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AN ANALYSIS OF SEDITION LAW IN INDIA

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ABSTRACT

Sedition law has often been a heated topic of discussion. It was originally introduced by the Britishers to curb nationalist feelings in India. Since then, the Indian government on various instances has used this law to curb dissent against the government.

In this research, the author aims to study the background of sedition law in India along with various opinions about it during the constitutional assembly debates. The research also attempts to analyse the legal provisions supporting sedition law and the Indian judicial trend towards it. Lastly, the aim of the research is to suggest a way forward by suggesting both short term and long term solutions to it.

Keywords: Free Speech, Expression, Sedition, Dissent

INTRODUCTION

In a democracy people have rights to express their views and opinions. Free speech and expression are protected under the constitution yet this is a limited right that has restrictions. One such restraint is given in sec. 124-A, Indian Penal Code (IPC), 1860. This Section criminalizes those acts which bring "hatred or contempt, or excites disaffection towards the Government." This section has been a heated topic since its enactment.

Sedition is a result of the Indian colonial history and was enacted by the Britishers. After its incorporation Britishers used it as a means to overpower protests, dissent or condemnation of the government. Many freedom fighters e.g., Mahatma Gandhi etc got imprisoned because of this law.

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This law was enacted by British government for a special and a sole purpose of suppressing Indian voices against the government. In the modern era of 21st century where India is a democratic country the irony is that the world's largest democratic country has laws that were once barriers to their own independence.

HISTORICAL BACKGROUND

Lord Thomas Babington Macaulay added section 113 that was closely related to sec. 124A IPC. The decided punishment prescribed was of life imprisonment. However, even after several discussions when IPC came into force in 1860 sedition law was not inserted in it. The section relating to it was omitted under the act.

The rigorous need to amend the IPC was realised during Wahhabi movement in India. The movement condemned changes into Islamic law and its objective were to preserve the Islam and revisit to its true essence. However, Britishers wanted to curb these uprising nationalist feelings and movements after the revolt of 1857. In order to do so, they finally amended IPC through Special Act XVII of 1870. Sir James Stephen justified the change in the act by stating that the law is free from any vagueness. It penalized an action that aroused ideas of dissatisfaction with the government, nevertheless this disaffection would be separated from disapprobation. As a result, people were allowed to express their displeasure with the government as long as they demonstrated a willingness to submit to his legal authority.

The first case of sedition in India can be traced back to 1892 when the Indian courts had to establish distinctions between "disaffection" and "disapprobation". In doing so, court in Queen Empress v, Jogendra Chunder Bose[2] case, held that Disaffection was described as a notion that is opposite to affection, such as hatred; while disapprobation was defined as simply disapproval.

In 1898, section 124A IPC was amended to include disloyalty and feelings of enmity in it. Queen Empress v. Bal Gangadhar Tilak[3] was the judgment that gave effect to this amendment. In the instant case, Bal Gangadhar Tilak (defendant) published an article in the magazine *Kesari*, where he cited an example of how the great Maratha warrior Shivaji Maharaj killed

[2] Queen Empress v. Jogendra Chunder Bose, ILR (1892) 19 Cal 35.
[3] Queen Empress v Bal Gangadhar Tilak, (1917) 19 BOMLR 211.

Afzal Khan. The British government charged him for inciting Swaraj feelings that prompted the murder of two British officers by locals. The court held that it is immaterial to consider that whether the publication in question has provoked or not provoked any feelings of dissatisfaction. The court specifically rejected the idea that this clause should be applied solely to actions that incited insurgence or disobedience to the government.

Further, in Queen Empress v Amba Prasad[4] case, after considering the definition of disaffection, the court determined that a disapprobation would be guaranteed as free speech if it does not amount to disloyalty or undermining the State's legitimate power.
However, in Niharendu Dutt Majumdar v King Emperor[5] case, the Chief Justice of India at that period was of opposite view. In this case, Majumdar was booked for delivering violent speeches in Bengal legislative assembly by being vocal about the State government's inefficiency to maintain law and order. The Federal court of India overturned Majumdar's conviction and decided that the inclusion of vicious words alone does not constitute a speech or article seditious. Further, court held that the words shall provoke public disorder.

