SEDITION LAW: A BOON OR BANE

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"It is the resolve of the government that none will be allowed to get away with making speeches that can cause sedition or that can cause violence, especially because when we make these kinds of pronouncement and do things that can cause violence or destruction of lives and property, we are no longer in control."

- Yemi Osinbajo

We often hear debates on various news social media channels in which they often argue that sedition being an archaic section should be repealed. Those who are against this section often debate that as the true inventor of this section is the British government, who invented it for their own cause which was obviously to curve the dissent in form of protest of Indian leaders and as now the condition are changed that is we have got our freedom there is no need to still having such anarchic provision in our constitution. As according to them it is the right of the citizen to voice their opinion against the government and government has no other option then listening to them and take their unruly behaviour.

Also this section of society often forgets that we are living in a democratic nation where people do have freedom to voice their opinion but in a proper and behaved manner. The Kashmir situation is not an unheard event for all of us, young youths peddling stones on the army personnel, saying things against their own nation. Recently only there was a mass protest by Punjab arty leaders in which they even tried to hurl the alleged flag of the new nation they are demanding for last decade. Now these kinds of events lays emphasis on that why we need laws like sedition because if we start taking event like these usuriously then the day is not far when India will be divided nation of many small states.

Recently the CJI while entertaining the petition for challenging constitutional validity of Section 124A of IPC observed, "Section 124A of the IPC has been enormously misused and asked the Centre why it was not repealing the provision used by the British to "silence" people like Mahatma Gandhi to suppress the freedom movement."[1] It is said that Judges don't voice

[1] PTI, 326 sedition cases were filed during 2014-19,The Hindu, July 18, 2021, https://www.thehindu.com/news/national/326-sedition-cases-were-filed-during-2014-19/article35398559.ece#

their opinion publicly as they tend to speak volumes through their Judgements. In the same light, it is not wise for a Judge to share his opinion on a matter which is Sub-Judice. The above statement poses a relevant question. Does the Hon'ble Chief Justice want the State to allow such modern Freedom Fighters to excite people for rebellion against the Indian Government?

The Law on sedition was always used to supress the rebellious nature of a group or person. If the section is removed from the statute, it would cause serious law and order issues across the country. Sedition has been categorized by the Penal Code as an offence against the State. The constitutionality of Section 124-A cannot be questioned as it is the fundamental duty of the State to maintain peace and public tranquillity as envisaged by the drafters of the Constitution.[2] The legislators and the judicial precedents have made the section very clear and limited its scope to only such scandalous speech as it may result into a law and order situation. The citizens of a state have a unwritten social contract where the Citizens are to surrender their rights and obedience to the state and in return the state guarantees them rights and protection from any aggression.

If such offences or speeches are not taken care of in a democratic state, then soon a revolution would take over the democracy to turn it into anarchy. In various parts of India, there is a continuous tussle between the army personnel and the Naxalite or Maoist Group. The formation of these groups is with the sole aim to revolt against the Government and create a law and order situation.

Every seditious speech has an inherent idea to commit an offence against the state. The provision under 124A only nips the bud before it sprouts in a tree. U.S.A. has a more stringent law of Treason which punishes the offence with death, or imprisonment of not less than five years. Additionally, he can be fined under this title but not less than $10,000. Australia too has sedition law with stringent measures and imprisonment up to 12 years.

It is agreed that the sedition law is being misused by the government but can it be said on that ground that the provision should be struck down. The Supreme Court in the case of Arnesh Kumar v State of Bihar[3] noted that there was a blatant misuse of the provision of 498A. The court further noted that the rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. The court

[2] ***Subramanian Swamy v. Union of India***, (2016) 7 SCC 221.
[3] (2014) 8 SCC 273

had the cognizance of the fact that the provision although misused was necessary to curb the cruelty against women. It should be appreciated how the court put a check on such misuse of power of arrest. The court evolved procedure of arrest in cases punishable with seven years of imprisonment or less where the police officer needs to give a notice of arrest two weeks prior to the date of arrest.

