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SECTION 124: GADGET TO ASPHYXIATE THE VOICES OF DISSENT

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ABSTRACT

When people in rural India hear someone with an English accent, they remark, "Englishmen went, but left English behind." This is the most typical phrase they use when they meet someone with an English accent. In a similar vein, there are several laws passed by the British during their rule that are still in effect today. Many of them have been repealed as a result of the constitution's provisions, but just a handful have not. It is Section 124A of the Indian Penal Code[1], published in 1860, that is the most draconian of all. It was the ultimate goal of colonial rulers to add this Section in the Constitution in 1870: to silence voices of opposition that questioned their repressive rule and framed them on accusations of sedition. Unfortunately, this part is still in effect after more than seven decades of Democratic administration, and the elected government actively employs it against anyone who expresses political opposition. The frequency with which this portion has been used has increased considerably in recent years. By putting voices of dissent in the context of sedition accusations, this essay makes an effort to study Sedition Law and how it has been utilised to persecute those who speak out against injustice.

Keywords: Indian Penal Code, Code of Criminal Procedure, Fundamental Right.

HISTORICAL BACKGROUND OF SECTION 124A

The crime of sedition, as defined by Section 124A of the Penal Code[2], was not originally included in the law when it was created in 1860. However, it is vital to recall that sedition was included in the Penal Code that was drafted by Lord Macaulay in the nineteenth century. Section 124A was incorporated into the Code of Civil Procedure in the year 1870, under the direction of Mr. James Stephen, by Special Act XVII of 1870[3]. This statute was almost equivalent to the treason code that

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[1] The Indian Penal Code, 1860 (Act 45 of 1860).

[2] *Ibid.*

[3] The Code of Civil Procedure, 1870 (Special Act 12 of 1870).

was in effect in England at the time. There was a growing amount of animosity against the British government as a result of this.

The first case filed by the government under Section of 124A was ***Queen Empress v. Jogendra Chunder Bose and ors.*** (famously known as Bangobasi case) in the year 1891[4]. Bose was an Editor in a Newspaper called Bangobasi and wrote an article that criticized the Age of consent Act, 1891 and called it interference in Indian Custom. Later the case was dropped and Bose got bailed. The other important Sedition Trials before Independence were of Bal Gangadhar Tilak and Mahatma Gandhi. It was the case of ***Queen-Empress v. Bal Gangadhar Tilak*** in 1897[5] which led to an amendment of section 124A in 1898. In this case, Bal Gangadhar Tilak was blamed for distributing an article in a Newspaper called Kesari. The British Government was of the contention that the article invoked the example of Shivaji to incite the overthrow of the British Empire. Two decades Later Tilak was again charged with Sedition. MK Gandhi along with hankerlal Banker was charged with Section 124A in 1922 for the Articles published in the Weekly.

The Indian Penal Code (Amendment) Act, 1898,[6] altered the aforementioned clause to allow for the possibility of life imprisonment or a reduced period of imprisonment. The amending act also made it illegal to incite hate or contempt against the government constituted by law, as well as to seek to incite hatred or contempt. The terms of this section were altered once again in 1955, and the penalty was changed to either life imprisonment and/or a fine, or three years imprisonment and/or a fine, depending on the severity of the offence.

It has been utilised by both the British and the Indian governments, beginning with the incorporation of Section 124A into the Indian Penal Code in 1860 and continuing now, to muzzle the voices of opposition and criticism in the country.

STATUTORY INTERPRETATION

When it comes to Section 124A of the Indian Penal Code, the term "sedition" does not appear in the main text. It does appear in the section's marginal note, which is where the word "sedition" is defined.

[4] Queen Empress v. Jogendra Chunder Bose and ors., (1892) ILR 19 Cal 35.
[5] Queen- Empress v. Bal Gangadhar Tilak,(1917) 19 BOMLR 211.
[6] The Indian Penal Code (Amendment) Act, 1898 (Act 19 of 1898).

According to Section 124A of the Indian Penal Code, 1860, "Whoever, by words, whether spoken or written, or by signs, or by visual representation, or by any other means, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection against the government shall be punished with death." According to the requirements of this section, a guilty person may be sentenced to jail for a period ranging from three years to a lifetime sentence. According to this law, the crime is a cognizable offence, which means that the police may arrest the accused without a warrant. In addition, there is no possibility of bail for this violation. The presence of two elements is required to convict a person under Section 124A, namely, that the accused brings or endeavors to bring hatred or disdain against the government, or energizes or endeavors to invigorate disaffection against the government, and that the act committed by the accused must be done through words, whether spoken or written, signs or visual representation. Any person who is charged with Sedition loses his or her eligibility for government work, is denied a passport, and is forced to appear in court whenever he or she is summoned to do so by the authorities.

