Page 1678 - 1688

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 4

2020

Law of Sedition: A Persistent Theory of Colonialism

MEDHA PRIYA[1]

ABSTRACT

India travailed for 150 years under the crown's despotic 'law of sedition'. The anticipated sojourn took an immortal form. Following this, there were many crusades and trials that took their respective turns, the matter formed a crucial topic of debate, some even turned out as epoch- making as for when the constituent assembly removed the word sedition from article 13(2) of the Indian constitution. However, law makers preferred to remain in lull state, there were times when promises were made but turned out to be fake and a result we can still find this archaic law under the section 124A of the Indian Penal Code, 1860.

The colonial legacy continues to haunt the soul of basic structure of the constitution that guarantees "freedom of speech and expression" under the article 19(1) (a) of the constitution. The satire pertains to the fact that 'England' who played the pivotal role in the propagation of the sedition laws in its colonies withdrew the relic from its statute book not less than 10 years before. The intention was simple – to set a paradigm. The democracy is seen to be are reflection of transparency and freedom of speech is its hallmark. While many countries can proudly proclaim their rights being a real democracy, India lags behind in this sphere and hence the question persists: Can India still be called a democratic country?

I. INTRODUCTION

Dissent is the pith and substance of democracy. However, the archaic law of sedition tends to cripple and dethrone the voice that builds the democracy. Law of sedition tends to characterize the Indian democracy as pseudo democracy.

The law of sedition was included in the code ten years after the code came into existence by Lord Macaulay. However, it was a part of original draft of 1837. Owing to multiple turn of events including Wahabi activities and rebellious tendencies it was re- inserted in the code through the section 124A of IPC[2]. The very first case registered was Queen Empress vs.

[1] Author is a student at Amity Law School, Noida, India.

[2]Section 124A of IPC, 1860 defines sedition as "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.
Explanation 1.—the expression "disaffection" includes disloyalty and all feelings of enmity. Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by

 [ISSN 2581-5369]

Jogendra Chunder Bose [3](popularly known as Bangobasi case). In this case, editor of the newspaper was charged with sedition however it didn't come to any possible conclusion. The case was succeeded by Queen Empress v/sBal Gangadhar Tilak[4] in which the law was amended and the term "disaffection" was interpreted.

Post-colonial regime has also witnessed humongous pile of cases charged with sedition. There has been a raining sedition charges since the infamous JNU case. The recent one being sedition charges framed on Arnab Goswami, a reporter exercising his right to freedom of speech and expression on the national television. These cases in any form and fixture are blatant attack on the constitution that guarantees freedom of speech and expression.[5]

While the irony behind the fact is that the country that the country that introduced this draconian law in India has already scrapped its own country. England no longer has any offence called Sedition while we continue to face the flak. Where India continues to hold its colonial legacy countries like Indonesia, South Korea, UK, Scotland have already scrapped such law that with the time being.

Expression can inspire rather than conspire. Hence, through this paper, I intend to draw my view point which relies on the opinion that provision of sedition in the code should be scrapped to re-establish the ethos of democracy.

II. SEDITION: SCENARIO IN COLONIAL REGIME

The phrase 'an unaccountable mistake' adopted by Sir James Filtzamen Stephen to describe the ill-judged omission section 113 of Macaulay's Penal Code in India for 20 years is rather a paradox used today. The veracity lies in the fact that it is an unaccountable mistake to retain the law- a blot on democracy. The law of sedition was included in the legislation 10 years after the legislation came into existence. However, it was a part of the original draft of 1837. Owing to the multiple turn of events including Wahabi riots and the great uprising, it was re-inserted in the legislation through the section 124A of the Indian Penal Code, 1860. Many a revolutionaries and nationalist leaders like Savarkar, Tilak, Gandhi fell prey to the obnoxious law of sedition as it purposely deterred anyone from inciting feelings of nationalism. Sedition

lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

[3]Queen Empress v. JogendraChunder Bose, ILR (1892) 19 Cal 35.

[4]Queen Empress v. BalGangadharTilak, ILR (1898) 22 Bom 112

[5]Article 19(1) (a) of the Constitution of India states that, "all citizens shall have the right to freedom of speech and expression".

 [ISSN 2581-5369]

in colonial era stood in congruence with the act of nationalism. It was considered criminal to exercise freedom of speech.

The very first case recorded is that of:

Queen Empress v/s Jogendra Chunder Bose[6]after 21 years in the backdrop of Vernacular Press Act, 1878. The case involved numerous prosecutions against the four editors of the Nationalists newspaper. One of the editor – JogendraChunder Bose wrote an article lambasting 'The Age of Consent bill' as dire threat to religion and exhibiting the British Colonialism as a dark patch on economy. Sedition charges in this case though were easily slapped, however owing to the cloud of confusions surrounding the case, the charges were finally dropped.

