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**THE GREAT REPRESSION: THE STORY OF SEDITION
IN INDIA AUTHORED BY CHITRANSHUL SINHA**

Mr. Yash Pandey*

'The Constitution fails when a cartoonist is jailed for sedition'

- Justice Dhananjaya Y. Chandrachud

Introduction

Sedition is perhaps the most debated legal provision in Indian criminal law. It finds mention in our daily news columns mostly out of notoriety than the rightful application of the law. Section 124 A of IPC says that Sedition is an offense where a person by words or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite dissatisfaction towards the government established by law¹. The law was brought in by Britishers to quell and suppress the Indian voices against repressive imperial rule². In this book 'The Great Repression: The Story of Sedition in India'³ Chitranshul Sinha traces the history and origin of this draconian provision. The book offers an in-depth analysis of this legal provisions and questions the desirability of having this provision. While discussing the history of sedition the author highlights famous sedition trials against the Indian Freedom revolutionaries like Bal Gangadhar Tilak, Jawahar Lal Nehru, Mohandas Karamchand Gandhi, etc. The tale does not end there and in the next portion of the book it is expressed as to how sedition has become a tool of oppression even in the post-independence era. The objective of Chitranshul Sinha's book is to clarify

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¹IPC §124 A, No.45 , Act of the Parliament , 1860(India)

²The sedition story: Complicated history of Sec 124A, HINDUSTAN TIMES, (Jul. 16, 2021 06:58) <https://www.hindustantimes.com/india-news/the-sedition-story-complicated-history-of-sec-124a-101626370928612.html>

³CHITRANSHUL SINHA, THE GREAT REPRESSION: THE STORY OF SEDITION IN INDIA (Penguin Random House 2019).

the concept of sedition and to highlight the fact that this legal provision can be used only in limited circumstances where such seditious speech is capable of disturbing public order and peace. Therefore, mere defamatory remarks towards the ministers of the ruling party will not amount to sedition. But often the law is misused. Therefore, this book aims to act as a guiding tool for the community to know their right and prevent misuse of this draconian provision.

History and Origin of Law of Sedition in India

In this part of the book the author threads a beautiful story of codification of penal laws in India and explains how it was through a fateful construct that positivist approach found its way to India from one of the staunch proponent of codification of law in England, i.e. Jeremy Bentham⁴. Jeremy Bentham wrote to Raja Ram Mohan Roy regarding reforms in the Indian judicial and administrative system that can be achieved with the help of his close friend James Mill⁵. Mill was then acting as examiner of India correspondence and it was by way of suggestion of James Mill that Thomas Babington Macaulay was appointed as the legal member of the council of governor general⁶. Macaulay then undertook the humongous task of codifying penal laws in India. The draft of Indian Penal Code contained a provision about sedition that was later used excessively for

⁴Jeremy Bentham advocated codification of law in England and he was instrumental in codification of law for Russia and Spain; See: CHITRANSHUL SINHA, THE GREAT REPRESSION: THE STORY OF SEDITION IN INDIA 20(Penguin Random House 2019). Also See: Charles Noble Gregory, Bentham and the Codifiers, 13 Harvard Law Review, 344 (1900).

⁵CHITRANSHUL SINHA, THE GREAT REPRESSION: THE STORY OF SEDITION IN INDIA 21(Penguin Random House 2019).

⁶Maculay was influenced by works of Jeremy Bentham in relation to codification of law however he was critical of despotism and reductionist approach of Jeremy Bentham. See:Cheong-Wing Chan, Barry Wright and Stanley Yeo eds,MACAULAY'S INDIAN PENAL CODE: HISTORICAL CONTEXT AND ORIGINATING PRINCIPLES (2011).

suppressing free speech. It was not the only legislation that was used to suppress freedom of speech and expression. Some other legislation like Vernacular Press Act 1878 and Dramatic Performances Act 1876 were also later brought in to suppress freedom of speech and expression.

Early Life of Law of sedition in India

The first case tried under section 124A IPC was against a Bengali Vernacular paper Bangobhasi. Britishers enacted Age of Consent Act 1891 to increase the age of consent for sexual intercourse from 10 to 12 years under section 375 of IPC. This enactment was brought in at the backdrop of death of a girl named 'Phoolmani' who was merely 10 years of age when she was married off to Hari Mohan Maitri who was 42. According to the Indian tradition of 'Garbhdaan'(which means donating the womb) Hari had sexual intercourse with this 10 year old girl on the marriage night which allegedly resulted in her death.

Bangobhasi published 5 articles against the Consent Age Act 1891 expressing that it is opposed to Hindu tradition and morality. This resulted in trial against the proprietor, editor, manager and printer of Bangobhasi for the offense of sedition in front of Calcutta HC⁷. The case finally ended with an apology given by Bangobhasi to the government.

Similarly, other famous trials find mention in this book like the trial of Bal Gangadhar Tilak for Articles published in Kesari⁸, the trial of Phenendra Nath Mitter for revolutionary articles published in Jugantar⁹, the trial of

⁷ Queen Empress v. Jogendra Chunder Bose & Ors. (1892) ILR 19 Cal 35 (India).

⁸CHITRANSHUL SINHA, THE GREAT REPRESSION: THE STORY OF SEDITION IN INDIA 57 (Penguin Random House 2019).

