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Book Review

THE GREAT REPRESSION: THE STORY OF SEDITION IN INDIA

by Chitranshul Sinha, Penguin Viking, India, 2019, pp. 280, ISBN: 978-0670091133

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The Great Repression: The Story of Sedition in India by Chitranshul Sinha, Penguin Viking, India, 2019, pp. 280, ISBN: 978-0670091133.

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The Great Repression by Chitranshul Sinha, an advocate on record of the Supreme Court of India, tells the story of the outdated colonial-era law of ‘sedition’. India has by now witnessed a proliferation of malicious usage of Section 124A of the Indian Penal Code, 1860, which makes ‘sedition’ a criminal offence punishable up to imprisonment for life plus fine. In the last decade, events have swung between fighting for an ideal democracy vis-a-vis acts of ultra-nationalism.

In the opening chapter (Part I: Origin Story) the author states that the system was designed to push forth British intention to facilitate their free-market agenda and less of reform in the otherwise hierarchical socio-cultural milieu of our Indian society. In chapter 2, Sinha draws attention to Jeremy Bentham’s correspondence with Raja Ram Mohan Roy about legal reforms and brings to light the ideas of James Mill and Macaulay in lieu of the same, saying, ‘Macaulay believed that the process of codification should be driven by a small group of veteran jurists instead of democratic assemblies that entails protracted debate which causes delay.’

The significant discussion on the historicity of sedition surfaces in chapter 3 where Sinha highlights the obvious disregard shown to local, pre-existing and uncodified penal laws by the first Law Commission largely influenced by the French Penal Code. There were several external influences which manifested later in the criticism of the draft penal code submitted by the commission and mentioned by the author in the book itself. He further explains how events such as the revolt of 1857 and the rise of Wahhabism sedimented British resolve to include and enact the law on sedition as a part of the penal code. Sinha notes that with a ‘complicated language of the explanation’ the initial enactment of the IPC took place after a decade. “The explanation left a lot to be desired and did not help in curing the vagueness and breadth of the original provision. The courts were left to determine the applicability of the provision with guidance from decisions of British courts on each aspect of the provision.”

Chapter 4 (Part II: Early Life) of the book discusses ‘four trials’ after Section 124 A of the IPC came into force, namely the cases of *Bangobasi*, Bal Gangadhar Tilak, *Pratod* and Amba Prasad. Sinha’s explications about Justice Strachey’s and Justice Ranade’s take on ‘disaffection’ (a ground under Section 124A) as ‘disloyalty’ is particularly intriguing. It brings out the duality in approaches of British and Indian judges of those times. While Justice Strachey’s understanding of ‘disloyalty’ was comprehended as ‘every possible form of bad feeling for the government’; Justice Ranade restricted its scope to ‘a defiant insubordination of authority’ or secret alienation of the people. Through Tilak’s example the author tries to convey how Section 124A can be notoriously stretched to connect two isolated incidents i.e., publication in the newspaper and a murder. Sinha subtly exposes the classic analogy of our current political scenario through this example. Chapter 5 on revolutionary sedition is an eye opener, discussing how Tilak made his popular though unsuccessful submission to the jury in front of Justice Davar who defended him in his first trial, claiming that for sedition to apply in cases of a writer there must be ‘a criminal mind, a culpable indifference to consequences’. Chapter 6 explores the trial of Annie Besant in connection to her role in the Home Rule League where she was convicted under the Section 4 of the Press Act 1910.

This conviction alongside the enactment of Rowlatt Act of 1919 further exposed the high-handedness and malicious designs of the British regime.

In Chapter 7, Sinha adroitly brings forth this transformation by showcasing trials and speeches made by veteran leaders like Gandhi, Nehru and Abul Kalam Azad for whom being convicted under the act of sedition was a symbol of great honour. Gandhi, undergoing his own trial for his writings in *Young India* termed sedition as the ‘highest duty of the citizen’. Echoing his sentiments, Abul Kalam Azad felt privileged in his conviction to belong to that ‘band of pioneers (which) sowed the seeds of such agitation...(and)...holy discontent.’ In Chapter 8 (Part III: Sedition in the Republic), the discussion shifts to the time when the Indian judiciary was facing a serious clout due to two approaches reflected in the ruling by Federal Court’s Justice Maurice Gwyer’s in *Niharendu Dutt vs. The King Emperor* and a traditionalist Justice Strachey-inspired decision by the Privy Council bench led by Lord William Thankerton took an opposite side. ‘Basically, the Privy Council set aside the decision of the Federal Court in the *Niharendu Dutt Case* and reinstated the principle that incitement to violence was not a necessary ingredient for the offence of sedition as defined in Section 124A of the IPC’ (2019: 160). The chapter is interesting with excerpts from Somnath Lahiri’s and Seth Govind Das’s constructive submissions, who along with other notable leaders in the Constituent Assembly successfully rose against the inclusion of sedition as an exception to free speech in the draft report on fundamental rights. Sinha aptly argues that this elimination of sedition from Article 19(2) of the Indian Constitution raised questions about the constitutionality of Section 124 A itself. Ideally, it should have been ‘declared void’ by the Indian Parliament.

