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Section 124A of IPC - A Tool of voice Suppression in times of Political Polarization

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In times of increasing Political Polarization, the actions of both State and Non-State Actors must be analysed efficiently in order to dissect the facts from the propaganda to reach a conclusion and form a well-informed opinion. In India, Political dissent has been subjected to various restraints since its independence. However, one major tool of restraining stands out from the lot i.e., Section 124A of IPC, the law of sedition. This article will discuss the colonial-era sedition law and its implementation in a 21st-century democracy. The law has been analysed under various themes like suppression of dissent, encroaching upon fundamental rights, and misuse of power by quoting various incidents evidently indicating either one of the stated themes.

Keywords: *section 124A, sedition, fundamental rights, right to speech, democracy.*

INTRODUCTION TO SECTION 124A OF IPC

The Black's law dictionary defines sedition as - An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state.¹ It also distinguishes between sedition and treason by

¹ *Sedition* (10th edition, Black's Law Dictionary 2014)

stating that while the main objective of sedition is to disturb public order, it does not aim toward violence against the laws or subversion of the constitution. The sedition law in India was introduced by the Britishers through the IPC (Amendment) Act, 1870 by inserting section 124(A) in the Indian Penal Code. The section states that -

“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.”²

OVERVIEW OF THE INDIAN POLITICAL SETTING

India, like the rest of the world, is going through a phase of a surge in right-wing and conservative political power. Donald Trump belongs to the conservative party and was the president of the United States of America until January 2021, Scott Morrison is elected prime minister of Australia, Jair Bolsonaro is the elected president of Brazil and Narendra Modi is the prime minister of India, the World’s largest democracy. The election of Narendra Modi, who belongs to the Hindu Nationalistic Bhartiya Janata party, was followed by quick and erratic decision-making and a politics of majoritarianism. The Bharatiya Janata Party is linked to RSS, a Hindu extremist organization. RSS was banned 4 times, once by the Britishers and thrice by the post-colonial governments in the wake of the killing of Mahatma Gandhi, the emergency, and the demolition of the Babri Masjid. The RSS is particularly against the concept of secularism and believes that India must only consist of people belonging to the Hindu faith.

SEDITION LAW IN CONTRAVENTION OF THE FUNDAMENTAL RIGHTS

Article 19 (1)(A)³ of the Constitution of India guarantees the freedom of speech and expression which includes the right to express one’s opinions and ideology freely by way of speaking, publications, or pictures. The Fundamental rights account for the essence of the Indian

² Indian Penal Code (Amendment) Act 1870, s 124A

³ Constitution of India, 1950, art. 19(1) (a)

democracy and must be upheld at all times. The sedition law encroaches upon this essential element of any functioning democracy. This colonial-era law has often been used to suppress voices of dissent in the situation of abuse of power. The law was extensively used during the emergency by the then prime minister of India, Indira Gandhi to suppress voices that challenged the authority of her government. The law was also used by the Britishers to suppress the voices of the freedom fighters. These instances are enough to observe that sedition law is a tool extensively used for the suppression of voices of dissent. There are two main concepts related to the sedition law - Disaffection and Disapprobation. Section 124A clearly lays down that only disaffection toward the government must be considered as a criminal offense. For further clarity, disaffection is defined as disloyalty or all feelings of enmity towards the government established by law. The disapprobation of the measures or administrative actions of the government without exciting hatred, contempt, or disaffection is not an offense under the sedition law. However, in the recent past, this distinction has vanished and various people have been charged under the sedition law even for disapprobation. This manipulation of the sedition law has not been addressed and is still being used as a tool to encroach upon fundamental rights like freedom of speech and expression.

