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The Trial of the Colonial Legal Order: The Tilak Trial 1908 and the Colonial Fiat

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ABSTRACT

The paper seeks to accentuate the case of Lokmanya Bal Gangadhar Tilak's trial and the functioning of the colonial legal order. This paper would try to bring out some grave complexities of the colonial legal order in the context of Bal Gangadhar Tilak's trial proceedings and how the court trial discourse perplexed the meaning of the imperial law and justice which was then ascribed to be universal. This study of jurisprudence would highlight the marked indifferences in the legal operation between the metropole and the colony. The major argument of this paper is that it was not Tilak who was found guilty or not guilty but through Tilak, the colonial legal regime was tried and checked to be guilty or not. The trial proceedings of Tilak ostensibly establish that it was not Tilak who was defending himself rather the colonial legal regime which was questioned and was found to be guilty of its glaring prejudices. The trial then became an event where the colonial law and its impartial "universal" judiciary was challenged, and the prejudiced visage of the colonial justice was observed with its final verdict.

Keywords: *Political Trial, Sedition, Section 124 A, Jury, Colonial Justice, Freedom of Expression, Press, Disaffection, Intention, Liberty, Translation, Anti-Colonialism.*

I. INTRODUCTION

With the growing anti-colonial struggle and the ripening of nationalism with a radical voice accelerated the merging up of Hindu ideals with the idea of nationalism. The mixing-up of one religion with the idea of nationalism brings out more concrete community support and solidarity towards the cause of the struggle. Bal Gangadhar Tilak was one of such personality who advocated the nationalism which was not a moderate type, asking for the legislative right for representation. He advocated for *Swaraj* or self-rule and a radical consciousness towards the cause of freedom. Tilak firmly believed that a healthy veneration of the old gods and the national heroes like Chattrapati Shivaji would best infuse a true spirit of nationality and patriotism. In 1895, Tilak came to be associated with the Shivaji commemoration movement which was alluded in his article, *Kesari*.

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It was in the backdrop of the severest famine that took place in 1896 and the plague, Tilak's role as agitator were consolidated against the repressive measures of the colonial state. He wrote a series of articles criticizing the official conducts on land tax in the famine and for not implementing the Famine Relief Code. The Epidemic Diseases Act was passed in 1897 considering the fact that a bubonic plague struck in Poona in 1897, to bring down the spread of the disease, Walter Charles Rand, the special duty officer, adapted repressive measures causing huge resentment among the masses. Due to these repressive measures, Rand became the target of revolutionary activists named Chapekar Brothers and he was killed, whereas Damodar Chapekar was convicted and hanged, which resulted in striking more anger in the masses and in return, more repression by the government. Tilak in turn wrote articles in Kesari, condemning the repressive acts adopted by Rand before the murder and also wrote an article on the killing of Afsal Khan by Shivaji and justified it as a heroic moment which in turn created intense excitement, especially in the Anglo-Indian Community of Poona and Bombay. Tilak was arrested on 26th July 1897 with the charges of sedition, and in the final verdict, he was found guilty by the court and was sentenced for eighteen months rigorous imprisonment.²

II. THE HARDSHIP

The more the country was experiencing the repression of the colonial regime, the more rigorous forms of challenges were disposed to the authority by the colonial subjects. Vernacular newspapers were questioning the authority of the government, with the articles in the newspapers, the educated youth were more and more becoming aware of the repressive measures and policies, in turn, revolutionary activities were increasing day by day against the government and its rule. The authorities wanted to quash these challenges and to root out its opposition, the British Indian Legislature passed two particularly repressive laws on June 8, 1908: the Explosive Substances Act, laying heavy penalties, including transportation for life, if as much as intent or attempt to cause violence was established, even if no explosion actually took place; and the Newspapers Act, giving magistrates the right to confiscate newspaper presses and imprison editors for sedition, if the incitement to violence against the colonial state was proved. A series of sedition trials ensued in 1908, resulting in the imprisonment and transportation of a number of editors of important Indian newspapers such as *Swaraj*, *India*, *Vande Mataram*, *Yugantar*, *Hind Swaraj*, *Vihari*, *Arunodaya*, and *Kal*. Bal Gangadhar Tilak was the most important and famous of these editors who came under the disciplinary gaze of

² Narsinha Chintaman, Kelkar (ed.). *Full and Authentic Report of the Tilak trial. (1908). Being the only authorized verbatim account of the whole proceedings with introduction and character sketch of Bal Gangadhar Tilak together with press opinion* (Bombay: N.C. Kelkar at the Indu-Prakash steam press, 1908).

the colonial state.³

With the split of Congress and the ripening of the revolutionary nationalism, an event heightened the anxiety of the state when a young revolutionary named Khudiram Bose, from Bengal, attempted to assassinate a British judge, Magistrate Douglas Kingsford, by throwing a bomb on the carriage, but mistakenly resulted in the death of two British women. Khudiram Bose was sentenced to death.

