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Colonial Hangover: Seditious Law in India

Mayank Singh

ABSTRACT-

The sedition law in India was inserted after the enactment of the Indian Penal Code. The objective behind insertion of this draconian acts was to get the forced loyalty from its subjects i.e. citizens of India towards the British regime. This offence carry imprisonment up to life and has been put against the prominent Nationalist and anti-colonial activist of that time. There have been many debates since its inclusion regarding its validity as it impedes on many human rights and mainly after the enforcement of Constitution of India that it violates the citizen's freedom of speech and expression. Ironically this colonial draconian provision which was inserted to get the forced obligation from its subject continue to be cherished in post-colonial era in many states, India being the one. In recent times, there has been a rapid increase in the use of this provision against persons who are critical of the Government, but NCRB data shows that there is very negligent conviction rate under this provision which gives indication that the colonial attitude has been adopted by the Indian Government to harass and suppress the voice of the people. Recent trend shows that this provision has been used to curb dissent. This study will try to point out the demerits of the sedition law as to how it disturbs the basic foundation of democracy and advocates the abolition of such law.

“Freedom of speech and expression, a cornerstone of Indian Democracy, has been put to constant and continuous threat with the use of an archaic colonial law.”

INTRODUCTION-

In the recent time, there has been rampant increase in the imposition of sedition charges against the intellectuals, human right activists, college professors, students, teachers and film makers etc. Section 124A of the Indian Penal Code deals with the Sedition law in India. Although it was not there in the Act from its inception but it was included later on in 1870 and also at that time it was not at its present form. The sedition law was originally drafted by the Thomas B. Macaulay, the British historian-politician but later on omitted to include it in the Indian Penal Code when it was enacted in 1860. It is the amending Act of 1870 when it was inserted as section 124A introduced by sir James Stephen, when the need was felt to address such issues by the Britishers. It was one of the draconian provision of the penal code which was inserted to put the voices of national movement to rest. At that time, there were many Nationalist movement were going on throughout the nation against the British rule, many persons of the country were associated with these nationalist movements for so long that they eagerly wanted to over throw the Britishers from India. In order to curb these voices and to get the forced loyalty from the citizens of India, Britishers brought this draconian provision into being. This provision was inserted ten year after the enactment of Indian Penal Code, apparently in response to the Wahabi Movement of 1860s.

When Mahatma Gandhi was charged with this section by the British Government in 1922 for his article published in a local magazine he said that, “Section 124A, under which I am happily charged, is perhaps the Prince among the political section of Indian Penal Code designed to suppress the liberty of the citizen...affection cannot be manufactured or regulated by the law. If one has not affection for a particular 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.”

Again, Jawaharlal Nehru, the first Prime Minister of India called this provision as “obnoxious” and “highly objectionable” and “the sooner we get rid of it the better”.

There were also time and again demands from the activist member of the society to repeal this draconian provision of British era but the Government has made its stand clear that there is not any proposal to repeal section 124A Indian Penal Code. “There is no proposal to scrap the provision

under the IPC dealing with the offence of sedition. There is a need to retain the provision to effectively combat anti-national, secessionist and terrorist elements.”¹

Recently, Jharkhand Government led by Chief Minister Hemant Soren has announced that State has decided to drop the Charges of sedition against 3000 persons, which was put indiscriminately against them in the recent protest in connection with the Ant-Citizenship Amendment Act. He further said, “Laws are not made to frighten and silence the people but to instill a feeling of safety in the public. My government will work towards being the voice of the people. We have recommended taking back the sedition cases registered against 3000 people.”²

Section 124A states 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 feeling of enmity.

Explanation 2- Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by 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 administration or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

The following are the essential of the offence-

- I. Bringing or attempting to bring into hatred or contempt or excite or attempting to excite disaffection towards the Government of India.
- II. Such an act or attempt may be done.
 - a) By words, either spoken or written, or
 - b) Signs, or
 - c) By visible representation.

Sedition is a non-bailable offence and a person charged under this section cannot apply for a Government job and has to surrender their passport also they have to be present before the Court of law as and when required. The punishment under this section varies from up to three years to the life imprisonment with or without fine or may be punished with fine only.

¹ Nityanand Rai, Minister of State for Home Affairs, in a written reply to the Rajya Sabha on July 2019.

² <https://timesofindia.indiatimes.com/india/what-is-sedition-law-explainer/articleshow/73168127.cms> (last visited 25-July-2020).

COURT'S ON SEDITION LAW-

C.J. Petheram in the case of *Queen v Jogendra Chandra Bose*³ explained the meaning of the word “disaffection” as to feeling contrary to affection; in other words, hatred or dislike. Disapprobation simply means disapproval. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist the authority, if and when the occasion should arise and if he does so with the intention of creating such disposition, among his hearers or readers, they shall be liable to be charged under this section.

