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Is Sedition a Colonial Invention or a Means of Political Survival in India

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ABSTRACT

Derived from the morphological evolution of Sedition, as an abstractly conceived terminology to being legally restored to the constitutional habilitation, the law has sailed through innumerable sheets of controversies, evaluations and subjective manipulations across various regimes and races of India. As sedition can sought to be a rare yet intuitive eye to check the popularization of the government and the nationalism of its citizens, one might get dilemmatic on its amorphous history, fudged biography and the recent scenarios, it has mobilized highlights with.

To compile it in a catalog of cases, churned from the days of its enactment through the diversified seasons it bloomed and banged along to its contemporary paradigms, the paper initiates a comparative but an asymmetrical compound of its historically pronounced evidences, substantiating its ongoing utilitarianism in these politically sensitized environments. The paper accounts for an extraction of its episodic alternations, salient cases and subsequent interpretations. The very ode to deliver a personalization on Sedition through a research paper, came after the Supreme court gave judgment installing certain contours and redefining the law with respect to its recent backdrops. The paper thus, exploits doctrinal methodology to effect a holistic graph of cases. It necessarily remarks the concentrated victimization around academicians, activists, journalists, students and critics for about a century's' indifference highlighting both the travesty and the legitimacy of its resilience.

It aims to enrich the thoughts of the reader with the etymology of this word through the rapidity of its allocation, coupled with factually sequential, comprehensive and statistically backed instances.

Acknowledging the uneven parallels, the history of sedition and its political restoration effected into, one must testify the dimensions within the cleavage it provides for operation, from the freedom to speech

A Judicial Bench of the Supreme court on **June 3**, retained against the veteran Journalist **Vinod Dua**, on a seditious libel proclaiming that 'he was entitled to protection under **Kedar Nath**

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Singh Judgment'. The hearings were on a runway, since **May 6th, 2020** when Mr. Dua opened doors on the face of Himachal Police, who had arrived to ordain his presence at a remote police station, at **Kumarsain** adjacent to the outskirts of Shimla. After a series of videoconferencing held across, Dua's petition could finally infest the court's verdict seeing a year's margin.

Acclaiming that the legalization of sedition was incurred to criminalize a person, founded at the intent of subverting the government duly established by law, through any means of representation, inciting disaffection or violence amongst the masses-the court staunchly encrypted Mr. Dua's case into the legal sedimentation against seditious appeals as '**the landmark decision**', from falling into bureaucratic fallacy, marking the appellant's plots redundant.

But what made Mr. Dua's case inconsistent with sedition? Mr. Dua did arguably, advocate testaments against the Prime Minister and the Union government on his YouTube video, which was a firm indictment of '**strong terms**', so why is he not thrown to the thrust of conviction, rather defended against by the apex court?

Well there's a good history to go in. Sedition traces back to an incongruous epistolary of citations from the 19th century, even before the law was itself constitutionally secured, succeeding which, came the cognizance it could levy under subjectivism. But, today, after the plausible evolution witnessed by the law, in India, particularly the 1984 amendment which is more or less in structure even today, there's an incumbency to reexamine-what have to be the matters, deemed under sedition and what not? Postulated by the three bench juries headed by **Mr. U.U. Lalit** while evaluating the chain of latest FIRs lodged under Sedition, the judgment came unequivocally seeking to redefine the contours and ambits within which sedition may operate, disposing off the vacuum around matters echoed in the courts, once and for all.

Sedition as a rudiment law was primarily instituted in **1837** in colonial India, by **Thomas Macaulay** while drafting the Penal codes, but was obliterated shortly after, for unidentified reasons.

Laid out under **Section 124A** of the Indian penal code, it only witnessed enforceability in **1870** following the suggestions of **James Fitzjames Stephen** to tackle the surging demands of aggressive legalization under the British colonial rule. The covert rationale behind, was the 'dreaded war, materializing from the Muslim propagandas who were promulgating and disseminating their ideologies to capsize the British government, from the Indian subcontinent. But the exigency to accessorize Sedition lawfully, was ultimately felt by the British, only after the forceful suppression of the Wahabi movement of Muslims.

