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OVERVIEW OF SEDITION LAW WITH SPECIAL EMPHASIS ON RECENT LAW COMMISSION RECOMMENDATIONS

AUTHORED BY - MANSHA GARG

Abstract:

The remarkable progress that India as a country has made in the global arena is not hidden from anyone. Today, even thinking about the independence from the colonial legacy brings the same smile and happiness on the millions of faces of Indians just like the feeling which we undergo when we see nature's scenic beauty. Sedition is a law which falls under the category of Offences committed against the State and it was basically brought forth by the Britishers to suppress the voice of Indian freedom fighters like Bal Gangadhar Tilak, Jawahar Lal Nehru etc. and still in the present times we have the provision of Sedition in the Indian Penal Code to protect the unity and integrity of our country, to maintain public order and to ensure the stability of the government which is deemed to be the representatives of people's voices and opinions. The aim of this article is to explain the Sedition Law, its need and issues associated with it and also to highlight the recent recommendations of the Law Commission over the same. To understand the nitty-gritty of the Sedition Law secondary research was being done. The key findings of this article includes knowing about the Sedition law with the changing nature of the society and to focus upon the recent suggestions made by the law commission. Overall, we conclude that in a democracy much emphasis is laid on citizen-centric measures and so what is required is striking a proper balance between the citizen's right of Freedom of Speech and Expression and to prevent the disruption of public disorder.

Keywords: Sedition Law, Need, Issues and Challenges, Recommendations of Law Commission.

I. Introduction-

➤ Sedition law was drafted by Thomas Babington Macaulay who was a British historian politician in 1937, but the provision was not incorporated when the Indian Penal Code(IPC) was drafted in 1860. Later, Section 124A was added in IPC by an amendment which was introduced by Sir James Stephen when the need was felt that there should be a provision which separately

deals with the offence of Sedition. It was one of the stringent laws enacted to suppress the voices of the people which were holding a dissenting opinion.

➤ Section 124 A Of Indian Penal Code talks about the offence of Sedition as “ When any person brings or attempts to bring into hatred or contempt, or excites or attempts to excites disaffection towards the government established by law in India by

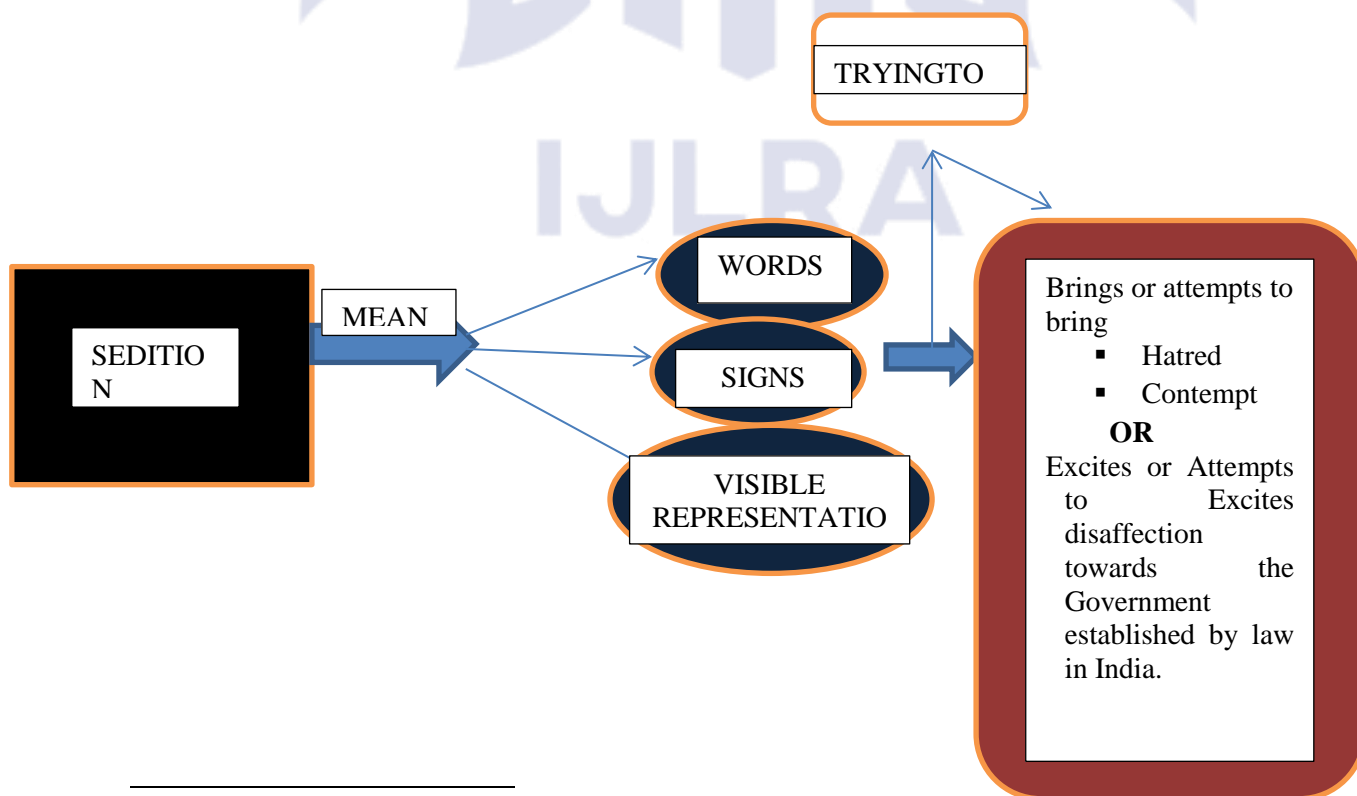
- Words, spoken or written
- Signs
- Visible representation, or otherwise.

