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SEDITION AND ITS INSURGENT ASPECTS

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INTRODUCTION

Sedition means any kind of influence or sudden provocation to rebel/agitate against the head of state. In simple words sedition means a crime of generating or designing to take up arms against the lawful governance with a goal to cause destruction in society and throw out the regime. For eg. Any person may commit sedition by holding a gathering/assembly to incite people to express displeasure and restlessness towards the government or an official settled power¹. Sedition often involves revolt against constitution and any ruckus, though not targeted at direct and unbolted violence against the statutory legal provisions. Sedition stimulated by a person is known as sedionist. Typically, sedition is not considered a disruptive act, but the acts may be triable under sedition laws varying from country to country. Sedition is considered to be a subsidiary crime then treason, as a sedionist encourages and motivates revolt, but does not take unconcealed actions to overthrow the governance.

INDIAN LAW RULING

Section124A of Indian Penal Code, which bestows sedition, was drafted by Thomas Babington Macaulay and introduced in IPC in 1870. Section124A says that “whoever, words either spoken or written, or by signs or by visible representation, or otherwise bring or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to 3 years to which fine may be added ”. Sedition is a non bailable felony. Retribution for this felony is upto 3 years to a life term along

¹ <https://en.m.wikipeida.org>

with, tagged with fine. ²A person prosecuted under this charge cannot ask for government appointments. Along with, they also have to survive without passports. Mahatma Gandhi commented that Section 124A is made to create suppression to fundamental right of speech and independence of an individual. Jawaharlal Nehru commented that this provision is unsavoury and highly objectionable. It would be finer the sooner we get rid such and abhorrent law. But in return in 2019 Nityanand Rai, Minister of State of Home Affairs stated that this provision is mandatory and required for fighting anti national hostilities, hence proposals to snippet this law out is not required. Supreme Court upheld the law in Kedarnath Vs State of Bihar ³in 1962. The court pronounced that this law is required by the government to safeguard and shield itself⁴. However, court also ruled that charges of sedition could only be framed when the actions of the person is in threat to public peace. A citizen has all entitlements of criticism against the state, provided that criticism should not lead to mutiny. In 2016, S.C recapitulated these necessary measures to be followed by all.

HISTORICAL BASE

Sir John Romilly, Chairperson of Second Pre Independence Law Commission stated that the amount of retribution proposed for England law is 3 years, hence in India it shouldn't be more than 5 years. This Section 124A was not sanctioned in IPC in 1860. Section 124A was amended in 1898(Act V of 1898), stating punishment of transportation for life or any shorter time. In UK, The Westminster Parliament validated The Prevention Of Seditious Meeting Act, 1907 in order to avoid public assemblies held in India with the intention of disrupting British Rule. The foremost case of India where Section 124A was applied in Jogendra Chandra Bose's Case⁵. Jogendra Bose had condemned the "age of Consent Bill" and defeatist effects of British Imperial Rule in India. Court observed the difference that in England Section 124A will be imposed when any action is done in sequel of a seditious emotion, but on the other hand in India only those acts would fall under 124A that are done with the objective of expressing opposition and reluctance and are a threat to British Rule. Disaffection and Disapprobation are 2 core elemental pillars of

² <https://timesofindia.indiatimes.com>

³ 1962AIR955,1962SCR Supl.(2) 769

⁴ <https://www.indiatoday.in>

⁵ (1892)ILR19Cal35

Sec124A. Section chastises disaffection and not disapprobation. Incase of Jogendra Chandra Bose, court did not announce any verdict and Bose was set free. The interpretation that, any actions that suggested revolt or forced reluctance to the government should be given to this section is not valid. Another landmark case is of Queen Emperor Vs Bal Gangadhar Tilak⁶ where the accused had published an essay featuring the Maratha warrior Shivaji overthrowing British reign. The newspaper was “Kesari”. Court ruled that the section places absolutely on the similar foundation of the victorious exciting of feelings of disloyalty, disaffection and the abortive endeavour to excite them. This judgement shaped the 1989 amendment to Section124A IPC where the explanation of defined disaffection to insert disloyalty and feelings of enmity too. In Niharendu Dutt Majumdar Vs King Emperor⁷ where court expressed its contradicting opinion from the literal elucidation given to Section124A in Bal Gangadhar’s case. The court opined that the offence of sedition was associated to disorganization of public order and prevention of organization until and unless the speech leads to mutiny or disorganization of public order, or a reasonable prediction or probability of same, it cannot be termed as seditious. Thus, the nucleus of the defence argument was certified. Two crucial decisions in accordance to Tilak’s case were Queen Empress Vs Ram Chandranarayan⁸ & second was Queen Empress Vs Amba Prasad⁹. In Ram Chandranarayan case, attempt to excite emotions of disaffection to the state was explained as “Analogous to an aim to produce dislike or detestation towards the government to excite political dissatisfaction, and cut off the public from their fidelity to state”. But it was clear that every act of disapprobation of state does not leads to dissatisfaction under Section124A on condition if the accused is a faithful at heart and true hearted and is ready to yield the orders of state¹⁰. A similar interpretation was provided to this disapprobation in Amba Prasad’s case who was charged against Section124A. The court proposed that the denotation of disaffection held that any disapprobation will only be shielded as a free speech if it does not lead to subversion of loyalty towards the state.

