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“DISSENT AND DEMOCRACY –THE INEXTRICABLE LINK”

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Abstract:

Mahatma Gandhi said - “Every man has the right to hold any opinion he chooses, and to give effect to it also, so long as he doesn’t use any physical violence against anybody”.

Dissent and democracy have always been linked, but in India, this relation has been suffocating in recent years. The indiscriminate application of legislations such as the Sedition and the Unlawful Activities Prevention Act (UAPA) to muzzle dissenting voices has been a noticeable trend in our country.

The framework for comprehending the persistent war on dissent is explained in this article, which also aims to explore current dissent contestations on a national level. What impact do such contests have on Fundamental rights such as freedom of speech and expression, have been dealt in this article. The recent trend of cases that silenced dissent have been traced. It underlines the necessity of dissent in a democratic system and the need to protect it in order for the economy, social, cultural, and political systems to function smoothly.

Keywords:

Dissent, Democracy, Article 19 (1) (a), Sedition, UAPA,

Introduction:

Simply put, "dissent" refers to a "difference of opinion," while "democracy" refers to the "power of the people" in Greek. Dissent has always been an inextricable part of the democratic process. Not agreeing to the majority is normal and in fact it is a personality trait that humans are endowed with. The trait of dissent has always been elevated in a democratic setting, and properly so, for the absence of disagreement is the absence of democracy.

We wouldn't be able to expand our growth frontiers or produce new age thinkers if we do not have the ability to question, challenge or hold the government accountable. Our democratic evolution would be stifled if we remained silently obedient to the old systems. *As Albert Einstein rightly said, "Blind faith in authority is the greatest enemy of truth"*. For, we cannot advance as a society without critical examination. It is through dissent, discussion and exploration of new ideas a society evolves.

While many democracies may not welcome criticism or protests as warmly as they should, dissent is essential for the development of critical and analytical thinking abilities, as well as the emergence of novel perspectives.

Just like any other democracy, India has had dissenting voices almost from the time of pre-colonial era. It is dissenting voices that have inspired the independence movement against the British rule. It is dissent that has given rise to many revolutions that preserved our freedom and promoted tolerance and plurality of thought, it continues to do so.

India's constitution recognizes Freedom of Speech and Expression as a Fundamental Right that all citizens have access to. However recently, The voices of dissent are censored beyond the reasonable restrictions thereby compromising the free speech and expression.

This is a stark reality that has blemished the democratic values of our country. And hence it becomes imperative to revisit our laws and revamp them. For a truly liberal and democratic society rather encourages and explores through discussions and not silence the voices of its people.

*"The blanket labeling of dissent as anti-national or anti-democratic strikes at the heart of the commitment to protect constitutional values and the promotion of deliberative democracy"—
Justice D.Y.Chandrachud."*

Constitutional provisions supporting dissent:

Art-19(1), Part -3 of the Constitution (Fundamental Rights) - sub clause (a) of clause (1) grants all the citizens the right to freedom of speech and expression.

Sub clause (b) provides with the right to assemble peaceably and without any arms.

Sub clause (c) ensures citizens the freedom to form unions or associations¹.

All of them together enable the citizens to express their “Dissenting view” as a part of “Freedom of speech and Expression”. Therefore the “Right to Dissent” inherently stems from Article-19.

However, it is pertinent to note that it comes with reasonable restrictions under the clause (2) which states -

“Nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the

- (a) Sovereignty and Integrity of India
- (b) Security of the State,
- (c) Friendly relations with foreign States,
- (d) Public order, Decency or Morality

The ground "Public Order" and “Incitement to offence” were added through the Constitutional (First Amendment) Act, 1951 to address the circumstances created by the Supreme Court's decision in **Romesh Thappar vs The State of Madras case**². The sense of public peace, safety, and Tranquility is referred to as public order. It is pertinent to note that mere criticism of the government does not necessarily disturb public order³

¹ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (8th edition, 2018).

² 1950 AIR 124.

³ AIR 1953 Hyderabad,277.

(e) in relation to Contempt of Court,

(f) Defamation or Incitement of an Offence.”

It is evident from Article-19 that every citizen is allowed to hold opinions and express their dissent as long as they do not hamper the peace of the society and instill fear or violence in the minds of others against the government. The inherent right to dissent ensures that the government must be able to justify every decision it makes, hallmark of true democracy.

Relentless attack on dissent under draconian laws of sedition and UAPA:

The Uniform Anti-Terrorism Act (UAPA) is a routinized anti-terror law that was intended for exceptional circumstances. It enables for up to 180 days of detention without charge, making it a useful tool for repressing dissidents. It has become a tool to limit freedom of speech and expression in independent India.