In *Queen v Balgangadhar Tilak*⁴, Tilak has written an article in the newspaper encouraging the Maratha warrior Shivaji on his fight against the Britishers, so he has been charged under sedition and the word “disaffection” has been described as above holding that, disaffection means any kind of feeling of enmity, hatred, dislike, hostility and ill will towards the Government will amount to sedition under this section. It was also observed by the court that person may not only be charged with exciting but also attempting to excite both successful and unsuccessful to excite disaffection both were placed on the same footing. So, if a person who is unsuccessful in its attempt to excite disaffection shall be charged with the offence of sedition.

The view taken by the Court in *Balgangadhar Tilak's* case has also been followed in the *Queen Empress v Ambika Prasad*⁵ holding the same view.

The view taken by court in both the above case has been altered in *Niharendra Dutta Majumdar v King Emperor*⁶ by Sir Maurice as “The first fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilization and advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than disease, but it does not cease to be a matter of obligation because some of whom the duty rests have performed it well. It is the answer of the State to those who for the purpose of attacking or subverting it try to disturb the tranquility, to create public disturbance or to promote disorder or who incite others to do so. Words, deeds and writings constitute sedition if they have this intention or this tendency. Public disorder the reasonable anticipation or likelihood of public disorder is thus the gist of the offence.

³ I.L.R 19 Cal. 35.

⁴ I.L.R. 22 Bom. 112.

⁵ I.L.R. 20 All. 55.

⁶ A.I.R. 1942 F.C. 22 at 46.

The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that this is their intention or tendency.”

The above statement of law was later on overruled by their Lordships of the Privy Council in *Emperor v Sada Shiv Narayan*⁷ and the dicta in *Tilak's* case was approved.

After Constitution of India coming into force in 1950 the constitutional validity of section 124A was challenged again in *Kedar Nath Singh v State of Bihar*⁸ after it was declared constitutional in case of *Romesh Thapar v State of Madras*⁹ and *Brij Bhushan v State of Delhi*¹⁰. In Kedar Singh case it was challenged on the ground that it is against the fundamental right of Article 19(1)(a) which guarantees freedom of speech and expression to every citizen. The plea was discarded by the Supreme Court and held this section to be valid. Court held that the explanation to the section makes it clear that criticism of public measures or comment on the Government action, however strongly worded, within reasonable limits and consistent with the fundamental right of freedom of speech and expression is not affected. It is only when the words have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the charges of sedition under this section shall follow.

The lawfully elected Government is the symbol of State and undermining the security of State will ultimately result in the destruction of State and hampering the security of its people. Which means that for the stability of State and its people it is necessary that there should be existence of Government to protect it. Sedition is the offence against State and this would further clarify that any act which comes even within the outer wall of section 124A should be punished.

However, the arbitrary use of this section to harass, intimidate the people is a serious threat to the freedom of speech and expression of the individual.

SEDITION AS A RESPONSE TO DISSENT-

The practice of putting charges of sedition on any person who is critical of Government has seen a rapid growth in the recent years when the protest was going on throughout the nation against the Citizenship Amendment Act and against the National Population Register. During the period of 2017-18 around 19 cases of sedition were put on 10,000 Adivasis of Jharkhand who were engaged in the peaceful protest of the Pathalgadi movement where Adivasi community had put placard reasserting

⁷ AIR 1943 P.C. 82.

⁸ AIR 1962 S.C. 955.

⁹ AIR 1950 S.C. 124.

¹⁰ AIR 1950 S.C. 129.

control over their land. In the month of January this year authorities have charged around 3000 persons with sedition charges over protest against anti-Citizenship Amendment Act¹¹. A sedition charges were also put on a woman in Mumbai and a student of Karnataka as they were holding placard of “Free Kashmir” during anti-Citizenship Amendment Act protest¹². A student of JNU named Sharjeel Imam was also arrested on the Charges of sedition for a speech given during the protest condemning Citizenship Amendment Act.

In Kanpur on 22 January during a rally, Chief Minister of Uttar Pradesh Yogi Adityanath has said strict action will be taken on any person who will raise “*Azadi*” slogan during the protest despite being the fact that Supreme Court has said that mere sloganeering will not amount to bring charges of sedition. *Azadi* word has become very popular these days during protest over anti Citizenship Amendment Act and National Population Register.

Again, in October 2019, around 49 intellectuals and artists who have sent a letter to Prime Minister showing their concern over increasing cases of Mob-lynching, have been charged with the sedition law.

