SEDITION PROVISION IN INDIA NEEDS AMENDMENT

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ABSTRACT

India being world's largest democratic country provide its citizen the freedom of speech and expression. The freedom of speech and expression within the Indian legal tradition includes within its ambit any form of criticism, dissent, and protest against the act or any policies of the government. "Criticism is a well-known and celebrated facet of democracy without which democracy cannot survive."

After the independence during the enactment of the Indian Constitution the constituent assembly debated on the scope and extent of restriction that could be placed on freedom of speech and expression. During the debates number of constituent assembly members reminded the assembly that how Indians had suffered greatly through the misuse of sedition law during the British era. One of the members T.T. Krishnamachari argued that the word sedition was anathema to Indians given their experience of it and he suggested that the only instance where it was valid was when the entire state itself is sought to be overthrown or undermined by force or otherwise leading to public disorder.[1] The constituent assembly moved a resolution to drop sedition law. Another member of constituent assembly KM Munshi stated that, "a line must be drawn between criticism of government which should be welcomed and incitement which would undermine the security or order on which the civilized life is based, or which is calculated to overthrow the state."[2]

INTRODUCTION

The historical development of law relating to Sedition shows that it was introduced in colonial India through Clause 113 of the Draft Indian Penal Code proposed by Thomas Babington Macaulay in 1837.[3] The law relating to Sedition inherited from the colonial regime in India is controversial as it has been modified and interpreted many a times by the courts.

[1] Somnath Lahiri, *Constituent Assemble Debate,* Oct.16, 1949
[2] Misra R.K, *Freedom of Speech & The Law of Sedition In India,* Indian Law Institute, Vol.8, No.1, Jan-March 1966, pp.117-131
[3] David Skuy, *Macaulay & the Indian penal Code of 1862: The Myth of the Inherent Superiority & Modernity of the English Legal System Compared to India's Legal System in Nineteenth Century,* Cambridge University Press, Modern Asian Studies, Vol.32, No.3, July 1998, pp.515

When the Indian Penal Code was enacted in 1860, the section pertaining to sedition had inexplicably been omitted. The law of 'Sedition' was introduced by Section 124A in Chapter VI of Indian Penal Code in 1870. It was not incorporated in 1860. The major objective behind introducing sedition law was to counter anti-colonial sentiments, and mostly the leaders who were part of the independence movement. The British colonial regime was threatened by the speeches made against their government and therefore to stop such acts they enacted sedition Sections of the Indian Penal Code designed to suppress the liberty of the citizen'.[4]

There are traces which show sedition law being used before independence also. One of the most famous uses of Section 124A of the Indian Penal Code was against, the eminent freedom fighter, Bal Gangadhar Tilak, in 1897. He was convicted under the sedition law for making a statement regarding the killing of Deccan chieftain Afzal Khan by the Maratha warrior king Shivaji. The ground for conviction was that the statement made by him incited the murder of two British officers. Another instance of sedition law being used was when Mahatma Gandhi was convicted in 1922 for spreading and inciting disaffection against the then British ruled government. This both instances show that the enactment of Section 124A of Indian Penal Code was to suppress and repress all those who pointed out the exploitative and illegitimate colonial administration of the government. Such a law certainly is of no use in a democratic form of government which exists for the welfare of its citizens. If Section 124A of Indian Penal Code is interpreted in the strict sense then it would limit the fundamental right of the citizen to express its views regarding the government. The United Kingdom is known to be the father of sedition law has repealed its own law in 2009, because of chilling effect on free speech. The repeal of sedition law was done on the grounds that the offence was redundant and unnecessary. In India also the time has come where there is a need to amend the sedition law.

The provision relating to sedition law in India is prescribed under Section 124A of Indian Penal Code, 1860 which clearly 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 shall be punished with imprisonment for life or which may extend to three years."*

The first Prime Minister of our country Jawaharlal Nehru during a debate in the parliament relating to first amendment to Indian constitution, 1951 strongly criticized the sedition law by

[4] Mahatma, *Statement in the Great Trial of 1922,* 18-3-1922, Vol.2, (1951), pp.129-133

stating that, "Taking into consideration Section 124A of the IPC, I am concerned this particular section is highly objectionable and obnoxious and it should have no place both practical and historical reason, if you like, in any body of laws that we might pass. The sooner we get rid of it is better."[5]

Today the major question arising is whether abusing government or public figures amount to Sedition? One of the recent incidents where the Delhi police arrested the president of the Jawaharlal Nehru University student's union, for organising an "anti-national" meeting has kicked up a major controversy over the use of the law relating to sedition. The protest was against the hanging of the 2001 parliament attack convict, Afzal Guru. "Sedition" is a wide and magnanimous term. The essential ingredients to invoke the draconian sedition provision in section 124A of IPC is that a person should either by spoken or written, or by signs provoked hatred, contempt or disaffection towards the government. According to Section 124A of IPC, a comment expressing strong disapproval of the administrative or other action of the government which excites or attempts to excite contempt or disaffection makes it a punishable offence under law. Many believe that the offence of sedition is fundamentally unconstitutional and therefore needs amendment.

Today sedition law requires amendment because of the danger posed by this law to freedom of speech and expression, contained in Article 19(1) (a) of the constitution. One of the basic principles of our Indian constitution is that no right can be absolute except barring few exceptions. Every right has certain restriction but another principle says that the restriction imposed should not be arbitrary & unreasonableness in nature. In *Menaka Gandhi v. Union of India*[6], the Supreme Court stated that the freedom of speech & expression is not confined to geographical limitations and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad too. Therefore mere advocating revolution or advocating even violent overthrow of the state, does not amount to sedition. The offence of sedition is committed only when one does not loves its nation and incite mobs for any violent action against the nation, it would not amount to any offence if the person does not loves the government.