The Sedition Act was considered to be a vestige of the colonial period in the mid – 1860s. The undemocratic colonial authority of India was intolerant of any perceived criticism. Organizing and leading a convoy, or even hosting a gathering, was considered a seditious act. Holding an anti-government viewpoint was also a terrible idea.

Gandhiji called Sedition, *“The prince among the political sections of the IPC designed to suppress the liberty of the citizen”*. This statute was used to indict Mahatma Gandhi, Annie Besant and many other freedom fighters who rebelled to the British empire’s grandeur.

The misuse of UAPA is leading to incarceration of lot of persons and the law in its current form is unconstitutional.

In **Javid Habib v. State of Delhi**⁴, the court held that *“Holding an opinion against the Prime Minister or his actions, or criticizing government actions, or drawing inferences from the leader of the government's speeches and actions that the leader was anti-a particular community and in league with certain other political leaders, cannot be considered sedition under Section 124A of*

⁴ (2007) 96 DRJ 693.

the IPC. The ability to criticize the government is a hallmark of democracy. In fact, criticism of the government is at the heart of democracy. The democratic system, which necessitates the advocacy of the replacement of one government by another, grants the people the right to criticize the government. The leaders in our country are more familiar with the parties. Some political parties are, in fact, personal political groups of the leader. In such parties, the leader is the embodiment of the party, and the party is known only to the leader. As a result, any criticism of the party is bound to be directed at the party's leader.”

“Recent Reports based on data from the National Crime Records Bureau (NCRB) details that between 2016 and 2019 the number of cases filed under section 124-A have increased by 160 percent”.

The Indian Government appears to be at odds with its own citizens. The government’s indiscriminate and often selective application of the sedition law (Section 124A) to citizens has several goals:

- To silence dissent
- To persecute and prosecute political opponents
- To target independent journalists, authors, and
- To protect those who pledge support to the current regime

The indiscriminate use of section 124- A and UAPA provisions to label dissent as anti-national has raised serious questions on the constitutionality of these laws which have now become scapegoats in the hands of the government to Attack the voices of citizens. In recent years, Sedition and the UAPA have been weaponized and routinely employed against dissidents of various ruling governments. This rise in the improper use of legislation to silence dissenting voices is a betrayal of democratic values. For a democracy to shine, must be "for the people, by the people, and of the people," not “Government versus Citizens”.

Given the prevalence of indiscriminate arrests and pre-trial imprisonment in India, even if people accused of sedition or any other crimes under the UAPA are acquitted, the procedure is punishing in and of itself. People who are arrested for these crimes almost always end up in prison for a long

time. Judges are hesitant to grant bail to anyone charged with sedition. A judge cannot give bail to an accused person unless the judge has “reasonable grounds to believe” that the accused is not guilty, according to the UAPA. Despite the government’s opposition to sedition and the UAPA, there have been no evidence that they will be rescinded or curtailed.

Judiciary’s stance:

The 2018 Law Commission Report on Sedition had observed: “While it is essential to protect national integrity, it is not to be misused as a tool to curb free speech. Dissent and criticism are essential ingredients for a robust public debate on policy issues as part of vibrant democracy.”

Chief Justice N.V. Ramana recently gave a stern message to the government, stating that section 124A of the IPC may have outlived its usefulness. In a sense, he added, the court has questioned the need for Section 124A – a colonial statute that was used to imprison the Mahatma – to be on the books of a modern democracy. This is a departure from the court’s own Kedar Nath⁵ decision from 1962, which affirmed Section 124A but interpreted it to mean any violent subversion of an elected government. The court will have to reconsider whether this 59-year-old decision holds up in the present era, when the government is employing punitive legislation to put substantial restrictions on free speech.

The judiciary has time and again held that – “Basic criticism of the government cannot be seen as sedition unless the government believes it was calculated to un-determine the respect for the government in such a way so as to make the people cease to obey it”⁶

The Supreme Court has stated that the laws should not be misused to curb speech and directed the states to follow the directions stated during the **Kedar Nath Singh v State of Bihar trial**⁷.

⁵ Kedarnath Singh v State (1962 AIR 955, 1962 SCR Supl. (2) 769.

⁶ Niharendra v Emperor, AIR 1942 FC22.

⁷ 1962 AIR 955, 1962 SCR Supl. (2) 769.

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Various courts have opined that the restrictions under article-19 must be justified on the anvil of necessity. In view of the sedition cases against the individuals expressing dissent -

“There has to be material to frame a charge against the accused. Evidence has to be brought in front of him, which stands the test of cross-examination in the trial followed by a verdict”- S.C Dharmadikari, Retired Judge (Bombay High Court).

Rightly so, especially while the rate of conviction dropped from to 3.3% in 2019 from 33.3% in 2016, according to National Crime Reports Bureau (NCRB)⁹.

