SECTION 124A: A CURB IN FREE SPEECH?

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ABSTRACT

Freedom of speech and expression forms an important part of the fundamental rights guaranteed by the Constitution of India. Considering the successive enhancement in the ideas and the ways of expression of the individual and the amendments in the Indian laws , there is little scope for the bygone and tyrannical British provisions. However , this archaic law is still in motion , it is really appalling to see that , even after more than 70 years of independence neither the Parliament nor the states legislatures dared to amend the provisions consisted in Sec. 124. In fact it is interesting to note that **British Parliament** abolished , Sedition , as an offence in 2009 , along with a message for other nations to do so , and embrace the freedom of speech and expression in its true sense , though it is said that UK has incorporated far more stringent laws in its counter terror legislations. In **New Zealand** also the sedition law was repealed in 2007 on grounds of containing provisions which defy the principles of natural justice and rule of law . Similarly , **Australia** , **Canada** , **Indonesia** and **South Korea** have done away with sedition law. This law continues to give the government a chance of stepping into the shoes of colonial government. Therefore , the question is whether Sec. 124A should be retained or repealed ? Sedition, as law is also seen as a restrain in the enjoyment of the freedom guaranteed under Article 19(1) (a). The work , wholesomely aims to inquire whether it's a law or a tool being misused extensively and consequently curbing the freedom of speech and expression.

INTRODUCTION

Sedition as a law was brought in colonial India by the British government to curb those activities of the Indian population that could criticize mis-governance and arbitrary rule by the crown. One of the most important role played by this law was to strengthen the colonial government and to suppress the voice of the Indian people. However , in contemporary India , a similar role is seen as of the British government , the balance between the fundamental right to speech and expression and the offence of sedition can be observed to incline towards the latter and hence dilution of the right to free speech and expression is observed , gradually leading to a defeat of the idea of the constitutional framers.

The Indian state , on the other hand is unshakeable in this regard , and to a great extent is reluctant to accept any view on changing the penal laws of sedition. The state and substantially a large group of experts believe that sedition type law is crucial for the unity and integrity of India . Such law exists as long as state exists . Absence of such laws would make the state vulnerable and prone to anti-national activities , which may later take up an unexpected shape , threatening national integrity and unity. Moreover , fully-fledged freedom brings nothing just chaos and unreasonable criticism and hindrance in the working of all the organs of the government.

Though , it is logical to think that colonial India and contemporary India are far apart in terms of rights , duties , laws etc. Laws imposing stringent restrictions are mere carriers of the dark colonial past , which in contemporary society thwarts the conscience of the individual . In addition to this the developed state of UK no more recognize such suppressive laws, but in India , where the liberty of individual is at the core of the Constitution , has not yet manifested its will of revisiting the laws declaring sedition a crime .

Taking into account the reports of Law Commissions , 39th and 42nd report of the Law Commission of India aimed at retaining some provisions. 39th Law Commission Report aimed at retaining the punishment of life imprisonment for the offence of sedition[1], whereas the 42nd Law Commission Report aimed at extending the scope of government to include executive and judiciary too[2].

[1] Law Commission of India "39th report on punishment of imprisonment for life under the IPC" (July,1968).
[2] Law Commission of India "42nd report on IPC 1860"(June 1971).

However , a positive news was witnessed when the Law Commission of India in its 267th report[3] , and the recent consultation paper published on sedition in the year 2018[4] , sought to restrict the wide scope of the term sedition 124A , by only involving those cases within the ambit of sedition , where there is incitement of violence or hatred , with a specific intent to undress the government in power .

Further , contemporary youth can be seen strongly advocating the right to free speech and expression. Some authors are of the firm view that there must be a reconsideration in the contemporary executive actions curbing free speech, especially those that relate to such allegations as those of sedition. On the other hand if a comparison is made between developed nations, possessing a liberal and a democratic setup , as that of India , the Indian laws relating to sedition appear more stringent [5]

SEDITION IN INDIA

The primary legislation criminalizing sedition in India is the Indian Penal Code , 1860. Which was drafted by Lord Macaulay , drafted so to fulfill all the requirements of the British crown. 124A of the Code defines sedition, and mentions the punishment associated with the same . The core elements of sedition are bringing or attempting to bring contempt, hatred or disaffection towards the government. Further , the explanations to the section clarify that mere disapprobation of measures or actions of government , intended to bring some positive change by lawful means , without arising feelings of hatred , contempt of disaffection does not amount to sedition . Following is the language of the section [6] :

“whoever , by words , either spoken or written , or by signs , or by visual representation , or otherwise , brings or attempt to bring into hatred or contempt , or excites or attempts to excite disaffection towards , the government established by the 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 without fine .”

