

“Abuse of Sedition Provision in Indian Democracy”

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Abstract

Even after seventy three years of independence, India is under the rule of oppressive laws enacted during colonial period. One such law is the sedition provision. Democracy that was born with the independence of India has failed to play its important role in India because of the lack of interest of the contemporary leaders to follow the principles of democracy. Personal freedoms are curtailed by sedition provision that has arbitrary effect on fundamental rights of the citizens. The provision is being misused by the government. Hate speech and contempt of government or healthy criticism or trivial offences against the ruling government are tried under the draconian sedition provision where the person can be imprisoned for life without getting bail. Consequently, no opposition can criticize against the ruling government. These core issues are addressed in the paper. In the present scenario, the only benefit that is received from the sedition provision is by the authority against critics and political opponent. Instead of using it as an instrument for security of the state, it is used as a weapon to curtail freedom of the citizens. The main reason for the origin of sedition provision was to suppress the critics of those in authority. One of the many reasons to look into this provision is that it has failed to deliver justice in a lawful means to the people. Apparently, the section is not in the interest of public. The aim of the study is to amend the provision and protect freedom of speech and expression which is fundamentally guaranteed in the constitution of India.

1. Introduction

The law of sedition in India is a colonial origin. It was established in 17th century by the then British rulers to suppress the people who are against the king. Sedition provision was not part of the original IPC, 1860. It was introduced only in 1870 after the Wahabi revolt¹. It was added in Section 124A² of Indian Penal Code, 1860 through the special Act XVII of 1870. Initially, when

¹ It was a revivalist movement that purified Islam by eliminating all the non-Islamic practices. (period of movement 1820s to 1870s)

² Indian Penal Code, 1860, s. 124A. Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings 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 ¹⁰⁴ [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. 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 or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section

the Indian penal code was established, sedition provision was not provided in the code, though it was already playing its role under Macaulay's Draft Penal Code, 1837-1839 in section 113³. The punishment under the Macaulay's code was life imprisonment. Later this provision was adopted and added in IPC under section 124A by the ruling British in 1870 in order to control the Indians who were against the decision of the government policies. In 1898, section 124A was again amended by IPC (Amendment) Act 1898 and through this amendment life imprisonment punishment for the offence of sedition was provided. It was witnessed by many nationalists that the law of sedition was used as a tool to suppress against great nationalists like, *Annie Besant*, *Bal Gangadhar Tilak*, *Mahatma Gandhi*, etc.⁴ and later it was used against many freedom fighters. The purpose of bringing sedition law by the Britishers in India was to curb the voice of the people against the ruling government. As it is evidential from different instances during the struggle of Indian independence by the freedom fighters.⁵ The main objects of sedition are to induce discontent and insurrection against the government. As cited by Mr. James Stephen, the reason for bringing this section under the code was to protect the freedom of expression from the stricter common law of England and when fundamental rights was born to the constitution of India, sedition law was already an old law playing major role in the country in favor of the ruling government. With the enactment of the constitution of India, freedom of speech and expression with certain reasonable restrictions like security of the State, public order, decency or morality, incitement to an offence, etc., was added in the Constitution.⁶

The offences that fall under the sedition provision are exciting, hatred, contempt, disaffection and attempt of such offences. The object of the sedition provision is to punish the accuse of such offences. Sedition also includes certain amount of hate speech that incites hatred, violence. Hate speech that threatens the sovereignty and integrity of the state and security of the state may be qualified as sedition. However, lack of provision on hate speech in criminal laws has also contributed to the unsuccessful court proceeding in dealing with the issue of criminalizing the hate speech. Sedition is also a defamation of the state under section 124A IPC. It has been described as disloyalty in action and inciting discontent or disaffection in order to create public disturbance, or to lead to war, or to bring hatred in the society against the government or, contempt the ruling government and inciting violence the government. The section reads that any hater or contempt against the government and exciting against the government amounts to

³³ David Skuy, *Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century* (Cambridge University Press, Vol. 32, No. 3 Jul., 1998, p. 514) available at <https://www.jstor.org/stable/313159>

⁴ Nivedita Saksena & Siddhartha Srivastava, *An analysis of the modern offence of sedition* (manupatra, P. 129)

⁵ *Queen Emperor v. Jogendur Chandra Bose* (1892) 19 ILR Cal 35, *Queen Empress v. Bal Gangadhar Tilak* ILR (1898) 22 Bom 112, *Queen Empress v. Ramchandra Narayan* ILR (1898) 22 Bom 152, and *Queen Empress v. Amba Prasad* ILR (1897) 20 All 55.

⁶ Mahima Makhija and Asha Sundaram, *The Sedition Laws in India with Special Reference to Shreya Singhal vs. Union of India* (International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, p. 113)

sedition and is punishable with up to life imprisonment under IPC. In order to fall under the section there are two essentials to be fulfilled. Firstly, bringing into hatred or contempt against the government or exciting disaffection towards the government established by law in India. Secondly, the act or attempt may be in the form of words or signs, or visible representation, or otherwise. The supreme court of India has ruled in the case of *Kedar nath singh v. State of Bihar*⁷ that unless there is violence incited against the government, it cannot prosecute under the sedition law. Though there was no vertical announcement in *Queen Empress v. Jogendra Chandra Bose and others*⁸, it was observed also that only those acts which has intention to resist by force or an attempt to excite resistance by force will fall under the sedition section. Further, in *Queen Empress v. Bal Ganghadar Tilak*⁹, the word ‘disaffection’ was interpreted. It was interpreted that only disloyalty and feelings of enmity against the government amounts to the offence sedition and in *Queen Empress v. Amba Prasad*¹⁰, it was observed that every act of disapprobation of government does not amount to disaffection under the sedition law.¹¹

Research problem

Ramification of the rampant misuse of sedition law (section 124A IPC) is a threat to the modern democracy.