After independence courts in many cases has interpreted the sedition law. There was judicial death of sedition law in 1958 when the Allahabad High Court declared it as ultra vires to

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[5] Nigam Nuggehalli, *Do We Really Need a Sedition Law?* 15-feb-2016, Available At: https://thewire.in/politics/do-we-really-need-a-sedition-law (last visited on 1/5/2021)

[6] 1978 SCR (2) 621

Article 19(1) (a) of the constitution. But in *Kedar Nath Singh v. State of Bihar*,[7] constitutional bench of the Supreme Court made it clear that allegedly seditious speech and expression may be punished only if the speech is an 'incitement' to 'violence', or 'public disorder'. Further in *Indra Das v. State of Assam,*[8] the Supreme Court unambiguously stated that only speech that amounts to "incitement to imminent lawless action" can be criminalised. In *Shreya Singhal v. Union of India,*[9] the famous judgement relating to Section 66A of Information Technology Act 2000, the Supreme Court drew a clear distinction between "advocacy" and "incitement", stating that only the 'incitement' should be punished. In *Balwant Singh v. State of Punjab,*[10] the Supreme Court interpreted law relating to 'Sedition' and stated that words or speech can be criminalised and punished only in situation where it is being used to incite mobs or crowds to violent action. Mere using words and phrases to criticize the action of the government, no matter how distasteful, do not amount to a criminal offence unless it incites a mob.

Even after several interpretation and decisions rendered by the Supreme Court, the sedition law continues to be used irrespective of whether the alleged seditious act or words constitute a tendency to cause public disorder or incitement to violence.

In India sedition law is used randomly and anyone who criticises the government policies and decision are punished for committing this offence, though the criticism is within a reasonable limit that does not incite people. If this law is used arbitrarily then it would lead to violate the freedom of speech and expression guaranteed by the constitution. The political party uses sedition law arbitrarily to curtail political criticism because most of the cases relating to sedition law are politically motivated. Though India is a democratic country where every citizen has got the fundamental right to speak and even legal precedents provide a wide ambit to political expression.

Sedition law should be amended in such a way which is based on the implication of words or signs used to examine whether the offence relating to sedition is committed or not. Mere examining the text closely in deciding sedition cases should not be applied. The existing sedition law is meant to suppress the voice of Indian people and should not exist in 21st century. The Chief of 21st Law Commission Panel has said that the sedition law needs relook

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[7] 1962 AIR 955
[8] (2011) 3 SCC 380
[9] (2013) 12 SCC 73
[10] AIR 1987 SC 1080

and requires reconsideration.[11] The definition of 'Sedition' is very wide and it needs to be reviewed by the government now.[12] Even the upper house of the parliament Rajya Sabha has demanded that sedition law should be scrapped as it is a colonial legacy and a relic.

The sedition law should be amended to make any person guilty where the words used are of such a nature as to create a clear danger to the integrity of the nation then only the person should be made guilty under this law. There is a need to differentiate between free speech and subversive speech. There is a difference between exciting someone by showing disaffection towards the government and by merely commenting in strong terms upon the measures of the government so as the restructure the condition of the people. The law is misused mostly and if people are not able to criticise government authorities then would lead to failure of democracy. If a person is accused of committing sedition and ultimately he is proved not guilty of that charge, the process of going through the charge itself is so arduous for any person. The process itself looks like a punishment. The time has come for the legislature to narrow down the definition of sedition and requires more clarification.

In a recent incident where sixty seven Kashmiri student supported Pakistan team were charged for committing sedition. The charge of sedition is not fair in such a case though the act leads to criticism. This shows how the sedition law is arbitrarily being used. There are many such instances where sedition law is grossly misused, like Arundhati Roy case, Assem Trivedi case, the most recent one being the Kanhaiya Kumar case. These all cases points out that the archaic law needs amendment. The basic problem which lies with the current sedition law is that it heavily infringes the fundamental right of an individual. Government can't enact laws which silenced its citizens from expressing their views. Even human right activist believes that this law is a 'blot' on Indian democracy. "This is a black law." Such law makes any political activity as seditious and is against the principle of democracy. The South Asia director of Human Rights Watch, Meenakshi Ganguly stated that, "Using sedition laws to silence peaceful criticism is the hallmark of an oppressive government."[13] The ambit of such a law should be narrowed down by amending it.

Law relating to sedition is now completely outdated, but then also government continues to use it as impunity. It has became a great tool of harass the people and to curtail their right of

[11] Available at https://indianexpress.com/article/india/india-news-india/sedition-law-needs-relook-law-panel-chief/ (last visited on 3/5/2021)
[12] Available at https://m.economictimes.com/news/politics-and-nation/definition-of-sedition-law-very-wide-government/articleshow/51425421.cms (last visited on 2/5/2021)
[13] Available at https://www.hrw.org/news/2011/01/05/india-repeal-sedition-law (last visited on 2/5/2021)

freedom of speech and expression. The legislature by amending the law should intervene because the sedition law enunciated for us is not being upheld in a proper manner and should be used to stop the dissent, around the nation.

The democratic edifice of our country is not fragile which can be easily shattered by ways of speeches in public places or by any kind of articles. Currently the section is slapped against any discarding entity, without any fairness. Such a law which shatters the principle of democracy needs amendment. Therefore before the law loses its potency, the legislature should amend it.