Explanation ; - The expression “disaffection” includes disloyalty and all feelings of enmity.

[3] Law Commission of India “267th report on Hate Speech”(March 2017).
[4] Law Commission of India “Consultation Paper on ‘sedition’ ”(August 30,2018).
[5] Anushka Singh , Sedition in Liberal Democracies (Oxford University Press, New Delhi , 2018).
[6] The Indian Penal Code,1860 (act 45 of 1860),sec.124A.

Further , section 95 of the Code of Criminal Procedure ,1974 empowers the government to forfeit any publication if it is found to be inappropriate . The grounds of forfeiture have been explicated further , where sedition , as described in section 124A is the first ground of such forfeiture . Following is the language of the relevant part of the section :

"Where-

(a) Any newspaper , or book , or
(b) Any document ,wherever printed , appears to the state government to contain any matter the publication of which is punishable under section 124A of the Indian Penal Code , the state government may , by notification , stating the grounds of its opinion , declare every copy of the issue of the newspaper containing such matter , and every copy of such book or other document to be forfeited to government and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where the copy of such issue or any such book or other document may be or may be reasonably suspected to be[7]. "

Therefore , the offence of sedition in India , as mentioned above , punishes only those who by their act either bring or attempt to bring into contempt or hatred or excite disaffection towards the government established by law . Thus , words of discontent , however harsh , but not amounting to excite the feeling of disaffection do not qualify for sedition . But the scenario was totally aloof in earliest times.

The word sedition has been derived from the Latin word "Seditio" meaning **(sed) – apart** and **(itio) –going**, thus symbolizing something ' which is going away '.[8]

DISAFFECTION IN BRITISH ERA : THE HISTORICAL VIEW

Sedition in colonial rule was totally different as it is now , then mere the presence of such feelings was sufficient to constitute an offence[9] .

[7] The Code of Criminal Procedure , 1974(act 2 of 1974), sec.95.
[8] Oxford Dictionary.
[9] Janaki Bakhle , Savarkar (2010), Sedition and surveillance ; the rule of law in a colonial situation.

Queen Empress v. Bal Gangadhar Tilak [10] was the leading case of sedition where the court , surpassing the arguments from both the sides , interpreted Sec 124A mainly as exciting 'feelings of disaffection' towards the government , which covered within its ambit sentiments such as spreading hatred, enmity ,dislike, hostility , contempt and all forms of ill-will. And was added that the presence of such feelings was enough to constitute an offence.

A conflict arose when the Federal Court of India , the highest judicial body of the country , in ***Niharendu Dutt v. King Emperor***[11] held that the mere presence of violent words does not make a speech or publication seditious. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men of its intention .

Later on , the view of the Federal Court was subsequently overruled by the Privy Council[12]. When the speaker told the audience that the government wanted to ruin those people who were trying to set them on the right path and the people of India says that the Englishmen had come to India to make the people addicted to drink ,opium , cannabis , that the executive and judiciary are inclined to the white men and exhorted the audience to resolve not to live under Englishmen, it was held that the speech was to excite disaffection against government and to bring hatred and unrest [13] .

MODERN PERSPECTIVE – Kedar Nath Judgement ;

The landmark decision of the Supreme court in ***Kedar Nath Das v. State of Bihar***[14] laid down the interpretation of the law of sedition as its stands today. In the court's interpretation the incitement to violence was considered as an essential element of the offence of sedition[15]. The fundamental issue involved for consideration was whether Section 124A has ended up in a void perspective of article 19(1)(a)of the constitution . SINHA .C.J. , who delivered the judgment scanned the whole history of S.124A . It was most likely that the provision of s.124A was violative of freedom under article 19(1)(a). The inquiry was aimed at whether to put it in limitations listed under article 19(2) or not. The court also observed the contrasting views of Privy Council and the Federal Court. The need of having the offence of sedition was understood and the view of the Federal Court at the same time was also constitutionally accepted.

[10] *Queen Empress v. Bal Gangadhar Tilak ,* ILR(1898) 22 Bom 112.
[11] *Niharendu Dutt v. King Emperor ,* AIR 1942 FC 22.
[12] *King Emperor v. Sadashiv Narayan Bhalerao , (*1947)49 Bom LR 526.
[13] *Kedar Nath Sehgal v. Emperor ,* AIR 1929 Lah 817.
[14] AIR 1962 SC 124.
[15] PSA Pillia , Criminal Law 1131 (K.L.Vibhute, ed. 2009).

Therefore, the constitutionality of Section 124A was upheld and should make penal only those matters that had the intention to incite public order or create a chaotic situation .The restriction imposed on free speech and expression was said to be in interest of the people. The crime of sedition was thus established as a crime against tranquility and harmony of the society .[16] .

