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“Dharma is to protect the Needy”

Article on
TIME FOR REDEFINING SEDITION

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ABSTRACT

The whole world is fighting against the pandemic, but India is fighting against the pandemic as well as the humanitarian crisis. The right to free speech tends to be non-axiomatic and it leads to complication of humanitarian issues. Derailing the democratic structure and the constitutional crisis, periling the rights enshrined in the constitution. Colonial Era legislation was done to satisfy the self-esteem of the crown and to suppress the rights of the individuals. The sedition laws were first used during the pandemic is an irony. The Sedition laws were first used during bubonic plague in India in 1897, to silence the fighters who fought for the rights. The sedition laws are in existence over the period of 150 years, and it is often used for quelling and hushing the expression against the Government. Every time, judiciary rang the sound bell to quash the proceedings in the sedition case and confirming its guardian of fundamental rights. This article is explaining in detail about the sedition laws, timeline of its presence, judicial pronouncements, sedition in the global perspective. The article is concluded with the suggestion for improvement in sedition laws and to overcome the restraints in the interpretation.

Keywords - Sedition, Fundamental Rights, Judicial reviews on sedition, Sedition in Global Perspective.

a. Introduction

The pandemic shattered the entire world and froze the progress. The pandemic made a huge change in the normalcy and people were forced to wear masks, washing hands with sanitizer often and social distancing. The Governments were forced to impose severe restrictions and to impose lockdown/shutdown of commercial complexes, transportation and forced everyone to cage themselves inside the house. The fourth pillar of the nation, the media's role is very vital during this pandemic. Due to their presence, so many issues involved during this pandemic came to light and authorities were able to address them. Sometimes, because of its presence in every nook and corner of the state, they were able to telecast the actual happenings during this pandemic and the crisis faced by the people. These types of reports were some time mistook by the authorities/government and sedition laws were applied on them. These type of oppressions makes the issue more complex, and it bounces back to the Government when the intervention of judiciary arises.

"Someone's statement criticizing the Government doesn't invoke an offence of sedition or defamation"

- Justice Dipak Mishra

In the initial stages of COVID-19 pandemic cases, the media people were targeted as they were reporting unauthorized and unauthentic news which was confusing but has a greater impact among the people, during which there emerges a mandate to define sedition clearly. There were many instances under which the application of sedition and its constitutional validity have been interrogated which gave different perceptions. People working in the sector of media are hugely exposed under Section 124A of the Indian Penal Code during this pandemic.

Recently, Supreme Court of India has accredited the need to define sedition law on media so that the right to freedom of speech & expression and right to press enshrined in our Constitution is ratified accordingly. The historical background, evolution, constitutional interpretation, and the contemporary issues regarding the law on sedition are to be scrutinized for the welfare of the society. Criminal penalty for the expression of opinion against the government and its policies should be strictly interrogated so that the real nature and application of the sedition law can be known.

2. Sedition laws in India

The law was originally a part of the Indian Penal Code drafted by Lord Macaulay but was dropped during the implementation in 1860 which was then inserted a decade later. The anarchial law was introduced based on British Sedition Act of 1661, it is a law for safeguarding and perpetuating of the monarch and Government against disloyal and seditious practices and attempts. The irony is that the sedition law being controversial continues to be in the Indian Legislation, but it was abolished in United Kingdom in 2009.

Section 124A of the Indian Penal Code states that:

"Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by 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 with fine."

As held in **Nazir Khan v. State of Delhi**¹ Sedition has been termed as disloyalty in action. "The object of sedition law is to induce discontent and insurrection and stir up opposition to the Government and bring the administration of justice into contempt." Sedition is considered as an offence; it is wage of war against the government, and which disturbs the public order.

Sedition law is often used by the national and local authorities to muzzle the press and media. During this pandemic, many cases have been filed under Section 124A of IPC for the sake of criticizing Governmental policies.

Punishment for Sedition

- A person convicted of sedition is punishable with either imprisonment for a period of 3 years to life imprisonment, fine or both.
- It is a cognizable offence, where the police can arrest a person accused of sedition without warrant.

¹ (2003) 8 SCC 461

- It is a non- bailable offence, where the person arrested for sedition cannot be released by the police on bail as matter of right. Bail must be applied before a court or a magistrate
- It is non- compoundable offence, where the dispute cannot be settled with a compromise between the accused and the victim.