ANALYSING THE IMPLEMENTATION OF THE SEDITION LAW IN THE 21ST CENTURY (INDIA)

The statistics of the National Crime Records Bureau suggest that in more than 70% of the registered sedition cases, Police proceed with the arrest without filing a charge sheet.⁴ The conviction rate of the filed sedition cases is significantly low as only 4 cases of sedition since 2016 have resulted in the conviction of the accused. Cases being filed under the sedition law increased by 160% while the conviction rate dropped to a mere 3% which clearly indicates a very problematic situation in place today.⁵ Amulya Leona Noronha, a 14-year-old girl, was

⁴ Pooja Dantewadia & Vishnu Padmanabhan, 'Sedition Cases in India: What Data Says' (*Live mint*, 20 February 2020) <<https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html>> accessed 25 April 2021

⁵ Rahul Tripathi, 'Arrests under sedition charges rise but conviction falls to 3%' (*The Economic Times*, 17 February 2021) <<https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr>> accessed 25 April 2021

charged with sedition after chanting, “Pakistan Zindabad” at a public gathering in Bangalore.⁶ The essentials of the sedition law were not fulfilled as there was no disruption of public order or incitement of an offense of any kind. A mere appraisal of another country does not account for sedition. Farooq Abdullah was accused of conspiring with the Chinese and the Pakistan government to criticize the decision of the Indian government to abrogate articles 370 and 35A removing the special status of Jammu and Kashmir. In this case, the Supreme Court held that mere disagreement with the actions of the government does not amount to sedition.⁷ The sedition case against Varavara Rao, Arun Ferreira, and Vernon Gonsalves can be construed as a politically motivated action of the Government.⁸ Two activists linked to the RSS were accused of inciting violence at the Elgar Parishad, namely SambhajiBhide and Milind Ekbote. The incitement of violence was then directed toward the Far-left activists as named above and sedition cases were filed against them in the name of incitement of violence and attempt of overthrowing the governments established by law. This was furthered by a conspiracy of Maoist insurgency in Jharkhand. The government of India in December 2019, introduced the Citizenship Amendment Act which allowed fast-tracked Indian citizenship to the persecuted minorities from neighboring countries excluding Muslims. The movement against CAA gained pace and gave rise to nationwide Protests. A total of 3,000 activists were arrested under the sedition law in January.⁹ The most prominent case of sedition during the anti-CAA protests was Dr. Kafeel Khan who was arrested for an alleged inflammatory speech at the Aligarh Muslim University.¹⁰ His late release after his bail was approved attracted questions from around the country and even the global Human Rights organizations. During the ongoing Farmer Protests around the country, cases of sedition were filed against the leaders of

⁶ Sukanya Shantha, ‘After 110 days in Jail for saying ‘Pakistan Zindabad’ 19 year-old Activist gets ‘default bail’ (*TheWire*, 11 June 2020) <<https://thewire.in/rights/amulya-leona-bail-bengaluru>> accessed 25 April 2021

⁷ ‘Not seditious to have views different from Govt: SC quashes PIL against Farooq Abdullah’ (*TheWire*, 3 March 2021) <<https://thewire.in/law/supreme-court-sedition-government-farooq-abdullah-article-370-china>> accessed 25 April 2021

⁸ Anurag Bende, ‘Bhima Korega on case: Pune Police invoke sedition charges against accused arrested for Maoist Connection’ (*DNA India*, 18 November 2018) <https://www.dnaindia.com/india/report-bhima-koregaon-case-pune-police-invoke-sedition-charges-against-accused-arrested-for-maoist-connection-2686970>> accessed 25 April 2021

⁹ Pooja Dantewadia & Vishnu Padmanabhan (n 4)

