unequivocal interpretation of the sedition clause, we find that it is being abused by investigative agencies to terrorise and silence, young, intelligent and patriotic Indians.

We feel that the Bar and Bench cannot watch silently as young people are forced into long incarceration. Even when the slow wheels of justice come to their aid and uphold their innocence, they lose the best years of their youth and the opportunity to serve the nation with their idealism. History will wonder, where the Indian Judicial system was when the Anne Franks of India were being dragged away without due process of law or any offence commensurate to our Constitutional Scheme.

Since Section 124A of the Indian penal code has outstripped all other provisions of the Indian Penal Code in being misused and since most democracies have either removed this colonial statute from the penal codes or reduced the punishment under 2 years, the time has come for the Supreme Court to revisit the issue of the Constitutionality of Section 124 A of the Indian Penal Code and remove this redundant colonial tool of silencing citizens in a democracy. Like in the judgment of Arnesh Kumar, guidelines for arrest in rarest of rare cases ought to be set down. Terrorising and silencing the spirit of young India seems far graver an act that causes danger to our country and democracy than their well-meaning and idealistic outbursts and protests that strengthen their character and commitment as citizens.

We do hope your lordships will heed our call and intervene in what can only be called a medieval and draconian abuse of Section 124A of the Indian Penal Code.

**Regards**

**Delhi High Court Women Lawyers Forum**

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