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CRITICAL EXAMINATION OF THE USE AND MISUSE OF SEDITION LAW IN INDIA VIS-À-VIS THE TOOLKIT CASE

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ABSTRACT:

The sedition statute, which may be found in the Indian Penal Code under section 124A, dates back to the time of the colonial government. The British were the ones who initially introduced it into the IPC in the year 1870. However, the legislation seems to be misused on several occasions, despite rare conviction. Further, the law is also often contended to be against the freedom of speech and expression enshrined in the constitution The law has been repealed in several other nations, inclusion England. This paper aims to critically examine the sedition law in India through the Supreme Court's bail order in the case of *Disha A. Ravi vs State (NCT of Delhi) & Ors.*

Keywords: Sedition, Bail, Supreme Court, Indian Penal Code 124A

I. INTRODUCTION:

The case of ***Disha A. Ravi vs State (NCT of Delhi) & Ors***[392] found itself in the High court of Delhi after the petitioner, Disha Ravi, was arrested for allegedly engaging in seditious activity and criminal conspiracy. The agency in charge of the investigation purposefully included charges under Section 124A of the Indian Penal Code in order to paint a minor crime as one which is punishable by a life sentence. The application of the sedition law has always been a contentious issue, leading to the much-needed intervention of the learned courts, to apply theirjudicial minds and use their cultivated discretion, to decide upon the various cases put before them.

The analysis below will attempt to showcase how the sedition law is ambiguous, redundant and often misused by the government. The analysis will also illustrate the need for the complete restructuring or withdrawal of the sedition law from the Indian legal system, in order to wholly protect the fundamental right to freedom of speech and expression and maintain the integrity of the legal system.

II. FACTS OF THE CASE:

Disha Ravi is a Bengaluru based climate activist and a founding member of the Fridays for Future campaign in India. In the present case, there was an accidental disclosure of a toolkit when Greta Thunberg, a Swedish environmental activist, on February 5, 2021 shared a Google document inadvertently through a tweet. The toolkit tried to "explain the farmers' protests" against the Narendra Modi government, over the farm laws passed by the parliament in 2020. This tweet was later deleted; however, it became a headliner. The main charge against Disha Ravi is that she edited a Google document shared among activists. The applicant is said to have started a WhatsApp group called "Intl Farmers Strike," and members of that group are said to have altered the document. The applicant is also said to have been a member of a Whatsapp group, which she later supposedly deleted. During the course of the investigation, it was discovered that there was a connection between Disha Ravi and Kisaan Ekta.co (Vancouver) through a group known as Extinction Rebellion, and that the WhatsApp group she founded wasused in furtherance of a request that originated from KisaanEkta.co. On January 11, 2021, a zoom conference was held, and somewhere in the region of sixty to seventy individuals from all around the world took part in it.

[392] Disha A. Ravi v. State (NCT of Delhi), 2021 SCC OnLine Del 822

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The lawyer who was representing the Delhi Police referenced in his argument a website called askindiawhy.com, which is said to have been utilised by "anti-national" elements in an effort to destroy India's image. In their opposition to Disha Ravi's bail, the Delhi Police had also identified a second site called Genocide.org, which detailed alleged breaches of human rights in India.

Shantanu Muluk and Nikita Jacob, along with Disha Ravi, were accused of working together with a pro-Khalistani group to develop a toolkit that would "defame India across the globe on the issue of three Agri laws." This allegation was made against all three individuals. The police in Delhi have asserted that the pro-Khalistani Poetic Justice Foundation is the primary conspirator who is responsible for the toolkit used in an international smear campaign against India. The PJF was also active in the demonstrations against the farm laws that were led by farmer's unions. The "toolkit" allegedly had a significant role in the events that led to the violence that took place at Red Fort on January 26, when protesting farmers and police officerscame into conflict with one another.