Essentials of Section 124A

- Words, Signs, gestures, or visible representation made by a person or group of persons
- Active intention of the accused to create hatred, contempt, or disaffection in the minds of the people towards the government

c. Crime Rates and NCRB Reports

It is pertinent to note that in the number of cases filed under section 124A of IPC when compared during the year 2016 to 2019, it was increased by 160% as per the National Crime Records Bureau while the rate of conviction of sedition was around 33.3% in 2016 and which reduced to 3.3% in 2019. Out of 96 people charged for sedition in 2019, only 2 persons were convicted against such offence. This clearly shows the abuse of this particular provision, thus violating the fundamental right to freedom of speech and expression enshrined in the constitution.

47 cases of sedition were filed in 2014 as per the report of National Crimes Record Bureau (NCRB). Charge sheets were filed against 16 accused while only one person was convicted. In 2015, 30 sedition cases were filed, and 73 accused were arrested out of which no one was convicted by the Court.

In 2016, out of 48 accused, only 35 cases were registered and only one was convicted. In 2017, out of 228 were arrested, only 51 cases were registered and out of which only 4 persons were convicted. In 2018, out of 70 cases, only 50 persons were charged and only 2 persons were convicted for sedition. In 2019, out of 93 cases registered for sedition against 96 persons were arrested, only two were convicted for sedition.

It can be clearly interpreted from this data that the persons accused of sedition is not proportional to the conviction rate as most of the cases were filed for mere criticism against the Government.

The Law Commission of India in its Consultation Paper released in 2018 observed that, Sedition is required to protect national veracity, but it should not be used as a tool to shut the voice of the rights. Every curtailment on freedom of express and on speech has to undergo severe scrutiny to overcome superfluous constraints.

It can be perceived that the law does not say that sedition is an act against the Country or the Nation. Thus, sedition is certainly an act of spreading disaffection against the Government. There is a thin line between criticizing a government and making false propaganda with the intention of provoking the people against the government.

The law of sedition should be constantly updated according to the prevailing situation in the country. Contending against this law does not amount to plead blanket immunity to freedom of speech and expression to the people and to the press because Article 19(1) (a)-All the Citizens shall have the right to freedom of speech and expression, is not absolute and is subject to reasonable restrictions. The Supreme Court has expressed that freedom of expression is a right which is safeguarded²

d. Judicial Interpretation on Sedition

*Niharendu Dutt Majumdar v. King Emperor*³ is the first ever case where the court established that it was an essential criterion to constitute the offence of sedition. The court held that sedition essentially means a person's intention to promote public disorder or his reasonable anticipation that his words or actions will promote public disorder. Therefore, provocation to violence or intention towards such activities to create public disorder are the important actions towards sedition.

- Government established by law should remain stable and the accused person should incite violence against it.

² The Secretary, Ministry Of Information and Broadcasting v. Cricket Association Of Bengal (1995) 2 SCC 161 at Para 14).

³ 1942

It has been held by the Supreme Court in ***Kedarnath Singh v. State of Bihar***⁴ that Government established by law” does not mean “the persons for the time being engaged in carrying on the administration”, but instead referred to the Government as “the visible symbol of the State”.

- Expression of a person’s disapprobation or dislike of the measures or policies of the Government of India are not considered as sedition if their only aim is to bring about lawful change in such policies, without provoking the people.⁵

The Supreme Court time and again gave plausible interpretations regarding the law on sedition as it was ambiguous in its practical application. Though the law provides for punishment against hostile activities with the intent to provoke the people and portray the Government adversely, in the recent times it has been used as a tool by the Government to subdue the power of media and press to criticize them. The present form of sedition law took shape through various judicial interpretations based on different circumstances the Court adjudicated.

The Queen Empress v. Bal Gangadhar Tilak⁶ was the first instance where Section 124A had been identified and applied against the freedom fighter in the colonial rule. Bal Gangadhar Tilak, staunch freedom fighter was accused of alleged incitement of violence, which resulted in the death of two British Officers. He was convicted under section 124A of IPC. Incitement to violence and rebellion was immaterial in the eyes of the presiding Privy Council in regard to the culpability of a person that’s been charged with sedition.

