

Chitranshul Sinha, *The Great Repression: The Story of Sedition in India*

(Penguin Viking, 2019), pp. xxii + 262, Price Rs 499

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India has a long tradition of lawyers who have written deeply researched narrative, legal or constitutional histories, often centred on free speech issues, for a general audience. Soli Sorabjee, AG Noorani, Rajeev Dhavan, Gautam Bhatia, Abhinav Chandrachud and Rohit De are the most prominent examples, the last three having published their books in the last three years alone. Their interest in contemporary legal issues and battles takes them to the terrain of history, from where they are able to derive both insights and arguments about the present state of affairs, and often about corrective or desirable legal reform. Sinha's book on sedition is part of this tradition. Its dedication – to “seditionists” to whom we owe our freedom – as well as the prologue and epilogue make it amply clear to the reader that the author will take us on a journey into the past with a map that will very much lead us back to the present.

The story that Sinha tells fluently is organized around several chronological milestones: 1860 (when the Indian Penal Code was enacted, but without a sedition clause), 1870 (when the clause – section 124A – was added), various amendments to it (two before independence and four afterwards, the last being in 1955), the Constituent Assembly Debates (1946-49), the first amendment to the Indian Constitution (1951), and the landmark Kedarnath judgment of the Supreme Court in 1962 (which emphasized that violence or incitement thereof – and not mere criticism of the government – was a necessary constituent of the offence of sedition). The first and shortest part of the book confines itself to a discussion of how sedition came to be regarded as an offence both in Britain (where a penalty for “creating discord” between the King and his subjects had existed since the 13th century) and in India, and how the codification of law in India proceeded during the course of the 19th century. The second part of the book focuses on the period between the 1890s and the 1930s. The chapter where Sinha retrieves

and recounts the story of four major trials for sedition in the 1890s makes for fascinating reading, as judicial pronouncements and hair-splitting over terminology and exception clauses are interspersed with excerpts from material deemed seditious. In addition to a detailed discussion of the Sedition Committee's report of 1918 (the so-called Rowlatt report), a lot of space is devoted to the three trials of Bal Gangadhar Tilak for his publications (in 1897, 1908 and 1916), as also to those of Gandhi, Nehru and Azad for their writings and speeches. The last part of the book covers the period from the year preceding Indian independence till 2018. Using numerous case studies, this chapter highlights the inconsistencies, paradoxes and willful misuse of the provision. Sinha also describes – and decries – the lack of clarity (or indeed, uniformity) among interpreters of the law, as well as law-enforcers, about what exactly constitutes the offence.

With extracts from legal judgments from the 1890s onwards, as well as brief excerpts from written or spoken material that led to the imposition of charges of sedition, Sinha fills in the reader on details of what would otherwise have become dry elaboration of legal principles. He pays careful attention to two themes within the judicial discourse on sedition, in both the colonial and post-colonial periods. One was/is the question of “intention”. Is it important to prove intention to convict a person on trial for sedition? If so, how is intention to be proved? One judicial view was/is that the result itself proved intention. That is, an assassination of a government official was in itself enough to prove that the intention of a particular author on trial was to obtain that result. The other was/is the question of “disaffection” against the state. Was disaffection the same as disloyalty leading to acts prejudicial to the state? Or was it merely the lack of affection? These two keywords have animated judicial pronouncements on sedition and through an analysis of various trials, Sinha is able to bring out the multiple

perspectives, agendas and outcomes that result from divergent interpretations of these terms.

The narrative is punctuated with fascinating details. We learn that the etymological origin of the term sedition is linked to "riot". We learn that truth was, and is, not a defence under section 124A. In other words, a spoken or written claim which a writer/speaker could prove to be true would not nullify the charge of sedition. We learn that Jinnah represented Tilak in the Bombay High Court on more than one occasion during the latter's trials for sedition, and it was the celebrated reformer Justice Mahadev Ranade who denied him bail on one occasion. We also learn that the same lawyer (Sir Dinshaw Davar) who represented Tilak in his first sedition trial was the one who (using a different set of arguments, naturally) sentenced him during his second trial (in his capacity as Judge of the Bombay High Court). We also learn that since sedition did not find mention in the Indian Constitution, successive Parliaments of Independent India could in fact have repealed the provision from IPC if they so wished. Sinha's training as a lawyer allows him to retrieve both well and lesser known cases from High Courts as well as the Supreme Court (and, for the pre-Independence period, from the Federal Court and even the Privy Council) in order to illustrate the diversity of opinion among various judges at various points in time about what exactly sedition was (and was not). These opinions point to the great subjectivity – and therefore danger – of such a provision. Contemporary data from the National Crime records bureau, and (in)famous sedition cases from the last decade or so, complete the story that Sinha seeks to narrate.

The challenge of writing accessible narrative history is always to go beyond historical reconstruction – fascinating as that may be – and derive insights and possibly generalizations of value from the mass of material. Sinha does this very well in the last seventy pages of the book,

set in the post-independence period. However, the bulk of the book (about 150 pages) covers events in the colonial period and some chapters seem to end abruptly with an anecdote rather than with the author's elaboration of what his case studies may mean with respect to the bigger canvas that he has chosen to explore. References to secondary material, especially pertaining to the colonial period, are basic but adequate for a general picture of the period and for landmark events and personalities.

The gulf between academic and popular histories is a wide one. Academic historians are constrained by the demands of their profession to go into great depth and detail, explore multiple perspectives (including contradictory or opposing ones), ideally look for novel sources, and engage with the most recent as well as landmark literature in the field. It is the rare and commendable academic historian who is able to do all this and still write in a way that both enthuses and enlightens a non-academic reader. Popular histories based on synthesis of academic research, as well as on retrieval of historical episodes and their fast-paced narration, are therefore better able to convey a more vivid picture. Sinha succeeds admirably at this exercise. His forays into the past are clearly motivated by a desire to understand the present better, and to suggest remedies. Having picked up a theme and then described its evolution over the colonial as well as the post-colonial period, Sinha tells a story of both change as well as continuity.

This book is a good resource for readers engaged with or concerned about debates over free speech in contemporary India (and not necessarily enjoying familiarity with modern Indian history). It is also useful reading for journalists or early-career scholars who wish to research or write about sedition in India beyond merely castigating it as a colonial legacy, and with a better sense of the how the law as well as its application have evolved over the last 150 years.