

The Offence of Sedition vis a vis Right to Dissent

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Abstract

In today's modern era where the individual rights have gone to a different level and the people have actively started participating in the governance of the country. Laws should be made which is adaptable by people at large but if the law is against the interest of society they can dissent. Protesting is not only a fundamental right granted by the Indian Constitution but protesting injustice is also a moral duty. By now, we are pretty much clear with the fact that the constitution safeguards the existence of Right to protest We are going through two laws one is pre constitutional and other one is post constitutional. Where one gives the right to speak and the other one takes away such a precious right Article 19(1)(a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, "all citizens shall have the right to freedom of speech and expression" The other law is in Indian Penal Code under section 124A. Sedition.—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 And the explanations goes on. When i read this two laws together i feel that the right to free speech is given if you are a mute .or to put it in other way you can speak but you will be allowed to speak only if you don't point out the flaws of the government. Even during the colonial rule, various communities organized public meetings, dharnas, protests, etc that were a sign of protest as to the elimination of the British rule and demand for independent India. The state is on the other hand required to respect and address the protests because the Constitution also makes it necessary for the state to ensure the Fundamental Right to Freedom of speech and expression. There is a need for India to progress and alter its sedition laws in accordance with the transitions in society. Further, given sedition covers a broad ambit of actions, each act should be governed by its individual provisions, rather than one generic offence with such a stringent punishment.

Key words: Sedition – Freedom of Speech – Right to Dissent – Protest – Justice

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Better a thousand-fold abuse of free speech than denial of free speech. The abuse dies in a day but the denial slays the life of the people and entombs the hopes of the race.¹

Introduction

Freedom of Speech and freedom of Expression are indispensable conditions for the full development of the person. They constitute the foundation stone for every free and democratic society. The freedom of speech and expression is the first and foremost human right, the first condition of liberty, mother of all liberties, as it makes the life meaningful. However, freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct. Since, individual's autonomy is the foundation of this freedom; any restriction on it is subject to great scrutiny. Although reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens. The offence of sedition is provided under section 124A of the Indian Penal Code, 1860. The relevance of this section in an independent and democratic nation is the subject of continuous debate.

Freedom of Speech in India

Article 19 (1) guarantees certain fundamental rights, subject to the power of the state to impose restrictions on the exercise of those rights. The Article was thus intended protect the rights of the state action. Other than the legitimate exercise of its power to regulate private rights in the public interest.² The main object of this article is to protect rights of the citizens against the dictatorial governance under the garb of democratic leadership. The relationship between impugned legislation and any of the relevant specified ground must be rational or proximate.³ There should not be any restriction which is vague and unreasonable against the freedom guaranteed under the constitution. The expression public order must be narrowly construed and all acts which disturbs public tranquility may not necessarily be restrained in the interest of public order.⁴ The laws which are against the welfare of the public or which questions their right to reside can be revolted and the government cannot restrict their right to speech under the pretext of reasonable restriction. When the law is impugned as having imposed a restriction upon fundamental right what the court has to examine is the substance of the legislation without being beguiled by the mere appearance of legislation.⁵

The court should look into the object sought to be achieved for which the disputed law was enacted. The words in the law books are not to be applied as it is, and it needs a proper interpretation to avoid injustice upon the citizens. The determination by the legislature of what constitutes a reasonable restriction is not final or conclusive; it is subject to the supervision of the

¹ Jewish Supremacism, Freedom of Speech and My Book Jewish Supremacism, available at <http://davidduke.com/freedom-of-speech/> March 2021 10.10 AM