The charges against Disha Ravi were brought under sections 124(A), 153, and 153(A) of the code. After appointing Disha Ravi as a counsel from the Delhi Legal team, the court proceeded to hold her hearing in accordance with the established protocol. After that, Disha Ravi petitioned the High Court of Delhi for release on bail.

III. LEGAL ISSUES OF THE CASE:

A. Can the bail application be maintained?

B. Whether the applicant Disha was only engaged in peaceful demonstration and dissent against the farm acts, or is it possible that she was genuinely engaged in subversive operations under the pretext of demonstrating against the aforementioned legislation?

IV. LEGAL HISTORY:

The sedition statute, which may be found in the Indian Penal Code under section 124A, dates back to the time of the colonial government. The British were the ones who initially introduced it into the IPC in the year 1870. It was used against Bal Gangadhar Tilak in 1897, which madehim the first person in India to be convicted of the charge. The law was used to silence the callsfor independence from the Indians. As a result of this case, it was determined that incitement to violence is not a prerequisite for one to be found guilty of the crime; rather, the simple excitement of feelings of hostility toward the government is sufficient evidence to prove one'sculpability.

Post-independence, "sedition" as an offence, was present in a draft of the constitution in1948; however, it was removed prior to its adoption after K. M. Munshi moved for its amendment, which provided for absolute freedom of speech and expression under article 19 of the Constitution. Consequently, the word "sedition" was not included in the final version of the constitution. In spite of this, sedition continued to be a crime under section 124A of the Indian Penal Code.

The High court, in the case of ***Tara Singh Gopi Chand vs. The State***[393] (1951), ruled that section 124 A of the IPC was in violation of article 19 of the constitution, which secures an individual's fundamental right to freedom of speech and expression. In the same year, Jawaharlal Nehru became the first person to successfully alter the constitution. He did so by adding article 19(2), which conditioned the right to freedom of speech and expression on being subject to certain reasonable constraints. It was later decided in the case of ***Debi Soren and Others vs. The State***[394] (1954) that article 19 of the Indian Penal Code is not violated by section 124A of the

[393] Tara Singh Gopi Chand v. The State; AIR 1951 Punj 27 (Z6)
[394] Debi Soren & Ors. v. The State (1954 CriLJ 758)

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Later, in the case of ***Kedar Nath Singh v. The Union of India***[395] (1962), a five-judge Constitution Bench declared that the only actions that can be considered seditious are those that either meant to cause disorder or have a tendency to generate disorder by resorting to violence. Eventually, the government that was led by Indira Gandhi in 1973 became the first one to make the offence a cognizable one. This allowed law enforcement personnel to conduct arrests without a warrant by using sedition as the reason for the arrest.

V. JUDGEMENT:

In his ruling on the bail application, Justice Dharmendar Rana noted that there was no legal impediment to the court's consideration of the immediate bail application. The judge, while citing the judgement from the case of ***Kedar Nath (Supra)*** also explained that the only activities that could be considered seditious in nature are those that would have the intention, or have an inclination to, resort to violent behaviour in order to cause disruptions to public order or peace.It was stated by the judge in the case of ***Arun G. Gowli v. State of Maharashtra***[396], that inferences alone cannot be used to prove a conspiracy. He further pointed out that there is no conclusive evidence linking the petitioner to the violence that occurred on January 26, 2021. To back up the inferences, proof must be provided.

It was also emphasised by Justice Dharmendar Rana that merely interacting with someone whose credentials are in question does not constitute an indictable offence; rather, the reason for the interaction is what matters when determining whether or not culpability should be assigned. In the duration of his social intercourse, a person whose credentials are questionable may engage in conversation with a number of other people. As long as the involvement or communication is legal, people who interact with such individuals, whether unknowingly, innocently, or even fully aware of their questionable credentials, cannot be assumed to be of the same character. This is the case regardless of whether or not the individual is fully conscious of the credentials they hold. Because of this, the accused cannot be presumed to have endorsed the separatist movement or the violence that was committed on 26.01.2021 merely due to the fact that she held in common a platform with people who oppose the legislation. This conclusion can only be reached by resorting to assumptions or conjectures. The judge also stated that perusing the aforementioned "Toolkit" reveals that there is no call for any kind of violence and that people cannot be arrested merely due to their disagreement with the policies of the government. This was in reference to the fact that there is a conspicuous absence of any such call. It is not permissible to use the crime of sedition as a means to soothe the bruised egos of government officials. (***Niharendu Dutt Mazumdar v. Emperor***[397]).