In the case of Common Cause v Union of India[4], the Supreme court was asked through a PIL that Guidelines be issued for dealing with cases on sedition. The court approving the Constitiution bench Judgement in Kedar Nath Singh vs. State of Bihar held that the said judgement gave exhaustive guidelines on the matter. Further, in Vinod Dua case,[5]the FIR was quashed on the basis of the Kedarnath Singh's Judgement. Hence, Kedarnath Judgement still holds well in law.

Now, the panacea and tool to curb the false registration of FIR is Preliminary inquiry. The category of cases in which preliminary inquiry may be made are matrimonial disputes/family disputes etc. hence, in order to check that the government don't misuse this provision to target their political enemies we need to look into various loopholes in the sedition, rather showcasing the whole provision as unnecessary and preliminary inquiry can be one of those amendment.

Now, at this juncture it also becomes relevant to trace the Constitutional Validity of sedition law and how the honourable court has interpreted it.

The first case in India that arose under this section is what is known as the Bangobasi case (Queen-Empress v. Jagendra Chunder Bose[6]) which was tried by a Jury before Sir Comer Petheram, C J. The Chief Justice distinguished between the words Disaffection and Disapprobation. According to the learned Judge, the word disaffection meant dislike or hatred whereas Disapprobation meant simply disapproval. The case also laid down that it was sufficient to show that the words used are calculated to excite feelings of ill will against the Government and that they were used with the intention to create such feeling. The next case was of Bal Gangadhar tilak's trial (Queen-Empress v. Balgangaddhar Tilak) in which the court found that the test of guilt was the exciting or attempting to excite feelings of enmity to the

[4] Writ Petition(s)(Civil) No(s). 683/2016 Dated 05/09/2016
[5] Vinod Dua vs. Union of India (UOI) and Ors. (03.06.2021 – SC): MANU/SC/0363/2021
[6] (1892) ILR 19 Cal 35

Government, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance.[7]

The case of Niharendu Dutt Majumdar v. The King Emperor[8] explained the objective of this section to prevent a situation where Government and the law cease to be obeyed because no respect is felt any longer for them resulting in anarchy.

In one of the early cases namely Tara Singh v State[9], the Court decided the constitutionality of the provision of Sedition was struck down as unconstitutional being contrary to freedom of speech and Expression guaranteed under Art 19(1) (a). Thereafter, the government through 1st amendment added the "in the interest of" and "public order" in Article 19(2). After the insertion of the words, the provision was argued to be saved by Article 19(2). The section was again challenged in the case of Ram Nandan v. State of U.P.[10] the High Court of Allahabad explained that it was possible for people who legitimately and peaceably criticise the Government to be caught in "the mischief of Section 124-A of the Penal Code" and declared the section as being ultra vires.

In landmark case of Kedar Nath Singh v State of Bihar, the Constitution bench decided upon the constitutional Validity of the Provision. The court had two conflicting judgements, one passed by Federal Court[11] and other by Privy Council[12]. The court saved the provision by upholding the interpretation given by the Federal Court and said that for an offence of sedition, there must be an act involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

In the case of U Damadaya V King-Emperor[13], the court laid down that the time and place, the audience that is being addressed should be considered while trying an offence of sedition. In another case of Balwant Singh v. State of Punjab[14], it has been held that the casual raising of slogans once or twice by two individuals alone cannot be aimed at exciting or attempt to excite hatred or disaffection towards the Government.

[7] (1897) 22 Bom 112
[8] (1942) FCR 38
[9] 1951 CriLJ 449
[10] AIR 1959 Alld. 101
[11] Ibid at 3
[12] King-Emperor v. Sadashiv Narayan Bhalerao, (1947) 49 Bom LR 526
[13] 1923, 1Ran 211
[14] (1995) 3 SCC 214

Hence it can be inferred from the above that court has tried to interpret the law from case to case basis instead of applying a straight jacket formula. Therefore what we need is change in the one or two loopholes rather than out rightly striking down the whole section altogether. Finishing my article in the words of Mr, Alok Nath,

"What you mean by freedom of speech? Democracy doesn't mean you abuse your country. Se dition has a law in the constitution. You can't give speeches against your country."