It was against this backdrop, Tilak wrote a series of the article named *देशाचे दुर्दैव*, *the country's misfortune* on 12th May 1908 and *हे उपय तिकाऊ नाहीत*, *these remedies are not lasting*, on 9th June and *बाँबगोल्याचा खरा अर्थ*, *the real meaning of the bomb* on 26th June 1908 and *बाँबगोल्याचे रहस्या*, *the secret of the bomb* on 2nd June 1908 in *Kesari*. He was charged in the first instance under section 124 A of the Indian Penal Code with regard to an article published on May 12th and the next charge is again one of sedition under the same section with respect to an article dated June 9th and the last charge was under 153A and is one of exciting feelings of hostility between different classes of His Majesty's subjects.⁴

III. THE COLONIAL INDIFFERENCE

There are some crucial aspects to be noticed when the trial began, firstly, the appointment of the special Jury, which was opposed by the/ defendant and the accused, Bal Gangadhar Tilak. It was opposed because with the special appointment of the Jury, it could be observed that the majority shall consist of Europeans and therefore, it would not fit for the case because the journal *Kesari* addressed the issues in Marathi language and the case on which the trial was to take place was based on the translation of the articles written in Marathi. So, it would have been better if the jury consisted of some Marathi jurors so that a deep understanding could be tested and judged in the court. If we look at the history of the Jury, we find that in the history of England, the Jury Act of 1792, was the statute that safeguards the liberty of the English people in matters of speech, in matters of meetings, of public discussion and the public writing. The jury was appointed to safeguard the rights of the accused. Albeit, the jury consisted of 7 Europeans and 2 Parsis, Tilak presented his arguments to the jury and not to the judge. The motive behind this act was that Jury was taken as people who were responsible to find out the

³ Mukherjee, Mithi. *Sedition, Law and the British Empire in India: The Trial of Tilak (1908)*. Law, Culture and Humanities. Sage Journals, 2017

⁴ Narsinha Chintaman, Kelkar (ed.). *Full and Authentic Report of the Tilak trial. (1908). Being the only authorized verbatim account of the whole proceedings with introduction and character sketch of Bal Gangadhar Tilak together with press opinion* (Bombay: N.C. Kelkar at the Indu-Prakash steam press, 1908). The Judge's summing up and the charge to the Jury, Pg 2.

intention of the accused behind the act of Seditious Libel and another reason for which he pleaded the jury was that, as highlighted by Mithi Mukherjee, as a discourse, he situated jury as a nation, therefore, Tilak found it better to address the nation in the courtroom and not the judge⁵.

The colonial indifference could be seen from the fact that in contrast to a common jury, a special jury is selected from a special list of persons with a restrictive qualification. While in England, special juries could denote a jury of experts, such as a jury made up of merchants for hearing commercial cases, in colonial India, special juries had the sole function of maintaining the racial privilege of Europeans and colonial administrators in deciding important criminal cases, particularly cases of seditious libel. It is significant that, unlike Europeans, Indians could not claim the right to be tried by a jury made up of a majority of their countrymen and peers.⁶ It is evident that the appointment of the special jury in this case in the colony is political and worked as an empowerment to the European minority.