Sedition was inscribed in **Section VI** of the Indian constitution, amongst the offenses enlisted against the State, for it could be any action, comment or statement of audio, visual, or written appeal, or an indicative sign, held cognitive in exciting disloyalty, disaffection, and enmity amongst the masses, aggravating violence, repugnance, contempt or aggressive hostility. This essentially excluded the legally adopted mannerism of exhibiting disapprobation, disagreement, or criticism, regardless of any gravity, intended at repeal, retraction, or alteration of a government policy or the bureaucracy itself, from accounting to the prosecutable libel of sedition. If violence or hatred-stimulating instruments, that might invoke the tendency of public disorder, discontent, or disturbance in the lawfully saturated peacefulness, were not fomented, one's thesis ranging to any polarities of brutality, could be acquitted of criminalization.

But the ones found guilty would be charged with life imprisonment beginning from three years and fine, to even both.

But, there's so much more about the networking of sedition with the right to freedom of speech, making frequent news headlines! How're they clashing, and why has our constitution held such dichotomies, with an almost negligible conclusion till date? And technically, why is it always the **Media, Press, Activists, Scholars** or the **Critics** at gunpoint for sedition? Well, the legitimate history-both colonial and post-independence, expiates Sedition of such antagonism, while being potentially at a trial to slander its image-as a threat. The law of Sedition perpetuates legitimate investment of reprehension in the hands of both, the gubernatorial authorities and the individuals. The mutation of which is heavily transacted by either the political authoritarianism, or subdued by the fallacious display of the individuals' circumstances. In either of which, the judiciary deals in sobriety of the Law.

There had been a few significant historical citations of the case, and attempts of equally intense magnitudes to bury it.

The very first allegation of sedition was registered against the critique published in the **Bangobasi Daily**, owned and operated by **Jogender Chunder Bose**, and the case was adjudicated in Calcutta high court in **1891**.

The case was summoned **Queen-Empress vs J.C. Bose**, and the appellant sought, that the article read the **Age of Consent Act, 1891** as '*forced Europeanization*', for it was circumscribing the abstruse oppression of Hindus by snatching their rights to rebellion. It was held an offense attempted at inciting a violent mutiny against the government. But later on, Bose's nonalignment was bailed out, and files saw closure.

The next and politically one of the most popular cynosures circumvented under the history of

Sedition was the file of **Lokmanya Tilak**, who was tried in **1897** by **Justice Arthur Strachey**. **Tilak** published a report entailing the anointment ceremony of **Maharaj Shivaji**, as a compilation named '**Shivaji's Utterances**', on his anniversary, which consummated the zests of **Tilak's** two previously self-established journals, **Kesari** and **Mahratta** combined. But this publication came to be priced at grave disenchantment by the Government. When tried, he was alleged under the augmented vertical of sedition, dealing with the incitement of enmity or hostility amongst the masses, against the government. The amplification in the legal diameter of the law taxed **Tilak**, 18 months of grave imprisonment. But ever since then, the matter didn't collapse to relaxation. Succeeding the amendment of Sedition enacted in **1898** in voraciously ramified terms, **Tilak**, for his another two articulations again faced a trial in **1908**, and subsequent imprisonment, this time of about **6** years in **Burma**.

The recent developments proceeded against two **Telugu** news channels **ABN** and **TV5** based in **Andhra Pradesh** were no different from what had happened over 100 years back in time. They've, in their plea against the MP from the ruling party **YCSR** of **Andhra**, allegedly exclaimed of being stifled calculatedly for reporting the "dampening conditions of the Covid-19 crisis in the state, concentrated on the State government's overall management and evident loopholes in it, in an unbiased manner to the masses.' Their claims against the **Jagan Mohan Reddy's Andhra** regime, registered that the media channels were being reprimanded for telecasting the states' news 'in an unbiased way'. The backlash was witnessed post a seditious allegation, initiated against the TV Channels by the party's member, and it sought in its counter-petition a judicial action for the erratic incompliance and deceiving projection of the law. This satirically invoked a judgment summoning the exchange of prosecutions as nothing but '**muzzling the media**' by the presiding justice.

This was an episodic reality, able enough to dismantle the 4th pillar of our democracy; to languish the very freedom of press-to report sans partisan in the country. This didn't just discredit the media's role of disbursing information but also took the news consumption of Netizens into haywire. Accountability was in question, and so was the purity of news! The bench of three juries headed by **D.Y. Chandrachud**, in protection of the channels, critically gave the verdict that 'reports broadcasted without a bias, may or may not intertwine with the interests of a secluded party or might infringe its political agenda or ideology, but is on no grounds suggestive of an act of sedition.'

