

Editorial

Tuesday, September 10, 2019

Of nationalisms, patriotisms and the crime against nature

The new world today is facing serious threat as the essence of patriotism and theory of Nationalism now has been a tool, which is considered the only way to show one's community existence and also to showcase their pride. Most country now face problem of separatist movement and recently, Hong Kong witness a rise for their freedom from the hand of Chinese supremacy. India witness a crisis in Jammu and Kashmir in its effort of makes the country a one nation. There are also any countries who are working whole heartedly to strengthening their so call nation using all means. The International body - United Nation now seems to be a name shake organization which cannot intervene to any of the anti humanitarian crime committed by any country for their own benefit. When all seems right from each country perspective, an issue which might put the entire human race into deep trouble seem to be forgotten to discuss. It is about the burning of Amazon Forest in Brazil. The American President seem to back the Brazil president in the regard. For sure if the Amazon Forest is rooted from the globe, the entire planet is going face problem of non availability of Oxygen which is needed by every living being in the planet.

Well Every year, a certain day is dedicated and observed as "World Environment Day" throughout the world. The irony, however is that it would not be far from the truth to say that everybody is feeling the consequences of the damages man has inflicted on the environment right this very minute. But the uncomfortable truth is that unless we start doing something concrete to reverse if possible, or contain the damage, the rise in temperature and the consequent disruptions in the natural climatic cycle will continue at an increased rate. That is not a very rosy picture, and yet precious little has been done on the ground to slow the ravages of man on our ecosystem. There is bound to be a conflict of interest between conservation of environment and development as has been witnessed countless times before, an inevitable crossing of paths arising out of necessity. But such conflicts need not result in disaster or damages though that has been the case so far. All it needs is proper understanding and earnest effort to bring about a cohesive system where nature and environment can be integrated into the developing world. It has now become a chick or "the in thing" to flaunt one's eco-friendly lifestyles. This says a lot for the changing mindset towards our environments- a welcome change for sure, compared to the wanton destruction of forests and natural greeneries a few years earlier to make way for concrete structures and artificial jungles of concrete and glass.

But the most emergent question everybody needs to be asking at the moment is: is dedicating a single day of the year to reaffirm our commitment and responsibilities towards our environment enough to make the necessary and desired changes? The answer couldn't be any clearer. This year, we have witnessed and experienced one of the worst floods in recent years, and the more relevant point that needs to be looked into is the frequency of the disaster. As of today, we have experienced flood situations at least four times in the state, the most recent one wreaking havoc at Senapati District, destroying, among others, an orphanage and leaving the kids with just the clothes on their backs.

The effects of the wrath of nature cannot be stressed enough. While it would not be possible or practical to expect the government to set things right and make plans to ensure that such calamities does not occur, there are areas where the government, both at the central and the state level, can look into and take up concrete steps to minimize the effects and contain the damage. Yet whatever has been done so far by way of any and every efforts towards addressing the issues, almost all of them turned out to be just another excuse by the contractors, engineers and others involved in the process to serve their own self-interests. The need of the hour, on the other hand, should be to implement a consistent plan to help nature and our environment to heal. This will undoubtedly prove easier said than done, but greater challenges have been successfully met and overcome with cooperation, dedication, a sense of purpose and resilience.

Meanwhile, making informed judgment by everyone of us, in the way we choose eco-friendly products and organic foods that does not contaminate the soil and water, to that of choosing things which are made locally instead of the ones that has been flown halfway around the world, as also inculcating a more evolved civic sense could make a much bigger and significant difference than we think possible.

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Justice Deepak Gupta: Law of Sedition Needs to be Toned Down if Not Abolished

"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.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section." (emphasis added)

When Section 124A was first introduced, we were told that this provision was not to curb legitimate dissent but was to be used only when the writer or the speaker directly or indirectly suggested or intended to produce the use of force. Another reason given was that there was a Wahabi conspiracy by a man who had preached jihad or holy war against Christians in India and therefore the need to introduce such a provision.

Though Section 124A was inserted for fear of Muslim preachers advocating jihad or religious war, it was initially used against Hindu leaders. The first such case was of Jogenra Chunder Bose where, in a newspaper called Bangobasi, the editor objected to the English rulers raising the age of consent of sexual intercourse for Indian girls from 10 to 12 years. While charging the jury, the learned chief justice explained the law to the jury in these terms:

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. 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 the intention to create such feeling."

The British used the law of sedition to curb any demand for independence. In the case of Lokmanya Tilak (Queen Empress v. Balgangadhar Tilak, ILR (1898) 22 Bom. 112) which was tried by a jury, the presiding judge, Justice Strachey, while explaining to the jury the meaning of sedition had this to say:

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are "feelings of disaffection"? I agree with Sir Corner Petheram in the Bangobasi case that disaffection means simply the absence of affection. It means hatred, enmity,

dislike, hostility, contempt and every form of ill-will to the Government. "Disloyalty" is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find that either of the prisoners has tried to excite such feeling in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realize another point. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite enmity or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope." (emphasis added)

A similar provision existed in the laws in England. However, in England this offence was a misdemeanour, meaning a petty crime punishable with imprisonment up to 2 years, but for subjects in the colonies including India, the punishment was "banishment for life", which essentially means life imprisonment.

