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The Fading Light of Democracy: A Seditious Perspective

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ABSTRACT

The union of India is a cherished democracy and a state of pluralistic views. The soul of the nation speaks through the words of a constitution that seeks to establish it into an ideal benchmark for governance and reasonably restricted free speech.

Through this paper, the researchers have tried to establish a balance between the need of the state to protect its interest and need of a citizen to express her views. It is difficult to gauge the stage at which oppression creeps into the mind of those in authority and even more difficult to ascertain the watershed moment when dissent loses its voice. Be it the liberals or the conservative's government. The people shall forever stand to lose this battle of words and ideologies.

Keywords: *Sedition, Colonial Regime, Section 124A, Article 19(1) (a), Public Order, High Court, Supreme Court, dissent, Expression, Speech.*

I. INTRODUCTION

“Affection cannot be measured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence”.

-Mahatma Gandhi.³

It is raining sedition charges in India. we see the sedition laws being invoked against any voice of dissent or criticism against the government. This archaic law is used by the government to suppress the very Fundamental right of freely expressing one's opinion even if that expresses displeasure against the government or politicians. A strong criticism of the government is not even defamatory, let alone seditious⁴. But still, we see a rise in arbitrary arrest, the National Crime Records Bureau report⁵ of 2019 shows a significant leap of cases from 35 in 2016 to 93

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³ Mahatma, Vol. II, (1951) pp. 129-33; The Selected Works of Mahatma Gandhi, Vol. VI, The Voice of Truth Part-I Some Famous Speeches, p. 14-24

⁴ Kedar Nath Singh v. State Of Bihar, 1962 AIR 955.

⁵ NCRB, Crime in India Report, 2019. https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2010A.2_1.pdf

cases in 2019. However, the statistics portrays the ground reality of low conviction rates, as only a handful of the cases even enter the trial stage.⁶

The state seeks to differentiate amongst its citizen on the basis of their 'nationalism'. These standards of nationalism vary based upon the political ideologies of the ruling party. What may be mere criticism for one government may be antinationalism for another.

This research paper explores the law of sedition and its constitutionality in brief. It seeks to analyse the use and misuse of this law in recent parlance while, referring to recent cases and judgements.

For the sake of brevity and convenience, this paper is divided into 4 parts:

1. A colonial perspective.
2. A post-constitutional liberalised approach.
3. The conservative approach- revisiting nationalism.
4. Conclusions and suggestions.

II. A COLONIAL PERSPECTIVE

The Indian Penal Code 1860, when enacted did not include sedation as an offence until 1870 wherein an amendment was introduced to insert Article 124 A. This amendment was made in the midst of the uprising of the Wahabi movement.⁷

Section 124 A reads as under:

*"Whoever, 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."*⁸

This law was later used as an instrument by the British government to stifle any kind of dissent and it was specifically used against the native Indians.⁹ With the unrest and freedom struggle movements some of our freedom fighters had to face the wrath of this law.

The very first case to be tried u/s. 124A of the IPC was that of ***Queen Empress v. Jogendra Chunder Bose***¹⁰, herein the Calcutta High Court was faced with a question whether the articles

⁶ NCRB Crime in India Report,2019.

⁷ Abhinav Chandrachud, History of Sedition, Frontline India's National Magazine, September 16, 2016.

⁸ Indian Penal Code,1860. Sec. 124A

⁹Siddharth Narrain, 'Disaffection and the law': The Chilling Effect of Sedition Laws in India, Economical and Political Weekly, 19th February 2011, Vol. No. 46,p.33

¹⁰(1892) ILR 19 Cal 35

of a newspaper¹¹ opposing the interference of the Crown with the Hindu religious practices by means of a statute¹². The interpretation given to the provisions of S. 124A by **Chief Justice W. Comer Pethram** is of importance here. According to him, sedition required the use of ‘calculated words’ with an intention to cause the listeners or readers of such words to disobey or subvert or resist the lawful authority of the Government. The jury was discharged on account of lack of unanimity and the Judge refused to accept a non-unanimous verdict. The accused was released on bail¹³.

The trend of interpretation shifted in the favour of the crown as observed in the famous case of **Queen Empress v. Bal Gangadhar Tilak**¹⁴. The accused in this case was an editor, proprietor and publisher of a local newspaper¹⁵. The said newspaper had a section called ‘Shivaji’s utterances’. Through this section the accused projected the state of affairs in India through the eyes of the Mighty king Shivaji. One such projection was that the king was looking down from heaven and feeling sad because the people in India had failed to protect the ‘Swaraj’¹⁶ that was gifted to them by the King himself. **Justice Arthur Starchey** as opposed to **Chief Justice W. Comer Pethram**, had a very broad interpretation for sedition. He contended that ‘disaffection’ meant – Dislike, hatred, enmity, hostility, contempt, absence of affection towards the government. For the learned Justice, there was no reason to look at the aspects of Mutiny or war or rebellion or any actual disturbance caused by the statements. He refused to refer to the English law of seditious libel. He instructed the jury that mere statements can also amount to sedition if the primary contention of the speaker is to attack ‘the Government or its essential characteristics or its motives or its feelings towards the people.’ Needless to say that Tilak was found guilty of sedition and sentenced to 18 months of rigorous imprisonment.