Sedated with the decoy of silencing media channels from unraveling the truths about its management, the states have pervasively been corrupting their ethics. Channels, who could've independently aired the states' handling of situations pushed by Covid-19, aided in acquiring

necessary help with the medication, oxygen cylinders, and other accessibilities are shelved because the states aren't pleasing with it. The court said that, given the **Sections 124A (sedition), 153A, and 505** of the Indian Penal Code, colonially incorporated in **1860**, through the bridge of which, journalists, critics, political activists, and everyone defiantly predicating against the government, have been penalized, and that following to the rampancy and invariability of cases relating to the state-filed suits of sedition, the courts must rethink of ameliorating the constitution's obsolete statutes. With interdisciplinary causes and critiques warranting to redefine the constraints of the law and the cleavage it is likely to extend, the court has been under dissident tensions to execute the same. In times of sprawling digitization, and electronic dissipation of information with social media in use, one needs to necessarily define the domains and threshold of the pragmatic application of this law.

The court on **April 30'21** had already declared a legal warning to all the states, for not initiating a penalizing suit of sedition to constitute anyone, critical of Covid-19 in the court, and that neither a journalist who's airing unbiasedness through its broadcasts whether syncing with the prevailing regime of Indian territories or not, shall be claimed cognizant, nor any of the critics who hold against the current circumstantial crisis might face a charge of the same.

One might eye parallels in the way a century-led civilization exploited intimidating servility to slaughter any anticipated danger of prosecution or threats from citizens or public bodies. As **TV5** said, and the court adjudged in reiteration that the states today, are incessantly inclined towards the masquerade of clipping ground-realities to secure its reputation from being scrambled, and could race to an extent of legally threatening the critics of stepping outside their political interests and opening up publicly, while the entire nation collapses in the turmoil of pandemic. This autocracy shall be reformed with the mending of the law.

The notice of stay, promulgated to the Andhra government as respondents, verbally accusing its compelling actions, and relaxation from accusations to Mr. Dua, poses indiscreet affirmation, that the Judges of India are still ears to the most languishing voices and the Indian Judiciary continues to be the elixir in disguise.

Treading back to the time, when Sedition was inculcated an admmissive offense, one is ought to be ruminating with a bunch of controversies and arguments surrounding the law, more or less stemming from the viewpoint, that it wasn't anything extraneous but very much a part, in fact, an internal impediment to the freedom of speech, and the contours up to which seditious libel might transact was a necessity to pinpoint, along with the penalization it shall evoke, post proven guilty of.

The furnace during the colonial era, however, hardly saturated but **Mahatma Gandhi** did also fall to its prey, when he was publishing articles on Young India, and got arrested.

Recognizing the threats it posed, even **Jawaharlal Nehru** in **1951**, extended a proposition to wipe out sedition as a written law, and be left at discretion, through other permissible means.

On **December 1st, 1948**, **Mr. K.M. Munshi**, one of the hardcore believers in the freedom of speech in the constituent assembly debate, proposed to exempt Sedition from the exceptions to the freedom of speech, as it was too diverse a defense to digest. He argued for the voracity, ambiguity, and multitude of interpretations it might effect into, in respect with its miscellaneous imports. And the advocate of the right to freedoms did successfully effectuate in deletion of the word, from exceptions on November **26th, 1949**. Hereinafter the freedom of speech, article **19 (1)a**, achieved acknowledgment galore, and the decaying law, continued to be the astringency of IPC, though with near to dissolved existence.

Sneaking into the regime of **Indira Gandhi**, post-independence, she's proclaimed the first leader to have deployed sedition as a cognizable offense in **1973**-one which could be facilitated by detaining anybody without a warrant.

In **1951**, The **Punjab High court** and in **1959**, that of **Allahabad**, again ruled decrees to scrape out its roots from the constitution, accosting it an encroachment to the freedom of speech. In **1962**, the apex court gave the final judgment thwarting all such intents, in rehabilitating Sedition as an authoritative law in perpetuity, penalizing one, only when found guilty of "*separatism by persuasion or force or posing an indictment to violence, or in any case undermining the sovereignty of the nation*", else was all non-permitted.

Thereinafter, sedition became an interceding trunk to hinder the outrage from sprawling to violent means and contain the rage of a cause within a respective boundary. During the huge clashes witnessed within the premises of **Jawaharlal Nehru University**, New Delhi, in **2016**, several protestors did proffer to snatch the legal designation of the law, trying to escape its forfeiture. Fast forwarded to **2018**, where the **21st Law Commission of India**, did privately publish a consultation proposition twice, for the possible amendment or repeal of the law. But was thwarted each time, before even falling in rendition of its possibilities.