Chapter 9, ‘Courting Sedition’, mentions how the Supreme Court of India (SC) had raised concerns at the possible fallout of Section 124A but did not explicitly strike it down. After a few glitches at the level of the High Court, the provision did come up for an assessment by the constitutional bench in *Kedarnath Singh vs. State of Bihar* (1962) wherein a five-judge bench of the apex court ruled that ‘a citizen’s right to criticism will remain intact thereby making the court responsible for drawing a clear line of demarcation between fundamental rights guaranteed under Art. 19 (1)(a) of the constitution and the power of the legislature with respect to the security of the State and public order.’

The court consented with the *Niharendu Dutt* standard but nevertheless declared that Section 124A can be considered within permissible limits of ‘reasonable restrictions’ laid down in Article 19(2) of the Constitution. It further laid down the ‘public order’ test that would make it easier for the Supreme Court to arrive at a conclusion, siding with a limited and rare application of Section 124A. Geopolitical events such as the Indo-China war had been juxtaposed with the *Kedarnath Case* which made the application of Article 19(1)(a) more effective than before. The cases related to Dr Binayak Sen and P. Hemlatha could have exposed the deviations in the ruling of the lower courts in this aspect.

The high court of Manipur noted in *Brij Bhushan, Romesh Thapar and Tara Singh Case* that ‘the amended Article 19(2) enabled the state to make laws imposing reasonable restrictions on freedom of speech in the interest of security of the State, to maintain public order and to prevent incitement of an offence. It relied on the “public order” test laid down in the *Niharendu Dutt Majumdar Case* and accepted that mere criticism of the government without inciting an offence would not be

punishable in the interest of “public order”. In doing so it went with the minority dissent in Brij Bhushan and Romesh Thapar judgments provided by Justice Fazl Ali’ (p.173). In a nutshell, Sinha rightly notes that after ‘sedition’ was dropped from the constitution, section 124A of the IPC should have ideally been ‘declared void’ by the parliament. But that did not happen because ruling parties and alliances across political ideologies were thinking of using it against their opponents under the garb of ‘rule of law’.

Stories on sedition in Chapter 10 highlight events from the past decade of inflicting sedition charges on students who cheered for Pakistan in a cricket match, Facebook posts, cartoonists, journalists, student activists, demonstrations against the Kudankulam nuclear plant and Sterlite Copper to mention a few. Sinha points out the fact that in most of the cases where Section 124A appears to have been misapplied, the problem lies in the ambiguity of the procedure. Another important aspect of the continued presence and (mis)use of the law and the role of the judiciary, including the Supreme Court is highlighted. That is the reason why the Common Cause NGO approached the court in 2016 in connection to the Kudankulam nuclear plant case seeking a mechanism that makes it mandatory for the director general of police to give an order certifying ‘that any alleged seditious act either led to violence or had tendency to incite violence’ before an FIR is registered in a particular case. Till date, sanction from the government is required only before trial and not before arrest under Section 124A.

The final chapter makes a case for a very limited application of sedition, in exceptional circumstances when the ‘nation is under threat of war or any major conflict’. Sinha states in the chapter that to tackle ‘internal security problems’ the law against sedition can be applied only to such notified regions which are affected by the problem. Any such notification must be based on sound evidence and reasons for the application of Section 124A or UAPA (The Unlawful Activities [Prevention] Act, 1967). He further reiterates that the UAPA is enough to be used upon a declaration of Emergency as it covers most of the grounds under sedition law. Sinha considers simultaneous existence of these laws as something that makes ‘little sense’. He quotes Justice Minister Claire Ward’s assertion here ‘Sedition and seditious and defamatory libel are arcane offences—from a bygone era when freedom of expression wasn’t seen as the right it is today’ (pp. 215–16).

Sinha has quoted in his last chapter instances where efforts have been made to repeal or amend the repressive law. In 2011 (during the Congress-led UPA government), the then Rajya Sabha member and now general secretary of the Communist Party of India (CPI), D. Raja, introduced a private member’s Bill to repeal the law, arguing that ‘this section is used precisely against those who fight for the welfare of the people.’ Speaking in the Upper House of the parliament, D. Raja said that ‘(t)his section is being misused mostly against those activists and organisations who are basically working among the poorest of our people. Do you believe that there is a need to have this section even after six decades of independence?’

In response, the then minister of State for Home Affairs justified its continuation citing the 42nd report of the Law Commission, which recommended the strengthening of Section 124A. Requesting Raja to withdraw the Bill, the minister added that ‘the government recognises the imperative need to reform the criminal justice system of the country by introducing a comprehensive legislation in parliament.’ Given the government’s assurance, Raja withdrew the

Bill; it is another matter altogether that the government failed to take any steps with regard to fulfilling its promise. But if we look at the post-Kedarnath sedition cases, the Supreme Court 'guidelines' have been rarely followed by the police and trial courts.

This book is a welcome step by the author towards initiating a scholarly debate with a comprehensive detailing of historically-induced misuse of Section 124A of the Indian Penal Code. However, the book concludes abruptly without outlining what could be done by the different stakeholders. Perhaps a section on oral interviews with people from different walks of life would have been an essential inclusion to the last chapter. Unfortunately, the book does not address relevant questions such as the rationale of retaining Section 124 A and the larger role of media and society in the whole scene. Nevertheless, it is an important book for those interested in modern Indian history, law, politics and policymaking.