SEDITION LAW: A THREAT TO INDIAN DEMOCRACY?

by RAJESH SINGH[1]

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- Chief Justice of India N V Ramana

ABSTRACT

Sedition is a state sanctioned act which is mentioned in Section 124-A of the Indian Penal Code and it is an offense which is considered an offense not just against the Government but also against the society. The penal provisions make sedition punishable with minimum seven years of incarceration which may extend to life imprisonment. Sedition law in India is considered as the relic of the British rule and it is one the most belligerent and disjunctive topic of the constitutional lawjurisprudence. Apex Court in various occasions interpreted the provision and intentionof the legislature. It is very contentious whether Sedition laws are antagonistic to freedom of speech and expression under Article 19(1)(a) or consistent with Article 19(2) of the Indian Constitution. Sedition laws are always been misused to the ruling party to meet their political ends and stifle any opposition.

1. INTRODUCTION

The law of Sedition in India, relic of the vicious British rule has always been one of the most contentious, disjunctive and belligerent topics of the constitutional law jurisprudence in India, with views ranging from obliteration of deleterious sedition laws from the statues, to buttressing sedition clause in its entirety with a more stringent and rigorous implementation for national security and to maintain law and order.

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The offence of sedition is against the state and is aimed at promoting hatred or ill will against the government. Section 124-A of the Indian Penal Code defines Sedition as "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 Govt. established by law, shall be punished, with imprisonment for life, to which fine may be added, with imprisonment which may extend to three years, to which fine may be added, or with fine." Sedition can be described as 'disloyalty in action'. The gist of the offence is to stir up the feeling of animosity and antipathy in the minds of people against the incumbent government. Its motive is to create a strong opposition to the government by inducing hatred and discontent in people's minds. Moreover, the offence of sedition is not only considered against the government but also against the society since the result of its commission includes disturbance in the state or leads to civil war or promotes public disorder. However, In the case of *Kedar Nath Singh vs State of Bihar*[1], Hon'ble Supreme Court Unequivocally narrowed down the scope of section 124-A but as observed in the case of as observed by the full bench of the apex court in the case of *SG Vombatkere v Union of India*[2] the law of sedition is continued to being misused and court passed the order to put the sedition law in abeyance and ordered the central and state governments not to use sedition law at all while it's under review.

Of lately, there has been a tremendous increase in the sedition charges coupled with a declining conviction rate against the intellectuals, human right activist, university students, filmmakers, teachers and journalists, which made sedition clauses as the epitome of tools to persecute and suppress political dissent, criticism and questioning authorities which is very fundamental to the idea of democracy. According to the data published by the National Crime Records Bureau (NCRB), in 2019, a meagre 3.3% of the total sedition cases resulted in conviction and of 30 cases tried in 2019, only one

[1] AIR 1962 SC 955

[2] 2022 SCC OnLine SC 609

resulted in conviction and between 2015 and 2020, a total of 548 persons arrested and only 12 persons are convicted in this six-year period. Pendency of filed cases languishing in various courts has grown from 72% in 2016 to 82 % in 2020.

According to the figures sedition law is one of the most misused and abused legislation for harassing, intimidating, and subjugating opposition and as observed in the case of *K.A Abbas v. Union of India*[3] invalidity arises even from the probability of the misuse and abuse of the law to the detriment of the individual.

2. ORIGIN AND EVOLUTION OF SEDITION LAW IN INDIA

"The law shall be certain, and that it shall be just and shall move with the times."

-Lord Reid, Judge as Law Maker

The inception of sedition in India traced back to colonial era. Macaulay's Draft Penal Code 1837 consisted of section 113 that corresponded sedition laws with punishment of life imprisonment. The Indian Penal Code (IPC) of 1860 was the first ever codification of the offences and penalties in India. However, this section was included in the 1860 Code. But consecutively added under section 124-A through Special Act XVII of 1870. The sole intention of the of the section was to punish an act of exciting feeling of disaffection towards the colonial government. Further this section was amended in 1898 providing punishment of transportation for life and also made bringing or attempting to bring in hatred towards the colonial government a punishable act. In Colonial era section 124A was extensively used to quell political dissent and insurrection in India. In 1916, Bal Gangadhar Tilak was accused for the charges of sedition in the case of Queen Empress v. Bal Gangadhar Tilak[4] for publishing an article in the newspaper - Kesari, invoking the example of Shivaji and provoking disaffection towards the colonial government. This judgment elaborates the disloyalty, disaffection and unsuccessful attempt to excite against the government.

