PUCL

PEOPLE'S UNION FOR CIVIL LIBERTIES

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Statement issued by PUCL National and PUCL Maharashtra State unit.

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PUCL condemns the targeting of comedian Kunal Kamra and the vandalism by Shiv Sena (Shinde faction) at The Habitat, Mumbai!

Political satire is a constitutional right!

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Punitive and Arbitrary demolitions as a form of punishment are an unconstitutional attempt to strangulate free speech

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India is not an eggshell democracy and the right to freedom of speech and expression cannot be held hostage by lawless mobs!

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The PUCL condemns the targeting of comedian Kunal Kamra, for a virtual show titled 'Naya Bharat'(meaning New India) which was recorded at the Habitat studio, Mumbai on 23rd March, 2025 and which went viral on social media subsequently. His show was a satire on the state of governance in India, political leaders and how they have failed the people of this country. He presented this satire through a series of parodies using the tune of Bollywood songs.

Within less than 24 hours, a mob of men from the Shiv Sena (Shinde faction) rampaged the Habitat, a popular performance-based venue situated in Khar, Mumbai, where the show was recorded. The mob entered the premises with hammers and rods, clearly intent on destroying the venue. In fact, as per the account of a witness, there was an audience of 80+ people sitting in the venue waiting for another comedy show to start. The mob told the audience to leave; but standing their ground the audience didn't leave until the mob started breaking glasses on the bar counter. It was then the representatives from the venue urged the audience members to leave fearing for their safety. According to this account, the Police were witness to the violence and vandalism but did nothing to intervene or stop the mob. There is documentary proof of the abdication of the responsibility of the police to

enforce the law when a gang of lawbreakers indulged in criminal acts with impunity, by openly ransacking the venue, intimidating the owners and attacking people in the venue. This only indicates that the Mumbai Police were not only hand in glove with the mob but were complicit in the mob breaking the law.

The videos showing the faces of the members of the mob breaking glasses and throwing chairs have been widely reported and circulated. What is extremely shocking is one leader of the mob, who is also the Shiv Sena social media chief and Yuva Sena General Secretary, Rahool Kanal, stating in an interview on India Today, beamed live, not only taking responsibility for the ransacking of the Habitat by the Shiv Sena mob but going ahead to justify his action on the ground that his/ their sentiments were hurt.

Shockingly the Bombay Municipal Corporation (BMC) also swiftly got into the act by unilaterally and arbitrarily demolishing an extension of the Habitat venue without following due process, alleging that it was illegal. This further arbitrary action by the BMC exposes the complicity of the state in the attack on Kunal Kamra. Why is the BMC arbitrarily targeting a property in which a show was recorded in which the Deputy Chief Minister was the alleged subject of political satire?

The only answer is that the state has come up with a new method to suppress dissent, namely punitive demolitions which are a violation of the rule of law and unconstitutional, as recently held by the Supreme Court in its November 2024 judgment in the matter *`Re: Demolition of Structures*', whereby the Supreme Court has also issued Pan India Guidelines regarding demolition of structures. Unfortunately this action is indicative of the new India that we are living in; ironically, on the same day that the Supreme Court and the Bombay High Court were hearing applications on arbitrary, illegal and unconstitutional demolitions in UP and Nagpur and Sindhudurg respectively, the Habitat Club was being demolished by the BMC without following due process of law!

On 24th March, 2025, while speaking in a Pune Law College Justice Ujjal Bhuyan's made some very strong observations on demolitions, noting that, ***"According to me, using a bulldozer to demolish a property is like running a bulldozer over the constitution. It is a negation of the very concept of rule of law and if not checked, would destroy the very edifice of our justice delivery system".***

What concerns us in the PUCL is that the arbitrary and punitive demolition seems to have achieved its objective as seen by the statement put out by Habitat that 'We are shocked, worried and extremely broken by the recent acts of vandalism targeting us.'

The studio said artistes are “solely responsible for their views and creative choices”, and it has never been involved in the content performed by them”. Most disturbingly, the statement concluded that, “recent events have made us rethink about how we get blamed and targeted every time, almost like we are the proxy for the performer" and went on to say that “We are shutting down till we figure out the best way to provide a platform for free expression without putting ourselves and our property in jeopardy.”