² *Samdasani PD v. Central Bank of India*, AIR 1952 SC 59

³ *Sodhi Shamsher Singh v. State of Pepsu*, AIR 1954 SC

⁴ *Madhu Limaye v. Sub Divisional Magistrate, Monghyr*, AIR 1971 SC 2486

⁵ *Express Newspapers v. Union of India*, AIR 1958 SC 578

court.⁶ But the media in our country points a particular person as criminal even before the court has a say on it. Though the court starts with the assumption that Legislature is the best judge of what is good for the community by whose suffrage it comes into existence, the ultimate responsibility of determining the reasonableness of the restriction, from the point of view of the interest of the general public, rests with the court and the court cannot shrink its solemn duty cast on it the constitution⁷ the sorry picture is that the court has just taken a step back and not questioning a state action. In fact, the apex court in one of its observations in a case batted in favour of the government and went on to advocate about discouraging petitions under article 32 of Indian Constitution. The test of reasonableness wherever prescribed should be applied to each case. No set pattern of reasonableness can be laid down as applicable to all cases.⁸

At the same time, the Court struck a balance between the right to free speech and expression and the power of the legislature to restrict such right observing thus:

...the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. ... But the freedom must be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

In the case of *Kanhaiya Kumar v. State (NCT of Delhi)*,⁹ the petitioner, charged under section 124A IPC approached Delhi High Court for grant of bail. Deciding upon the issue, the Court observed that while exercising the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, one has to remember that Part-IV Article 51A of the Constitution provides Fundamental Duties of every citizen, which form the other side of the same coin.

In *V.A. Pugalenti v. State*,¹⁰ the case of the prosecution was that the petitioner along with others, distributed pamphlets containing seditious and defamatory statements. The Madras High Court held that calling out public to demonstrate and agitate against the Central and State Governments on the issue of NEET Examination would prima facie constitute the offences of sedition and defamation. At the same time, the Court cautioned the government not to take action against any peaceful protest or criticism or dissent observing that every citizen of the country had a fundamental right to register her/his protest peacefully and to demonstrate, not causing a situation resulting in violence to paralyze the law-and-order situation.

In the case of *Shreya Singhal v. Union of India*¹¹, section 66A of the Information and Technology Act, 2000, was declared unconstitutional on the ground that it was in direct conflict

⁶ *Chintamanrao v. State of MP*, 1950 SCR 759

⁷ *Hanif Qureshi Mohd v. State of Bihar*, AIR 1958 SC 731

⁸ *Pathumma v. State of Kerala*, AIR 1978 SC771

⁹ (2016) 227 DLT 612

¹⁰ CrI. O.P. No. 21463 of 2017, decided on 9/11/2017

¹¹ AIR 2015 SC 1523 81

with the fundamental right of freedom of speech and expression. The Supreme Court held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression is a cardinal value and of paramount importance.

*Union of India & Ors. v. The Motion Picture Association & Ors, etc. etc*¹², the Supreme Court observed: ...free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing viewpoints, debating and forming one shown view and expressing them, are the basic indicia of a free society.

It was observed by Alexander Meiklejohn that freedom of speech makes a democracy vibrant. The focus of Meikeljohn was not free speech, but rather he was an advocate of _right to hear. He argued that to let people self-govern it is very important for them to make an informed and well-researched decision and that is only possible when they will be able to hear every voice raised in the society.¹³

*Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*¹⁴ emphasizing the importance of the freedom of speech the Supreme Court observed:

‘Freedom of speech goes to the heart of the natural right of an organized freedom-loving society to impart and acquire information about that common interest’.

In the case of *S. Rangarajan v. P. Jagjivan Ram*¹⁵ it was held that unless there is danger to the society and public order, the right to freedom of speech and expression cannot be restricted. The Court further held:

The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

Sedition Law under Colonial Rule

The first recorded state trial for sedition is that of *Queen Empress v. Jogendra Chunder Bose*¹⁶ (‘Jogendra Bose’). The Court, in its much-debated judgment, laid down the distinction between ‘disaffection’ and ‘disapprobation’. Disaffection was defined as the use of spoken or written words to create a disposition in the minds of those to whom the words were addressed, not to obey the lawful authority of the government, or to resist that authority. It was also observed that:

¹² AIR 1999 SC 2334

¹³ A. Meiklejohn, *Free Speech and its relation to Self- Government*, Washington: London, 1948, cited in Anushka Sharm, *Sedition in Liberal Democracies*, Oxford, 2018

¹⁴ AIR 1995 SC 2438, see also *LIC of India v. Prof. Manubhai D. Shah & Cinemart Foundation*, AIR 1993 SC 171

¹⁵ (1989) 2 SCC 574; see also *The Superintendent, central prison, Fatehgarh v. Dr. Ram Manohar Lohia*, AIR 1960 SC 633

¹⁶ *Queen Empress v. Jogendra Chunder Bose*, ILR (1892) 19 Cal 35.

