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Law of Sedition Contemporary India: An Overview

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Abstract: ***Sedition law is one of the most controversial law under Indian legal system introduced in the later part of 19th century to silence every voice of decent raised against British Raj in India. This law was very harsh as it tends to punish every expression try to challenge the authority of colonial rule. Any action or statement that stirs up rebellion against a legitimate government is considered to be an act of seditious behavior. Under the law of sedition, it is illegal to encourage hatred or contempt for the government, or even try to do so, and it is also illegal to instigate or try to incite disaffection toward the government in violation of the laws that have been created. In addition to a possible monetary penalties, the sentence might range from imprisonment for a period of three years up to life, depending on the severity of the crime. Supreme Court narrowed the application of law in order keep it alive in law text book and imposed pernicious tendency to create violence as essential condition to complete the offence, later on it converted into requirement of actual violence after the speech or expression. Because protecting individual liberties and rights, as well as the safety of the general population, is one of the most important tenets of India's constitutional framework, the criminal law of India strives to achieve this goal. Citizens are afforded the right to freedom of speech and expression, as guaranteed by Article 19 of the Constitution. As a result of this contradiction, the practice of continually analyzing the judicial interpretation of such legislation as a means of addressing the ever-shifting socioeconomic situations has become increasingly important. Given that genuine freedom of expression is the distinguishing feature of a well-functioning democracy in today's world, we view the sedition statute as being particularly harsh in light of this reality. As a result, we maintain that the legislation regarding sedition needs to be revised so that it accurately reflects the situation. This paper tries to present the summary of the judicial development of sedition law with the relevant judgments of various courts in chronological manner of the body, which can generally result to better health and personality.***

Key Words: Judicial development, disaffection, monetary penalties, imprisonment, law in order, rwsult.

The seed for what would later become known as the "Law of Sedition" was planted in India as early as 1837, namely in one of Macaulay's draft sections for the Indian Penal Code. The Law of Sedition is a major law in the Indian legal system that deals with all kinds of expressions that excite hate, contempt, or disaffection towards the government established by law. This law has been subjected to a huge amount of debate and controversy in the recent past, and it is still the most hated section of the Indian Penal Code. There has been a long-running demand to repeal this law from the statute book due to various reasons.

Legal Provision- This section is a part of Chapter VI which consists of twelve sections in IPC under the title 'Offences Against State'. Law of sedition was not the part of the original draft of IPC adopted in 1860 prepared by the first Law Commission; even it was not incorporated in IPC for a long time.

In 1870 when Wahhabi movement broke out it was added as a marginal note called 'disaffection' in the IPC but the word "Sedition" was not used. It was the year of 1898 when the Council of Imperial Legislation (a colonial legislative body) passed an amendment in IPC and replaced the marginal notes with the word sedition.

Along with that in main body several explanations were attached to the section. Although there has not been any change in the phraseology of this section but this section had been under constant and regular change through judicial interpretations.

The section 124 A says- "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempt to bring into hatred or contempt, or excites or attempts to excite disaffection towards the

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government established by law in India, shall be punished with [imprisonment for life] to which fine may be added, or with three years, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine".

According to a subsequent section's definitions, "disaffection includes all feelings of enmity and all feelings of disloyalty." However, comments that indicate dissatisfaction of the actions taken by the government with the goal of obtaining those actions' modification by authorized means and that do not provoke or attempt to excite hatred, contempt, or disaffection do not constitute an infraction under the provisions of the section. In addition, remarks that express dissatisfaction of administrative or other acts taken by the government but do not promote or attempt to stir hatred, contempt, or disaffection do not constitute an offense under this provision. These types of comments are not considered to be in violation of this section.

Language of the section made it clear that every expression which tries to disseminate the government established by law will be seditious. Phraseology of the Section remained the same but application of law has changed in due course of time due to judicial interpretations. In Bal Gangadhar Tilak trails judge Stacy J. interpreted the law literally and did not accept the plea that intention of the offender was not seditious.

Any act which does not satisfy a reasonable man that there was 'the intention or tendency to create violence' would not be sedition. But Privy Council did not agree with the interpretation and overruled in later cases. At the commencement of constitution it became an anomaly of Fundamental Rights and almost all members of constituent assembly was in favor to repeal the section, still the principal drafter of the constitution Dr.B.R. Ambedkar favored the section. He referred the civil unrests taking place in border areas that time provoked by anti-Indian elements through various hate speeches and expressions towards India. So Supreme Court in order to continue the law in the text book tapered the application of sedition and imposed many restrictions on its application time to time. Ultimately this law became so degraded through judicial interpretations that it is as good as a erased law.

Judicial Pronouncement before Independence- Queen Empress v. Jogindra Chandra Boss was the first case ever recorded on sedition in India. In this case the accused was an editor of weekly newspaper named Bangbasi. In 1891 the newspaper criticized the Age Bill (1891) by which government raised the age of consent for the sexual intercourse. He put an allegation on the government that they are trying to Europeanize the Indian society and British government is also liable for the economic deprivation in India. He was charged with law of disaffection. The accused argued that there was no reference to the rebellion or other violent means. So he should not be incriminated for any offence. Although prosecution advocated for proceedings on him but court took off the charges after the accused submitted an apology.