Thereafter, there were throngs of cases that went through the trial stage.

Queen Empress v/s BalGangadharTilak[7]: There was a controversy over the reports in the magazine 'Kesari' of BalGangadharTilak.[8] It contained detailed account of the series of events at the Shivaji Coronation Ceremony[9]. Speeches and allegories in Marathi were delivered that held references with the Shivaji's call for 'Swaraj'. Following this, two prominent British Officers were killed which was a huge setback for the state. However the confusion loomed over the construed interpretation of the section 124A of IPC and section 128 of CrPC[10]. The judgement however led to enlargement of Tilak and led to the amendment of section 124A of IPC that added 'disloyalty' and 'feelings of enmity' to sedition.

Niharendu Dutt Majumdar v/s King Emperor[11]: The court altered the interpretation of section 124A in the case above, and alluded that Sedition is concerned with the dissolution of public order and therefore intention must be established.

Emperor v/s Sadashiv Narayan[12]: The above judgement was overruled in this case. In this, it was established that inciting or attempting to incite was not an essential ingredient of offence of sedition rather creating bad words for the government was taken to be seditious.

Thus, one could easily sense the crest and trough through which law of sedition went. Montague Declaration (August Declaration) in 1917 implied that demand of home rule would

[6]*Supra* note 1 at 1
[7]*Supra* note 2 at 1
[8]*Id*
[9]*Id*
[10] Section 128 of CrPC states that Enforcement of order of maintenance. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any or to the person to whom the allowance is to be paid; and such
[11]NiharenduDuttMajumdar v. King Emperor, AIR 1942 FC 22.
[12]King Emperor v. Sadashiv Narayan Bhalerao, (1947) LR 74 IA 89.

 [ISSN 2581-5369]

be no longer be considered seditious.

III. SEDITION: SCENARIO IN POST COLONIAL REGIME

The withdrawal of the colonial rule from India brought no respite to the active citizens of the country- the ardent believer of freedom of speech and expression. The law has been retained in the form of 124A of IPC however with a scant modification that hardly brings any difference.

The controversies guarding colonial continuity/ colonial legacy has always been on the upfront and finds its place on the list of issues relating jettisoned human rights. Instead of diagnosis, big wheels are often seen shifting the blame. Dr.Ambedkar had commented against it in his famous closing address to the constituent assembly, in which he said "By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter, things go wrong, we will have nobody to blame except ourselves."[13]

The adage "Man is born free but everywhere he is in chains"[14] is a virtual reality in the millennial era. The constitutionality of the law has been challenges time and again but has failed to yield any optimism in the area. Several voices have been raised in favour of scrapping the archaic law but most of the appeals have fell on deaf ears.

A speck of relief owes to the fact that the draconian word finds no mention in the constitution credit of which goes to the member of the constituent assembly. Members of the constituent assembly on its first amendment were on a clear consensus. Majority views expressed their denial on the inclusion of the oppressive law in the constitution as they felt it to be a blatant disregard to the clause of freedom of speech and expression. Henceforth, the word 'seditious' was dropped from the proviso to Clause 8 of the draft constitution, which granted liberty for the exercise of freedom of speech. However, it found its way back as a restriction on freedom of speech and expression through Article 13(2) which provided that such freedom of speech and expression would not affect any existing law or prevent the State from making any law relating to "libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."[15]

Many debates and suggestions were put forth and improvised in favour of a positive amendment following which finally the word sedition was dropped from article 13 of draft constitution, 1948.

[13]The Outlook, Grammar of Anarchy,2014, available athttps://www.outlookindia.com/website/story/the-grammar-of-anarchy/289235 (Last visited on: 10/05/2020)
[14] Adage by Rousseau
[15]**Constituent Assembly Debates** CONSTITUENT ASSEMBLY OF INDIA - VOLUME VII

 [ISSN 2581-5369]

Whatever it be, Sedition under 124A of the IPC continued to be a statutory offence as article 372 of the Constitution provides that any existing law in force in India as on January 1950 would continue to be in force unless explicitly modified or repealed by the legislature.[16]

There were an array of cases post- independence the underpinnings of whose were laid thereafter bearing the seed of modern day rebellion.

Ram Nandan v/s State[17]: The case followed the footsteps of its precedent case –Tara Chand v/s State. In this case, the constitutionality of section 124A was challenged and it was held that mere criticism cannot be mischievously subjected to sedition under section 124A. However the following case contradicted this judgement.