¹⁰ ‘Sedition case filed against DrKafeel Khan for speech at AMU’ (*The Free Press Journal*, 14 February 2020) <<https://www.freepressjournal.in/india/sedition-case-filed-against-dr-kafeel-khan-for-speech-at-amu>> accessed 25 April 2021

the Farm Unions in the wake of the violence on the 26th of January, 2021, the cause of which is controversial and not determined to this day. The Delhi High Court in the case of a 21-year old laborer charged with sedition for sharing a fake video of the Delhi Police during the Farmer agitation¹¹ stated that “the sedition law cannot be invoked to quieten the disquiet under the pretense of muzzling the miscreants”. A climate activist related to the imminent climate change movement “Fridays for Future” was launched by Greta Thunberg. Disha Ravi was arrested under sedition charges for sharing the toolkit which consisted of different methods of expressing dissent.¹² As the Farmers’ Protest gained recognition from international activists and celebrities, the sharing of a mere toolkit was stated as an international conspiracy against the nation. The same was linked to the Khalistani movement. The Delhi Trial Court held that “it cannot account for sedition unless it incites violence.” The discrediting of JNU as an institution was carried out by launching a hate campaign and using the tool of sedition against the students like Kanahiya, Umar Khalid, etc. was used to great extent.¹³ The hearing for a plea of bail was not scheduled promptly as they were subjected to extended imprisonment and violation of rights. It is evident that the voices in support of the ruling party are avail of unfair favors and abuse of the due process of law. An imminent example might be construed as Mr. Arnab Goswami, the chief editor of Republic TV which constantly broadcasts debates and reports in favour of the decisions taken by the ruling government. He was able to get his bail plea hearing fast-tracked¹⁴ while various political prisoners like Varavara Rao, Dr, Kafeel Khan, Safoora Zargar, and many more were not allowed a bail hearing in adverse conditions like pregnancy and covid-19 infections.

¹¹ ‘Sedition Law can’t be used to ‘Quieten the Disquiet’: Delhi Court in Farmers’ protest-related case’ (*The Wire*, 17 February 2021) <<https://thewire.in/law/sedition-law-cant-be-used-to-quieten-the-disquiet-delhi-court-in-farmers-protest-related-case>> accessed 25 April 2021

¹² Apurva Vishwanath, ‘Conspiracy, Sedition: Ruling in Disha Ravi case raises bar for State’ (*The Indian Express*, 2 March 2021) <<https://indianexpress.com/article/explained/conspiracy-sedition-ruling-in-disha-ravi-case-raises-bar-for-state-7201885/>> accessed 25 April 2021

¹³ Anirban Bhattacharya, ‘JNU Sedition Row: Age of Unreason and ‘Reasonable Restriction’ (*The Wire*, 9 February 2019) <<https://thewire.in/rights/jnu-sedition-row-age-of-unreason-and-reasonable-restrictions>> accessed 25 April 2021

¹⁴ Vilay Singh, ‘India’s Supreme Court in spotlight over bail for divisive anchor’ (*Aljazeera*, 13 November 2020) <<https://www.aljazeera.com/news/2020/11/13/india-top-court-under-fire-for-bailing-out-divisive-tv-presenter>> accessed 25 April 2021

CONCLUDING THE CASE OF MISUSE OF SEDITION LAW

In view of the above-stated facts and instances, it is evident to conclude that the colonial-era sedition law is being used to suppress the voices of dissent in the largest democracy in the world. The major takeaway from the cited cases is that the sedition law must be revoked completely, that it must be subject to instant hearing of bail pleas to stop the practice of false imprisonment and mental harassment, or that section 124A may be invoked only in cases of disrupting public order and inciting violence to overthrow the government which was also suggested by the law commission in a recent constitutional paper. The suggestion would however still require an independent regulatory framework of fast-tracked hearing of Bail pleas to avoid the rise in instances of political imprisonment. Therefore, answering the research gaps of the instant study, it is evident that the colonial-era sedition law is still being used prospectively as a tool of voice suppression in India in the 21st century in coherence with the ideologies and agendas of the ruling government. The abuse of sedition law might be restricted by introducing an independent regulatory body and a legal framework to provide for the fast-tracked hearing of bail pleas, mandatory filing of charge sheets before arrest warrants are issued, and presentation before magistrates before being arrested under the issued arrest warrant. Complete revocation of the law provision might be a major move towards the further democratization of India and ensuring freedom of speech and expression.