Explanation 1- The expression disaffection includes disloyalty and all feelings of enmity.

Explanation 2- Comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting hatred or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3- Comments expressing the disapprobation of the administrative or other action of the government without exciting or attempt to excite hatred, contempt or disaffection, do not constitute an offence under this section.¹

Now, for better explanation for the same flow chart is illustrated below:



¹ The Indian Penal Code, 1860, Sec.124A, No. 45, Acts of Parliament, 1860 (India).

Punishment :

Section	Offence	Punishment	Cognizable or Non-Cognizable	Bailable or Non-Bailable	By What Court Triable
124A	Sedition	Imprisonment for life +Fine or Imprisonment for 3 years+Fine or Fine	Cognizable	Non-Bailable	Court of Session

- A person who is charged under this law is denied entry to do a government job.
- Individuals who are charged under this law their Passport is seized by the government.
- Individuals who are charged under this law have a responsibility to produce themselves before court as and when required.

For Example- (1) If suppose there are three persons namely A,B and C and “ A” invited B and C for dinner in his house and the dining table contained cloth that resembles our national flag, then in this scenario “A” can be made liable for the offence of Sedition.

(2) If a person “ A” posted some cartoon pictures which depicts the ruling government leaders are favouring a particular religious sect by formulating policies in their favour which has a tendency of inciting violence and also of communal clashes in the country, then in this case “A” can be made liable for the offence of Sedition.

Case Laws Related To Sedition-

(1) **Kedar Nath V. State of Bihar(1962)²**- In this particular case, Constitutionality of the Sedition law was challenged.

Facts :- In this case the accused who was a member of the Forward Communist Party , was charged for sedition as he had given a speech which consists of wrong words against the ruling

² Kedar Nath V. State of Bihar, 1962 AIR 955.

Judgement- The court upheld the validity of the Sedition law in this case and was of the opinion that Section 124A of IPC is in harmony with the Article 19(1)(a) read with Article 19(2) (provides for reasonable restrictions) and held that the accused could not be made liable as he was not having an intention to incite violence or to disturb the public peace and tranquility or to create any sort of public disorder.

(2) **Balwant Singh V. State of Punjab**(1995)³-

Facts :- In this case the accused(government servants) raised some slogans on the day Smt. Indira Gandhi, the then Prime Minister of India was assassinated, in a crowded place but no disturbance was caused and people in general remain unaffected.

Judgement- The court held that merely shouting of slogans alone cannot be said to be aimed at exciting or attempting to excite contempt, hatred or disaffection towards the Government and thus it does not amount to sedition.

(3) **Vinod Dua V. Union of India** (2021)⁴

Facts :- Journalist Vinod Dua criticized Prime Minister Mr. Narendra Modi and the centre in a video for how they handled the migration situation last year during Covid-19. He was charged with sedition by the Himachal Pradesh government and the governing party under Section 124A. They said that Vinod Dua had tried to incite fear amongst them by attempting to circulate false or fake information in the public.

Judgement :- While dismissing the case, the Supreme Court observed that the words represented legitimate criticism of the government and cannot be qualified to be called as seditious. The court protected the right to Freedom of Speech and Expression of every journalist as long as they do so without creating a violence.

³ Balwant Singh v. State of Punjab, (1995) 3 SCC 214.