“It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling.

Another significant case which had a direct bearing on the 1898 amendment was that of *Queen Empress v. Bal Gangadhar Tilak*¹⁷ (‘Tilak’). Allegations of sedition against Bal Gangadhar Tilak were first forwarded when the magazine Kesari published detailed reports of the proceedings that had taken place at the Shivaji Coronation Festival, during the celebration of which several patriotic lectures and speeches were delivered. It was alleged that these speeches made references to Shivaji’s call for Swarajya (independence) and alluded to the trials of the people under the British rule.¹⁸ Although the Coronation Ceremony in itself was peaceful, the weeks following the publication of the report on June 15, 1897, saw the murder of two eminent British officials.

The meaning of ‘disaffection’ and ‘disapprobation’ was further clarified by the court in *Queen Empress v. Ramchandra Narayan*¹⁹ in which accusations against the editor and proprietor of the Pratod newspaper for publishing an article entitled “Preparation for Becoming Independent”. The Court did not agree with the notion that ‘disaffection’ was necessarily the opposite of affection, but it advocated that an attempt to excite disaffection amongst the masses was to be construed as an attempt to “excite political discontent and alienation from their allegiance to a foreign sovereign.

Kamal Krishna Sircar v. Emperor,²⁰ refused to term a speech that condemned Government legislation declaring Communist party of India and various trade unions and labour organizations illegal, seditious. It was opined by the court that imputing seditious intent to such kind of speech would completely suppress freedom of speech and expression in India. To suggest some other form of government is not necessarily to bring the present Government into hatred or contempt... That does not mean that one may not make speeches of this kind. I do not like quite a lot of things the people do constantly from day to day. That is no reason for suggesting that those people are guilty of sedition or of attempting to bring the Government into hatred or contempt.

Constituent Assembly Debates

From the Constituent Assembly Debates it is understood that there had been serious opposition for inclusion of sedition as a restriction on freedom of speech and expression under the then Article 13 of the draft Indian Constitution. Such a provision was termed as a shadow of

¹⁷ *Queen Empress v. Bal Gangadhar Tilak*, ILR (1898) 22 Bom 112.

¹⁸ Ganachari, supra note 10, 60; See also Siddharth Narrain, “Disaffection” and the Law: The Chilling Effect of Sedition Laws in India, XLVI (8) EPW 34 (2011) (The allegedly seditious report comprised of two sets of publications. The first was a metaphorical poem entitled “Shivaji’s utterances”. It was asserted that strong symbolic parallels could be drawn from the poem insofar as it linked Shivaji’s attempt to attain “swarajya” with the Indian struggle for independence. The second was a compilation of speeches delivered at the Shivaji coronation ceremony. It was believed that these speeches, by referring to the killing of Afzal Khan by Shivaji, sought to justify acts of political assassination and were directly responsible for the murder of Commissioner Rand and Lieutenant Ayherst, both of whom were killed within a week of publication)

¹⁹ *Queen Empress v. Ramchandra Narayan*, ILR (1898) 22 Bom 152.

²⁰ AIR 1935 Cal 636.

colonial times that should not see light of the day in free India. The Constituent Assembly was unanimous in having the word sedition deleted from Article 13 of the draft Constitution. During the discussions Shri M. Ananthasayanam Ayyangar said:

If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether²¹ (Emphasis added).

Shri K M Munshi,²² while speaking on his motion to delete the word 'sedition' from Article 13, quoted the following words of the then Chief Justice of India, in *Niharendu Dutt Majumdar v. King*²³ wherein a distinction between —what 'sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942: This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.