CONSTITUENT ASSEMBLY DEBATES

During the colonial rule, people of India witnessed the arrest of many prominent freedom fighters on grounds of sedition. Mahatma Gandhi, Bal Gangadhar Tilak etc, were among the national leaders who were booked under section 124A IPC. The Britishers used this law to eliminate the dissent and limit the freedom of speech and expression of Indians against British Government.
These were the major reasons that influenced the constitution drafters to exclude sedition law as a position for curbing fundamental right to free speech. Also, this was one of the prominent rights that played a vital importance in developing patriotic feeling and attaining independence from the colonial rule.

However, initially in the Draft Indian Constitution sedition was incorporated as a situation to restrain the free speech and expression yet the constituent assembly voted totally to remove sedition as a valid ground for curbing free speech and expression. It was done to free the modern India from the dark shadow of British laws which caused suffering to our national leaders. K.M

[4] Queen Empress v Amba Prasad, (1898), ILR 20 All 55.
[5] Niharendu Dutt Majumdar v. King Emperor, (1942) 4FCR38.

Munshi, who was a lawyer by profession and also a national leader significantly advocated for arguments against the use of word 'sedition' as a lawful situation to restrain free speech and expression.

The assembly was of clear view that sedition law is oppressive in nature. They were reluctant to include it. Therefore, the word 'sedition' was not added in the constitution. While it was excluded from the constitution it was validly retained under IPC as a crime against the State.

STATUTORY PROVISIONS

The constitution does not mention word 'sedition' anywhere. Rather, it has been included in various statutes but no statute defines the word 'sedition'. The Indian Penal Code contains provisions of sedition law in multiple sections. Section 124A IPC criminalizes the actions which bring hate. Section 153A penalizes sedition by class hatred and section 295A criminalizes seditious acts that promote religious insults.[6]

In 1967, to curb terrorist activities the "Unlawful Activities Prevention Act" was instigated by the Parliament to manage the activities harming the sovereignty of nation.

"The Prevention of Seditious Meetings Act, 1911" was enacted by Britishers. The object of it, was to criminalize seditious meetings to curb the increasing dissent among the people. The District Magistrate or Police Commissioner was given authority under section 5 of the act to prohibit any public meeting which they were doubtful of to be seditious in nature.

The Hon'ble Karnataka High court in N.R. Narayana Murthy[7] case held that as per article 51(A), it is the obligation of each Indian citizen to respect the constitution, the National Flag and National Anthem. To prevent acts of insults to these symbols, "National Honour Act, 1971" was introduced by the Parliament.

Article 129 and 215 of the constitution gives the hon'ble courts power to penalize for contempt of court. While, "Contempt of Courts Act, 1971" gives the detailed method for penalizing the offender.[8]

[6] KUMAR ASKAND PANDEY, INDIAN PENAL CODE (IPC). (4th ed. Eastern Book Company. 2017).
[7] N.R. Narayana Murthy v. Kannada Rakshana Vakeelara, AIR 2007 Kant 174.
[8] Law Commission of India, 2018. Consultation Paper on "SEDITION". https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf.

SEDITION VIS-À-VIS FREEDOM OF SPEECH

Democracy without freedom is an illusion. Therefore, freedoms are significant to truly achieve the principles of democracy. John Stuart Mill advocated that to achieve solidity in a society one should not supress citizen's voices, how so ever contrary it might be.[9] With the intention to achieve this, right to free speech has to be given due importance. The Supreme Court in the case of Re Harijai Singh[10] drew an analogy amongst a democratic civilization and free speech. In a democracy active participation of people is needed. Therefore, it is the right of the citizens to know the political, social and economic events daily and to know the ways in which they are being managed. To attain this goal, people need a clear knowledge of the events. This enables them to form opinions and comments about the government.

Alexander Meiklejohn focussed on "right to hear" while observing that to attain self-governance it is vital that people make well-informed decisions. That is also the sole way when people will pay attention to each voice elevated.[11] In S.P Gupta case[12], the apex court apprehended that according to Article 19(1)(a) of the Constitution, the right to know is included in the right to freedom of speech and expression.

In a democracy free speech is vital. It is the foundation on which democratic society works. The primary indicators of a democracy include a free interchange of ideas, unrestricted distribution of information, spreading of information, publicizing of various perspectives, establishing unique opinions and expressing them.