Kedar Nath Singh v/s State of Bihar[18]: The verdict of the Supreme Court in KedarNath laid down the interpretation of the law of sedition as it is today. In the Court's interpretation the 'incitement to violence' was considered an indispensable ingredient to be an offence of sedition. Here, the interpretation was given by the set guidelines of Federal Court in NiharenduMajumdar. Thus, the crime of sedition was established as threat to public order as opposed to a political crime affecting the very basis of the State. Here, it has been deduced that sedition had been excluded as a valid ground to put a restraint on the 'freedom of speech and expression' even though it was included in the draft Constitution. This was indicative of a legislative intent that sedition not be considered a valid exception to this freedom. It was envisaged that sedition could only fall within the purview of constitutional validity if it could be read into any of the six grounds listed in Article 19(2) of the Constitution. The Court considered the 'security of the state' as the most paramount ground to support the constitutionality of 124A of the IPC. The Court made a firm approach that when different interpretation is given to a legal provision, it must uphold that interpretation which makes the provision constitutional. Any interpretation that makes a provision ultra vires the Constitution should be uprightly rejected. This case formed an insight to all the cases following in the queue.

RomeshThappar v/s State of Madras[19]: In this case, a law banning the entry and circulation of journal in a state was held to be unjustified. The petitioner, an editor of the journal 'cross roads' was reprimanded on the contents of the journal. It was held that a law which authorizes

[16]Article 372 of Indian Constitution states that "Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority"
[17]Ram Nandan v. State, AIR 1959 All 101
[18]KedarNath v. State of Bihar, AIR 1962 SC 955
[19]RomeshThappar v. State of Madras, AIR 1950 SC 124.

 [ISSN 2581-5369]

imposition of restriction on the ground of 'public safety' or the 'maintenance of public order' falls outside the scope of authorized restriction under 19(2) and therefore void.[20]

(A) The Contemporary issues

One of the questions in the present context ad rem is how is Section 124A, being an admittedly colonial import, perceived today. The International Convention on Civil and Political Rights which India ratified in 1979 itself prohibits restriction on freedom of expression on simply the pretext of national security unless they are as such propounded by law, strictly construed and necessary and proportionate to address a legitimate threat[21]. However, the National Crime Records Bureau data tells a different story. The number of sedition cases have nearly doubled between 2015 and 2018 with four convictions[22]

Kanhaiya Kumar v/s State of NCT of Delhi: Kanhaiya Kumar, the president of JNU and two others were arrested by Delhi police in February, 2016 and charge sheet was filed against 36 students on account of alleged raising of anti-national slogans by the students in the campus[23]. Four years after they are to face trial for the same. The sloganeering depicted commemoration of Afzal Guru who was judicially hanged after being branded as a terrorist.

It became one of the most notorious case on sedition that grabbed headlines.

Anti CAA Protest- The Citizenship Amendment Act (Bill) protests, also known as CAA Protest, occurred after the Citizenship Amendment Act (CAA) was implemented by the Government of India on 12 December 2019. The move sparked a widespread national and overseas flame in the form of protests that raised voices and collected masses against the blatant act and the associated proposals of the National Register of Citizens (NRC)[24]

Arnab Goswami case: Arnab Goswami, the editor of the Republic TV was recently attacked and several FIRs bearing sedition charges were lodged for criticizing Sonia Gandhi on the national television. This was a direct assault on the freedom of the press and the government at the time could have muzzled free speech by using vague expressions such as 'grossly indecent' or 'scurrilous' to frame charges against journalists. [25]

[20] The Constitution Law of India 46th edition by JN Pandey published by Central Law Publication
[21]THE RIGHT TO INSULT IN INTERNATIONAL LAW by Amal Clooney and Philippa Webb
[22]https://www.deccanherald.com
[23]The Quint, *jnu sedition case*, 2019, available at https://www.thequint.com/(Last visited on 13/5/20)
[24]https://en.wikipedia.org/wiki/Citizenship_Amendment_Act_protests
[25] The Print, https://theprint.in/opinion/congress-attack-on-arnab-has-a-nehru-legacy-curb-on-free-speech-is-built-into-partys-dna/410214/ (Last visited on 10/05/20)

 [ISSN 2581-5369]

IV. THE AMBIGUITY SURROUNDING CERTAIN TERMS: 'PUBLIC ORDER' AND 'DISAFFECTION'

The terms often used while dealing with the cases on sedition are 'public order' and 'disaffection' are sometimes ambiguous and conditional on different interpretation to the whims and caprices of the investigating officers.