In the cases of ***Tara Singh Gopi Chand v. the State***⁷ and ***Ram Nandan v. State***⁸, the Courts gave a narrow interpretation and held that the sedition law under Section 124A of IPC *ultra vires* the Constitution as it violated the fundamental right to freedom of speech and expression.

The Supreme Court addressed the legality of sedition law for the first time in the case of ***Kedarnath Singh v. State of Bihar***⁹. In this case, the constitutional validity of Section 124A of

⁴ AIR 1962 SC 955

⁵ Explanations 2 and 3 of Section 124A of IPC

⁶ 1897

⁷ 1951 CriLJ 449

⁸ AIR 1959 All 101

⁹ AIR 1962 SC 955

IPC was upheld and a clear demarcation on disloyalty to the ruling Government and criticizing the measures of the Government without provoking the public was made.

In **Shreya Singhal v. Union of India**¹⁰, Section 66A of IT act was struck down as it was against Article 19(1) of the Constitution. It has been ruled that a person could not be tried for sedition unless their speech; however, “unpopular,” offensive or inappropriate, had an established connection with any provocation to violence or disruption in public order. Further the Supreme Court gave a clear distinction between ‘advocacy’ and ‘incitement’, stating that only the latter is punishable by law.

e. **Sedition during pandemic**

During the COVID 19 Pandemic, many journalists and other people sharing their views on social media have been charged under the offence of sedition. Freedom of speech and expression is widely accepted as the “**cornerstone of democracy**”. It was held that freedom of expression is not only politically useful “but that it is indispensable to the operation of a democratic system”.¹¹ At the wake of increased COVID cases, the Government has taken stern regulatory measures by imposing complete lockdown and curfew in some states so that the spread of the virus can be curtailed. While addressing the issues regarding shortage of vaccine, increasing the isolation wards, creating more awareness of virus spread and being precautionous among the people, giving support to the frontline workers and doctors, and introduction of people welfare schemes, the Government takes utmost effort to control the spread of the disease so that people adapt to the new- normal situation.

Considering the executive functions of the Government during the pandemic, many journalists, TV channels, editors of newspaper and other persons who act as influencers in social media have been accused of sedition. Though Indian legislation has various other provisions to curtail the spread of fake news and unauthentic information during crisis many citizens have been

¹⁰ (2015) 5 SCC 1

¹¹ Indirect Tax Practitioners Assn. v. R. K. Jain (2010) 8 SCC 281.

booked under sedition for exercising their legitimate constitutional right in the virtual platform. The available legal remedies for the spread of fake news are:

- **Section 66D of Information Technology Act, 2008-** Whoever by means of any for any communication device or computer resources cheats by personating shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.
- **Section 54 of Disaster Management Act, 2005** - Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic shall be punished imprisonment which may extend to one year or with fine.
- **Sections 153, 499, 500 and 505(1) of Indian Penal Code, 1860:**

Whoever maliciously, or wantonly, by doing anything illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offense of rioting to be committed will be liable for an offence under section 153 of IPC.

“Anyone by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is liable for defamation which is punishable under section 499 and 500 of IPC”.

“Whoever by making, publishing, or circulating any statement, rumor or report which may cause fear for an alarm to the public or to any section of the public shall be punished under section 505(1) of IPC”.

Sedition law being ambiguous in nature is often used by the authorities against persons who criticize the ruling Government or express opinion against the Government policies. Cases reported under sedition during this pandemic are huge of which many were reported against Television channels expressing disgrace of the Government. Recently, two journalists Kishorechandra Wanghemcha from Manipur and Kanhaiya Lal Shukla from Chhattisgarh have

been accused of sedition for comments made by them on social media. The Supreme Court agreed to hear the plea challenging the legal validity of Section 124A of IPC.¹²

In **Disha Ravi's case**¹³, where the climate activist was accused of sedition, the Delhi court said that the government could not put citizens “behind bars simply because they chose to disagree with the state policies”.

The Supreme Court bench in the case **Vinod Dua vs. Union of India**¹⁴ constituted by Justice U U Lalit and Justice Vineet Saran quashed the FIR lodged against the senior journalist Vinod Dua for sedition recently on 3rd June 2021. The bench observed that every journalist will be protected under this sedition as held in Kedarnath Case. Further, the Sections 124A and 505 of the IPC has to be in conventionality with the provisions of Sedition.