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Post Constitutional Developments

Sedition was not acceptable to the framers of the Constitution as a restriction on the freedom of speech and expression, but it remained as it is in the penal statute post-independence. After independence, section 124A IPC came up for consideration for the first time in the case of *Romesh Thapar v. State of Madras*.²⁴ The Supreme Court declared that unless the freedom of speech and expression threaten the security of or tend to overthrow the State, any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution.

²¹ Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol. VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014

²² 2 Constituent Assembly of India discussions held on 1st December 1948, Ibid.

²³ AIR 1942 FC 22.

²⁴ AIR 1950 SC 124

The Punjab High Court in *Tara Singh Gopi Chand v. The State*,²⁵ declared Section 124A IPC unconstitutional as it contravenes the right of freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution observing that a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about.

By the first Constitutional Amendment two additional restrictions namely, friendly relations with foreign State and public order were added to Article 19(2), for the reason that the court in *Romesh Thapar* (supra), had held that freedom of speech and expression could be restricted on the grounds of threat to national security and for serious aggravated forms of public disorder that endanger national security and not relatively minor breaches of peace of a purely local significance.

In the case of *Ram Nandan v. State of Uttar Pradesh*²⁶ the Court quoted Pt. Jawaharlal Nehru, who while introducing the first Constitution of India (Amendment) Bill 1951, referred to sedition and stated:

Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it.

The constitutional validity of section 124A IPC came to be challenged in the case of *Kedar Nath Singh v. State of Bihar*.²⁷ The Constitution Bench upheld the validity of section 124A and kept it at a different pedestal. The Court drew a line between the terms, 'the Government established by law' and the persons for the time being engaged in carrying on the administration observing: 'Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence.

Similarly, in *Javed Habib v. State of Delhi*,²⁸ it was held: Holding an opinion against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition under Section 124A of the IPC. The criticism of the government is the hallmark of democracy. As

²⁵ AIR 1951 Punj. 27

²⁶ AIR 1959 All 101

²⁷ AIR 1962 SC 955

²⁸ (2007) 96 DRJ 693

a matter of fact, the essence of democracy is criticism of the Government. The democratic system which necessarily involves an advocacy of the replacement of one government by another, gives the right to the people to criticize the government. In our country, the parties are more known by the leaders. Some of the political parties in fact are like personal political groups of the leader. In such parties, leader is an embodiment of the party, and the party is known by the leader alone. Thus, any criticism of the party is bound to be the criticism of the leader of the party.

Private Member's Bill Suggesting Amendment

In the year 2011, a private member Bill titled the Indian Penal Code (Amendment) Bill, was introduced in the Rajya Sabha by Mr. D. Raja. The Bill proposed that section 124A IPC should be omitted. It was reasoned that the British Government used this law to oppress the view, speech and criticism against the British rule. But the law is still being used in independent India, despite having specialized laws to deal with the internal and external threats to destabilize the nation. Thus, to check the misuse of the section and to promote the freedom of speech and expression, the section should be omitted.

Another Private member Bill titled The Indian Penal Code (Amendment) Bill, 2015²⁹, was introduced in Lok Sabha by Mr. Shashi Tharoor to amend section 124A IPC. The Bill suggested that only those actions/words that directly result in the use of violence or incitement to violence should be termed seditious. This proposed amendment revived the debate on interpretation of sedition. The courts through various judgments have settled that the language of this section does not imply that only words, either spoken or written, or signs, or visible representation that are likely to incite violence should be considered seditious

Indian Democracy Under Threat

India is on the verge of losing its status as a democracy due to the severely shrinking of space for the media, civil society and the opposition under the present government, the 2020 'Democracy Report' by the Sweden-based V-Dem Institute has observed.

