

Law of Sedition in India: A critical study of its Contemporary relevance and scope

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Abstract: Today, the law of sedition in India has assumed controversial importance largely on account of change in body politic and also because of the constitutional provision of freedom of speech guaranteed under constitution as fundamental right. Freedom of press also is formulated as a part of freedom of speech. Freedom of press is the basic principle of democracy. This freedom should not be curtailed and to suppress the free expression of opinion by the press. This law has always been considered as having political bent. The ruling political parties may use the law as they want whenever there comes any discussion on the functioning of the government. The words used in the section are not being defined and thus they cause great amplitude of meaning to be imputed to them by judicial interpretations.

Keywords: Law of Sedition, India;

1. Introduction

As once said by Mahatma Gandhi, "section 124 A is prince among political sections of Indian Penal Code designed to suppress the liberty of citizen. Affection cannot be regulated by law. If one has no affection for a person or for a system, then he should be given fullest liberty to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite violence."¹

Law of sedition is being defined in the section 124 A of Indian penal code. It was inserted after a decade in 1870. The conflict relating to its justifiability may arise that how far it is justifiable to have this kind of penal provision in a democratic country. The sedition law in India continues to be functional even more than 60 years after independence. However it has suffered certain tension in the era of independent India due to the constitutional provisions. This paper is just an attempt to find out that what has been the scope of the law of 'sedition' and how far it is still useful for a democratic country like India. The section has certain key elements such as:

- (1) Bringing or attempt to bring hatred; or
- (2) Exciting or attempting to excite disaffection against government of India;
- (3) Such act or attempt may be done (a) by words, either spoken or written, or (b) by signs, or (c) by visible representation; and

- (4) The act must be intentional.

Explanation 1 to the section sets out the scope of disaffection and Explanations 2 and 3 state what is not considered to be seditious intention as referred under English law. That is to say, criticism of government measures and administrative and other action of the government, if done without exciting or attempting to excite hatred, contempt or disaffection towards the government established by law is not sedition.²

2. Law of Sedition

The existence of sedition laws in India's statute books and the resulting criminalization of 'disaffection' towards the state are unacceptable in a democratic society. In the heading only the word sedition is there and not in the provision anywhere. Sedition is a remnant of that part of the criminal law which inhibits freedom of speech.³

In the contemporary India, people are aware of their rights and they know the obligation of state. With the advent of technology and globalization, the concept of 'human rights', has evolved considerably. There has been development of one new space that is known as cyber space and by this people are connected with the world

¹ A. G. Noorani, *Indian Political Trials 1775-1947*, 2005.

² K. D. Gaur, *Commentary on Indian Penal Code* (Universal publishing co. pvt. ltd. ,2006).

³ There is no separate offence. The generic term "sedition" is conventionally used as shorthand for several distinct categories of common law misdemeanours or statutory offences, namely, (a) uttering seditious words, (b) publishing or printing a seditious libel, (c) undertaking a seditious enterprise, and (d) seditious conspiracy.

and they know about the 'human rights' concept. Moreover, 'good governance' has also been made a part of 'human rights'. This all has revolutionized the attitude of people towards the ruling government and people can get policies and schemes amended in order to improve their estate.

The law of sedition was enacted in 1800's when India was a colony. The main purpose of this law was that there should not be rebellion against the ruling country but now the situation has changed. As discussed above many countries which were colonized have either abolished the law of 'sedition' or they are in process of doing so. There is always a controversy with its constitutionality and how it is constitutional to have such a law in a democratic country.

Passed in haste and with little legislative planning and enforced indiscriminately and arbitrarily in periods of war, hysteria, and social unrest, state sedition statutes generally constitute a hindrance rather than an aid in the search for compatibility between internal security, personal liberty, and judicial integrity.⁴ Thus it is needed to revisit the law and its implementation.