RECENT DEVELOPMENTS

Since the judgment of the Supreme Court in Kedar Nath case , the courts have applied the same law on various occasion .There have been only fourteen cases of sedition in the last fifteen years , of which only two were heard by the Supreme Court . Further , there have been only three convictions , of which one conviction was made by the Supreme Court . Moreover , a report issued by the Ministry of Home Affairs reflected that 326 seditious cases were registered in India between 2014 and 2019 with only six convictions[17] the data was shared by the National Crime Records Bureau .

Therefore, it would not be wrong to say that the offence of sedition is extensively misused against the innocent to suppress their righteous voice and demands. 326 cases of sedition in just five years is really an alarming condition, reflecting the ill-will of the ruling government irrespective of the states, comparing state government and Indian government with British in this regard would not be wrong , to any extent. The thing doesn't ends up here , whosoever, goes against the ruling parties either in centre or state, or criticize the propaganda of respective parties is brought to an halt by initiating proceedings of sedition against the particular person or a group of person. Neither the national parties nor the state parties ever dared to revisit the provisions of sedition law , all the political parties have sense of oneness within in this regard.

In one of the recent case , ***P.J.Manuel v. State of Kerala***[18], the accused pasted posters on a board at the Kozhikode public library and research gate , appealing people to boycott the general elections to the Legislative Assembly of the state . The poster represented that "No vote for the masters who have become swollen exploiting the people , irrespective of differences in political parties". Criminal proceedings were initiated against him under Sec.124A . the court held in its decision that the content of the offence of sedition must be determined with reference

[16] *Rex v. Aldred* , (1909)22 coxCC 1.
[17] Report released by MHA, available at , *http://mha.gov.in/MHA1/Par20...fs/LS-16032021/281.pdf* (last visited on 12th September, 2021).
[18] ILR(2013) 1 Ker 793.

to the letter and spirit of the constitution and not according to the standards laid by the British and ordered acquittal.

In another case of ***Gurjatinder Pal Singh v. The State of Punjab***[19]**,** the accused approached the Punjab and Haryana high court for an order to quash the FIR filed against him under Sec.124A. At a religious ceremony organized in the memory of the martyrs , the accused gave a speech to the people advocating the creation of separate buffer state of 'Khalistan' between the India and the Pakistan , it was held that even explicit demands for secession and the establishment of new state would not constitute a seditious act . Thus, the FIR against the accused was quashed.

In the other case of ***Mohd. Yaqub v. State of W.B.***[20] the accused had admitted to being a spy of Pakistani intelligence agency ISI . he got instructions from the agency to carry out anti-national activities in the country , he was thus , charged for the offence of sedition under Sec.124A of I.P.C. Citing the judgment of the Kedar Nath case , the Calcutta High Court found that prosecution had failed to establish that the acts were seditious in nature and had the effect of inciting the general mass. Thus , the accused was set free in lack of strict evidentiary requirements .

In ***Balwant Singh v. State of Punjab***[21] , the apex court overturned the conviction for sedition and promoting enmity between different groups on grounds of race , religion etc. and acquitted persons who had shouted –" Khalistan Zindabad , Raj Karega Khalsa etc."

And in the very famous case of ***Binayak Sen v. State of Chhattisgarh*** [22], one of the accused Piyush Guha made an extra-judicial confession that Binayak Sen , a public health specialist , had given him certain letter to be delivered to Kolkatta . these letters allegedly contains Naxal literature – some contained information on police atrocities and human rights. Convicting the accused the High Court cited the widespread violence by banning Naxalite groups . however , court did not explained how the mere possession and distribution of literature could amount to sedition. Further , High Court did not took into account the question of incitement of violence , which was absent in this case.

[19] (2009) 3 RCR (Cri) 224.
[20] (2004) 4CHN 406.
[21] 1995(1) SCR 411.
[22] (2011) 266 ELT 193.

The most recent case is of Kanhaiya Kumar (former JNU student union President) , Umar Khalid and other students , who were alleged for favoring Afsal Guru (master mind behind the attack on Parliament) and enchanting the slogan 'Bharat Tere Tukde Honge'[23] in a gathering in JNU premises .The case is still to reach its destiny .