The judge went on to add that individuals have the right to seek an audience in any part of the world while exercising their freedom of speech and expression. Communication is not hindered by any physical locations or conditions. A person has the basic rights to utilise the best methods of transmitting and receiving information so long as such methods are legally sound. As a result, the citizen has access to an audience beyond the country. There is reliance put on the case of ***Secretary, Ministry of I&B v. Cricket Association of Bengal***[398], which was heard before the Supreme Court of India. The judge remarked, with reference to the first page of the aforementioned website askindiawhy.com, that he discovered absolutely nothing offensive in

[395] Kedar Nath v. State of Bihar[4] AIR 1962 SC 95
[396] Arun G. Gowli v. State of Maharashtra, 1998 Cr.LJ 4481 (Bombay)
[397] Niharendu Dutt Mazumdar v. Emperor AIR 1942 FC22
[398] Secretary, Ministry of I&B v. Cricket Association of Bengal 1995 SCC (2) 161

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the said page. The judge also stated that the content that is available on Genocide.org is not ofa kind that is seditious. Additionally, the judge ruled that the formation of a WhatsApp group or serving as the editor of a harmless Toolkit does not constitute a criminal offence.

Furthermore, the court released the accused on bail on the conditions that she post a surety bond in the amount of one lakh rupees (with two guarantors each posting a bond in the same amount) and that she complies with the following conditions:

1) She is required to continue cooperating with the investigations that are now underway andis required to attend the investigation whenever she is summoned by the Investigating Officers;

2) It is strictly forbidden for her to leave the country until she has obtained authorization to doso from the court.

3) She is required to attend in court without fail at each and every step of the hearings before the relevant court in order to prevent any kind of hindrance or delay in the case's progression.

VI. CRITICAL EXAMINATION:

The arguments that are being litigated in this case are not addressing the core problem of the sedition statute, which is a relic of the centuries-long oppression that Indians were forced to endure at the hands of the British. It is necessary to conduct a thorough investigation of the relationship that exists between the sedition provision and the other domestic laws that are in place to safeguard human rights. The citizens of India have the constitutionally protected right to freedom of speech and expression, which is enshrined in Article 19 of the Indian Constitution. One question that has to be answered is whether or not the sedition offences place an unjustified or illegal burden on this right. This is a very crucial and relevant question.Therefore, the problem in the instance of India is not the absence of a guarantee of free speech; rather, the problem is the ease with which free speech can be silenced on the basis of laws that are overly broad anda lack of jurisprudential consistency.

Even though convictions for sedition are rare, the police continue to make bookings and arrestsof persons on the suspicion that they committed the crime. This exemplifies the hazy and unclear nature of the law that governs the situation. There is a need to adopt a narrower conception of the offence in order to draw a clear distinction between what is protected by Article 19 and what falls under the purview of sedition. This can be accomplished by adopting a narrower construction of the offence. The goal is to make the scope of the provision so limitedand specific that it does not permit the unjust prosecution of an individual who was perhaps only engaging in the act of criticising the government or its policies or expressing their dissenting opinion. The decision that was made in this particular case acknowledges this fact and recognises its significance by stating that the expression of differing opinions is an obvious sign of a “healthy and vibrant democracy" and that "people can’t be arrested only becausethey don’t agree with government policies. By deciding that merely affiliation with persons of questionable repute does not constitute a crime, the Delhi Trial court has also made it harder for the state to commence prosecution for sedition.