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[3] (1970) 2 SCC 780

[4] 22 B. 112 at p. 151 ; 11 Ind. Dec. (N.S.) 656

This judgment influenced the 1989 amendment to section 124A, in which explanation defined the disaffection to include disloyalty and feeling of enmity against the government. In the case of Kamal Krishna Sircar v. Emperor, British government justified the enlarging ambit of laws on sedition which is conspicuously reflects the tendency of the Colonial Government to use sedition to lacerate and suppress any kind of criticism by literal interpretation of the section 124A, which is also evident from the landmark judgment of *King-Emperor v. Sadasiv Narayan Bhalerao.* [5]

After India attained independence in 1947, the offence of sedition continued to remain in operation under 124-A of IPC. There had been serious opposition for inclusion of sedition in the Constituent assembly and many argued and termed as shadow of ruthless colonial times that should not see light of the day in free India. As a result of the vehement opposition in in the Constituent Assembly, the word 'sedition' does not find a place in our Constitution.

It is conspicuous that the sedition was not acceptable to the framers of the Constitution to curtail the freedom of speech and expression, however it remained in the penal statues post-independence. Post-independence, section 124A IPC came up for consideration or the first time at the touchstone of Article 19(1)(a) for in the case of Romesh Thapar v. State of Madras[6]. The Hon'ble Supreme Court declared that unless the freedom of speech and expression threaten and menaced the security of or tend to overthrow the State, any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution. In the case of *Tara Singh Gopi Chand v. The State*[7], the Punjab High Court declared section 124A IPC unconstitutional and it is antithetical to the freedom of speech and expression under article 19(1)(a) of the Indian Constitution. Also, Allahabad High Court in the case of

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[5] Privy Council Appeal No. 49 of 1946

[6] 1950 AIR 124

[7] AIR 1951 Punj. 27

Ram Nanda v. State of Uttar Pradesh[8] declared Section 124A unconstitutional on the same ground. However, the constitutional bench in the case of *Kedar Singh v. State of Bihar*[9] upheld the Constitutional validity of section 124A and struck a thin line balance between the right to free speech and expression and the power of the legislature to restrict such right and court observed that utterance would be punishable under this section only when it is intended or has a reasonable tendency to create disorder or disturbance of the public peace by resort to violence.

3. VIOLATION OF FUNDAMENTAL RIGHTS

"*Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties."* - John Milton

Section 124-A has always been criticized for being violative to freedom of speech and expression under article 19(1)(a), right to equality under article 14 and right to life and personal liberty under article 21 of the Indian Constitution.

I. Sedition law violative of Article 19 (1) (a)

Free speech is one of the most significant principles of a health democracy and considered as "cornerstone of democracy". Free speech is foundation of a democratic society.[10] It is first and foremost human right, first condition of all liberty, mother of all liberties, as it makes life meaningful and it is termed as the essence of the free society. Freedom of speech and expression has various significant functions Hon'ble SC in the case of *Bennett Coleman v. Union of India*[11] observed that Free expression is necessary for individual fulfillment, for attainment of truth, for participation by the members of the society in political or social decision making .

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[8] AIR 1959 All 101

[9] AIR 1962 SC 955

[10] Union of India & Ors. v. The Motion Picture Association & Ors, etc. etc. 1999 (3) SCR 875

[11] AIR 1973 SC 106

Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression to all citizens. It gives liberty to express one's view, opinion and beliefs. Freedom of speech and expression under article 19(1)(a) lay at the foundation of all democratic organization, without political discussion, criticism and opposition, no public education is possible which is essential for proper functioning of the popular government as observed in the case of *Romesh Thappar v. State of Madras*.[13] Freedom of speech goes to the heart of the natural right of organized freedom loving society as observed in the case of *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd. And Ors.*[14] Freedom of expression is essential in enabling democracy to work and public participation in decision-making. In the case of *Javed Habib v. State of Delhi*[15], Hon'ble Delhi Court described criticism of the government is the hallmark of the democracy.