Section 124A which makes no mention of the expression 'public order', has attracted the views of many judgements as for-

In **Kedarnath Singh v/s State of Bihar[26],** the validity of provision was upheld by a constitutional bench. The case held the judgement as long as there is no incitement to violence and no injury to 'public order'.

Similarly in State of **UP v/s Lalai Singh Yadav[27]**, precedence has been given to 'public order' over 'free speech'.

In **Shreya Singhal v/s Union of India[28]** too, the court laid that regardless of the degree of derogation and insult, a certain degree of proximity is needed to exist between the mere utterance and behemoth of 'public disorder'. The Supreme Court's disdain guidelines that the interpretation of sedition be limited to 'public disorder' makes it easy for it to be invoked against the dissidents at will.

'Disaffection' as it says includes disloyalty and feelings of enmity. There was a great degree of uncertainty as to the unambiguous definition of the term 'disaffection'. The Court in the case, **Queen Empress v. BalGangadharTilak[29]** had laid down the distinction between 'disaffection' and 'disapprobation'. Disaffection was defined as the use of spoken or written words to create an impression in the minds of those to whom the words were addressed, not to follow the lawful authority of the government, or to build antagonism with that authority. It was also observed that: "It is ample for the purposes of the section that the words used are calculated to stimulate feelings of ill-will against the Government, and to hold it up to the abhorrence and contempt of the people, and that they were used with an intention to create such feeling."[30]

Another significant case was that of Queen Empress v. Bal Gangadhar whereon of the most comprehensive elucidations of the law in colonial India was recognized, the Court, in this case,

[26] Kedar Nath v. Union of India, AIR 1962 SC 955
[27] State Of Uttar Pradesh vs. Lalai Singh Yadav, 1977 AIR 202, 1977 SCR (1) 616
[28] Shreya Singhal v. Union of India, (2013) 12 SCC 73.
[29] Queen Empress v. BalGangadharTilak, ILR (1898) 22 Bom 112
[30] https://indiankanoon.org/search/

interpreted section 124A predominantly as rousing 'feelings of disaffection' towards the government, which covered within its compass sentiments such as enmity, hatred, dislike and contempt, and forms of ill-will. It further elaborated the scope of the offence by concluding that it was not the gravity of the action or the measurement of 'disaffection', but the presence of feelings that was paramount and mere attempt to excite such feelings was sufficient to constitute an offence.

The meaning of "disaffection" and "disapprobation" was further distinguished by the court in **Queen Empress v. Ramchandra Narayan**[31] in which allegations were made against the editor and proprietor of the "Pratod newspaper" for publishing an article entitled "Preparation for Becoming Independent". The Court in this case did not necessarily agree with the notion that 'disaffection' was necessarily the opposite of affection, but it advocated that an attempt to excite disaffection amongst the masses was to be construed as an attempt to "excite political discontent and alienation from their allegiance to a foreign sovereign."

In **Queen Empress v. Amba Prasad**, [32] the Court, however, held that even in cases of 'disapprobation' of the measures of the government, if it can be deduced from a "fair and impartial consideration of what was spoken or written", that the intention of the accused was to rouse feelings of disaffection towards the government and therefore ought could be deliberated as a seditious act. Thus 'disaffection' would comprise the "absence" or "disavowal" of affection as well as a "positive feeling of aversion" towards the government.

V. REVOCATION OF SEDITION LAW IN ENGLAND

Before 2009, England's law too had retained its brainchild i.e. its law of sedition. The seditious libel was closely linked to the blasphemous libel since the time when the church and the state were analogous to each other. Blasphemy and blasphemous libel was repudiated in 2008 as a part of Criminal Justice and Immigration Act, 2008.[33]

Article 114 of the Stephen's Digest of the Criminal Law stood synonymous with section 3 of our Sedition Act, 1948 except for the clause of 'seditious intent found within the version of the latter. This meant that defences were available to the defendants to prove that they did not cause hatred or contempt. Just like in India, in common law of sedition too, the definition was considered to be unnecessarily broad.

British seditious laws were exhaustively used in 18th and 19th century. Sedition law was slapped

[31] Queen Empress v. Ramchandra Narayan, ILR (1898) 22 Bom 152.
[32] Queen Empress v. Amba Prasad, ILR (1898) 20 All 55.
[33] https://www.lawjournals.co.uk/

a multiple times on John Wilkes, a civil rights activists who bravely challenged the extent of freedom of speech and media freedom in Britain. All he faced was the ignominious pillory but this gave an insight to the future of reforms that were on cards.

