AN ANALYSIS OF THE CONCEPT OF SEDITION UNDER THE INDIAN PENAL CODE, 1860

Nithin Manoj, School of Law, Christ (Deemed To Be University)

ABSTRACT

The paper mainly discusses about the concept of Sedition Laws and it applicability of this law in the current Indian legal scenario. The law of sedition have been introduced in India as measure to curd the unwanted usage of the freedom of speech. The punishment for the offence of sedition is harsh with minimum seven years of imprisonment which may extend to life imprisonment. It is considered as a cognizable, non- bailable and non-compoundable offence under the Indian Jurisprudence.

With the passage of time there has been a widespread misusage of this particular provision and currently it has been employed as a tool of harassment to curb free speech. As a result, there have been strong calls to remove the Sedition clauses, which are considered as an antiquated legislation designed to protect colonial interests.

The Supreme Court in a recent writ petition have stated that the sedition statute was from the colonial era, and have questioned the center government whether it was still essential after 75 years of independence. The Court stated that the statute has been abused to the point where it is "like handing a carpenter a saw to cut a piece of wood and he uses it to cut the entire forest."[1] This paper mainly focuses on the analysis of the sedition regulation in our country and also tries to find out that the current sedition law outdated and weather these law need an amendment. As the law on sedition in India has been employed as a tool of harassment to curb free speech. This has resulted in widespread demands to repeal the provisions regarding sedition as it is seen as an archaic law that was meant to serve the colonial interests.

This paper mainly tries to find out the need for the sedition law along with a complete analysis of the regulation. This is done thorough considering the legislative as well as judicial interpretation of the statute. The act is also supported with an analysis on the idea of free speech and its role in a modern societal system

Keywords: Sedition, Free Speech, Section 124A, Judicial Precedents, Criminalization.

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[1] Kishorechandra Wangkhemcha & Anr Vs. Union of India W.P.(Crl.) No.106/2021

INTRODUCTION:

Sedition can be understood as "an insurrectionary movement tending towards treason, but wanting an overt act, attempts made by meetings or speeches, or by publications, to disturb the tranquility of the state".[2] Sedition law in India is covered under section 124-A of the IPC which give a marginal note on the regulations related to sedition in India. It covers the crimes that come under the law it does not give a precise definition of the term sedition itself.

The Pre-independent period this particular regulation of sedition was created to use against the Indian nationalist leaders who fought for the freedom of our country. Mahatma Gandhi called section 124A IPC as "the prince among the political sections of the IPC designed to suppress the liberty of the citizen".

The fundamental challenge that this particular sedition rule faces is a conflict between the rights given by the Constitution and the requirement for those rights to be applied within a legal regulation designed by a foreign authority with an objective that is no longer applicable in the current situation. As a result, there is frequently a contradiction between rights and pre-Constitutional laws remaining in effect, and courts are frequently called upon to assess the legitimacy of such laws under psychologically different and completely different socioeconomic desires and conditions.

The paper has been divided into four parts. The first part is the law of sedition in India, the relevant provision and its scope. The second part deals with the case against sedition and the arguments which are commonly stated against the law of sedition. This part also tries to examine the manner in which the law of sedition has been interpreted by the judiciary. The third part talks about the concept of Free Speech and various theories and its relation with the free speech concept along with its relation on the restrictions by sedition. The fourth part tries to look from the opposite side by talking about the need of a sedition law and then moves to the conclusion and suggestions part which tries to sum up the entire paper.

SEDITION LAWS IN INDIA:

The sedition law in India is a product of the British colonial rule and how a colonial suppressive rule can have an effect in the rules and regulations of a country. The law against sedition in India is contained in section 124-A of the Indian Penal Code, 1860. It is important to note that

[2] Arizona Pub. Co. v. Harris, 181 20 Ariz. 446.

the word “Sedition” has not been used anywhere in the Constitution, it merely forms a marginal note to the section in the IPC. It was also removed as one of the grounds for nullification of laws under Article 13(2) of the Constitution.

Section 124-A was inserted in 1870 Indian penal code by the British government in order to suppress all the voices that has been roused against them which can be clearly understood from their attitude during various freedom protests. The provision as it stands today finds its place in Chapter VI of the IPC which deals with “Offences against the State”.

Under section 124-A[3] there are certain important points or elements that need to be taken into consideration which has to be taken into account while bringing any act under the banner of a seditious nature, these elements are:

(i) A person must bring, or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection;

(ii) Such disaffection should be targeted against the government established by law in India;

(iii) The said disaffection may be caused by words that should be either in written or spoken, or by signs, or by visible representation, or otherwise; and

(iv) The said words must not amount to a fair criticism of policy or administrative action undertaken by the government.