Hon'ble SC in the case of *Kedar Nath Singh v. State of Bihar*[16] expressed that the "freedom of expression is the sine quo non of democracy". However, abuse of the law of sedition to silence critic create a chilling effect and psychological barrier on the freedom of speech and expression. The Supreme Court in the case of *S. Khushboo v. Kanniammal*[17] has held that the law should not be used in a manner that has chilling effects on the `freedom of speech and expression and free flow of of the ideas in the society makes citizens well informed. Similar observations were marked in the case of *Shreya Singhal.*[18]

II. Sedition law violative of Article 14 & 21

The sedition law violates article 14 in two ways. First, the law is unclear in its expression used in article 124A which makes it uncapable of objective assessment.

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[13] Supra 13

[14] AIR 1995 SC 2438,

[15] (2015) 221 DLT 29

[16] Supra note 1

[17] (2015) 5 SCC 600

[18] (2015) 5 SCC 1

Terms such as "disaffection", "contempt", "hatred", and "feeling of enmity" are vague and open ended which creates space for arbitrary action and misapplication of the law. The lack objective standard for understanding guilt gives scope for implicating individual action even when there is no danger to national sovereignty. It was held in Shreya Singhal[19] that a penal law is void for vagueness if it fails to define the criminal offence with sufficient definiteness because ordinary people should be able to understand what conduct is prohibited and what is permitted and because those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of the law does not take place. Second, because most cases end up punishing the individual without the reasonable apprehension of disruption of public order, this limits the law in satisfying the concept of intelligible differentia laid down in Shreya Singhla[20], wherein the Hon'ble court further iterated that there should be rational and direct nexus between the classification of law and the objective of law, which in case of the impugned sedition law is connection between the instigation and the aggravated disruption of public order. This connection should not be remote, far-fetched or conjectural. However, the devoid of clear guidelines regarding Article 124A makes it so. Consequently, this results in curtailing personal liberty of innocent people and further violate article 21 of the Constitution of India. The judgement of R.C. Cooper[21] has established the golden triangle between Articles 14, 19 and 21 which has brought into existence a jurisprudence which recognizes the interrelationship between rights guaranteed under part III of the Constitution of India. Article 21 is no longer to be construed as a residue of rights which are not specifically enumerated in Article 19. Both sets of rights overlap and hence a law which affects the personal freedoms under Article 19 would have to meet the parameters of a valid 'procedure established by law' under Article 21 where it impacts on life or personal liberty.

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[19] Supra note 15

[20] ibid

[21] 1970 AIR 564

4. KEDAR NATH JUDGMENT: RELEVANCE IN THE PRESENT TIMES

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- *Chief Justice of India N V Ramana*

The Hon'ble court in the case of Kedar Nath Singh v. State of Bihar[22] upheld the constitutional validity of section 124-A and stated that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It was added that merely creating disaffection or creating feelings of enmity in certain people was not good enough or else it would violate the fundamental right of free speech under Article 19(1)(a).

Its conspicuous that the court narrowed down the horizon of section 124-A but sedition has come to heavily abused with case being filed against citizens for exercising their freedom of speech and expression and allowed government to quell the criticism irrespective of whether or not the alleged act is seditious, or words constituting a "tendency to cause public disorder or incitement to violence". In carrying out arrest and slapping charges, the police and the government have rarely, if ever, respected restrictions.

