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High Time for Striking down the India's Draconian Law: Law of Sedition

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This article is aimed at analysing the Sedition Law which is still in play after these many years of Independence. This section was brought in to force in 1870 to curb the free speech of the nationalist leaders. But, this is a matter of utter surprise that law which was brought to suppress the Indians by Britishers is now used by government of this country to suppress them who goes anti-government or who tries to raise the tuff questions. The question then arises that are we actually free or the colonial rulers have left their footprints which leaders of rulers of this country are now following. Indeed the free speech still remains a myth! In this paper I have tried to analyse the history of this law, later developments and present scenarios, laying and emphasis on a landmark case of Kedarnath and also linking it with developments in different cases filed. I have tried doing an extensive study of it, however limiting my submissions only application level and not stepping into the shoes of political debaters.

Keywords: *sedition, draconian, kedarnath.*

INTRODUCTION

Quoting former Justice Minister¹ of UK, presenting his views on this sedition law “Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn’t seen as the right it is today.... The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom...Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech”. It is one of the most surprising fact that the law which was imposed during the British India, basically for the selfish purpose of the then rulers, is still continued in “free and independent India”. However the countries like UK, US, Australia have already abolished this law. The demand for quashing down this law is not a new demand but we have a deep rooted history behind this. But the argument of striking it down has again taken air after The Apex Court quashed the FIR in Vinod Dua’s Case. Consequently, Justice Chandrachud too gave a remark while he was hearing a petition on Covid Management. Chandrachud says “a news report yesterday showed that dead bodies were being thrown in river. I don’t know if a sedition case has been filed against the news channel yet or not, which again portrays a different story of this law. The statement by Justice Chandrachud reveals that it is well in cognizance of apex court also that these laws are being used as a tool by the government for curbing the free speech. However, the debates of Section 124A² being Unconstitutional as being in the contravention with article 19(1) is not new. The Apex court has been very instrumental time and again for drawing the thin margin between the seditious statements and between the hard criticising statements.

In the landmark case of Kedarnath³, Supreme Court upheld the Constitutional Validity of Section 124A, but also attempted to restrict its scope for misuse. A data of NCRB says that the

¹ Prasun Sonwalker, ‘Sedition law in UK abolished in 2009, continues in India’ (*Hindustan Times*, 16 February 2016) <<https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3ddY8uqvKsO.html>> accessed 15 May 2021

² Indian Penal Code 1860, s 124a

³ *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955

conviction rate was 3.3 % in 2019. This shows the instrumentality of our courts, but the problem is not with this. The basic problem lies because of the process. Firstly, the offence of Sedition is being triable by Sessions Court and the procedure of getting acquittal in such offence from this court becomes problematic. Secondly, it not the law that punishes but the judicial process that makes the person punishable. Though the conviction rate is too low but getting a stay or getting the FIR quashed is again a long time taking process. This law has been widely used not only by the present government but also by the previous governments for curbing free speech of people and of media. Also, it is important to analyse this law from a different angle. The words used in this section is 'against the Government', and not against the one who governs. The broader interpretation also says that the legally established government. Since in the case of Kedarnath it was held as a valid ground of restriction so we shall be also analysing article 19 (2) which lays down the reasonable restrictions on freedom of speech, nowhere expressly mentions sedition categorically but however the phrase 'incitement to an offence' makes it a restriction again, but the word mentioned in article 19 (2) is State. The restrictions have been laid down for protecting state and not the rulers of the State. But this Draconian law has been used for long by the leader of the political parties for their personal vendetta.

HISTORY OF LAW

The idea of this law can be traced back to 1837, when first time it was seen in the drafts of Lord Macaulay, but in 1860 when bill was actually to be implemented it was found omitted. Later in 1870, by way of amendment re-added this part. But there were many notable differences that could be seen in newly added section. Majorly three differences were there which is very important here to be examined as it actually explains the intention of the colonial rulers behind bringing this section.

1. Previously, 'exciting or attempting to excite the feeling of disaffection' was only considered as offence but dramatically in the new law feeling of hatred or contempt was also brought in the ambit of punishment.

2. The object of punishment in the old law was 'government' but new law witnessed 'Her Majesty' also falling in the realm.

3. And the most interesting part the old law fell under the name of 'Exciting Disaffection' but the new law fell under a new name 'Sedition'. And thus a new disastrous law took its birth in our country.

After the first war of Independence⁴, the seed of colonial nationalism was already shown. After which the various political leaders started raising their voices to unite India to fight against the British colony. The propagation of 'Drain of Wealth Theory'⁵ explaining how the Britishers were exploiting India economically, which spread far and wide was the next setback of the colonial ruler. But the most problematic thing for Britishers, which James Stephen referred as 'bugbear' while introducing this bill was the Wahabi Movement.