The difference is stark and the reason for this difference is that in England the Crown was dealing with its own citizens and in the colonies, it was dealing with people whom it did not consider to be its own citizens but those who were being ruled by it. Both were obviously not equal.

Though in India the directions of the judges to the jury gave a very wide meaning to the word 'sedition', in England, at the same time, the interpretation given to sedition, was (in Revv. Aldred, (1909) 22 CCLC 1), as under:

"Nothing is clearer than the law on this head - namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the state, is guilty of publishing a seditious libel. The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form....."

The difference in the approach while interpreting the word 'sedition' between the citizens of the mother country and the colonies is writ large. Criticism of the government without any incitement or encouragement to use physical force or violence - which would not be an offence in England - would somehow tantamount to be an offence in the colonies though the language used was the same. It is said that English is a very strange and difficult language and any word can have two meanings. But here the double meaning was not due to a problem in semantics but where and against whom the law was being applied. A lenient view against citizens and a harsh view against the colonized.

Another important decision on the law of sedition is in the Niharendu Dutt Majumdar's case (Niharendu Dutt Majumdar v. The King Emperor, (1942) FCR 38) when Chief Justice Sir Maurice Gwyer of the Federal Court held:-

"Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek as the phrase is, to bring government into contempt. This is not made an offence in order to minister to the bounded vanity of governments, but because where government and the law cease 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."

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 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, that be, must be permitted. Majoritarianism cannot be the law. Even the minority has the right to express its views.

We must also remember that in India we follow the first-past-the-post principle. Even governments which come in with a huge majority do not get 50% of the votes. Therefore, though they are entitled to govern or be called as majority, it cannot be said that they represent the voice of all the people.

There is another very important aspect of this interplay between freedom of expression and the law of sedition, and here I would also discuss the offence of creation of disharmony under Section 153A and criminal defamation under Section 499-500 IPC.

Sedition can arise only against a government established by law. Government is an institution, a body and not a person. Criticism of persons cannot be equated with criticism of the

government. During the dark days of the Emergency, an attempt was made by one party president to equate his leader with the country. That attempt miserably failed and, I am sure that no one will ever try in future to equate a personality with this country of ours which is much bigger than any individual. Criticism of senior functionaries may amount to defamation for which they can take action in accordance with law but this will definitely not amount to sedition or creating disharmony.

The law of sedition is more often abused and misused. The people who criticise those in power are arrested by police officials on the asking of those in power and even if a person may get bail the next day from court, he has suffered the ignominy of being sent to jail. The manner in which the provisions of Section 124A are being misused, begs the question as to whether we should have a relook at it. Freedom of expression being a constitutional right must get primacy over laws of sedition. Sedition is a crime only when there is incitement to violence or public disorder. That is what the law of the land is as laid down in Kedar Nath Singh's case.

Sadly, day in and day out we read of people being arrested in different parts of the country for making cartoons, making not so complimentary references about the heads of the State, etc. The police always claim to be short of forces when questioned about the adverse law and order situation in various parts of the country. Trials in criminal cases of rape, murder and crimes falling under POCSO carry on for years on end because police officials do not have time to even depose before the courts but when it comes to sedition or Section 153A or implementing the provisions of Section 66A of the Information Technology Act (which has been declared unconstitutional), there seems to be no shortage of manpower and the police acts with great alacrity. It is, thus, clear that there is one set of rules for the rich and the powerful and another set of rules for the ordinary citizens of the country. In a country which professes to live by rule of law, this cannot be permitted.

The last few years have given rise to a number of cases where the law of sedition or creating disharmony have been misused rampantly by the police to arrest and humiliate people who have not committed the crime of sedition as laid down by the constitution bench of this court.

In 2011, the Mumbai police arrested Asim Trivedi, a cartoonist for circulating a cartoon which allegedly poked fun at the constitution and the national emblem in an anti-corruption rally organised by Anna Hazare. This led to the Bombay high court issuing directions to the police that before arresting a person on charges of sedition the senior officials should be consulted. The Bombay high court held:

"15...it is clear that the provisions of section 124A of IPC cannot be invoked to penalize criticism of the persons for the time being engaged in carrying on administration or strong words used to express disapprobation of the measures of government with a view to their improvement or alteration by lawful means. Similarly, comments, however strongly worded, expressing disapprobation of actions of those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. A citizen has a right to say or write whatever he likes about the government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the government established by law or with the intention of creating public disorder. The section aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.

(To be Contd.)