Further, the Supreme Court bench consisting of Justices DY Chandrachud, L Nageswara Rao and S Ravindra Bhat barred any coercive action against two Andhra Pradesh based television channels which were charged for sedition. Justice DY Chandrachud while addressing the issue stated that “The Andhra Pradesh government’s act of filing sedition cases against the channels is muffling channels. It is the time the court defines sedition”. Further the bench stated that “we are of the view that the ambit and parameters of the provisions of Sections 124A, 153A and 505 of the Indian Penal Code 1860 would require interpretation, particularly in the context of the right of the electronic and print media to communicate news, information and the rights, even those that may be critical of the prevailing regime in any part of the nation”.

Justice DY Chandrachud ensured the supplies of medicine and drugs during COVID-19 pandemic and remarked about the image of a COVID dead body being thrown into the river in Uttar Pradesh’s Balrampur district, stating that hopefully there was no sedition case filed against the photographer who published that image.

¹² <https://www.livelaw.in/top-stories/sedition-law-124a-indian-penal-code-constitutional-validity-draconian-colonial-provision-threat-to-fundamental-rights-169468>

¹³ Disha A. Ravi v. State (NCTW.P. (C) 2297/2021 & CM APPLs.6685/2021, 6686/2021, 6687/2021

¹⁴ LL 2021 SC 266

Though the plea made by three advocates challenging the constitutional validity of sedition law, the Supreme Court established that sedition law should be defined properly to be on par with the prevailing conditions in the society rather than relying upon six-decade old judgement.

f. Sedition laws in Global Perspective

i. United Kingdom

Sedition law was very first introduced by United Kingdom to this universe. This law was repealed in 2009 and it came into effect from 2010 in United Kingdom. However, the sedition act by an alien (resident but not national of a country) is an offence.

ii. New Zealand

In the year 2007, The Crimes (Repeal of Seditious Offences) Amendment Bill was introduced and passed by the parliament of New Zealand, and it came into effect from 01.01.2008.

iii. Scotland

The act which punishes sedition was abolished. Section 51 of the Criminal Justice and Licensing Act, 2010 was abolished and it came into effect from 28.03.2011.

iv. Indonesia

In the year 2007, sedition laws are declared as unconstitutional.

v. Ghana 2001

Sedition laws were repealed by Ghana Parliament and to make effect of this, The Criminal Code (Repeal of the Criminal and Seditious Laws – Amendment Bill) Act, 2001 was passed by the parliament.

vi. Australia

Sedition laws were made effective and according to the modern era. The Crime Act 1920 was the first act which charged sedition and it was amended during 1984 and 1991. Again, in the year 2005, the Section 7 of the Anti-Terrorism Act, 2005 was amended regarding sedition. The Australian Law Reform Commission (ALRC) reviewed the term “sedition” and redefined it during

2005 in accordance with the modern society requirements. In 2010, ALRC recommendations were implemented.

vii. United States of America

Sedition is still an offence in USA; however, it is a dead law. The Sedition Act of 1798 was the first law in USA to punish sedition. This was abolished in the year 1820. However, in 1918, The Sedition Act was passed again to safeguard the American interests during the world war. This law explicitly mentions about “Use of Force” or Violation of Law to define sedition.

g. Suggestions

The freedom of expression should not be shut at any point of time by invoking the provisions of law and silencing the rights of anyone is unconstitutional.

The researchers suggest redefining the sedition to go with the modern changes in the society and to go with universal practices.

The sedition laws should be used only when it is war against the nation and to counter terrorism related activities.

The sedition laws should be used only when the nation’s integrity is startled, or nation’s peace structure is affected.

The sedition laws should be not used for overturning the rights of the press and the freedom of expression.

h. Conclusion

“Section 124-A is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen” - Mahatma Gandhi

Law is dynamic in nature, and it should be amended according to the emerging situations in the country. The mandate to define sedition law has been observed by the Supreme Court as the conviction rate is far lagging compared to the rate at which people are accused under Section 124A.

Pandit Jawaharlal Nehru was completely against this sedition law as it is obnoxious and contented to repeal Section 124A from IPC during his parliamentary debate centered on freedom of speech in 1951.

In the current pandemic situation, journalists, human rights activists, and people were made scapegoat under this law for expressing their opinions and views on the prevailing conditions. The real meaning and crux of the sedition law is being misused by the authorities to muffle the television channels from publishing contents against the Government.