The basic essence of the Law is to regulate the human conduct and it should grow in order to placate the needs of the people and keep abreast with the developments taking place in the country. The concerned authorities need to take a bold step in order to evolve Laws suitable to the conditions prevailing in India.

The law of sedition law is being misused in various cases and freedom of people is just suppressed to fulfill the political vendetta of a party. Like in *Binayak sen's case*, judgment completely ignored the well settled law of *Kedar Nath case*.

The 42nd report has also given some recommendation regarding the provision such as;

1. That mens rea should be expressed as 'intending or knowing' it to endanger the integrity or security or India or any of the state or to cause public disorder,
2. The section provided for life imprisonment or a three year imprisonment then on this also the Law Commission

⁴ (1956) "State Sedition Laws: Their Scope and Misapplication" Indian Law Journal: Vol. 31: Iss. 2, Article 6. Available at: <http://www.repository.law.indiana.edu/ilj/vol31/iss2/6>.

recommended that seven years imprisonment should also be incorporated.

3. As discussed earlier the offence does not provide for showing disaffection towards constitution, Legislature or administration of justice thus accordingly the provision should be inserted.

If these recommendations are adopted by Parliament then it would definitely prevent misuse of law of 'sedition'. Innumerable laws are misused; however, parliament must keep in mind, that through suitable amendment, they can minimize the extent of abuse. The abuse has reached to such an extent that in August 2011, a Member of Parliament introduced a Bill⁵ in Rajya Sabha proposing deletion of section 124A of IPC. This is pending before the House.

If the present provision is not repealed then it should be amended keeping in mind the guidelines given by the recommendations given by the Law Commission. With this there are some other points which should also be kept in mind while amending the impugned provision such as it should be amended in such a manner that it should reflect the law laid down by the Supreme Court in *Kedar nath Singh v. State of Bihar*.⁶ Then the section should clearly define the words such as 'hatred', 'contempt', 'disaffection' and 'disapprobation'. As these words have a greater amplitude and the judge will interpret them subjectively, hence to settle this aspect these words should be properly defined and then less judicial interpretation would be there. This would definitely reduce the misuse of the law.

There should be clear cut distinction between 'disapprobation' and 'disaffection'. Presently, the interpretation of words and amount of intensity of feelings created are subjective and may vary with the opinion of each judge. Clear and uniform guidelines should be given, in particular, to lower judiciary, so that frivolous cases of sedition are not being entertained and its misuse could be reduced. These guidelines can be even circulated in the judicial academies and police. With these guidelines there should be certain programmes to be conducted so that they may give the judges the idea how the Supreme Court has treated the offence of sedition in its judgments.

The sanction for the cases of sedition shall be obtained in writing from an officer not below the rank of Joint

⁵ Criminal Law (Amendment) Bill, 2011 (II of 2011), introduced in Rajya Sabha.

⁶ Supra note 22.

Commissioner of Police or an Inspector General of Police; this is a procedural requirement and the concerned officer is needed to give reasons for grant of sanction with due application of mind. This should be made as precondition for any prosecution on sedition.

3. Analysis

It can't be proposed that the law of 'sedition' should be repealed completely but with the changing circumstances, it should be amended keeping in mind that how this is being misused now a days. In a modern, democratic and progressive India it is needed to check and put a bar on its misuse, so that the frivolous cases under the provision could not be registered. This law should be amended in such a manner so that the political parties may also not use this. As the case of arrest of girls in Maharashtra for liking a status in which a particular person expressed his feeling that why Maharashtra should be closed on death of a particular political party leader. The person who expressed this feeling in the form of facebook status was arrested and the person who liked the alleged status was also arrested. Although later on they both were released as this is not an offence but we could see that political parties may use this section in whatever manner they want and they could further suppress the freedom of people by terrorizing them with such a kind of provision. In last it could be concluded that it should not be completely repealed from the statute but it is a draconian law which could easily be used against the people to stifle the voices of dissent against government. This provision needs amendment to the extent so that it may not be further misused

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