The inconsistent application of the law also continues to be a cause for concern. The section lacks an integral part of any legally sound law, which is the important aspect of ensuring that the legislation is applied fairly. It is abundantly clear in the contemporary political climate, that there is a tendency for certain sections of society to be unfairly treated and offences may be applied disproportionately or unfairly to the disadvantage of particular groups. The motivation for the same are several, including: stifling of dissenting political opinion, tainting the reputation of certain communities, marginalising and penalising certain minority sections or even evoking a false sense of patriotism amongst people. Further, there is

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also a lack of accessibility to complaint mechanisms for the people who unfairly suffer at the hands of this law. There is a desperate requirement of a comprehensive set of rules and systems that report and record all such incidents and conduct fair and proper investigation of such matters. Such a provision also is likely to hamper inter community dialogue by creating self- censorship of opinions that support an enemy. This is exactly the type of dialogue that is required to encourage understanding and peaceful resolution of differences.

Perhaps one of the most dangerous applications of sedition law is the treatment of it as a benchmark of patriotism. It takes away from the liberty of people to express their love for their country anyway they choose. For some, being patriotic might entail engaging in constructive criticism and debates or loopholes in government policies, and while such an expression of thoughts might be considered harsh by some, the same cannot be labelled seditious. Therefore, in the light of the above stated issues with the legislation on sedition, there is an unquestionable need to rethink and restructure the law, if not completely withdraw it, in order to keep the legal system's credibility and ensure accuracy of justice. This would go a long way in improving inter community dialogue and also help avoid wrongful prosecution of innocent individuals, by protecting their fundamental right to freedom of speech and expression.

VII. IMPLICATIONS:

The verdict of the Court highlights once again how important it is to be able to differ, disagree, and protest, all of which are fundamental components of the freedom of speech and expression. It is reasonable for the Court to make the comment that that sedition-related offence charges cannot be brought to nurse to the bruised egos of the governments and this point is applicable to all democracies in the same manner. The relevance of a citizen's right to discuss and question state policies, or take part in nonviolent demonstrations is vital to the growth of a genuine democracy. In order for a democracy to continue existing, it is of equal significance to acknowledge the right of access to a worldwide audience as an integral component of freedom of speech and expression. As a result of the ruling, this right has been elevated to the highest pedestal, which has the effect of enlarging the scope of the right.

Further, within the scope of its authority, the ruling creates a precedent that is either persuasive or binding. Although the provisional ruling handed down by the high court is open to be challenged and could be overturned by the superior courts, it is possible that this ruling will have an impact on the assessment of cases that are sensationalised in order to silence political dissent through the use of sedition charges by the state. The fact that the verdict respects and cherishes freedom of speech and expression above all else, as well as the freedom of a citizen to demonstrate or dissent, may have an effect on the public's willingness to support the decision.

VIII. NEW DEVELOPMENTS:

During the course of the Supreme Court considering a number of petitions that questioned the constitutionality of the sedition offence, the bench issued an order that will go down in legal history. The sedition legislation, was put on hold by the bench on 11th May 2022. The court expressed that when it comes to Section 124A, they strongly hope and expect that boththe Government at the centre and the States will desist from filing any FIRs, continuing investigations, or taking any other coercive measures while the bill is being considered. It was also recommended that this legal provision not be utilised until after the completion of the ongoing review process. In the event that such instances are registered, the parties involved have the option of going to court. The court is to make a decision about this matter as quickly as possible. The Centre will

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have the authority to issue directives, which may be submitted to the court for consideration and then issued to the states in order to avoid improper application of 124A. Instructions to carry on until additional directives are also provided for the same. Thus, this statute, which dates back to the colonial era is put on hold until the central government reassesses the proviso marking this judgement as one of the mostsignificant ones in Indian history.

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