⁴ Vinod Dua V. Union of India, 2021 SCC OnLine SC 414.

II. Need Of The Sedition Law-

1. **To safeguard the unity and integrity of India** - The legislation will aid in combating anti-national, secessionist and territorial forces that jeopardize the nation's territorial integrity. It is even more necessary for such a provision to be incorporated in the legislation given the constantly expanding role of social media in radicalizing the populace and inciting the feeling of hatred, frequently at the initiative and facilitation of the foreign powers. Maoist insurgency and rebel groups openly support revolutions that are aimed at toppling the state government and therefore for maintaining the internal security, the provision for sedition is required.

Also, if a contempt of court may result in legal action, then contempt of the government should also result in legal action.

2. **Stability of the State**- A crucial requirement for the safety and stability of the state is the continuous existence of the lawful government. It acts as a shield for the elected government as it safeguards the government from all sort of negative efforts that are made to overthrow the government by inciting hatred or violence against them.

3. **Existence of the Counter- Terror legislations does not obviate the need for Section 124A** - The Unlawful Activities Prevention Act⁵ was passed in 1967 basically with an objective of providing adequate mechanisms to deal with terrorist activities and National Security Act⁶ which was passed in 1980, is basically a preventive detention law which empowers the central and state government to detain such a person who is likely going to commit a crime in the future for protecting the safety and security of the state. The existence of the UAPA and NSA Act, does not include all the components of the offence as envisaged under Section 124A of IPC and also these special laws prevent or punish the persons who commit an offence against the state but Section 124A of IPC seeks to prevent the illegal overthrow of a democratically elected government. Furthermore, in the absence of provisions like Section 124A, the persons would be tried under these special laws which prescribe more stringent punishment for the accused.

4. **Realities differ in Every Jurisdiction-** Every nation's judicial system struggles with its own different set of realities. Removing Section 124A of IPC solely on the ground that the other

⁵ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India).

⁶ The National Security Act, 1980, No. 65, Acts of Parliament, 1980 (India).

nations have done so is effectively turning a blind eye to the obvious ground realities present in India. Additionally, it is clear that even in most of the developed countries of the world, the law of sedition has only undergone some minor modifications without changing the fundamental nature of the offence.

5. **Sedition is a reasonable restriction under Article 19(2)-** Article 19(1)(a)⁷ which talks about Freedom of Speech and Expression is subject to reasonable restrictions provided under Article 19(2), which means the provision of Sedition in our legislation is not violating Article 19(1)(a) as it is falling under the category of exceptions provided under Article 19(2) like protecting the security and sovereignty of India, friendly relations with foreign states, public order, decency, morality, defamation etc. In the case of Janhit Abhiyan V. Union of India,⁸ doctrine of reading down was applied to save a statute from being struck down on the grounds of constitutionality.

Similarly, in the case of Delhi Transport Corporation V. DTC Mazdoor Congress Sawant,⁹ it was held that “When two interpretations of the same statute is possible, one rendering it constitutional and the other rendering it unconstitutional, then the former one would prevail.”

III. Issues And Challenges Associated With The Sedition Law –

1. **Colonial Legacy-** The offence of sedition is sometimes considered as a continuation of the colonial legacy because of the time period in which it was created and its application in history basically to suppress the voice of Indian freedom fighters. Under the colonial regime, the relationship between the ruler and the ruled is of a Master and Servant whereas in a democratic form of government like as in India where ruler is considered to be the servant of the people as the ruler is elected by the people according to their own wishes, so keeping this into consideration it is felt that the provision for Sedition law is not required as the healthy criticism of the government by the citizens is the very bedrock of democracy.

However, we also need to have a broader outlook and have to look into the merits because the mere fact that a particular provision is colonial in nature does not by itself make it a valid reason for its repeal and India itself follows some of the practices associated with the time of Britishers

⁷ The Constitution of India, Article 19.

⁸ 2022 SCC OnLine 1540.

⁹ 1991 AIR SC 101.

like the idea of Police Force, Civil Services etc.

So, what needs to be taken into account is that, the use of Sedition law should be done wisely and judiciously.

2. **Vague Definition**- Due to the improper legal definition, determining the precise type of speech that might be labeled as seditious is particularly challenging. It would be difficult to exactly differentiate between seditious discourse from appropriate expression of speech.

3. Misuse of the Sedition Law- In a healthy democracy, dissent and criticism of the government are crucial components of public debates and discussions. But it has been found that the sedition law is being utilized to suppress the political dissent. Governments have frequently used the sedition law unjustly merely to suppress the voices of the opposition. The sedition statute has affected social activists, journalists, political opponents most amongst the others.