Set up in 2014, V-Dem is an independent research institute based at the University of Gothenburg and has published a data-heavy worldwide democracy report each year since 2017. As the name suggests, these reports look at the status of democracies in countries around the world. The institute calls itself the world's largest data collection project on democracy.³⁰ For the first time since 2001, autocracies are in the majority and comprise 92 countries that are home to 54% of the global population, notes the report. As with Hungary, Poland, and Brazil, the report states that the developments in India suggest that the "first steps of autocratisation involve eliminating media freedom and curtailing civil society." The report cites "...the dive in press freedom along with increasing repression of civil society in India associated with the current

²⁹ The Indian Penal Code (Amendment) Bill, 2015, available at: <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/2535LS.pdf>

³⁰ The 2020 Report, titled 'Autocratisation Surges'

Hindu-nationalist regime of Prime Minister to illustrate this declining press freedom in India is often in the news with the increased slapping of charges (ranging from sedition to defamation) against journalists, along with increased litigation against news reports and those who write them. Several international bodies have urged for the current government's lenience in this regard. Meanwhile, a Central 'index monitoring cell' has been tasked with examining the whys and how's of India's poor ranking on global press freedom indices and its recommendations are expected shortly.

This is not the first time India's democracy has been called into question by an international watchdog. For instance, in the 2019 Democracy Index released this January, India slipped by 10 ranks to the 51st position a big downgrade. The report was prepared by the intelligence unit of The Economist Group. The Index categorized India under "flawed democracies" which is defined as countries that hold free and fair elections and where basic civil liberties are respected, but have significantly weak governance, an underdeveloped political culture and low levels of political participation.

Partly Free India

Freedom House's Freedom in the World report has downgraded India's status from a 'Free' country to a 'Partly Free' country, giving it 'global freedom score' of 67/100 after judging it on various political rights and civil liberties. The report noted a "multiyear pattern" as it attributed the downgrade from a score of 71 in 2019 and 75 in 2018 to 67 in 2020 to "rising violence and discriminatory policies affecting the Muslim population" and "crackdown on expressions of dissent by the media, academics, civil society groups, and protesters" under the present government. It said criminal charges were filed against journalists, students, and others under "colonial-era sedition laws" and the Information Technology (IT) Act in response to "speech perceived as critical of the government, notably including expressions of opposition to the new citizenship legislation and discussion of the official response to the COVID-19 pandemic".³¹

'Lack of Freedom' in Institutions

The report alleged that freedom of various institutions such as the Election Commission of India and the Supreme Court have been "called into question". "The panel's decisions concerning the timing and phasing of national elections, and allegations of selective enforcement of the Model Code of Conduct, which regulates politicians' campaign behaviour and techniques, suggested bias toward the ruling party."

Talking about the amendment of the Right to Information Act, it said the salaries and tenures of the information commissioners were placed under the control of the central government, "potentially exposing the commissioners to political pressure". It also noted "concerns that the positions (in the commissions) that have been filled are held by ruling-party loyalists".

³¹ NGO Freedom House, which is funded by the US government and conducts research into democracy and political freedom around the world, March 4 2021, The Print

About the functioning of the Supreme Court, the report said several key rulings in recent years “have been favourable to the ruling party”, specifically mentioning the 2019 verdict allowing the construction of Ram Mandir on the site where the demolished Babri Masjid stood.

It also remarked on the transfer of Justice S. Muralidhar in February from Delhi to Punjab and Haryana High Court and appointment of former Chief Justice Ranjan Gogoi to the Rajya Sabha.

Freedom of Media and Expression

The report said the authorities have used security, defamation, sedition, and hate speech laws, as well as contempt of court charges, to “quiet critical voices in the media”. It said reporting has become “less ambitious” under the present government, and that “Hindu nationalist campaigns aimed at discouraging forms of expression deemed ‘antinational’ have exacerbated self-censorship”.

Stating that there was added pressure on media outlets to report favourably, the report noted: “In a March video conference (last year) with the heads of India’s largest newspapers, Prime Minister called on media to help prevent the spread of ‘pessimism, negativity, and rumour mongering’, which many perceived to be a warning not to criticize officials’ management of the pandemic.”

It also claimed that academic freedom has declined, and that academics, professors and students are intimidated. “Academics face pressure not to discuss topics deemed sensitive by the government, particularly India’s relations with Pakistan and conditions in Indian Kashmir.”