Claire[34] had very well noted that "The existence of these obsolete offences in the country had been used by the other countries as an excuse for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom". There were a slew of recommendations on the abolition of the law of sedition by Britain's Law Commission. Following this, Sedition was finally abolished through the Coroners and Justice Act, 2009, under Gordon Brown's Labour Government. [35]

Though, England suffered with the tyrannical law for quite a long time yet it braved all odds and set a benchmark for the other countries to do the same. Whereas, India is yet to get over the hangover of such a draconian colonial law.

VI. THE REAL DEMOCRACIES V/S THE PSEUDO DEMOCRACIES OF THE BIG WHEELS

The remnants of English common law live on its past imperial colonies as a constant threat to freedom of expression. Despite the hard won independence in countries like India, Malaysia, Singapore, Tanzania, their present government have often found the crown implemented acts of sedition too lucrative to abandon.

However, several countries broke the chain taking cue from England and made positive steps to make way for the creation of wholesome ethos of the democracy.

South Korea with all its managed to delete the law during the outscoring Indonesia, in 2007 declared it's law on sedition as ' unconstitutional' and scrapped it laying the explanation that it was extracted from the law book of its colonial Dutch crown. Scotland too after a long debate pulled off and removed the law in 2010.

Thereon, one can easily distinguish between real democracies and so called democracy i.e., pseudo democracy. Real democracies round the world can be called as those who with all its grit and determination have contained their democracy and have taken all measures to preserve sanctity by getting over the colonial hangover by scrapping the archaic laws that make no room for the colonial laws and believe in making their own. And rest countries including India, the power lies with the distinct classes- the big wheels, and they believe in the continuity of the

[34] Claire Ward Britain's former Parliamentary Under Secretary of State at the Ministry of Justice, Sedition in England: The Abolition of a Law from a Bygone Era, October 2, 2012, available at http://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-alaw-from-a-bygone-era/ (Last visited on May 10, 2020)

[35] Section 73 of the Coroners and Justice Act. 2009

despotism with the motive of absolute power. Thus, there remains very minute difference between democracy and dictatorship

VII. CONCLUSION AND SUGGESTIONS

The story underlying, Churned and throttled

Is the system denying, Dissenting truth of glottal…

India as a country has witnessed generations that has cuffed the free speech as has been virtually guaranteed in the modern day nation. There was a time when speeches of the indigenous were muzzled by foreign forces to retain their dominion. The time is almost the same except that foreign forces have been replaced by Indian brute political forces. The figures are quite unsettling when it comes to the number of trials but then again there remains a ray of hope that does not stop the paradigm setters to stand up for their rights . The draconian provision of the section 124A includes 'any form of expression' which brings to the threat all the strata of the society whether it's a cartoonist exercising his right to speech or an editor being vocal through his columns. It takes everyone within its aegis. Easy labelling of the term 'anti nationalists', lynching, unjustifiable stratification , pillory, uprising of Maoism , overcrowding of trials , discouraged foreign investment have been some of the flaws that the country has consistently been spectator of under the garb of the law of sedition. While countries like England and New Zealand have done away the obsolete law, India countries to stretch the life of the age old law.

With time, the law of sedition has only managed to gain dynamism. There has been blatant misuse of this law time and again by the political bigwigs that has raised objections on the provisions of this law. In democracy every individual has the right to speech and that should be promptly safeguarded by those in charge of our nation.

It's a very well said quotation by Henry Ward Breech-"It takes 100 years to make a law, and after it has done its work, it takes another 100 years to get rid of it". The quote holds prominence with the current scenario that the country is witnessing. The section holding the law of sedition under the Indian Penal Code- section 124A should have been scrapped right itself when the constituent assembly was deciding on the first amendment. However, it is a very popular adage- better late than never. While dealing with the anti- nationalist elements, there are many other alternative legislations and there are even laws existing within the same code to deal with such elements that injures the sovereignty and integrity of the nation.

The definition of sedition under the section 124A is way too broad to be held justifiable. It could have certain degree of specificity. The section 124 A of IPC should remain a preventive

provision that should only be read as an emergency measure. Partly to address it, in 1967, the government enacted the Unlawful Activities (Prevention) Act. This was meant to be a more specific law intended to impose more reasonable restricts on freedom of speech in the interests of sovereignty and integrity of India.

If it is way too mandatory the retention of the law, then there should be additional clause attached therewith that puts a bar on the law of sedition so that it could not be misused as is very rampant today.

A welfare democratic state with the idea of all-inclusiveness must bear the hallmark of the free speech. Such element of sedition in colonial era was invented to suppress the ideas that could lead to freedom. However, it's really unfortunate that even after the 73rd year of independence we are still teetering with the old archaic law. Quashing is the clarion call.

*****

 [ISSN 2581-5369]