4. **Lower Conviction Rate**- Despite the fact that police are accusing more persons of sedition, very few instances end in conviction. According to 2021 National Crime Records Bureau(NCRB) Report, 2021, number of sedition cases registered were seventy-six(76). Sedition is still an uncommon offence compared to other offences as it makes up less than 0.01% of all the IPC crimes.

5. **Inconsistent with the International Convention**- India ratified the International Covenant of Civil and Political Rights(ICCPR) which lays forth the internationally recognized standards for the protection of freedom of expression. However, misuse of the term sedition and arbitrary imposition of charges are in contradiction with India's international commitments

IV. Recent Recommendations Of The 22nd Law Commission .

Nearly a year after the Supreme Court stayed the operation of the sedition law, the Law Commission of India which is currently headed by the former Karnataka High Court Chief Justice Ritu Raj Awasthi, has recommended some changes in the sedition law in its 88 page report. The commission recommended that the Section 124A should be retained in the Indian Penal Code(IPC). Other recommendations of the Law Commission are as follows:-

1. **Incorporation of the ratio of the Kedar Nath Judgement**- According to the law commission report, the essence of **Kedar Nath V. State of Bihar** needs to be incorporated into

the sedition law. Kedar Nath case affirmed the validation of the sedition law by stating that it complies with the reasonable restrictions on freedom of speech outlined under Article 19(2) of the Constitution. The court held that act of sedition can be proven when the words or actions tends to incite violence or lead to public disorder. The report defines tendency to incite violence as a “mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence.” However, the report claims that, in its current form, Section 124A fails to explicitly defines the meaning of the terms “actions” leading to ambiguous interpretations.

➤ The definition of the term “tendency” as a slight inclination gives the law enforcement agencies wide discretion to subjectively decide whether the words, signs or visible representation has the potential to incite violence or public disorder.

2. **Removal of the Oddity in punishment prescribed for Section 124A of IPC-** The recent report has suggested to increase the punishment for the offence of sedition because of the fact that the current provision leaves the judges with wide discretion with respect to sentencing. Section 124A prescribes a jail term up to three years or life imprisonment which means the punishment could either be up to three years or of a life imprisonment or a fine but nothing in between can be imposed.

➤ The Law Commission has now proposed to enhance the jail term up to seven years or life imprisonment.

3. **Introduction of new procedural safeguards-** To prevent the misuse of the law, some procedural changes in the Criminal Procedure Code (CrPC)¹⁰ were also suggested by the Law Commission.

It suggests that the police officer not below the rank of inspector or higher, must conduct a preliminary inquiry before the filing of the First Information Report(FIR). The Central Government will then decide whether or not to permit the filing of the FIR in the light of the preliminary inquiry report. Section 154 of CrPC will be amended as a result of this change. Further, the Law Commission stated that these recommendations were made after the Supreme Court findings in the **S.G Vombatkere V. Union of India**¹¹(where a retired army general has challenged the constitutionality of the Section 124A) regarding the potential misuse of Sedition law was taken by the Commission into account.

❖ **Reasons Given By The Law Commission To Retain the Sedition Law**

¹⁰ The Code of Criminal Procedure Code, 1973, No. 2, Acts of Parliament. 1973 (India).

¹¹ (2022) 7 SCC 433.

- To protect the Unity and Integrity of India.
- Realities differ in every jurisdiction (Though the Britain has abolished the sedition law through the **Coroners and Justice Act of 2009**, but the ground realities of both the countries are different, so the sedition law must be retained).
- Existence of several counter-terror legislations is not sufficient .
- Colonial legacy is not a strong ground for striking down the law in the context of India's contemporary democracy.
- Sedition Law falls under the purview of reasonable restrictions that are provided under Article 19(2) of the Constitution.

V. Conclusion –

Thus, to conclude India is one of the largest democracies of the world and the quintessential feature of a democracy is the freedom given to the citizens to express their views and opinions freely without any hesitation even up to the extent of fair criticisms of the Government. A reassessment of this harsh law is now required as sedition is one of contentious law of the country. The Government should try to maintain a fine balance between freedom of speech and expression and the ability to openly criticize the government, as fair criticism not only helps in the prosperity of a nation but in the long run it acts as a guiding light for the government to act in a legitimate manner.

As it is said that Law evolves with the changing nature of the society, keeping this into consideration what is required is that the provisions of the sedition law should be made in line with the changing circumstances and situations.

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