The second aspect that is worth considering is that the implementation of section 124 A and its legality. Section 124 A reads “whoever by words either spoken or written or by visible representation or otherwise brings or attempts to bring into hatred and contempt, or excites disaffection towards His Majesty or Government established by Law in British India, shall be punished with transportation for life or shorter terms to which fine may be added or with imprisonment et cetera to which fine may be added or with fine”. Tilak divided the section into three parts, first “whoever by words either spoken or written or by visible representation or otherwise brings or attempts to bring into hatred and contempt, or excites disaffection towards His Majesty” where he argues that the question of intention is not here, it is all about the effect produced. He also argues that there is no proof to show that what particular intentions were there and what motive was served after writing those articles and addressing the intention was important to prove that case because it was with intention, the whole discourse of disaffection and exciting the public mind against the government are linked, without proving the intention, he could not be charged in this case. Secondly, he was not informed by the prosecution whether he was charged with causing disaffection or with attempting to cause it. While for the next remaining section he argues that it is important to clarify the meaning of disaffection and also the word attempt, both of them are significant and without understanding these two terms, it would be rather vague to come to any sort of judgement. To understand, whether he has caused

⁵ The idea of the Jury is foundationally based on the collection of the 12 people among the masses who could judge whether the publication et cetera is to be considered guilty or not. It basically supported by the people against the judge, appointed by the state to impart justice.

⁶ Mukherjee, Mithi. *Sedition, Law and the British Empire in India: The Trial of Tilak (1908)*. Law, Culture and Humanities. Sage Journals, 2017 pp 9

the disaffection and excite the subject against the government, it was important to bring the classes who were affected or got excited. It was the Marathi public sphere that should be called upon to record that what kind of effect they had after reading those articles. Tilak stated that the great error to be avoided is the error of supposing the sedition can ever consist in the mere use of the language, abstracted from other considerations.

The term 'excite' for Tilak means to create what does not exist and to create a higher degree for what exists. Tilak tried to challenge the prosecution, rather the whole regime here. He argued that he only informed what was already there in the public discourse, in the reply of various Anglo-Indian papers etc. He stated that his intentions while criticizing the government was actually to reform it and hence not seditious. He considered that it was the duty of him as the subject of the Imperial Great Britain to criticise the policies and the bureaucracy which was corrupt and all-powerful. What made him write those articles, were not the seditious intentions towards the government but the environment in which the case like bombing in the carriage through revolutionaries was done in Muzzafarpore, and the various paper while condemning the act, Tilak wanted to inquire the actual causes which made the youth merely of eighteen, bombing the carriage. He further argued that it was not a good governance which should fall down towards this much where this kind of atrocities are taking place. For him, it was rather important to understand the circumstances which led to these situations. He argued that his articles cannot be merely read and judged, and applied to the legal fiction and to give the verdict, circumstances, timings were also important and ought to be considered by the jury and then to decide the intentions and attempts to excite the public by Tilak. He challenged the very legality of sec 124 A while stating that this act is actually stood opposite to the freedom of speech, freedom of the press, the freedom to criticise and discuss the state policies in public. Mithi Mukherjee highlights that the object of the law of sedition in India, Tilak pointed out, was to punish not just overt criminal acts, but also all "*attempts* to cause disaffection," where the mental state or intention of the accused was the direct target of the prosecution. Thus, it was the responsibility of the prosecution to prove beyond a doubt that his intentions were criminal and that he had a "criminal mind" (*mens rea*).

The third aspect is that of the official translations through which the government tried to overpower the author and technically attempted to accept legally, the distorted meanings of the articles. Tilak in his trial tried to show and to prove that the translations of certain terms by the high court translators were wrong, exaggerated when there was no need of it and simplified when the actual term was quite intense. He stated

“The Oriental Translator said that the Printer’s Devil came to his help. A small k was turned

into a capital 'K'. Probably the printers are very much afraid of sedition. They must have thought that if they set capital 'K' they would be quite safe. One refers to 'the King' and the other to 'kings' in general. The other instance is *राजकुल*. The translator thought that 'killing' was a poor insignificant word, he wanted something grand. 'Assassination' is a grand word. He would appear, he thought, to have a greater command of the English language if he used such a grand word as 'assassination'".

Even after the repeated request to bring original papers into account, the jury was not allowed by the judge to read anything other than the official translations. The translated terms in its face value appeared to be seditious but in actual they were not. Therefore, it could be argued that by basing the case solely upon certain translated terms from the articles which were written by Tilak were nothing but an absolute exercise of power. The judicial system well ignored the cultural specificity of the terms and applied universal law fiction to understand the whole plot. The visage of colonial indifferences is very much revealing in this trial. Tilak asked the court that would they held anybody seditious under sec 124 A, for writing as he had done, in England. In England, there were two parties and they are very much free to express their ideas and viewpoints. He criticised in the court saying that bureaucracy is not the government, so to criticize bureaucracy is not to bring into contempt or hatred the government established by law in this country.