Authorities have often been seen resorting to the sedition law when they are faced with any kind of dissent. Not only they charge people doing active protest with sedition but they also charge college students, professors, principles, intellectuals etc. In a report published by Human Rights Watch titled “Stifling Dissent: The criminalization of peaceful protest in India” they stated that in India this colonial era provision is being frequently used to suppress dissent and is “often used against the dissenter, human right activists and against those who are critical of the Government.”¹³

Recently on 7th July, Supreme Court has granted an interim relief to the renowned journalist Mr. Vinod Dua charged with sedition for his recent criticism of the present Government on its failure to combat the Covid-19 outbreak effectively. Further Supreme Court has ordered the Himanchal Pradesh Police to file a status report to check whether the FIR which is filed against senior journalist was filed only to harass him for his unpalatable criticism of present Government.

Government and the police has been seen overzealous in putting the charges of sedition but when it comes to proving their case in the court of law they fail miserably. The number of sedition cases have increased dramatically from 2015 to 2018 as the data shows, which is available with the National Crime

¹¹ <https://timesofindia.indiatimes.com/india/what-is-sedition-law-explainer/articleshow/73168127.cms> (last visited 25-July-2020).

¹² <https://www.newsclick.in/sedition-criminalising-dissent-0> (last visited 25-July-2020).

¹³ <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india> (last visited 25-July-2020).

Record Bureau. In 2015, 30 cases, in 2016, 35 cases, in 2017, 51, in 2018, 90 such cases of sedition were registered. Total of which 160 cases are still pending for trial and out of total only 4 persons were convicted under sedition, which put the question as to how helpful is the sedition law in today's world. In 2018, the conviction rate is as low as 15.40% of the total person accused. Since the protest against anti Citizenship Act started, total 195 cases were filed under the sedition law which is much higher than the total of last preceding three years' total¹⁴. The above data clearly shows that how this colonial era provision has been used by our democratic Government to curb the voice of the people. Even if the conviction rate is very low but still it has been used to silence the dissenters and to intimidate and harass the persons.

WHY SECTION 124A NEEDS TO BE ABOLISHED?

Reasons why this draconian provision needs to be abolished are discussed below: -

- a) Section 124A is of colonial origin which is totally unfit for democracy. It put restraint on the legitimate exercise of the constitutional right of freedom of speech and expression.
- b) Democracy to thrive in all aspect, there should be freedom to question and to dissent the Government. It should not be considered as sedition. Right to question, criticize and to change the Rulers are the basic idea of democracy.
- c) The wording used in the provision are very vague in itself and are subject to very wide construction which are often used by police as per their whims and fancies.
- d) The Britishers who have introduced the law in India have themselves abolished the same in Britain owing to the report of Law Commission of Britain in 2010.
- e) The Indian Penal Code and the Unlawful Prevention Activities Act has enough provisions to tackle with the problem of “disrupting public order” and “to overthrow the lawful Government”.
- f) Arbitrarily imposition of sedition charge is against the India's international commitments as on 1979 India has ratified the International Covenant on civil and Political Right which has advocated for the international standards for the freedom of speech and expression.

¹⁴ <https://www.thehindu.com/news/national/law-commission-backs-dissent-in-a-democracy/article24822850.ece> (Last visited 25-July-2020).

CONCLUSION-

India being the largest democracy in the world and the freedom of speech and expression¹⁵ which is a guaranteed fundamental right provided by our Constitution is the essential ingredient of the democracy which also includes the positive criticism and dissent. It can be rightly said that if the Government is not open to positive criticism then there will be no difference between the pre-and post-independence era. The Law Commission has stated that “an expression of frustration over the state of affairs cannot be treated as sedition”.¹⁶ Supreme Court has also stated that dissent is the safety valve of the democracy. It has been promised to abolish the section 124A from the Indian Penal code in the 2019 election manifesto of the present Government but on the contrary the same Government’s administration has been using this section the most to silence the dissent.

There is no reason to keep this section in the present times when almost all the countries like Britain, Australia etc. have abolished the same. It is evident that it disturbs the interwoven threads of democracy and at the same time it is against the basic fundamental idea of democratic structure of our nation. It is very saddening to see that during the colonial time the method used by the Britishers to curb the voices to our freedom fighters or activist, the present regime has also devised the same method of curb the dissent of the people who are standing against the misdeed or wrong action taken by the Government. The significant low conviction rate is the evidence of its being used arbitrarily to harass, intimidate and to suppress the dissent against the ruling government. The sooner we get rid from the same the better will be for the future of Indian Democracy otherwise the voice of dissent will be left on the whims and fancies of the ruling Government.

¹⁵ Article 19(1)(a) of the Constitution of India.

¹⁶ <https://www.thehindu.com/news/national/law-commission-backs-dissent-in-a-democracy/article24822850.ece> (Last Visited 24-July-2020).