Hence, there is no wrong in saying that it is utmost important for the judiciary that every restriction put on exercise of speech and expression be scrutinized carefully to keep at bay unreasonable attack on dissent.

“When dissent is relentlessly attacked Citizenship suffers and Democracy fades away”

On June 24, 2021, **Former Supreme Court Justice Madan B. Lokur** questioned what kind of society is being built in which the families and friends of these incarcerated people face insults about their loved ones being labelled traitors for expressing their dissent.

According to **Justice Gupta**, the courts should intervene under Article 142 of the Constitution and establish guidelines for the use of UAPA, noting that it is a well-known fact that UAPA can be abused.

⁸ Law Commission, Sedition (Law Com CP,2018).

⁹ Ministry of Home Affairs, National Crime Reports Bureau, Crime in India (2019).

Justice Aftab Alam, a retired Supreme Court Justice, stated that by focusing on dissent, the government risks diverting attention away from the actual 3% of terrorism cases. Many lives have been ruined as a result of years behind bars, he added.

He claimed that peaceful protests and acts of violence were grouped together and prosecuted under the UAPA. There is no distinction between the right to dissent and free speech and the crime of engaging in violent acts against the state.

Former Supreme Court Judge Gopala Gowda referred to how the state has made it a battle between terrorism and human rights. He said the courts cannot say they have no power when the state charges people for expressing dissent under UAPA and let them languish in jail.

Recent famous cases – a trend of silencing dissent (In a nut shell).

- **Farooq Abdullah's Sedition**

During a speech on September 24, the petitioner Rajat Sharma accused Dr. Abdullah, president of the National Conference of Jammu and Kashmir, of stating that "in Kashmir, he will get Article 370 of the Constitution restored with the help of China."

Mr. Sharma claimed that Article 370 was removed from the Constitution by a majority vote in Parliament. "Everyone knows that there are only two countries in the world that are attempting to seize the Indian portion of Indian territories, namely China and Pakistan, which means that Farooq Abdullah is attempting to hand over Kashmir to China or Pakistan, which is completely contrary to the provisions of the Constitution and amounts to sedition," his petition stated.

Dissenting against the government does not constitute sedition, the Supreme Court ruled on Wednesday, rejecting a petition to "terminate" Dr. Farooq Abdullah's Lok Sabha membership and charge him with sedition.

A Bench led by Justice Sanjay Kishan Kaul found nothing in Dr. Abdullah's statement "so offensive as to give a cause of action for a court to initiate proceedings."

“The expression of a dissenting view from a decision taken by the Central Government itself cannot be said to be seditious,” the court stated in its order.

● **Disha Tool Kit Case¹⁰**

Disha Ravi, a climate activist, is being held by the Delhi Police for altering and sharing a toolkit with Greta Thunberg, a well-known juvenile anti-climate change activist. Others have been arrested, including activists Nikita Jacob and Shantanu, for working with the pro-Khalistan Poetic Justice Foundation (PFJ) in connection with farmers' union protests over the new farm rules. The toolkit attempted to "explain the farmers' protests" on the Delhi border against the Narendra Modi administration over agriculture legislation passed by Parliament in 2020.

“This is a paper intended to help anyone unfamiliar with the recent farmers' protests in India better grasp the situation and make decisions on how to support the farmers based on their own analysis,” the tool kit stated simply. “This is a booklet intended to help anyone unfamiliar with the recent farmers' demonstrations in India better grasp the situation and make decisions about how to support the farmers based on their own analysis,” it said.

They accused Disha of sedition for speaking out against the government and, in reality, supporting the farmers. She was detained for disseminating a "toolkit" connected to the ongoing farmers' protests against three controversial agriculture policies.

“Law prescribes only such acts that would be intended, or have a tendency, to produce unrest or disturbance of public peace by resort to violence,” the judge said in response to the judge's interpretation of the word "sedition”.

There is no direct link between the purportedly seditious speech and the ensuring public disruption in the current situation. The speech was given to improve the people's situation or secure change through legal means.

In the current situation, the protest toolkit does not push protestors to use violent tactics or to take part in actions to "overthrow the government" or "cause public disruption." The toolkit's

¹⁰ Disha A. Ravi Vs State & Ors.

guidelines, on the other hand, instruct people to use legal forms of expression to build worldwide momentum around the protesting farmers '.

- **Umair Khalid's Case:**

On September 14, 2020, Umair Khalid, an activist, was charged under the UAPA Act for his involvement in the sedition case at Jawaharlal Nehru University for allegedly making "provocative comments" during American President Donald Trump's visit to India. He was accused by the authorities of being a participant in the Delhi riots over the CAA. His statements were interpreted by the Delhi Police as encouraging and facilitating Delhi riots – 2020 in order to provoke public violence in violation of the Act. People discovered Umair did not say anything provocative after the whole video footage of his address was posted on digital sites. This is incompatible with the ethos of deliberative democracy. The arrest and usage of the sedition statute were widely criticized as a repression of political dissent.