The governments, regardless of regimes or recessions have unequivocally upheld **Sedition** as a **Sacrosanct**, stating that it decontaminates the milieu from ideologies like **anti-nationalism, secessionism and terrorism**.

With an unequivocal spirit of reckoning the realities, many to date have been booked under the law, such as **Arundhati Roy, Binayak Sen, Parveen Togadia**, etc. While the tenets of sedition

are plateaued on a slithery surface of ambivalence and to identify the line that distinguishes is difficult, clearly, accusing anybody under the libel and condemning any critique as cynical was never the answer.

Perusal of Sedition, inter alia anti-national spectrums, also vitalizes communalism to be a discordant string of emanating extremism, subsequently bifurcated to riotous tendencies and terrorism. Disqualifying Religion as a catalytic ingredient in aggravating anti-national fervor around the cavaliers, would be a packaged lie, especially when it comes to India, being the womb of Hinduism, and the majority of population to be Spiritual. In the masks of 'minority' and through the constitutionally reinforced acts of protection, innumerable crimes are committed, by **Islamists**. With dissident motives-one, which might be lubricating religious paroxysm or one that is politically cultivated, these religious extremist activities should mandatorily amount to Sedition. Such a case has recently been cited when the **Special Investigation Police of CSS Hyderabad** had to reregister the complaints against two ladies, **Shabista** and **Zille Huma**, the daughters of **Maulana Abdul Islahi**, previously detained by the Saidabad police for alleged involvement in anti national activities and physically attacking the policemen. The detainment grounds prevailed their provocative agitation in a special congregation **Qunoot-e-Nazilah**, organized against the SC's judgment pertaining to the land of **Ayodhya**. This brought back the decades long dispute of '**Ram Mandir & Babri Masjid**' into habilitation, as the twin-sisters have been booked for non-aligning with the court's guidelines, and misguiding the cavalier public. The girls had been lodged under a pending non-bailable warrant already, succeeding which, the new booking also sought traction.

Owing to the inseparability of Islam, from the nation it identifies its descent's majority to, the detainment proceeded against Pro-Pakistan enchantments, staging sloganeering, launching propaganda, rioting or instigating hate speeches, Islamic communalism has become a routine dividend to the sedition cases registered regularly.

Despite accounting to a dwarf figure of **0.1%** inter alia offences enlisted under IPC, the rampancy with which a splurge is witnessed in the cases of Sedition, concentrated around the states of **Assam** and **Jharkhand**, perturbed by **Naxalites** and Tribal insurrectionaries, is upsetting, as their individual injection itself is **32%** of all sedition cases between **2014-18**, stated by **NCRB**. Most of these cases are registered in thousands, but jots down to only a countable few to be potentially picked for conviction.

Following an extensive research scrutinized over ten years, from **January 1, 2010**, to **December 31, 2020**, the database of **Article 14**, publishes the intimation of **96%** cases being

filed underlain seditious libel seeing the victory of **Modi** led **BJP** government in **2014**, accounting to **405** people put under allegation. The report states that **149** seditionists out of all, had been charged for criticizing or using maliciously worded comments for **PM Narendra Modi**, and about **144** of them for having used derogatory remarks for **UP CM Yogi Adityanath**. One of the deaf-driving instances can be the detainment executed post-**Pulwama attack**, wherein **26** out of **27** detainees were imputed in only BJP-run states. The escalation in cases of sedition was heftily recorded during the **BJP** regime receding the **UPA** government's rule by **28%**. There were over **3,000** regimentation of seditionists during the **CAA bill clearance**, and a subsequent **3,300** more during the Peasantry protests and land-related disputes, summoned on the pretexts of prospective assailants or speakers. The data records, that since **2016**, merely **4** alleged have actually faced conviction in the aftermath of such an insurrectionary backdrop, while rest all were dismissed. This speaks a lot about an outpaced legacy of imputation under sedition, from what should duly be expected of the law. And this necessitates the need to understand sedition and its obscure concreteness, more than just a prescript.