Subsequently on similar lines the Bombay High Court went on to decide the case of **Queen Empress v. Ramchandra Narayan**.¹⁷ Herein, the editor and the proprietor of Pratod were found guilty of sedition for pointing out that the people of Canada need not pay a price for their independence by filling the purse of Englishmen.¹⁸ It was held that sedition also consisted of acts that lead to the production of hatred towards the government established by law or exciting political discontent.

¹¹Bangobasi

¹²Age of Consent Bill- The said Bill sought to raise the age of consent for sexual intercourse by Hindu girls from 10 years to 12 years.

¹³Para 21 of the said judgment

¹⁴(1897) ILR 22 BOM 112.

¹⁵Kesari was published in Poona.

¹⁶Swaraj in this context meant native rule or the right of the people to form their own government.

¹⁷(1897) 22 ILR BOM 152 (FB)

¹⁸Article bearing title- “Preparations for Becoming Independent”.

The decision of Allahabad High Court¹⁹ was in line with that of Bombay High Court. It was held that 'disaffection' was synonymous to 'disloyalty' & any person who tried to excite or attempts to excite the feelings of dislike, hatred, enmity, hostility, contempt, absence of affection towards the government, was guilty of sedition.

The interpretation of the aforesaid High Courts was duly incorporated in the Indian Penal Code by virtue of the 1898 Amendment that completely changed the wordings of S. 124 A.

It must be noted that the test laid down by Justice Strachey was to be extensively followed. The defence of absolute truth²⁰ was not applicable in the matters of sedition and a person could be convicted based upon the notes of his speech created by a police officer who was present on the venue.²¹ The last case which was decided by the Privy Council, prior to the independence of India, was that of *King Emperor v. Sadashiv Narayan Bhalerao*,²² the accused was charged with sedition for calling the imperialist policies as barbarous and making allegations that such policies had turned India into a cremation ground. The Magistrate and the Bombay High Court had acquitted him in the lines of the decision of the federal court in *Nibarendu Dutt Majumdar v. King Emperor*²³, wherein it was held that sedition required a direct inducement of public disorder and bringing a halt to the justice dissipation system of the state. The Privy council overruled *Nibarendu-Dutt Majumdar* (supra) and held that the common-law definition of sedition cannot be incorporated to Indian Laws. S.124 A was expressly worded and it did not require a direct inducement of public disorder in order to secure a conviction.

III. A POST-CONSTITUTIONAL LIBERALISED APPROACH

The Constitution of India excluded sedition as one of the restrictions under Article 19(2). This was brought about after strong objections raised by the assembly members while drafting the Constitution. Right after the Constitution came into being the Supreme Court struck down government restrictions laid on a few magazines namely Cross Road, The Organiser and Rashtriya Swayamsevak Sangh magazine.²⁴

The Punjab- Haryana High Court in the case of *Tara Singh Gopi Chand vs The State*²⁵ struck

¹⁹Queen Empress v. Amba Prasad,(1898) ILR 20 All 55

²⁰Joy Chandra Sarkar v. Emperor, (1911) ILR 38 (Cal) 214

²¹Krishna Chandra Pangoria v. Emperor, AIR 1937 All 466

²²(1947) 60 Law Weekly 462

²³(1942) FCR 38, herein Chief Justice Maurice Gwyer had held that the law of sedition must change with time, a speech that may appear to be seditious at one point of time, may not be the same at other times. A mere criticism of the existing government or a demand for a different system of government was not sedition. Reliance was placed on R v. Sullivan (1868) 11 Cox. C.C. 44, p. 45

²⁴Gautam Bhatia, The nine lives of the sedition law, Mint, February 5,2016.