Section 95 of the Indian Criminal Procedure Code, 1973[7], gives the government the authority to designate some publications as forfeited if they include content that is illegal under Section 124A of the Indian Penal Code, 1860 (Indian Penal Code)[8]. However, two essential requirements must be met: the content published must be illegal under Section 124A of the Indian Penal Code, and the government must demonstrate justification for its decision to forfeit the material in question.

WHAT DO COURTS HAVE TO SAY ABOUT SECTION 124A OF THE INDIAN PENAL CODE, 1860 ?

Ram Nandan vs State of Uttar Pradesh[9], was one of the first cases in the post-independence era which challenged the constitutionality of section 124A of the IPC[10]. In this case, Allahabad High court held that the said section is Ultra vires and found it violative of Article 19(1)(a) as it curtails freedom of speech enshrined in our constitution.

The same question was before Supreme Court in the case of ***Kedarnath Das v. the State of Bihar***[11]. The honorable court, for this case, held that the provisions of the said sections are established and are not being violative of the basic right of the ability to speak freely and express freely which is

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7 The Code of Criminal Procedure, 1973 (Act 2 of 1974).
8 *Id* at 1.
9 Ram Nndan vs State of Uttar Pradesh, (1959) AIR 1959 All 101.
10 *Id* at 1.
11 Kedarnath Das v. the State of Bihar, (1962) AIR 955.

Article 19(1)(a) of the Indian Constitution[12]. The court further said that the explanations of Section 124A make it clear that the section has nothing to do with criticism of Government or Public Policy when it is done within the limits of the Fundamental Right of Freedom of Speech and expression. The said section only comes in action when the words have the tendency or Intention of interrupting law and order. Hence, the Apex Court overruled the judgment of Allahabad High Court.

A divisional bench of Supreme Court in ***Balwant Singh v. the State of Punjab***[13] held that mere raising of slogans without any hilarious activities to lead to public disorder and no intention of creating violence cannot be covered under Section 124A of Indian Penal Code, 1860. In numerous cases, courts have opined that mere expression of opinion does not amount to sedition. In ***Javed Habib v. the State of Delhi,***[14] the court held that having an opinion against the Government or Prime Minister's action and criticizing their policies cannot be covered under Section 124A of Indian Penal Code, 1860. The court further said that the Analysis and criticism of the Government is the embodiment of Democracy. It has been accepted by almost all the Courts that while judging a case under Section 124A of the Indian Penal code, 1860 intention of the accused is the most important element.

Overall Section 124A of the Indian Penal Code, 1860 has been found constitutionally valid by Indian Courts. However, the courts have issued certain guidelines regarding its applicability so that the misuse of the Section can be prevented.

INCREASING MISUSE OF SECTION 124A

Right from Colonial times, there is a great trend of using Sedition law to curb the voices of dissent. But in the past few years, the usage of Section 124A has touched new heights. According to National Crime Record Bureau (NCRB) data the cases filed under Section 124A of Indian Penal Code, 1860 has increased by 160% from 2016 to 2019 whereas the conviction rate has fallen from 33.3% in 2016 to 3.3% in 2019. In the year 2019, 96 were arrested under the charges of Section 124A but only 2 were convicted. A recent report by Article 14 sedition database reveals that since 2014 there has been an expansion of 28% sedition charges documented each year, the number has increased at a greater speed during any protest movement.

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[12]The Constitution of India, 1949 (Article 19 (1) (a).
[13] Balwant Singh v. the State of Punjab, (1995) /91) SCR 411.
[14] Javed Habib v. the State of Delhi, (2007) SCC OnLine Del 891.

RECENT ANTI-CAA PROTESTS AND BRUTAL RAPE OF DALIT GIRL IN HATHRAS

There are instances where an individual is charged with sedition and imprisoned for liking a Facebook Post› Cartoonist has been charged with sedition for raising anti-corruption voices against the government› Former Chief Minister charged with sedition for remarks on Yoga and Ramdev, a journalist was charged with sedition for covering Brutal Hathras Rape case and many more. Many important individuals are facing sedition trials i.e. Kanhaiya Kumar, Hardik Patel, Arundhati Roy, etc. Recently a Young Climate activist Disha Ravi was charged with sedition charges for allegedly making a toolkit that supported Farmers Protest. Numerous Journalists, TV anchors, Editors, Social Activists, and many more are facing Sedition charges for their dissent or criticism. This data shows how the government has misused this tool of Section 124A to curb all those voices who tried to criticize them or show their dissent.