	CHANGE	LDI 2009	LDI 2019	REGIME TYPE 2009	REGIME TYPE 2019
Hungary	-0.36	0.76	0.40	Liberal Democracy	Electoral Autocracy
Turkey	-0.36	0.46	0.10	Electoral Democracy	Electoral Autocracy
Poland	-0.33	0.83	0.50	Liberal Democracy	Electoral Democracy
Serbia	-0.27	0.53	0.25	Liberal Democracy	Electoral Autocracy
Brazil	-0.25	0.76	0.51	Electoral Democracy	Electoral Democracy
India	-0.19	0.55	0.36	Electoral Democracy	Electoral Democracy
Mali	-0.17	0.48	0.31	Electoral Democracy	Electoral Autocracy
Thailand	-0.16	0.32	0.15	Electoral Autocracy	Closed Autocracy
Nicaragua	-0.16	0.22	0.06	Electoral Autocracy	Electoral Autocracy
Zambia	-0.15	0.42	0.27	Electoral Democracy	Electoral Autocracy

Arbitrary Detention Haunts the Country at an International Stage

A UN expert panel has concluded that student activist Safoora Zargar, arrested for her alleged role in the northeast Delhi violence last year, should be provided compensation and other reparations by the government as she was arbitrarily detained.³²

The findings of the Working Group on Arbitrary Detention (WGAD), which operates under the office of the UN high commissioner for human rights, were formally released in Geneva late on Friday.

WGAD said Zargar's detention was arbitrary as it went against both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

"The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Ms Zargar an enforceable right to compensation and other reparations, in accordance with international law," WGAD said in its report.

The group asked the Indian government to take steps to "remedy the situation of Ms Zargar without delay and bring it into conformity with the relevant international norms", including those of the Universal Declaration of Human Rights and the Covenant.

In its report, WGAD concluded that Zargar "was deprived of her liberty on discriminatory grounds, owing to her status as a human rights defender, and on the basis of her political or other opinion regarding the Citizenship (Amendment) Act". WGAD urged the government to "ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty" of Zargar and to take "appropriate measures against those responsible for the violation of her rights".

WGAD further said it considers that Zargar was "targeted for discrimination on the basis of her status as a human rights defender and in violation of her right to equality before the law and equal protection of the law under article 26 of the Covenant". The group also considers that Zargar's "political views and beliefs regarding the Government's policies and actions are at the heart of the present case".

The group also referred Zargar's case to the UN Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Law Commission

In August 2018, the Law Commission of India published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code that deals with sedition. However, the Privy Council did not approve what was said by Justice Maurice Gwyer. At this stage, I would also like to refer to the father of the nation Mahatma Gandhi, who in this city of Ahmedabad was charged with sedition. While appearing before

³² Published by Hindustan Times correspondent, Published on March 13, 2021, 9:40 pm IST

sessions judge C.N. Broomfield, Mahatma Gandhi while dealing with the word 'disaffection' had this to say:

“Affection cannot be manufactured or regulated by law. If one has no affection for a 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.”

Conclusion

To conclude, I would say that if this country is to progress not only in the field of commerce and industry but to progress in the field of human rights and be a shining example of an effective, vibrant democracy, then the voice of the people can never be stifled. The right of Freedom of Speech and Expression is an integral right of each and every human being and part of the basic fundamental rights provided by our Constitution, along with a provision to apply reasonable restrictions on the same. There needs to be a proper law drawn between free speech and its misuse. Decriminalizing acts such as sedition or defamation will result in open instigation as well as shattering of people's goodwill and will contradict their fundamental right against exploitation. Moreover, it will give way to the unwanted elements of the society to propagate hate and violence in the citizens. On the other hand, inflexible restrictions may sabotage the very spirit with which the right was granted by our founding fathers. What is required is balance. There is a very thin line between providing too much freedom and providing too little freedom, both of which will take the essence of the right out of it. It is a thin line that the nation needs to walk on and reducing the ambiguity present in Article 19(2) will help achieve it.