- **Aseem Trivedi Case¹¹:**

In the context of the Anna Hazare protests in the Bandra-Kurla complex (BKC) in November 2011, Trivedi was arrested for sedition for exhibiting cartoons. Amit Katarnayea, legal adviser to a Mumbai-based NGO, has filed a complaint against the arrest.

The cartoons portrayed the National Emblem and Parliament negatively. He was charged with defaming national symbols.

He stated - "I don't require any counsel. I can't even remember which of my sketches was used to apprehend me. The police arrested me for expressing my displeasure with the government. And if I am accused of expressing my opinions, I would rather be imprisoned than enjoy my freedom in this manner."

The court has said "*Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people.*" The fundamental freedom under Article 19(1)(a) can be reasonably restricted for the purposes mentioned in Article 19(2) and the

¹¹ Sanskar Marathe Vs State of Maharashtra.

restriction must be justified on the anvil of necessity and not the quicksand of convenience of expediency. *Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others.*

His arrest sparked widespread outrage, with civil society and political leaders from across the political spectrum rushing to defend his right to free expression and condemning what they called a government crackdown on dissent.

- **Dr. Binayak Sen Vs State of Chhattisgarh**

A court in Chhattisgarh sentenced Dr. Binayak Sen, a vocal critic of the state government's counterinsurgency policies against the Maoists, to life in prison for sedition in December 2010, despite finding no evidence that he was a member of any outlawed Maoist group or that he was involved in violence against the state, Sen has filed an appeal against the verdict. While granting him bail, *the Supreme Court upheld the right to dissent once more, saying Sen's possession of Maoist literature did not make him a Maoist: "We are a democratic country." He may be a sympathizer. But that does not make him guilty of sedition.*"

- **Arun Jaitley v. State of Uttar Pradesh¹²**

Mr. Arun Jaitley, a well-known politician, was charged under the Section 124A for criticizing the Supreme Court's decision in the National Judicial Appointment case. The Allahabad High Court's Single Judge Bench dismissed a charge of sedition against the Finance Minister Arun Jaitley in the National Judicial Commission Act case. In dismissing the complaint, the Court stated:

“A citizen had the right to criticize or comment on the government in any way he saw fit, as long as he did not incite others to violence. The purpose of this article is simply to express the author's opinion and point of view on the importance of striking a balance between the functioning of two important pillars of the country. It is not, without a doubt, a call to arms.”

¹² 2015 SCC Online All 6013

- **Balwant Singh v. State of Punjab¹³:**

On the eve of Mrs. Indira Gandhi's assassination by her Sikh bodyguards, two people raised slogans like "Khalistan Zindabad" and "Raj Karega Khalsa." The Court in this case ruled that the individuals could not be charged under the Section because their actions were merely the "casual raising" of some slogans with no intent to incite people to cause public disorder.

- **Farm Laws 2020:**

The Farm Laws 2020 incident is a recent example. Farmers in Punjab have been protesting the implementation of the government's agricultural amendment laws. These laws limit the government's involvement in the sector, making it vulnerable to competitors from the private market. The government sent in police to keep the farmers from carrying out their protest activities.

The court order stated unequivocally that farmers' organizations "shall" participate in the committee's discussions and provide their opinions.

“The representatives of all farmer organizations, whether they are protesting or not, and whether they support or oppose the laws, shall participate in the committee's deliberations and present their points of view,” it stated.

Take away:

The time has come to put a stop to this illegitimacy. Every person has the right to question, criticize, verify and demand accountability from the government. These rights should never be taken away because otherwise we would become a lethargic society incapable of further development. Authorities should not use sedition to infringe citizen's fundamental freedoms of speech and expression. We must all be willing to accept criticism. There would be no work other

¹³ AIR 1995 SC 1785

than contempt procedures if judges of the superior courts took note of all the disrespectful messages they received.

There will be improvement if there is criticism. When we criticize, we can discover that many of the decisions we make can be improved. Criticizing the executive, judiciary, bureaucracy, or armed forces is not considered as anti-national. We fail to function as a nation when the executive, legislature, and judiciary do not work together to protect constitutional and democratic norms. It is the youth's future that is at stake, as the youth are unavoidably the ones who will inherit the future. There is a rise in voices from the citizens to judges, asking to put an end to sedition and stop misuse of uapa, rightly so, it is high time that India should now put an end to unconstitutional laws and uphold democracy above anything.