This section is intended to criminalize mere words regardless of any consequent action. Disturbance to public order is implicitly not intended to be included as a necessary ingredient of the section. The words in this section has been used in such a broad way so that it can be easily include any person who tries to act against the will of the sovereign under the list of the seditious act. The main question that need to be taken into consider while talking about the sedition provision is that weather the act or words against the government also falls under the ambit of the Crime of Sedition under the Offence against the state.

CASE AGAINST SEDITION LAW:

The sedition law or the provision of sedition law is one of the most misused provision under the judicial system of our country. Mahatma Gandhi once said that “Section 124A, under which

[3] Indian Penal Code Act No. 45 of 1860 India Code(1860)

I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen"[4].

Since its establishment in 1950, the Supreme Court of India has only dealt with 39 cases that refer to sedition and has pronounced only 7 judgments wherein it has extensively discussed the offence. By taking all these judgments into consideration it can be easily understood that the court have either have only took the entire idea of sedition in a narrow way. Various judgments have tried to question the act of government in misuse of this section but still haven't questioned it in its full potential.

This part of the paper tried to conduct a complete analysis on the above said cases and tries to understand how the Indian judicial system have taken this issue into account. For which we have taken 5 important judgments they are: *Tara Singh Gopi Chand vs. State (1951); Sabir Raza v. The State (1955); Kedar Nath Singh v. State of Bihar (1962); Dr. Binayak Sen vs. Chandigarh (2007).*

(i) TARA SINGH GOPI CHAND V. STATE (1951)

Tara Singh case was the first sedition case under the independent Indian judiciary. The case has its own importance as it marks the mindset and the application on how the Indian judicial as well as the government looked on the concept of sedition.

The first sedition case in independent India has its on twists and turns the case went in such a twist that the Punjab and Haryana High Court held that S.124A was unconstitutional and stated the sedition law violated the fundamental right to freedom of speech and expression. "A democratic state will see changes in political ideologies and ruling parties. Sedition laws may have been necessary during foreign rule. However, they are inappropriate by the nature of the change which came about at independence"[5].

Further, the court also stated that although Article 19(2) gives reasonable restrictions to the fundamental right of free speech, the restriction has to be constitutional and not excessive. The judgment heavy criticized the sedition law but still was not taken into consideration and the sedition still prevailed in the country.

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[4] Centre For The Study Of Social Exclusion And Inclusive Policy, National Law School Of India University, & Alternative Law Forum, Sedition Laws & The Death Of Free Speech In India 9 (Chandan Gowda Ed, 1st Ed. 2011), https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf.

[5] Tara Singh Gopi Chand v. The State; AIR 1951 Punj 27.

(ii) SABIR RAZA V. THE STATE (1955)

The court in this case also took a similar openion about the factors that are related to the sedition and have also clearly opposed the idea of sedition and its relation with attack on the ruling party. The court in the Sabir Raza case viewed "any criticism of the Government done by a Member of Parliament or Government policy as protected under the right to freedom of speech and expression and such speech cannot be penalised under sedition even if it disrupts public order"[6]

On the issue of threatening the security of the State, the Court held that disruption of public order does not lead to the overthrow of State. It is only by rebellion and mutiny that the State can be overthrown, and a Republic destroyed.

(iii) RAM NANDAN V. STATE OF UP (1959)

The case is one of the prominent sedition law case where the factual matrix of the case is that

Ram Nandan who was an agricultural labour and an activist charged with sedition. In the case situation he accused the Congress government of failing to address extreme poverty in the State. Along with that he had also encouraged cultivators to form an army and overthrow the Government if needed.

The government took the act of Ram nandan with utmost seriousness and had charged sedition charges against him. The court after the hearing have given important statements regarding the sedition law of the country where they stated that S. 124A to be unconstitutional as it used as a mode where it imposes restrictions on freedom of speech and was not in "public interest".

The court have also pointed out that "a mere possibility of public disorder is not enough to justify a restriction on the fundamental right of freedom of speech and expression"[7]

(iv) KEDAR NATH SINGH V. STATE OF BIHAR (1962)

The Kedar Nath Judgment is a landmark judgment that decided the future of the sedition law in India. In the case the court decided on the constitutional validity of the section 124A of the IPC i.e the sedition law on the basis of all the above mentioned precedent judgments.

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[6] Sabir Raza v. The State Cri App No. 1434 of 1955.
[7] Ram Nandan v. State of UP; AIR 1959 All 101.

The constitution bench of the Supreme Court in the case have overruled all the aforementioned High Court precedents. It held that sedition is a valid exception to free speech so long as it intends to incite violence.