In Emperor v. Bal Gangadhar Tilak, Bal Gangadher Tilak was tried three times under the law on different occasions. "In his first trial, the authorities alleged that Shivaji's comments referencing the death of Afzal Khan were responsible for the assassinations of the despised plague commissioner Rand and another British officer, lieutenant Ayherst. The murder took place a week after this speech, while they were returning from the dinner and event they had attended at Government House in Pune to mark the diamond jubilee of Queen Victoria's reign. Bal Gangadhar Tilak was found guilty of sedition but was later freed in 1898 as a result of Max Weber's intercession."
In 1908 Tilak was again prosecuted under sedition law for his editorial which was published in "Kesari after the Muzzufarpur Kand and Tilak defended the revolutionaries by his articles. Despite a spirited defense the judges sentenced Tilak to six years rigorous imprisonment with transportation" .

In 1916, J.A. Guider, the director general of the police's criminal investigation department (CID), filed a charge with the district magistrate of Pune, accusing Bal Gangadhar Tilak of verbally propagating seditious material. This led to Tilak facing a second trial for seditious activity. Three Tilak speeches from 1916 were cited by him, two from Ahmednagar and one from Belgaum. Jinnah skillfully argued that Tilak could not be charged with sedition since he had targeted the bureaucracy, not the government, in his remarks, but Tilak was once more given a three-

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year prison sentence.

In this case court reasserted its view as was in first trail and held that any expression which incites disaffection towards the government established by law is offence , it is immaterial whether he had tendency to create such or not.

Niharendu Dutt Majumdar v. Emperor is a landmark judgment in sedition law. "In terms of the legal definition and scope of sedition, there was difference in opinion between the federal court in India and the Privy Council in Britain. The federal court for the first time defined sedition in this case and held that in order to constitute sedition the acts or words complained of must either incite to disorder or must be such as to satisfy a reasonable man that it is their intention or tendency".

In King Emperor v. Sadashiv Narayan case Privy Council overruled the liberal interpretation given by federal court in Niharendu Dutt Majumdar case. In this case accused published and distributed same leaflets on January 23, 1943 in which he described the poor situation of people dying from hunger but still they were over burdened by taxes of British government. In leaflets he criticized the British policies but nowhere had he called for a separate government. Trail judge put his reliance on Niharendu Dutt Majumdar case and acquitted the accused but Privy Council altered the judgment in appeal. The Judgment of Strachey, J in Bal Ganga Dhar Tilak was cited with approval and it was reiterated that incitement to violence was not a necessary ingredient of the Offence of Sedition.

Judicial Pronouncement after Independence- Tara Gopi Chand v The State was the first case related to law of sedition decided by any court in independent India. In this case Punjab high court tested the constitutional validity of section 124A IPC. Another significant fact about this case is that it was decided before First Amendment Act to the constitution.

The next case in which another High Court tested the constitutional validity of sedition law was Debi Soren v. State of Bihar . This time Patna High Court confronted the question of constitutionality of section 124 A IPC. This was the first case decided after the First Constitutional Amendment which added the words "in the interest of public order" as a new ground of restriction on freedom of speech under article 19(2).

The next judicial development in sedition law was Sagolsem Indramani Singh v. State of Manipur . This case came before the Guwahati high court just after the Debi Soren judgment. The court referred two approaches expressed by Privy Council and federal court in respective cases. The court tried to make balance between the security of state and freedom of individual by declaring a certain part of sedition as unconstitutional and rest of the part as valid. Court specially emphasized on the disaffection term which formed the very essence of the sedition law. Court opined that public order or the reasonable consequences of likelihood of public disorder was held to be the gist of the offence.

Ram Nandan v. State of UP was the second case confronted by Allahabad high court to decide the constitutionality of section 124 A of IPC. The appellant delivered a speech to an audience about 200 people in a village in which he criticized the congress regime and claimed that if government does not fulfill our demand it shall be overthrown. For this speech he was charged with sedition. Court held that creation of bad feelings against the government is not against the interest of public order but might be in the interest of public order in the present democratic set up of the country ushered in constitution.

Kedarnath Singh v. State of Bihar was the landmark judgment of Supreme Court which changed the face of sedition law forever. In this case the accused was a forward communist leader who was convicted under section 505 and 124 A of IPC for his alleged speech in which he had used very bad language for the government and called ministers and officials as Gundas. He challenged the constitutionality of the section on the ground that it is in contravention to the fundamental right provided under the constitution. Court justified the presence of the sedition law in penal statute on the ground of security of the state and provided it legal validity, but in order to save it court narrowed down its scope. In this case Court propounded the tendency test in order to apply the law of

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sedition. Balwant Singh v. State of Punjab molded sedition law in such a way that it made it almost tooth less. Supreme Court moved one step ahead from the line laid down in Kedarnath Singh judgment and almost closed the ambit of sedition law. The incident in this case took place just after the assassination of Prime Minister Indira Gandhi. Accused was an officer on duty in the market of Chandigarh, as the news came out of Indira Gandhi's death accused shouted some of the highly objectionable slogans about the Khalistan.