The Chief Minister of Maharashtra, Devendra Fadnavis, instead of unequivocally condemning the above-mentioned illegal acts, took to the floor of the Assembly and forgetting his constitutional oath went on to call Kamra an “urban naxal” and a “traitor”. He promised stringent action against him and unequivocally stated that such people will not be spared. Mr. Fadnavis should know that the Constitution protects the freedom of speech and expression and politicians cannot claim legal immunity from being made objects of satire. They cannot overcome the limits imposed by the Constitution by deploying lawless mobs working in cahoots with the police. The elected constitutional authorities cannot legitimize arbitrary, punitive and unconstitutional demolitions by state agencies which aim to render precarious, the freedom of speech and expression.

What the Shinde faction of the Shiv Sena, as well as the Chief Minister have failed to recognise is that not only is there a fundamental right to freedom of speech and expression but within the framework of the constitution, speech that may shock, offend, or disturb is also protected speech. Such speech can be a way of challenging stereotypical ideas and dominant orthodoxies as well as political power. In a democracy, such speech should be constitutionally protected even if it offends the fragile egos of politicians.

Two FIRs have already been registered, one against Kunal Kamra and the other against 19 members out of the entire mob who are out on bail. While on bail they are appearing before News Channels and seen in continuing to justify their illegal, unconstitutional, violent actions. They have also continued to brazenly demand an apology from Kamra for the exercise of his constitutional right! There can be nothing more absurd than such a demand!

The FIR was registered against the Shiv Sena mob under sections 132 (assaulting or using criminal force against a public servant to deter them from performing their duty), 189(2) (unlawful assembly), 189(3) (definition of unlawful assembly), 190 (constructive liability for unlawful assemblies), 191(2) (all members of an unlawful assembly are guilty of rioting if any member uses violence), 324(5) (mischief with damage to property), 324(6) (mischief with preparation for harming or causing death of

any person), 223 (disobedience to orders duly promulgated by a public servant), 351(2) (punishment for criminal intimidation), 352 (intentional insult with the intent to provoke a breach of peace) 333 (house trespass with intent to cause harm) of the Bhartiya Nyaya Sanhita and sections 37(1) (power to prevent certain acts) and 135 (breach of prohibitory orders) of the Maharashtra Police Act. Despite the violent actions of the Shiv Sena mob, and the fact that they continue to threaten Kamra and others, the remanding court granted them cash bail with regular bail being granted to them subsequently. This could happen only if the Mumbai Police did not object to their bail petitions. Which is only to be expected from a police force that has been openly complicit in the mob violence and vandalization because the accused persons belong to the ruling coalition party.

The Mumbai police has also filed an FIR against Kamra based on a complaint by Shiv Sena MLA Murji Patel alleging criminal intimidation and defamation. In our constitutional democracy satire has been recognized as part of freedom of speech and expression. The Supreme Court in the case of `*Indelibly Creative Pvt. Ltd. Vs. Govt. of West Bengal'* (2020) held that,

> *"Satire is a literary genre where "topical issues" are "held up to scorn by means of ridicule or irony". It is one of the most effective art forms revealing the absurdities, hypocrisies and contradictions in so much of life. It has the unique ability to quickly and clearly make a point and facilitate understanding in ways that other forms of communication and expression often do not.*

In `*Tata Sons v. Greenpeace International*', Justice Ravindra Bhat upheld the right of parody of Greenpeace against Tata Sons observing that , '*rhetorical hyperbole is protected by doctrine requiring that allegedly defamatory statements (such as the characterization of a union dissident as a "traitor") reasonably be interpreted as stating actual facts'*.

Clearly, the only embargo the Constitution recognises on satire are the restrictions under Article 19(2) which include hate speech. In the case of Shreya Singhal Vs. Union of India (2015), the Supreme Court has examined the contours of freedom of speech and expression in relation to the content of an expression, and clearly held that mere discussion or advocacy, however unpopular cannot be restricted under Article 19(2), unless it amounts to incitement.

> *13. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.[3] It is at this stage*

that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".

The YouTube video of the comedian's show is up for all to see that no such statement targeting a group or inciting hatred against any community was made. Simply calling an elected representative as a turncoat and traitor, that too, in this case without even naming the politician, does not fall within any of the grounds which qualify as reasonable restrictions under Article 19(2).

The role of the state, the BMC and the Maharashtra police in this case is in complete violation of the law. In the aforementioned Supreme Court judgement in the matter of *`Indelibly Creative Pvt. Ltd. Vs. Govt. of West Bengal'* (2020), it is clearly held that,

"*The instruments of the state must be utilized to effectuate the exercise of freedom. When organized interests threaten the properties of theatre owners or the viewing audience with reprisals,* ***it is the plain duty of the state to ensure that speech is not silenced by the fear of the mob***."