Sedition law was basically introduced to trample off the Indian Nationalist leaders having the dissenting opinions. Post Tilak's trail, this law became more stringent. There was insertion of new words 'hatred' and 'contempt' in this definition of sedition. Tracing the history of first known trial, *Queen Empress vs. Jogendra Chunder Bose*⁶ in the year 1891 in which Mr. Jogendra, Published an article in the magazine, *Bangobasi*, criticising the Age of Consent Act, 1893 which the then government found to be creating disaffection. Next, in the Case of *Queen Empress vs Bal Gangadhar Tilak*⁷, where Tilak commorated the killing of Afzal Khan, which according to government resulted in assassination of WC Rand and Lt. Ayerst. The Great leaders of India viz. Balgangadhar, Gandhiji, Annie Besant , Maulana Azad and many more have been the real sufferers of this draconian law, and so the leaders of India which was going to be Independent actually felt the the evil of this law and this being the reason why the credit must be given to KM Munshi who moved the proposal to remove the word sedition from the Constitution and instead use the phrase like 'which undermines the security of , or tends to overthrow the state'

⁴ India Today Web Desk, 'India's first war of independence: All you need to know on its 160th anniversary' (*India Today*, 10 May 2016) <<https://www.indiatoday.in/education-today/gk-current-affairs/story/indias-first-war-of-independence-322576-2016-05-10>> accessed 16 May 2021

⁵ *Ibid*

⁶ *Queen Empress v Jogendra Chunder Bose* (1892) ILR 19 Cal 35

⁷ *Queen Empress v Bal Gangadhar Tilak* (1897) ILR 22 Bom 112

where he highlighted the major issues in this, how this law has been misused to suppress the people of country by the colonial rulers. His proposal was though accepted unanimously which led to the deletion of word sedition which occurred in article 13 (2) of the draft constitution before turning as article 19(2) in the final constitution.

In the later legislations though it was praised and courts actually interpreted the laws at various stages but also we will discuss how one law brought back this law in action which again changed the history of India. In *Romesh Thapar vs State of Madras*⁸, Chief Justice Patanjali Shastri who is referred as one of finest judges in the history of India., notably quoted the intention of drafting committee behind removing the word sedition from article 19(2), which he connected with the case he was dealing with⁹ as any comment or criticism against the government cannot be considered as exciting disaffection. or bad feelings towards it, is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the state.

These were the times when the courts were of very clear stand of holding the sedition law as unconstitutional, later in the case of *Debi Soren vs State of Bihar*¹⁰, Patna HC upheld Constitutional Validity of Section 124 A which eventually paved the path for pushing this section into Constitutional Test.

The Kedarnath Case

The Case of Kedarnath shall be considered as a 'disastrous' case in my opinion. Though it set out the boundaries for penalising under the sedition law but what more important is , this case brought sedition 'the draconian law' back to life. Prior to this in many cases this law has been declared unconstitutional, but in this case perhaps the fine judges of the apex court were reluctant to accept the rationality of our constitution makers behind repealing the provision. May be the reason could be that these bench of judges were not the real sufferers of this law so the dark truth was not visible to them. The five Judges bench headed by CJI Bhuvaneshwar

⁸ *Romesh Thapar v State of Madras* AIR 1950 SC 124

⁹ *Ibid*

¹⁰ *Debi Soren v State of Bihar* 1954 Cri LJ 758

Prasad Sinha said that vilifying or condemning the government which incite or have tendency to disrupt public order cannot be considered as sedition. If this would be amount to sedition, then this may make the cartoonist, columnist jobless. In the Court's opinion, this law shall be used to maintain a proper balance between individual fundamental freedom and interest of public order. In this case, SC examined that whether intemperate speech delivered by a member of the Forward Bloc was seditious. The court held that speech or writing in which 'subverting the government by violent means' is implicit – including talk of 'revolution' – is seditious. So, not just incitement, even a failed attempt to incite is an offence. To save this offence, this was brought under the restrictions of public order, which again laid the way for its misuse in future and can also be seen as a part going against the spirit of constitution.

However, there are some important principles laid down in this case which needs to be looked upon:

- * SC drew the distinction between the expression 'the government established by the law' and the person for time being engaged in carrying on the administration.
- * The acts within the meaning of this section which may have effect of subverting the government by bringing that government into contempt or hatred or creating disaffection against it, would be in the ambit of punishment.
- * Any comment, however strong it may be which expresses disapprobation of actions of Government, without exciting those feeling shall not be penalised.
- * A citizen has freedom of speech and also right to criticise the government, so long as it does not incite people against the violence.
- * Reading the act in to along with explanations, it becomes clear that this section is aimed at penalising the acts that have intention or have tendency to create disorder or disturbance of public peace by violence.