Beside all these cases there are many cases still pending in various courts these are as follows:

1. Kirori Singh Bainsal , Gujjar Community leader , June 2008 Bayana , Rajasthan – for leading an agitation putting forward ST status for Gujjars.
2. Piyush Sethia , Environmentalist and Organic farmer , Jan 2010 Salem , Tamil Nadu – for the distribution of pamphlets during the protest against the Chattisgarh government's support for Salwa Judum.
3. Noor Mohd. Bhat , lecturer ,Gandhi Memorial College , Srinagar , Dec 2010 – for setting a question paper for students of English literature on the topic 'Whether stone pelters were the real heroes'.
4. One of the recent cases of Merrut University suspending 60 students for cheering in favor of Pakistan in a cricket match between India and Pakistan , these students were charged under sedition . Similar case happened in Aligarh Muslim University too, where students belonging to Kashmir , in a gathering chanted slogans in favor of previously killed student turned terrorist Mannan Wani . These students were also charged under sedition prima facie later on given another chance .
5. Aseem Trivedi , cartoonist , September 8 , 2012 , Mumbai – he was arrested after a complaint that his cartoons mocked at the Indian Constitution and National emblem.

And the list continues…

And now here comes the much needed comment on draconian colonial law of Sedition made by the incumbent Chief Justice of India N.V.Ramanna : The CJI said "sedition or sec 124A of Indian Penal Code was prone to misuse by the government. The use of sedition is like giving a saw to the carpenter to cut a piece of wood and he uses it to cut the entire forest itself "[24]. A number of petitions have been filed highlighting the 'chilling effects' sedition has on the fundamental right of free speech . The CJI's remarks has also opened the floor for debate and

[23] http://www.google.com/search?q=kanhaiya+kumar+sedition+case.
(last visited on 12th September 2021)
[24] http://www.google.com/amp/s/www.thehindu.com/news/national/is-this-law-necessary-sc-seeks-centres-responsw-on-pleas-challenging-sedition-law/article35336402.ece/amp.
(last visited on 12th September 2021)

introspection on the courts's own judgment in 1962 , in the Kedar Nath case , which upheld section 124A. The CJI has made it clear that the court is sensitive to the public demand to judicially review the manner in which the law enforcement authorities are using the sedition law to regulate free speech and send journalists , activists and dissenters to jail , and keep them there . Moreover , the apex court has asked the government the need of such law .

Therefore , calling section 124A a tool instead of law would not be wrong . All the cases , comments and data revealed by National Crime Record Bureau points only to one thing that the law of sedition is an effective tool for the political parties in power . Official data reflected that there was 160% increment in cases registered under sec. 124A between 2014 – 2019 , with only 3% conviction rate . So , the contrast between the number of cases registered and the conviction rate is evident enough for disposing off the misuse of this legal provision .

CONCLUSION

In the words of Adlai Stevenson : "Every man has a right to be heard , but no man has the right to strangle democracy with a single set of vocal cords."[25] There is difference between desiring and working to overthrow the government and desiring to and working to overthrow the country . the government is not the same as the country , because it's the national anthem of India not the national anthem of the government , it is he national flag of the India and not the national flag of the government of India. Thus , there is a difference between speaking against the government and speaking against the country (which , at any cost must not be upheld). In today's environment the sedition law seems to be colonial imposition which expects citizens should not show enmity , contempt ,or hatred towards the government established by law .

It is, therefore , necessary to reform it in a such way that the misuse is checked. It has been rightly suggested that section 108 of CrPC 1973 is a good answer to the issue of misuse of section 124A. Certain new provisions should be made in Sec.124A as making it a non – cognizable and bailable offence to prevent unnecessary arrests and other infringements of individual dignity and freedom of speech and expression , this would also prevent misuse of the law.

[25] Eric Barendt , (2003) , Interests in Freedom of Speech : Theory and Practices in Legal explorations.

There is a need to make balance between the right to free speech and sedition as every dissenting voice cannot be termed as seditious. Imposition or fear of invocation of sec.124A compels individual to self – censor their voice by yielding ' chilling effect ' on the exercise of one's fundamental right to speech and expression. That is why the law should be either repealed or amended. Thus , Judiciary has to be in frame and revisit the sedition law . The law needs to be changed and re-examined as the time and society keep them changing with the time. As Justice D.Y.Chandrachud said "Time has come to define the limits of sedition law".[26] CJI N.V.Ramanna is also of the same view.

Freedom of speechand expression is the natural right possed by every individual and every comment , speech , idea and opinion whether in favor or against are essential elements of healthy democracy. However , liberty has to be limited in order to be effectively possessed.[27] Therefore , each of the limitations upon the free speech and expression should be audited in order to avoid unwanted barriers.

[26] *The Economic Times* , May 31 , 2021 , available at: https://m.economicstimes.com/news/india/time-has-come-to-define-limits-of-sedition-law-supreme-court-/articleshow/83125219.cms
(last visited on 12th September 2021)
[27] *A.K.Gopalan v. State of Madras* , AIR 1951 SC 21.