⁹ IBID AT P. 86

Ganesh Damodar Savarkar (elder brother of Veer Savarkar)¹⁰, the trial of Annie Besant¹¹, the trial of Jawahar Lal Nehru¹², etc..

But perhaps the most iconic trial was that of Mahatma Gandhi for Articles published in Young India. The trial took place in Ahmedabad sessions court and it was presided over by Justice R. S. Broomfield. Justice Broomfield had high regard for Mahatma Gandhi however, eventually he rendered a guilty verdict against Mahatma Gandhi. On the other hand, Mahatma Gandhi came out in the most indomitable manner and said, “I do not plead any extenuating act. I am therefore, to invite and submit to the highest penalty that can be inflicted upon me for what in law is a deliberate crime and what appears to me to be the highest duty of a citizen”¹³

Post-Independence Era

The book further highlights that the phantom of suppression through the legal tool of sedition still lurks in our independent society. Despite clear position enunciated in Kedar Nath v State of Bihar¹⁴ case the law is still misused. In this case it was clearly stated that a case of Sedition can only be brought when words or action on part of the accused results in public disorder or has potential to cause public disorder. Most glaring example of misuse of sedition is present in Tamil Nadu where peaceful protestors from Idinthakarai and Kudankulam villages were charged with sedition charges since 2011 and almost 8956 people were charged with sedition¹⁵.The citizens were protesting against construction of

¹⁰IBID AT P. 104

¹¹IBID AT P.125

¹²IBID AT P.145

¹³IBID AT P.135

¹⁴Kedar Nath v State of Bihar 1962 AIR 955

¹⁵CHITRANSHUL SINHA, THE GREAT REPRESSION: THE STORY OF SEDITION IN INDIA 199 (Penguin Random House 2019).

Kudankulam nuclear power plant. Fearing that something similar to Japan's Fukushima Daiichi nuclear power plant accident may happen in India they raised a rightful concern through protest. In order to suppress the protests the government used sedition provision to put people behind the bars to quell the protest.

Conclusion

Imagine a dangerous nuclear facility being constructed near your residential area and you are unable to express your legitimate concerns about its potential harm to you or to the people living in your neighboring area. This helplessness was felt by people of Idinthakarai and Kudankulam villages. In such moments the freedom of speech and expression looks like an illusion and constitutional rights appear to be a sham. Despite the fact that our colonial masters have done away with the provision of sedition we are still carrying the torch of suppression passed down by Britishers to the independent India in the form of section 124A of IPC. I completely agree with the author that it is high time that this regressive provision should be taken off the books. It appears to be a conscious choice of the law makers to keep the law in place so that it can be used as a legal tool to suppress opposition. Despite the constant and severe criticism of the law it is still intact and now more reinforced by amendments than before¹⁶. Even if this book fails to make a foolproof case of doing away with sedition then too this book has done a wonderful service by addressing the issue as to when a case of sedition exists and when not. The book clearly explains that the position was finally settled in 1962 in the case of Kedar Nath Singh v State of Bihar¹⁷ case, where the court said that sedition cases

¹⁶The sedition story: Complicated history of Sec 124A, Hindustan Times, <https://www.hindustantimes.com/india-news/the-sedition-story-complicated-history-of-sec-124a-101626370928612.html>

¹⁷Kedar Nath v State of Bihar 1962 AIR 955

can only be brought when words or action on part of the accused results in public disorder or has potential to cause public disorder. But it is a sad state of affairs that this law is still misused at times.

The recent announcement by the state of UP, that students found celebrating Pakistan's Cricket team victory over India in the T20 world cup would lead to sedition charges¹⁸, has brought back the question regarding legitimacy of sedition provision and desirability of this provision in modern India. According to National Crime Records Bureau (NCRB) conviction rate under charges of sedition is less than 3 % now but the rate of arrest under sedition charges has risen to 160%¹⁹. It is a clear indication that the law is heavily misused and it also calls for a need to abolish or at least revise the law²⁰.

The book, although with all of its clarity has stated that sedition is undesirable, however still it does not present a full-fledged case for doing away with sedition. But now it appears that we have finally reached the realization that it is high time to drop this colonial baggage of sedition and therefore on 9th May 2022, the government in *S. G. Vombatkere v Union of India*²¹ case has filed an affidavit before the Supreme Court to reconsider the provision of sedition. Meanwhile Supreme Court has effectively suspended all pending and future proceedings under Section

¹⁸Sudha Ramachandran, India's Sedition Law Needs to Be Buried, <https://thediplomat.com/2021/11/indias-sedition-law-needs-to-be-buried/>

¹⁹ Rahul Tripathi, Arrests under sedition charges rise but conviction falls to 3%, The Economic Times (2021)<https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr>

²⁰Anushka Singh in her book *Sedition in the Liberal Democracies* made a comparative study of sedition provision in U.S., U.K., Australia and India and found that India is the only country that is using the original definition of sedition as introduced by British rulers. The other countries have either abolished, restricted or modernized sedition provision. See: Anushka Singh, *Sedition in Liberal Democracies*, (Oxford University Press, 2018)

²¹ *S. G. Vombatkere v Union of India*, WRIT PETITION (C) No.682 OF 2021

124A of IPC²². To conclude I just want to say that perhaps we have reached a significant point in our constitutional history where we can now be truly free from colonial rule not only in form but also in substance.

²² Swati Gupta and Rhea Mogul, CNN, India's top court suspends use of controversial sedition law - CNN