The factual matrix of the case is that the petitioner Kedar Nath was charged with sedition for his speech in 1953. He had accused the Congress government of corruption and targeting Vinobha Bhave's attempts to redistribute land. The court carved out the scope for applying sedition. It noted that any words of disloyalty towards the government in 'strong terms' will not be sedition unless it causes "public disorder by acts of violence". Hence, this judgment predicated the applicability of sedition on the likelihood of causing violence.

(v) DR. BINAYAK SEN VS. CHANDIGARH (2007)

In the current case the petitioner Binayak Sen was found in possession of naxalite pamphlets, booklets and letters admitted in evidence reveal constitution of PLGA which is an organization and 'Jan Sena Gorilla Zone Krantikari Samyukta Morcha' for direct fight with the Government and its machineries by use of force. In the case the court out there was a clear attempt has been made to excite disaffection towards the Government established by law and to bring into hatred and disaffection towards the Government established by law. There is comprehensive evidence relating to bringing into hatred and disaffection towards the Government established by law which reveals the act of alleged organizations and their success in killing members of armed force, destructing mine proof vehicle of police, use of pressure bomb, robbery of arms & ammunitions from police and armed forces

Dr. Binayak Sen was charged for sedition, amongst other things, for allegedly aiding naxalites, and sentenced to life imprisonment at the Session Court in Raipur. He was accused of helping insurgents, who were very active in the region at the time, by passing notes from a Maoist prisoner that was his patient to someone outside the jail. He stated that a state-sponsored group was designed to curb the insurgency in the villages of indigenous tribes where it thrived, according to them. But Dr. Sen, who's a human-rights activist apart from being a pediatrician, claims that the group's real job was to clear village land that's rich in iron ore, bauxite and diamonds for it to be quarried. The court after conducting a complete analysis on the facts of the case held that he was held liable for sedition.

FREE SPEECH AND THEORIES ON THE FREE SPEECH:

The Article 19 of the Indian Constitution guarantees the citizens of India freedom of speech and expression. This freedom can be in any form of written texts, word of mouth or any other form of communication. This is the most often cited argument against sedition which finds its basis from the principle of free speech. The constitutionality of sedition law under the section124A has been challenged in court on the ground that the said provision is violative of the fundamental right to freedom of expression and is therefore ultra vires the Constitution. This matter of violation of the fundamental right of free speech has detailed discussed and emphatically been settled by the Supreme Court in 1962 in the Kedar Nath case[8] where it held that section 124A was not unconstitutional.

The concept of free speech is deeply connected with India's legal based set up. It is also contended that India democratic based system, the option to air one's perspectives and conclusions about the Government isn't simply alluring, yet is important for its appropriate working.

The Indian judiciary and the constitutional setup has given paramount importnance to the idea of freedom of speech which has been provided in the Article 19(1)(a) various important judgments have also understood this importance. The sedition law on the other hand have a very big negative effect in the right of free speech as the law in its basic sense itself is created to curb the freedom of expression against the government.

The right to free speech and expression can be understood as a benchmark of democracy, but it is always under threat because to the sedition statute. In a democracy, citizens must actively participate in debates and provide constructive critique of government policy. The executive branch, on the other hand, has been given permission by the sedition laws to utilise the ambiguously written provision to control public opinion and indiscriminately wield power. Sedition legislation has evolved into a weapon for creating a sense of cooperation with government policies in citizens.

There are various principle and theories that has its own importance in the idea of free speech and some of their famous theories or principle includes (a) Harm Principle and Free Speech,

[8] Kedar Nath Singh v. State of Bihar (1962)

(b) Offence principle and free speech. These theories could be briefly dealt in this section of the paper.

(I) HARM PRINCIPLE AND FREE SPEECH

The famous legal jurist John Stuart Mill have explained understood harm principle "as an expression of the idea that the right to self-determination is not unlimited. An action which results in doing harm to another is not only wrong, but wrong enough that the state can intervene to prevent that harm from occurring"[9].

The basic idea of the harm principle is that it the allows government to limit liberties as it is very much necessary to prevent harm to a society. Based on this principle it gives the governments to create regulations for the benefit of the state thus the entire regulations on the offence of state can fall under this protection. This befit can also arise around with a question that does the freedom of speech at present can be an exception to the harm principle. This part will discuss on that question of exception.

Constitutional law has developed a firm rule prohibiting the regulation of speech based on its content, no matter what the alleged harm might be. "This rule, to which will be refer here as the "cardinal rule" of free speech, means that if a restriction turns on what is said or expressed, or on characteristics of an expression, then it is presumptively invalid"[10]

The entire mills arguments on freedom of speech is based on certain arguments which are:-

(a)The truth and a clear and lively impression thereof is valuable; we ought to allow/enable people to arrive at true beliefs about the world.

(b) Freedom of speech which allows people to arrive at a clear and lively understanding of truths about the world or, what is the same thing, the silencing or censorship of expression prevents people from arriving at a clear and lively understanding of true beliefs about the world.