The fact that the police was witness to the vandalization and did not stop the mob, indicates that it has been complicit in this violence. Clarifying that the role of the police is not to guard public morality, the Supreme Court held that,

"*The police are not, in a free society, the self-appointed guardians of public morality. The uniformed authority of their force is subject to the Rule of law. <u>They cannot arrogate to themselves the authority to be willing allies in the suppression of dissent and obstruction of speech and expression</u>*."

Further, the duty of the state is to not only prevent violence, but it is also to protect those who want to exercise their freedom of speech and expression. In the Supreme Court case in *`S. Rangarajan v. P. Jagjivan Ram*', it was held that,

"*It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression*."

In a constitutional democracy, the joke is really on 'we the people of India', that a humourless mob is empowered by the complicity of the State, to initiate vigilante action against those exercising their right to constitutionally protected speech which the mob, arbitrarily deems offensive. **Vigilante action leaves behind a smell of fear which**

chokes the constitutional right to expression. The right to political satire is today on a ventilator, because the political satirist now knows that the price she has to pay for making fun of the powerful is to confront a lawless mob, face the risk of demolition of the property where she performs as well as be prepared for prosecution by the state!

The comedian in the current polarised times has begun to anticipate such mob backlash. Kamra in fact, ends the show holding up the Constitution and saying "This is the Constitution of India. This is what allows me to do what I do. In the framework of this book, you can feel free to do anything." In Kamra's statement is an honest belief that the Indian Constitution offers protection for satirists against those who would take offence and attempt to shut down his speech. Kamra's case indicates that the challenges free speech faces today is the complicity of the state in allowing vigilante attacks and the state unleashing bulldozer raj against those brave enough to criticise the state! This is indeed an increasingly challenging time for Indian democracy, which seems increasingly precarious. It is up to constitutional courts to vindicate the faith of the ordinary citizen in the protections guaranteed by the Constitution.

We applaud Kunal Kamra in not allowing himself to be intimidated, threatened or cowed down by a politically motivated mob and instead standing firm that he will not apologise for his work on the ground that it is an expression of his constitutionally guaranteed fundamental right to free speech thereby expressing his belief in the Indian Constitution.

India was not always an eggshell democracy with politicians quick to take offence at the exercise by citizens of the constitutional right to political satire. Famously, our first Prime Minister Jawahar Lal Nehru called up the cartoonist R.K. Laxman who had made a cartoon commenting on the India China war and asked him, "Mr. Laxman, I so enjoyed your cartoon this morning. Can I have a signed enlarged copy to frame?"

This is one of the many examples of former elected representatives that saw the right to political satire (even if it was at their expense) as a protected constitutional right.

We urge the Prime Minister of India, Mr. Narendra Modi to set a similar example of encouraging political satire and offering a role model to others in his party to accept in good humour that in a constitutional democracy, leaders will be made fun of. To 'offend, shock and disturb' is a right under the Indian Constitution. A nation without humour takes one step closer to fascism. In the converse, humour is the tool to puncture the preening self-importance of leaders who arrogantly see themselves as God's gift to the nation. Humour is the tool which Charlie Chaplin used to mock Adolf Hitler in the 'Great Dictator' and is the tool the Indian citizen has to keep political leadership in check.

Humour is indeed in in the words of the Mexican poet, Octavio Paz, 'the great invention of the human spirit'.

To create an environment where political satire can flourish without fear, PUCL appeals

- To the Bombay High Court to suo motu initiate action against the Mumbai Police and MCGB for the vandalism, the illegal demolition, dereliction of duty to enforce the `rule of law' and violation of fundamental rights.

PUCL demands that the state authorities must:

- Take effective legal action to prosecute the leaders of the mob.
- Ensure full protection to Kunal Kamra.
- Ensure compensation is paid in full by the leaders of the mob to the owners of the venue, the Habitat for the damages sustained by the vandalism.
- Compensate the owners of the venue for losses suffered due to the unconstitutional, punitive and arbitrary demolition.
- Initiate an inquiry against the police officers who stood by and watched the destruction of the venue in dereliction of their duty.
- Withdraw the FIR against Kunal Kamra.
- Develop a sense of humour.

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