* It is only when the words, written or spoken etc. which have pernicious tendency or intention of creating public disorder or disturbance of law and order that law steps in to prevent such activities in the interest of public order.

These observations made in Kedarnath case has though impacted this section but it has opened the window for the government for suppressing the free speech by different means. The data provided of 3.3 % conviction in these cases expressly makes this thing very clear and establishes the point. But, it becomes also very important to analyse the aftermath cases of Kedarnath, in which SC has been instrumental and which has been a keen observer of this law.

Impact Post Kedarnath Case

In *Balwant Singh vs State of Punjab*¹¹, where charge of sedition was imposed, Supreme Court made it clear that merely raising Pro-Khalistan slogan cannot attract this section.

In another important case of *Bilal Ahmed Kaloo vs State of Andhra Pradesh*¹², the apex court realised the backdrop of this section and said that this section is been casually invoked just to infringe liberty of citizens

In a landmark case of *Shreya Singhal vs UOI*¹³, apex court said that advocacy and discussion howsoever unpopular they may be are part of article 19(1) unless there is actual instigation.

But, amidst these discussion I would like to put a special emphasis to year 1974, when this section was made a cognizable offence. This act made this section more draconian as it is today. Researching all over the internet, we can find hundreds of blogs which says about the current political party being very ruthless with this section. However, in my research I have tried to be free from the political debates but I find this need of this hour to mention that what the then government did in 1974 cannot be justified as it has increased the legal complications for the one who is been charged. Chitranshul Sinha writes in *The Great Repression* that, Kedar Nath “does not provide for pre-arrest requirements and compliances”. That is, any person arrested for

¹¹ *Balwant Singh v State of Punjab* (1995) 3 SCC 214

¹² *Bilal Ahmed Kaloo v State of Andhra Pradesh* (1997) 7 SCC 1

¹³ *Shreya Singhal v Union of India* (2013) 12 SCC 73

sedition will have to obtain bail, attend proceedings, make themselves present for investigations, etc. before the charge-sheet is filed or the case is closed. Lack of guidelines on arrest and inquiry gives further room for abuse of this law.

Post Kedarnath Judgement the plethora of cases proves that state while imposing this charge often fails to revisit the judgement of the case particularly the part which distinguishes the government established by law and person time being in the place carrying administrative function. The very existence of state will be in jeopardy if the government established by law is subverted. Justice UU Lalit in a recent case of sedition said that this observation in Kedarnath case requires further clarifications as state and government cannot be regarded as same. He further quoted that government come and go but Indian state is a permanent entity. Criticism of ministers cannot be equated with disaffection against the state.

CONCLUSION

This law has curbed the free speech of citizens but this law has mostly affected the freedom of media and also the people raising voice against government policy. This law has been used as a tool by intolerant governments to perhaps hide the failures but at many points these act reveal the actual malice behind imposing these sections. Picking the recent examples of JNU, Disha Ravi, or other examples where government has imposed these section to suppress the free speech. However, some speech have been so harsh but they obviously cannot fall under the ambit of sedition. No wonder why Gandhiji referred section 124A as 'prince among political sections of IPC designed to suppress free speech'. This debate has taken air in these recent times as two petitioners Kishorechandra Wangkhemcha and Kanhaiya Lal Shukla has approached supreme court in April 2021 challenging the constitutional validity and proving it to be in violation of article 19(1)(a). The Supreme Court in this case has seeked response from Centre in this regard. The two journalist alleged that they were charged under this section for raising voice against their state and central government and then they were arrested for posting a cartoon on their Facebook profile. Recently, retired Judge of Supreme Court, Justice Deepak Gupta, said that this law is widely misused and cases of its misuse are exponentially increasing. In an Interview to *The Wire*, he also narrated the cases of JNU Incident, Case of Disha Ravi, and Farmers Protest

etc. where unwanted use of this section was seen. Recently, Supreme Court quashed the FIR lodged by Himachal Police against the journalist Vinod Dua over the contents of a talk show released last year. Supreme Court also said that centre must reanalyse the laws for journalists. In 117 page historic judgement over this case the court says Dua's prosecution will be unjust and violative of freedom of speech. Dua however recommended to give protection to journalists who have experience of more than 10 years by creating a committee and prosecuting on basis of that , but court however rejected this suggestion as it considered this as trampling the legislature's domain but SC also clarified that journalists shall be availed the protection in terms of KedarNath judgement and every prosecution under Section 505 and 124A must be in strict conformity with scope and ambit of said sections as said and explained in the Judgement. In 2018, Law Commission suggested that this sedition law must not be used to curb free speech. However, we can now only wait for any substantive step to be taken by Courts or by the committee working under the Ministry of Home Affairs for revision of Criminal Law. The Judgement of Kedarnath must have been relevant in 1962 but it finds no ground in today's time.