The entire way of co relation of harm principle and freedom of speech by mills is based on the above said arguments. He has also stated that free speech is a necessary condition for intellectual and social progress. We can never be sure, he contends, that a silenced opinion does

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[9] JOHN STUART MILL, ON LIBERTY 80 (David Bromwich & George Kateb eds., Yale Univ. Press 2003) (1859)

[10] R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992)

not contain some element of the truth. Thus, it can be easily inferred that harm principle is an important part but it doesn’t mean as a dictatorial power for curbing the freedom of the society.

(II) OFFENCE PRINCIPLE AND FREE SPEECH

The offence principle in the basic sense can be refers to a theory of crime which demands a moral or legal ground for enshrining an actor's behaviour. It concerns of the moral standings or feelings of society. This principles explains that it is generally a valid justification on the side of a proposed criminal preclusion that it would presumably be a successful approach serious offense to people other than a loose way. Additionally, the principle support that offending someone is less serious than harming someone, the penalties imposed should be higher for causing harm.

The famous jurist Joel Feinberg on a comparison between harm principle and offence principle have suggests, need an offense principle that can guide public censure. The basic idea is that the harm principle sets the bar too high and that we can legitimately prohibit some forms of expression because they are very offensive. Feinberg's principle reads as follows: “it is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense...to persons other than the actor, and that it is probably a necessary means to that end...The principle asserts, in effect, that the prevention of offensive conduct is properly the state's business”[11]

Such a principle is hard to apply because many people take offense as the result of an overly sensitive disposition, or worse, because of bigotry and unjustified prejudice. Despite the difficulty of applying a standard of this kind, something like the offense principle operates widely in liberal democracies where citizens are penalized for a variety of activities, including speech, that would escape prosecution under the harm principle.. Feinberg suggests that many factors need to be taken into account when deciding whether speech can be limited by the offense principle. These include the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offense, and the general interest of the community.

Thus taking the both the theories and its implications into account it can be understood that the idea of free speech is being questioned in various countries at various levels which is also being

[11] Feinberg, J., 1984, *Harm to Others: The Moral Limits of the Criminal Law*, Oxford: Oxford University Press.

supported by various theories also. Thus it is very much evident that the idea of free speech is not a complete right but would be based on how people connive on it. Thus considering there theories and concepts into mind it can be easy derived that the regulations such as sedition laws are legislations that are never a complete wrong act but the value and the constitutionality of those legislation would be mainly based on the usage of such legislation by the concerned authorities.

THE NEED FOR SEDITION LAW:

The law of sedition cannot be completely considered as a barbarian or an arbitraty legislation as stated on basis of the above said thoeires it is very much evident that it is important to retain sedition as a crime against the State, As the State being the protector of our rights and there can be no substantive rights in the absence of the State. Therefore, destabilizing the State by any means is undesirable and liable to be punished.

It is also a well understood concept that certain words when spoken by certain persons in particular contexts, do have the authority to incite violence and these may start from religious leaders, politicians or even militant groups. Thus in an absence of a strong regulatory law it can lead to a situation were any person can simply wage a war against the country internally just through mere words or writing which can be problematic in the future.

Paper also contends that any such act that is trying to affect the harmony as well as the democratic set up of the country fall beyond the protection of free speech not just because of the nature of the words and their tendency to cause violence, but because in such situations, the words themselves constitute the acts and therefore fall outside the purview of the free speech doctrine.

Thus on based on the above stated theories collaborated with the current reasons it can be clearly understood that any state need a sedition law that need to have its own regulation on the people but the main part of the legislation will be based on the amount of control or regulation such legislation is having on the rights of the people.

CONCLUSION AND SUGGESTIONS:

The entire paper that talks on the constitutionality as well as the applicability of the section 124A of the IPC or the sedition law has come to its conclusion part where the main aim would

be finding a solution to the research question that has been posted in the starting of the paper i.e. is the current sedition law is outdated and does it require an amendment.

On the basis of the entire discussion, it is very much evident that there a real and pressing need to keep balance between the views of the supporting and opposite of the law relating to sedition. Thus in order to achieve the said balance that is required by any regulating legislations the paper suggests certain amendments to the current legal setup.

The major change is to update the legislative write up of the sedition law where it clearly demarks the act of sedition or the acts that can be potentially considered as the crime of sedition. This can include the major look on the context of the act or even the proving of the tendency to cause a problematic situation. The next part is that proving of the fact that the accused must be in such a situation where he could have caused chaos or is in an authority to cause problems.

The research solutions or the amendment suggestions that has been stated in this conclusion part majorly aims to uphold the need for the sedition law at the same time tries to maintain it with the rights of the people without making it as an arbitrary and unconstitutional legislation.