Accused were held liable for the sedition under section 124A and 153A of IPC by the lower court as well as high court. But Supreme Court overturned the decision and held that-

Shouting Khalistani slogans is not seditious because raising some lonesome slogans a couple of times without 'anything more', did not constitute any threat to the government. It appears to us that raising some slogans only a couple of time by the two lonesome people, which neither evoked any response nor any reaction from the from anyone in the public can neither attract the provisions of section 124A or 153A IPC some more overt act is required to bring home the charges.

Now if we interpret the impact of this judgment in current scenario it will mean that any speech or slogan no matter how objectionable it is, if not coupled with violence, will be out from the scope of sedition.

Gurjatinder Pal Singh v. State of Punjab case is a clear example that how the interpretation given by the Supreme Court has legitimized the anti-national activities and anti-national speeches. In this case the appellant gave a speech and advocated for establishment of Khalistan state by all means either by force or without force. Later on the audience listening the speech became passionate and they raised their naked swords in the air to support his views. He was convicted under section 124A and 153A of the IPC by the lower court. High court denied the sedition charges on the petitioner by narrowing the scope of sedition law and acquitted the accused on the same ground as was in the case of Balwant Singh case.

The judicial attitude has been going from tendency test to the clear and present test in respect of sedition. Judiciary is continuously closing the ambit of sedition law and that is one of the reasons which are contributing in the growth of anti-national activities and speeches.

In the case of S G Vombatkere v Union of India , "a petition was filed in Supreme Court to quash the sedition law arguing that it is not tuned with the current social milieu and it was intended to suppress the people under colonial rule. But it is no longer required under democratic form of government. Considering the matter court ordered government to reconsider the section and stayed the law for further operations. Court held that till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the Governments. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124 A of IPC while the aforesaid provision of law is under consideration".

If any fresh case is registered under "Section 124 A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC are kept in abeyance". .

Conclusion- Sedition law has been degraded through interpretations in its judicial development. Sedition used to be called as prince among all the sections of IPC due to rapid prosecution of freedom fighters under the law. It was slammed on almost all the freedom fighters during the struggle for independence. It was proposed to repeal the sedition in constituent assembly because it was seen as a symbol of colonial barbarism.

The repeal of the legislation might not be sufficient to prevent fabricated cases in a culture that does not distinguish between treason and sedition. If 124 A is repealed, the government might employ another harsh statute to persecute political opponents. Legal, police, and judicial reforms are necessary to ensure that harmful laws are repealed by the Union, that state police do not abuse the law, and that the judicial system maintains a vigilant watch

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on bogus claims by providing early relief and punishing offenders.

The Center has not given a deadline for reviewing the sedition laws. It would be wise for the government to reconsider all of its harsh legislation at this time. Along with promoting civil rights, this will facilitate doing business in India. On the grounds that it contravenes Articles 14, 19, and 21 of the Indian Constitution, Section 124 A has been challenged in front of the Supreme Court. In order to make room for a New India if the government does not repeal sedition, section 124 A should be repealed by a larger Supreme Court panel.

Footnote-

1. Indian Penal Code, 1860 (Act 45 of 1860) s. 124 A.
2. Ibid.
3. Hereinafter referred as Tilak Trails.
4. Queen Empress v. Jogindra Chandra Boss 1892 ILR 19 CAL 35.
5. Emperor v. Bal Gangadhar Tilak, 1897 I.L.R. 22BOM 112,151.
6. Emporer v Bal Gangadhar Tilak (1908) 10 BOMLR 848 (Tilak –II).
7. 1917 19 BOMLR 211.
8. Niharendu Dutt Majumdar v. Emperor AIR 1942 FC 22.
9. King Emperor v. Sadashiv Narayan AIR 1947 P.C 82.
10. Supra Note 9 12 Tara Gopi Chand v The State 1951 CriLJ 449.
11. Debi Soren v. State of Bihar (1953) 32 ILR 1104. PAT. (Web Edition SCC Online).
12. Sagolsem Indramani Singh v. State of Manipur 1955 CriLJ 184 (Gauhati High Court).
13. Ram Nandan v. State of U. P. AIR 1959 All 101.
14. Kedarnath Singh v. State of Bihar AIR 1962 SC 955.
15. Balwant Singh v. State of Punjab AIR 1995 SC 1785
16. Supra Note 17.
17. Ibid.
18. Gurjatinder Pal Singh v. State of Punjab20 (2009) 3 RCR (Cri) 224.
19. S.G Vombatkere v Union of India(Petition no 682 of 2022) (11 may 2022).
20. Ibid.

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