TIME TO RETHINK THE PROVISIONS OF SECTION 124A

In the year 2018, the Law Commission of India issued a consultation Paper on Sedition, showing its willingness to alter Section 124A. The paper on page no. 30 said, "*In a democracy, singing from the same songbook is not a benchmark of Patriotism. People should be at liberty to show their affection towards their country in their way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the government with violence and illegal means.*"[15]

The givers of Sedition law to India i.e. Britishers have themselves deleted their sedition law through the Coroners and Justice Act, 2009[16] by calling seditious libel as a draconian law. Provisions of Section 124A are not acceptable in a Democratic Setup. When used without proper care this acts as an illegitimate restraint on Freedom of speech and expression guaranteed under Part III of the Indian Constitution. It is important to understand that question, criticizing, altering the established government is the very essence of Democracy, suppressing this means killing the soul of hard-earned democracy. The increasing misuse of Section 124A is also inconsistent with the Country's international commitment, as India ratified International Covenant on Civil and Political Rights

[15] Law Commission of India, 'Consultation Paper on Sedition' [2018] PL 30.
[16] Coroners and Justice Act, 2009 (2009 c. 25).

(ICCPR) in the year 1979[17]. The treaty recognized Protection of Freedom of Expression. There are already numerous provisions in the Indian penal code, 1860[18] , and unlawful activities prevention act 1967 which penalizes actions that disrupt public order and overthrow the Government through illegal means. Hence, there seems no need for Section 124A which has been mainly used just to curb the voices of dissent.

CONCLUSION

In the words of Roscoe Pound, "Law must be steady, but it cannot be still." Because society is inherently unstable, the words and actions that have the potential to damage society change from time to time. Because of the advancement of civilization, gatherings and processions that would have been considered seditious 150 years ago are now considered legal. The criterion used to determine whether someone has stoked or tried to stoke hate, disdain, or disaffection must be re-examined because India, as well as the governing authority, have transgressed after more than 60 years of independence.

"Every individual has the right to be heard, but no one has the right to strangle democracy with a single set of vocal cords," said Adlai Stevenson. However, there is a differentiation between wishing and effectively attempting to oust the organization and wanting and effectively attempting to bring down the entire government. The government and the country are not the same thing. Since it is the national anthem of India, not the national anthem of the public authority of India; it is the national flag of India, not the national flag of the public authority of India and it is a resident of India, not a resident of the public authority of India. So there is a distinction between standing in opposition to the administration and revolting against the country, the last option of which ought to be secured no matter what.

At the point when found in the present setting, the sedition enactment is by all accounts a provincial bogeyman, with the expectation that people would not harbour hostility against, disdain for, or hate for the government created by law. In its current structure, there is a hazy situation that exists between the genuine enactment and how it is placed into impact. The punishment of activities done against the state or the government that are important for the protection of public order does not need a particular provision in the law. Such situations may need the use of other existing regulations that are less strict but do not serve to counterproductively distinguish and legitimise criminals as political offenders.

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[17] International Covenant on Civil and Political Rights (ICCPR) ,1979 (Article 49).

[18] *Id* at 1.

As a result, it seems that there is no sufficient basis to support the continued existence of sedition offenses in law books considering their obsolescence. It merely serves to weaken the general public's interest. Since their inception, the sedition laws have been portrayed by unclearness and non-consistency, providing enough scope for the ruling class to enforce them in a vague manner, particularly as a weapon to control any speech that is in opposition to their inclinations. The courts have likewise neglected to address the defects in the system, ensuring that the legislation is properly applied, and preventing the law from being used as a weapon of harassment. The elimination of the English sedition legislation should serve as a model for the repeal of the Indian sedition statute, which should be deemed outdated as well. Taking into consideration the above considerations, it is past time for the Indian legislative and courts to reexamine the presence of statutes relating to sedition. These legacies of colonial tyranny continue to exist and serve only to weaken the rights of people to express their dissatisfaction with and criticism of the government in a democratic society.