Clearly, the tussle in the court between the state and Tilak was not the case of a simple trial. Tilak was already an established leader and he took the court as a platform to challenge the constitutive assertion of the violence monopolised by the colonial state and asserted that *bomb is wicked but it is a signal to pause and consider*. For him this kind of violence had a law-making character, to bring a radical change in the colonial judicial system. Tilak through highlighting various loopholes in the Imperial law and justice order challenged the colonial administration.

IV. THE AWFULL VERDICT

After the pro-long trial, the jury returned a verdict of guilty with the ratio of 7:2. Justice Davar expressed that a journalist could criticise the government as strongly as he liked but he had no right to attribute dishonest or immoral motives to it. Justice Davar also criticized and urged the jury to consider what Tilak had accounted that *the bomb has more the form of knowledge, it is a kind of witchcraft, it's a charm and amulet*. Mithi Mukherjee asserts that by claiming that the judge was simply following colonial law and applying a rule, the judge gave up the fundamental claim of the colonial state of doing justice to its subjects. For any claim of justice

to be legitimate, apart from applying existing rules, the decision also had to approve, justify, and reaffirm the principles of existing law by a re-institutive act of interpretation. By refusing the act of interpretation and asserting that he was not the "judge of law," the judge in Tilak's trial fell back on the ultimate ground of law, force, and thus, paradoxically, affirmed Tilak's equation of the violence of the colonial state with that perpetrated by the bomb-throwers.⁷

From the very beginning of the trial, Tilak and the defence objected to the amalgamation of the two cases and the trial of the three charges, charging Tilak with distinct offences as the procedure which was Prohibited by Sec 233 of CPC. In the notes of the judge and the earlier consideration, it was quite clear the judge was under the pressure of the prosecution for to conduct the distinct charges into one. The prosecution, moreover, did not give sufficient notice and specify the passages which were used for the sec 124 A. A deep prejudice was also done while selecting the special Jury where no Marathi Juror or Marathi knowing Juror was appointed. Moreover, the charges which were framed were not based on the actual words rather the inaccurate translations and documents presented by the prosecution were put in a proper order, only selected cards and papers were presented so that it could be charged to be seditious. The court did not specify the persons or classes against whom the offence under section 153 A was committed, therefore prejudicing him in the defence.

The colonial legal regime very well knew how to present the evidence, and the use of such sections over the limited evidence was technically stitched to maintain the power of the state. The main motive of the government, then, was not to transmit universal justice to its legal subjects but to impart a clever mode of judgements through which colonial rule could be established in a more rigid manner. The 6 years imprisonment with a fine of Rs 1000 had a symbolic character through which it could be set as an example to the other newspapers which were also criticising the government and the consequences could be harsh on them.

V. CONCLUSION

Michel Foucault in his book *Discipline and Punish* argues that for the modern legal order, it was not the body of the convict which is important, rather the mind and the soul and something is beyond the body is of great significance. The modern colonial law regime tries to snatch away the fundamental liberties as a form of penalty and to impart more and more corrective character. It was through rigorous surveillance, the modern colonial regime would attain its all-powerful state to control its subject. Sedition acted as a tool for the colonial state to control the

⁷ Mukherjee, Mithi. *Sedition, Law and the British Empire in India: The Trial of Tilak (1908)*. Law, Culture and Humanities. Sage Journals, 2017

revolutionary activities and through it, the colonial state checked the ongoing nationalism. Bal Gangadhar Tilak used the courtroom to express his views, questioning the administration and bringing out the epistemological understanding of the *cult of bomb* and revolutionary nationalism, as his arguments were written down and spread like fire in the public, whereas the court openly rejected the requests by Tilak for reconsidering the evidence and the translations. A whole range of prejudice was imparted through the judgement. We often say that colonial legal order negotiated with colonial subject to stay powerful as a ruling state. This case study has analysed the despotic power of the colonial legal regime to stay all-powerful and to downsize the right to criticise the policies, acts of the colonial bureaucracy and the government. The colonial indifferences were heightened in this phase of the early twentieth century, the Fox Libel Act which was to be in operation in the same way both in the Metropole and the colony, the colonial government did find a way to manipulate the laws and legal procedures to operate a better control in the colonies.

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