Indeed, free speech and expression is important in a democracy. Yet no fundamental right is absolute in nature. Article 19(2) lays down various reasonable restrictions on free speech and expression. John Stuart Mill as well, explained the importance of certain restrictions on free speech. In his 'harm principle', he stated that for the freedom of speech to be limited, the restriction imposed has to be reasonable. The harm potentially endangers the society's existence or threatens public order and apparently, leads to disorder in the society.[13] In 1951, Indian constitution was amended for the first time and it inserted the words "public order" and

[9] *Id.*
[10] Re: Harijai Singh And Anr.; In ... vs Unknown, AIR 1997 SC 73.
[11] Supra note 12, pg 22.
[12] Supra note 14.
[13] S. Rangarajan v. P. Jagjivan Ram, 1989 SCR (2) 204.

"relations with friendly states," as exceptions also "reasonable" was added before the word "restrictions." The case of S. Rangarajan v. P. Jagjivan Ram[77] observed that to restrict right to free speech and expression there needs to be a threat to the society and public order.

The conflicting question raised before the courts from time to time is, whether, sedition be a justified restriction under article 19(2). In Balwant Singh[14] case, the Court declined to punish two people for screaming catchphrases against the state on a few occasions It was argued that two people shouting a few solitary chants on a few instances, with nothing really more, did not amount a danger to the Indian government as defined by law, nor could it cause enmity or hate among other communities, religious or other groups.
Further, the Delhi High Court in a 2015 judgment held that intention plays a vital importance in determining sedition and a holistic approach is required to fully understand such cases. The High Court of Allahabad in Arun Jaitley case,[15] observed that a mere criticism of a judgment does not attract the offence of sedition.

It is now widely accepted that words, deeds, or writings are only criminal as sedition under Section 124-A IPC if they encourage violence and disturb law and order. Section 124-A demonstrates that the government can be questioned by any legal methods while the state is powerless to intervene.[16]

POST-INDEPENDENCE AND RECENT DEVELOPMENT IN LAW

The drafters of Indian constitution excluded the word 'sedition' from the constitution and retained it under penal laws post-independence. The first case for validity of s.124A IPC came before the courts in Romesh Thapar case.[17] The Supreme Court observed that any provision restricting free speech and expression cannot be a part of Article 19(2) unless it is a threat to State security. The after effect of the case was that it led to the constitutional amendment. And the terms "public order" and "relations with friendly states" were included as exceptions in the Indian Constitution's First Amendment, and the word "reasonable" was added prior to "restrictions."

[14] Balwant Singh v. State of Punjab, (1995) 3 SCC 214.
[15] Arun Jaitley vs State of U.P, 2016 (1) ADJ 76.
[16] Supra note 9.
[17] Romesh Thapar v. State of Madras, 1950 AIR 124.

Later, section 124A IPC was held unconstitutional in Tara Singh v. The State of Punjab case. Also, In the Ram Nandan's Case, section 124A was challenged and this section pertaining to sedition law was held as unconstitutional.

The landmark judgment on sedition was delivered by apex court in Kedar Nath Das v. State of Bihar.[18] The judgment interpreted the sedition law as it is today. In the instant case, various appeals pending for consideration by the court. Those appeals were combined to determine the constitutionality of sec.124A IPC. Provocation to violence was seen as a major condition for the crime of sedition. Reliance was put upon the Majumdar case.[19]

Additionally, the court gave due importance to pre-independence history of India and the Constituent Assembly debates which added sedition in the draft of the constitution but apparently, through a unanimous voting in the final constitution they excluded it from a ground to restrict freedom of speech.

The court observed that constitutionality of sedition law can be upheld if it falls under the purview of any of the six reasonable restrictions, as stated under article 19(2).[20] Within the six grounds the court felt the "security of the state" as the most suitable justification to upheld the validity of s.124A IPC. Court cited R.M.D. Chamarbaugwalla case, and upheld the principle that if a law provision can be interpreted in more than one way, it must sustain the constitutional interpretation[21] and rest must be disregarded. As a result, this case overruled the judgment given in Ram Nandan's case and sec.124A was declared to be constitutionally valid, and solely the acts that had the aim to provoke public disorder or were decided to be penalized. After this judgment, the provision of sedition stopped applying to statements that criticise the government policies provided they provoke hate or disorder among society or the general public.[22]

[18] Kedar Nath Das v. State of Bihar, AIR 1962 SC 955.
[19] Niharendu Dutt Majumdar v. The King, (1942) F.C.R. 38.
[20] Supra note 28, para 38.
[21] Id, Para 39.
[22] Supra note 9.