⁶ (1917)19BOMLR211

⁷ AIR1939Cal703

⁸ (1931)33BOMLR1169

⁹ (1898)ILR20ALL55

¹⁰ Law Commission Report 30August2018

CONSTITUTIONALITY

The Supreme Court validated the constitutionality and distinguished between disloyalty to government and stated upon the considerations of the government without influencing public disorganization to actions of ferocity. Sedition wasn't bearable to the creators of constitution as it stood as a limitation to Article 19(1)(a). Article provides freedom of speech and expression that is also limited to constraints under Article 19(2) of Constitution¹¹. Article 19(2) imposes cut backs on restricted grounds of enjoyment of rights of sovereignty and honor of India, soundness of the state, congenial relations with foreign states, public organizations, decorum, or ethics in relation to contempt of court, character assassination etc. Section 124A is cognizable in nature and non-bailable. After independence, Section 124A came up for deliberation for the first time in case of *Romesh Thappar Vs State of Madras*¹². The Supreme Court opined that unless freedom of speech and expression penance "The security of or be inclined to topple the state", any law imposing limitations upon the same would not fall within the ambit of Article 19(2). The constitutional validity of Section 124A came to as a dispute in case of *Kedar Nath Vs State of Bihar*. The bench confirmed the validity of Section 124A. The court demarcated between the phrase, "The government confirmed by law" and "The persons interested in carrying on the management". Court also came up with an equilibrium between the "Rights under 19(1)(a)" and the "Capacity of law making body to hinder such right". However, this liberty under 19(1)(a) has to be controlled against becoming an entitlement for denunciation and censure of the state established by law. An individual has all the rights of criticism against the government unless and until it does not encourage and motivates others to pick up their arms against governance. In case of *Aseem Trivedi*¹³, where the cartoonist Mr Aseem had displayed an animated caricature that expressed sarcasm and insult on Parliament on Facebook. He was finally acquitted under the charge after filing a PIL in B.H.C. In 2015, court opined that there is a requirement to lay down measures for striking down of Section 124A. India's constituent assembly had a belief that for the splinter group, in specific, its principal key to have an assembly and free speech so that they can highlight their voices to state. In the scene of considerable Retribution, the law serves as discouragement on fundamental rights bestowed to citizens of India.

¹¹ www.jatinverma.org

¹² 1950AIR124,1950SCR594

¹³ Cri.PIL 3-2015

CRITICAL ANALYSIS

Section 124A is a fossil of imperial inheritance and is incompatible with democracy. Its a restriction on the licit use of fundamental rights of speech and expression. Dissatisfaction and condemnation towards the states are essential elements of rigorous public discussion and dialogue in high spirited democratic country. They should not be construed as sedition. Right to debate, find fault in and to use another governance instead is very much basic rudiment of democracy. Sedition has been inherited by Britishers in India, britishers used Sedition as a tool to suppress Indians, have themselves scrapped out the law in their nation. Hence, there is no good reason as to why Indians should continue with the same. The core elements of sedition “disaffection & disapprobation”, are very fuzzy and are opened to endless interpretations, hence the elements lack definite meaning. IPC & Unlawful Activities Prevention Act have statutes that penance “disorganizing the public order and overthrowing the government by illicit manner”. Shield of national honour is well guarded by these two acts and need for Section 124A is irrelevant¹⁴. Sedition Law is been exploited as an instrument to abuse and victimize political dissent. A broad and an extensive executive circumspection is incorporated into it which authorizes the undisguised abuse. In 1979 India endorsed the International Covenant on Civil & Political Rights (ICCPR) which recites globally acknowledged standards for the safeguard of freedom of expression. Nevertheless, embezzlement of sedition and tyrannically slapping of charges which are not in consonance with India’s obligatory commitments towards the global world.

SCOPE OF IMPROVEMENT IN INDIAN LEGISLATION

Sedition is a major resentment in violation of Article 19. So there is a requirement that sedition laws should have explicitly carry words which self satisfy the limitations of Article 19(2). The aim of constraining speech under sedition act is to safeguard national security. Sedition laws should be rewritten and applied according to measures given by the apex court. In my view law needs lot of improvement and should include aspects which are only against national security

¹⁴ <https://www.indiatoday.in>

and should not include those aspects where it acts as a ticking bomb against people who are to express their opinion. For eg, in 2014, 60 Kashmiri students were cheering Pakistan against India in a cricket match, so they were accused of sedition¹⁵. The move of levying of sedition charges against students is not relevant. Another example being of a folk singer for singing 2 songs condemning the state government for purportedly exploiting from state liquor shops at cost of the poor. Hence, this way Section 124A is also used as a suppression of facts against public. There are some gloom areas which rest between actual statute and its execution. Thus those gloomy areas need to be rectified by law. Such laws are mandatory for wrongdoing in a country like India due to a lot of alienating potential capacities. At times the law has been exploited and abused irrelevantly. Recent sedition charge against cricketer Navjot Sidhu for expressing affection to Pakistani Army Chief Qamar Javed Bajwa during PM oath ceremony shows the stretch which the law has been ill used in India¹⁶. A law that should have no place in free spirited India has been used time and again to hush activists, journalists, scholars and academicians, whose views aren't advantageous to that of ruling power.

CONCLUSION

We've tried a hand on explaining sedition and its various aspects related. As a matter of fact, when this section was launched to suppress Indians and was used as a tool by Englishmen isn't substantive enough to be retained in IPC. India being largest democratic country across the globe, takes rights of free speech and expression into account as a mandatory element of democracy demands sedition law to be redefined. The redefined law if done, should stuck an equilibrium between sedition and fundamental rights. We feel Section 124A would not fulfil any aim because there are already other existing statutes for same. The redefined law should also take the measures to ensure that the law isn't misapplied to suppress basic fundamental rights under Article 19(1)(a) and also cardinal voicing of feelings and emotions.

¹⁵ <https://blog.ipleaders.in>

¹⁶ <https://thewire.in>