In Kedar Nath case necessity and effectiveness of the offence of sedition as a mean to ensure public order and state security unquestioningly assumed. Even In 1962, there may be need to use the section 124-A, due to lacuna in the law, as a mean to prevent public violence and public disorder that fell short of waging war against the state. The lack of alternative legislation made sedition a necessity in crime control. In the last sixty years, however new legislation inter-alia the Unlawful Activities Act, the Public Safety Act and the National Security Act have been passed dealing with overt conduct

[22] Supra note 1

that the sedition seeks to make penal-inciting violence and public disorder. Few constitutional experts criticize Kedar Nath judgment[23] for court had erred in construing Section 124A on the anvil of Doctrine of Presumption of Constitutionality. In subsequent decisions, this Hon'ble Court has held that the presumption does not apply to pre-constitutional laws as those laws have been made by non-democratic and colonial powers. Section 124 A does not enjoy presumption of constitutionality since the law was not made by 'legislature' and the makers of law were not making law for their 'own people'. There was no Constitutional barrier when the law of sedition was introduced. Further, the section was introduced to suppress dissent. This Hon'ble Court in *Navtej Singh Johar v. Union of India*[24] has held that pre constitutional law like Penal Code, 1860, do not enjoy presumption of Constitutionality. Many legal luminaries criticize Kedar Nath Judgment[25] for not taking into the note of judgement of the Constitutional Bench in *Superintendent Central Prison v. Dr. Ram Manohar Lohia*[26], where it was held that only aggravated disturbance of 'public order' as opposed to mere 'law and order' could be used to restrict freedom of speech and expression and there should be direct and proximate connection between the instigation and the aggravated disruption of public order. Therefore, Kedar Nath Judgment[27] is obsolete in present times.

5. CONCLUSION

Law of sedition continues to be used and misused irrespective of the judicial safeguards, by successive governments to meet their political ends and stifle any opposition used as chilling effects to threaten and gradually destroy the constitutional protection to dissent or criticize the government. In today's era of media trial and social media trail many translate as *desh-droh* and remember those people who are

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[23] Supra note 1

[24] (2018) 10 SCC 1

[25] Supra note 1

[26] (1960) 2 SCR 821

[27] Supra note 1

charged with this scruples law with the scarlet mark of "anti-national". Article 14, a web-based platform focusing on civil rights, did a comprehensive analysis of the cases of sedition in India from 2010 onwards finding that the provision has been used largely to stifle free speech and against citizens participating in popular movements critical of the governments of the day. However, it is unlikely that any government will give up this power, and it is therefore left to the courts to re-examine the constitutionality of sedition.

Repealing or sedulous modification of iniquitous sedition law can positively impact the future of dissent and free speech in the country. Sedition law poses complex challenges to freedom of speech and expression guaranteed under article 19(1)(a) of the Indian Constitution. Change thorough free speech is rudimentary to our democracy and to obstruct change through criticism is to petrify the organs of democratic Government as observed in the case of *Indirect Tax Petitioners Assn. V. R.K Jain*[28]. The founding father of our Constitution were cognizant of the history and need to protect and responsibilities attaches to freedom of speech and expression. The courts have also been unable to give clear direction to this baleful and ambiguous law. Law of sedition is characterized by its incorrect application, ambiguity and use as a tool for harassing those who speak against the interest of the ruling party. A careful analysis of the Kedar Nath Judgment exhibits deficiencies in how the law is currently understood although sixty years old Kedar Nath[29] judgment is obsoletes for the current issues looking into the shift how the law of sedition being understood and utilized from 'security of the state' to suppress the political opposition and therefore, should be carefully reviewed as observed in the case of *SG Vombatkere v Union of India*[30].

The enforcement or the threat of invocation of sedition constitutes an insidious form of unauthorized self-censorship by producing a chilling effect on the exercise of one's

[28] 2022 SCC OnLine SC 609

[29] Supra Note 1

[30] Writ Petition(C) No.682 Of 2021

fundamental right to free speech and expression. That is why the law needs to be repealed. Looking into the figures of sedition cases its conspicuous that law of sedition is nothing more than a political tool which should be obliterated to save the soul of freedom of speech and expression, drawing inspiration from the repeal of sedition in England. There are various other laws and statutes to ensure tranquility. The repealment of the law will have a major standing on whether a citizen would feel safe in raising opinions contrary to the government.

"The prince among the political sections of the IPC designed to suppress the liberty of the citizen."

– Mahatma Gandhi