²⁵Tara Singh Gopi Chand vs The State, 1951 CriLJ 449

down Section 124A of Indian Penal Code as unconstitutional as it was contrary to the spirit of Art 19(1)(a) that guarantees freedom of speech.²⁶

The First amendment by the Parliament amended Article 19(2), broadening its ambit to include “public order” as a restriction to free speech. It was amended also added the word “reasonable” before “restrictions”.²⁷

In another case of *Ram Nandan v State of UP*²⁸ the accused was charged under sedition for his inflammatory speech against the ruling Congress rule for their inability to address poverty in the state of Uttar Pradesh. The Court held Section 124A of Indian Penal Code to be unconstitutional in this case.²⁹

The question of constitutional validity of sedition was addressed by the Supreme Court in the case of *Kedar Nath Singh v. State of Bihar*³⁰. The judgment was given by Chief Justice Sinha on behalf of a 5-judge bench comprising of himself and his brethren, namely- Justices Das, Ayyangar, Sarkar and Mudholkar, not only upheld the constitutional validity of Sedition but also held that only those activities that are intended to create or capable of creating a disorder would come under the purview of S.124A of IPC. The court held that this view was constitutionally consistent³¹ and the interpretation given by the Privy-council was unconstitutional.

Later in the case of *Balwant Singh and Another v State of Punjab*³² the accused after the assassination of Smt. Indira Gandhi, the then Prime Minister of India, raised pro-Khalistani slogans. The Supreme Court held that mere raising of slogans once or twice by two individuals cannot be aimed at exciting or attempting to excite hatred or disaffection towards the government as established by law in India.³³

By virtue of the Criminal Procedure Code, 1973, sedition was made a cognizable offence³⁴ i.e. a police officer now has an authority to arrest any person without a warrant for the offence of sedition. This authority was not vested in the police officers under the rule of the crown. Thus,

²⁶ S A Ishaqui, Many sedition cases since Independence failed legal test, Deccan Chronicle, Mar 8, 2016

²⁷ The Constitution (First Amendment) Act, 1951, June 18, 1951.

²⁸ *Ram Nandan v State of UP*, AIR 1959 All 101.

²⁹ *Supra* 39

³⁰ AIR 1962 SC 955

³¹ The view was taken by the Federal Court in *Niharendu Dutt Majumdar v. King Emperor*, (1942) FCR 38

³² *Balwant Singh and Another v State of Punjab* 1995 (1) SCR 411

³³ *ibid*

³⁴ Read S.2 (b) of Crpc, 1973. It must be noted that the Criminal Procedure Code, 1898 had made Sedition a Non-cognizable offence i.e. a person could only be arrested by a police officer acting under a warrant issued by the court.

it can be observed that a liberalised prime-minister³⁵ did more damage to the personal liberty than the British over-lords.

IV. THE CONSERVATIVE APPROACH- REVISITING NATIONALISM

The NCRB report 2019 has shown a surge in cases filed under this section. Between the years 2016 to 2019, there was an increase in the number of sedition cases by 160% and the conviction for these cases dropped to 3.3% in 2019 from 33.3% in 2016, as per the NCRB report 2019.³⁶

The conservative era accounts for 96% of sedition cases filed against 405 Indians for criticising politicians and governments over the last decade were registered after 2014, with 149 accused of making “critical” and/or “derogatory” remarks against the Prime Minister Narendra Damodardas Modi, 144 against Uttar Pradesh (UP) chief minister Yogi Adityanath³⁷.

In words of Justice (retired) Madan Lokur “It is clear that the law(sedition) is not being misused, but is being abused.”³⁸ A rise in cases have been noticed after national wide protest in relation to CAA where 3,754 individuals were booked and 25 sedition cases were filed. After the Pulwama terrorist attack, 27 cases were filed against 44 individuals. After protest broke out in relation to the brutal gang rape of a 19 year old girl in Hathras district, 22 cases of sedition were filed.³⁹

In the midst of the on-going farmers protest and the outrage on 26th January has resulted in a multitude of arrest. Protestors, journalist, activist were all targeted for dissenting. Former foreign minister Shashi Tharoor had to also face the wrath of this colonial law for criticizing against the government.⁴⁰

Disha Ravi, 22 year old activist was arrested for editing a toolkit in relation to the farmers protest. The Additional Sessions Judge Dharmender Rana of Patiala House Court Complex held that, "The imputations may be false, exaggerated or even with a mischievous intent but the same cannot be stigmatized being seditious unless they have tendency to foment violence". He further added that "The right to dissent is firmly enshrined under Article 19 of The Constitution of India. In my considered opinion the freedom of speech and expression includes

³⁵ <https://www.pmindia.gov.in/en/former-prime-ministers/>

³⁶ NCRB Report 2019.