Therefore, one who may detain, advocate or adjudicate underlain sedition, must advertently rethink, that mere sloganeering, enchanting or giving speeches enriched with hatred or hostility is no more by itself, a sustainable evidence to host against prosecution, but the one which tends to provoke aggression, resurrection or rage amongst the audience, or basically employs diversionary methods to instigate a tangible reciprocation, is liable to be unquestionably detained under seditious libel.

And so, why **Citizenship Amendment law** invited major seditious actions, exponentially followed by the **Hathras gang rape** incident in India, proposes asymmetrical reasonability of motives, that needs to be questioned. Exaggerated suits of sedition have witnessed heavy political sensitization during **Modi** regime, as the data suggests the implication of over **65%** of the **11,000** individuals booked under **816** exordiums since **2010**, have pronunciations with the day of PM Modi's swearing to power. The influx of cases has even left the Supreme court's guidelines ghosted. The occult FIR registrations have shadowed authors, academicians, critics, students, and journalists, clearly sabotaging the freedoms enshrined in the constitution. But the question arises, were these lawsuits apparent and to an extent justified of the reformation the Modi-government endeavored to bring in through pertinent policies or was it too much a compensation to the affordability of the nation? The answer truly remains at the discretion of the mediocrity among whom, someone got arrested!

Coming back to **Vinod Dua**, he's the **Padma Shree awardee** and a prominent figure of Indian

journalism, who was allegedly pulled down by the BJP leader **Shyam** for having published derogatory statements against the BJP-run government, signaling to besmirch its image countrywide on grounds of Covid-19 management, and that must invite a lawsuit of '**public mischief**' on grounds of '**causing nuisance**'.

Appending to the denounced history of political parties in India, any opened case could never be distilled with whether the party designed to preserve the public peace or did it fashion from forfeiting to disrepute.

His case was nonetheless dispensed by the apex court, as it said, addressing the circumstances, this video surfaced in the foreground of, and statutory principles it may exploit in the way, his arguments were an "**an expression of disapprobation**" deemed as fine criticism, and that the case could be wrapped within, "**quickly and efficiently**".

The judicial desk extended defining benchmarks to reinforce the security and commitment towards cherishing the journalism of the country, and its free will to criticize to any extent of gravitation and be acquitted off seditious accusations.

Remarking to cramp the reactionary upheavals, the court tried to rejuvenate living ashes of the **Kedar Nath Singh case of 1962**, summoned as one of the **judgments of eminence**.

K. N. Singh was deemed a communist who tried instigating the mass against the advent of capitalism, through his speech, targeted at **INC** in **Bihar**. He denounced **Congress'** Bourgeois ideology, burgeoning to reprehensively ransack the nation of its resources and potential through gradual moves. Rescinding from such libels, the court's judgment set him free, found not in rendition of exciting an insurrection or disheveling public tranquility.

It exhumed out saying, as long as the intent of an alleged is restricted within resolving the situations of the commons, or to secure a repeal or alteration in any respective policies or actions of the government or its administrative agencies, through means that are legally not pinpointed violent, rebellious or enraging, or disconcerting the public harmony, the person shall not worry of being levied a seditious libel. Anything otherwise, implicitly or compendiously embedded as a reform or revolution, might witness such a libel, as evidentiary. "**Every journalist is entitled to protection under the Kedar Nath Singh judgment**"-were the concluding words of **U.U. Lalit**.

The court loudly ruled out, that conviction of seditious libel in the domicile of journalism, prompted at a practitioner of over **10 years**, must undergo a state constituted committee for probation prior to moving to the court.

Although the court remarked, that anything of a state committee to investigate the apprehensions of a veteran journalist would infringe the subliminal statutory bounds and stand in dissidence of the Indian constitution and the hot-talks continues to be on, this staunch escalation of matters in its infancy itself, backfired all the political parties that sought to connive threats to silence the voices, not aligning with their ideologies.

As Advocate **Vikas Singh** read out of the judgment, ***“if this makes out to be sedition, then half the country is committing the crime.”***

To that, which upholds the sobriety of popular government, must tolerate the criticism ***“however strongly worded”***, if operational within the ***“reasonable limits of free speech.”***

We somewhat knew, that despite an undelivered acknowledgment of timely rectifications in the law, the diplomacy to dilute or hyper-intensify its algorithms in order to lubricate one’s own room of idealism has always overarched the game. And that an arbitration must be sought to recognize the toll of the time. Many such cases might subject to frequent ins and outs, however, it's important to espouse the **Freedom Of Speech And Expression** along with **Sedition**, with respect and not mere utilitarianism.

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