RECENT JUDICIAL TREND

Recently, the law of sedition has received a lot of backdrop. Although the principles given out in Kedarnath are regarded as the substantial criteria for assessing of sedition offenses, there are daily news relating to new cases under Section 124A being slapped on some new "offender".

Binayak Sen v. State of Chhattisgarh[23] is a very infamous case basically, for the wrong precedent set by Chhattisgarh High Court. In instant case, a person was convicted for the offence of sedition for possessing and ordering the dissemination of particular letters containing details regarding police crimes and Naxal literature. The High court ignored the "incitement to violence" principle in this case.

Further, in Kanhaiya Kumar v. State (NCT of Delhi), accused was prosecuted for sedition, and he approached the Delhi High Court to obtain bail.

Later, on appeal, the Supreme Court granted the bail, underlining the crucial nature of preserving free speech and expression simultaneously acknowledging the core idea of "Guilt by Association" in its ruling.

Furthermore, in Common Cause v. Union of India case, it was decided that authorities need to respect the principles laid out in the Kedar Nath case when dealing with offences u/s 124A of the IPC, and that charges for sedition can't be brought simply for criticizing the government.

After analysing these judgments one can come to the conclusion that there must be a threatening security of State or the actions must lead to public disorder to constitute the offence of sedition.

POSITION OF SEDITION LAW IN UK

Sedition as introduced in UK, had a much wider scope as it had in India. Furthermore, punishment for doing the crime was unduly cruel. The punishment prescribed was of life imprisonment or high fine.[24] But with the modernization in England the provisions of sedition were rarely used against people.

According to the England law commission it was decided that a significant number of the detrimental actions that are engaged in sedition will be punished individually under various

[23] Binayak Sen v. State of Chattisgarh, Criminal Appeal No 20 of 2011 & Criminal Appeal No 54 of 2011.

[24] DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA, [25th ed. New Delhi: Lexis Nexis. (2021)].

other statute sections. It is also worth noting that the provision of UK sedition law was also against the international human rights obligations. Hence, in 2009 the law was repealed in UK.

CONCLUSION

Singing from the same hymn book is hardly a test of patriotism in a democracy. Rather people should be able to express love for their nation in their own unique way. Some do it by constructive criticism of the government and the loopholes in its policy. A person should not be penalized under the section simply for expressing an opinion that is contrary to the current government's policies. There is almost no distinction between before and after independence of India if the nation is not open to constructive criticism.[25] As component of a vibrant democracy, dissent is a required element for a healthy public discussion on policy matters.

International organizations call for quick removal of sedition law in India but each country has its unique cultures and religious feelings. Here communal riots are always a threat. The State has to act as a watchdog in order to maintain harmony and abolishing sedition law in India would certainly create chaos and make things worse than before. On contrary, the State denies to follow the principle that sedition law seeks to achieve when it uses this law as a mere political tool.

The government and all lower courts need to follow the principles laid down by Kedarnath Case where sedition law was rightfully justified as a reasonable restriction under Art.19(1)(2) as "security of the state". The words "disaffection" and "disloyalty" shall be interpreted cautiously and solely those acts that have the aim to provoke public disorder should be penalized.

SUGGESTIONS

The author after going through various judgments, legal commentaries, law commission reports and understanding India's socio-legal position is of the opinion that the time is not right to repeal sedition as a crime. Yet, we cannot accept it in its current form as well. Therefore, the author proposes a short-term solution and a long-term solution.

It is impracticable to repeal sedition law overnight. Hence, seriousness of punishment given to offenders can be relaxed.

[25] Supra note 11.

The legal principles laid down by Supreme Court in Kedarnath case and Common cause case should be followed by all inferior courts. Also, the parliament needs to amend sec.124-A to make the "dissent" and "disloyalty" against the nation rather than against the government.

In the past, governments have punished innocent journalists and activists who merely criticized the government. To prevent government from using sedition as political tool a special tribunal shall be constituted which will act as a watchdog.

The police officer shall be given with power to begin a preliminary enquiry before actually registering the FIR. This will reduce political abuse of the law.

These solutions can be followed until we can truly repeal sedition law and replacing it by a more efficient law where the offenders no longer will be a victim of dirty politics.

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