³⁷ Article 14 database. www.article-14.com Last viewed 18.03.2021 2:30pm

³⁸ *ibid*

³⁹ Article 14 database. www.article-14.com Last viewed 18.03.2021 2:30pm

⁴⁰ Shruti Menon, Farmer protests: India's sedition law used to muffle dissent, www.bbc.com, Feb, 24,2021. Last viewed 18.01.2021.

the right to seek global audience.”⁴¹

Another 21 year old was accused of sedition for posting a video on Facebook in relation to the farmers protest. The Delhi court held that, the law of sedition is a powerful tool in the hands of the state to maintain peace and order in the society. However, it cannot be invoked to quieten the disquiet under the pretence of muzzling the miscreants.⁴²

The Supreme Court dismissed the plea seeking sedition charges against former Jammu and Kashmir Chief Minister Farooq Abdullah over his comments on the abrogation of Article 370 of the Indian Constitution. The Court held that “the expression of a view which is a dissent from a decision taken by the Central government itself cannot be said to be seditious”.⁴³ Aseem Trivedi, a cartoonist was arrested for expressing his disaffection against the government and corruption through his work. This matter was heard by Bombay High Court through a Criminal PIL. The matter was heard by former Chief Justice Mohit Shah and Justice N.M.Jamdar in regards to invocation of Sec.124A and permissible lawful restriction on the freedom of speech. It was held that, a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.⁴⁴

This law is slapped on people as an intimidation tactic against anyone who has a dissenting opinion against the government. It is to be noted that, the offence of sedition cannot be invoked to minister to the wounded vanity of the governments.⁴⁵ The State is unable to distinguish between nationalism and anti-nationalism, because the standards are prima-facie arbitrary in nature.

V. CONCLUSIONS AND SUGGESTIONS

If liberty means anything at all, it means the right to tell people what they do not want to hear.⁴⁶ Right to dissent is a hallmark of a democracy. Even if one party comes into power, it is not

⁴¹ Bail Application No. 420/2021 , State v. Disha A. Ravi, Bail order 23.02.2021. by Justice Dharmendra Rana,

⁴² Sedition law cannot be used to quell disquiet, says Delhi court, The Hindu, Feb, 17,2021. Last viewed 18.03.2021.

⁴³ Prashasti Singh, 'Not sedition to have views different from govt': SC junks plea against Farooq Abdullah, Hindustan Times, March 02,2021. Last viewed 18.03.2021 3:30pm.

⁴⁴ Sanskar Marathe vs The State Of Maharashtra And Anr on 17 March, 2015

⁴⁵ Supra 56

⁴⁶ George Orwell, *Orwell on Freedom*. 22.11.2018

immune to criticism and right to dissent allows such criticism.⁴⁷ But the draconian law is used to silence that very voice and create fear. It is undisputed that one must not be allowed to propagate unnecessary hatred which would lead to violence, but at the same instance it is pertinent to strike a balance with the right to freedom of speech and expression. If one is given the right to vote he also has the right to oppose.

India needs to also keep at par with the international standards set by the International Covenant on Civil and Political Rights (ICCPR).⁴⁸ To achieve this goal the very law of sedition needs to be reformed. Only then can the abuse of this law be curtailed. The statistics show a rise in the arrest and low conviction rates. The gap that is leading to this phenomenon needs to be acted upon.

As observed by the Supreme Court in *Shreya Singhal vs. Union of India* (2015), “when it comes to democracy, liberty of thought and expression is a cardinal value that is paramount significance under our constitutional scheme”.⁴⁹

Every individual has a birth right to express against the wrong done to him or her. But these draconian laws seize this right and make the very foundation of democracy vulnerable.

The Law Commission had taken upon the issue of revisiting sedition in the 39th Report (1968). And later in the 42nd Report (1971) followed by the 267th Report.⁵⁰

Analysing these reports and other research material available from developed nations the following proposals are put forward by the researchers:

- i. The offence could be amended to a non-cognizable offence, as this will curb the misuse of the power of arrest by the police. It is observed that the police arrest citizen when an FIR is filled under sedition even without conducting a preliminary inquiry or how small the offence is.
- ii. *Mens rea* must be incorporated in this section. The intention must be established by the prosecution.
- iii. The quantum of punishment could be revised.
- iv. The words in the section are too broad. They need to be narrowed down. Words like ‘disaffection’ causes ambiguity. Hate speech and sedition needs to be distinguished.

⁴⁷ Justice Deepak Gupta. <https://www.livelaw.in/top-stories/justice-deepak-gupta-dissent-democracy-sedition-freedom-of-speech-remand-disha-170156>

⁴⁸ International Covenant on Civil and Political Rights, 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁴⁹ *Shreya Singhal vs U.O.I*, AIR 2015 SC 1523

⁵⁰ GOI, Law Commission of India. Consultation paper on ‘SEDITION’, Aug 30, 2018

- v. The police officials are unaware of the Kedar Nath's Judgement, where the offence of sedition would be made out only if the speech incites violence. Arrest should be made only at exceptional cases and should be avoided as it can be used as a tool to torment and instil fear in a person.

In an era where the citizens are increasingly aware of their rights and liberties and have a growing sense of duty and responsibility in this democratic system, it is the perfect time to consider reform in this law.