Research questions

- Whether sedition provision in IPC has fulfilled public interest and delivered justice to the people?
- Can hate speech and contempt against government be considered as sedition?
- Is sedition law being used as a tool to suppress criticism? Is the government abusing sedition law?
- Is sedition law necessary in democratic India where freedom of speech has restriction? Should the sedition law be scrapped or amended in India?

Literature review

Every hate speech against the government is not sedition. Hate speech is a lesser serious offence than sedition. Alexander Brown, in his article¹² has explained in wide manners that hate speech that involves emotions, feeling of hate should be understood “as a heterogeneous collection of expressive phenomena”. *The Law Commission of India on Hate Speech* has also explained the

⁷ AIR 1962 SC 955

⁸ (1892) ILR 19 CAL 35

⁹ (1917) 19 BOM LR 211

¹⁰ (1898) ILR 20 All 55

¹¹ Law Commission of India, consultation paper on Sedition, government of India, (30 August 2018) p. 12-14

¹² Alexander brown, What is hate speech? Part-1: the myth of hate, cross mark (Law and Philosophy, 2017)

difference between hate speech and sedition. Hate speech is a public tranquility that indirectly affects the state but sedition is a direct offence against the state. Simply disobeying the government does not amount to sedition. As it is observed in the article, *An analysis of the modern offence of sedition*, Sedition law in India is now obsolete in a modern democratic system of government and need reconsideration by Indian judiciary and legislature. The article also explained the reason why sedition provision in India needs to be reconsidered is because there are others laws that maintain public order and peace and tranquility. Such offences should not fall under sedition provision because the punishment for sedition has draconian affect in less serious offences. The provision should be either amended or repeal from the statutory book. In the article, *An analysis of sedition law in India: a critique*, the author has criticized that sedition provision expects citizens to have “popular affection” towards the government in every aspect. It also explained that sedition provision suppresses the freedom of the citizens and that it threatens the democratic value. That is why sedition provision should be abolished by taking the example of modern democratic country like England and New Zealand. The abuse of sedition provision in India can be witnessed from the case of *Shreya Singhal case* where two girls were arrested for advocacy. But the court has distinguished between advocacy and incitement. The authors in the article, *The Sedition Laws in India with Special Reference to Shreya Singhal vs. Union of India*, have discussed the facts and judgment of the case. As per the judgment, advocacy is not punishable under the sedition but only incitement is punishable. Sedition provision is used by the government as an instrument to control people. Tonnie O Iredia stated in his article, *Trends In Sedition Laws: Implications For The Practice of Journalism in Developing Societies*, “activists, political opponents and media professionals face frivolous daily charges of sedition”. The author in this article emphasized on “theories of the press” and discussed how sedition laws has negative effects on journalism. The author also explained how sedition is used as a tool to suppress free speech and expression in a democratic system especially in developing countries.

2. Hate speech that amounts to sedition

Hate speech has not been defined in any law in India. In general sense, hate speech is a speech inciting against a particular group. According to Law Commission of India (report 267th), hate speech is done with an intention to cause hate or fear, incitement, etc., against the group. It is any word written or spoken, signs, visible, representations.¹³ The term “hate speech” was first coined in 1980s in the United States by legal scholars. The term was used by the American scholars to highlight the failure of legal system in United States that fails to provide legal protection to the victims of the racists’ speech.¹⁴ In India, though there is no explicit definition in statute, the court uses the term hate speech in the form of insult in deciding whether the particular speech amounts

¹³ Law Commission of India, 267th report on Hate Speech (March 2017)

¹⁴ Mari Matsuda, Public Response to Racist Speech: Considering the Victim’s Story (The Michigan Law Review Association, 1989, Vol. 87, p. 2325)

to public disorder and humiliate particular group base on race, religion, etc.. Sometimes an insult may not constitute public disorder but may constitute hate speech. The offensive and abusive speech which is not qualified for constitutional protection and which falls within the restriction of freedom of speech and expression under article 19(2) may be considered as hate speech. Apparently, free speech do not include hate speech and even though acceptable criticism are not hate speech, a speech or a criticism that incites hatred, disloyalty or disaffection or promoting feeling of enmity towards government may amount to sedition. To constitute the offence of sedition, the court had distinguished between “advocacy” and “incitement”. Advocacy is not the offence of sedition but Incitement may amount to sedition.¹⁵ The term hate speech is not only a mere legal concept. It can also be used in other social, cultural, political and economic concept and can be explained through different domain. In legal background, it can be term as speech that incite to hatred, offensive speech that may amount to violation of one’s reputation or criminal defamation, etc.. The European Court of Human Rights have explicitly defined the term ‘hate speech’ in the cases *Surek v. Turkey*¹⁶ and *Gündüz v. Turkey*¹⁷ that hate speech is the expression which spread, incite, promote or justify racial hatred, and other forms of hatred based on intolerance.¹⁸

In a democratic country where freedom of speech and expression is the fundamental right, to pin point the speech as hate speech is a difficult task. In spite of the fact that the responsible speech is the essence of the liberty of free speech, sometimes people tend to take advantage in a malice manner and defame or ruin reputation of the person. Article 19 (1) (a) of the constitution of India deals with the freedom of speech and expression that permit free speech to individual or group of individuals but this fundamental right of the citizens is not absolute. The article is subjected to certain restrictions and hate speech can be curtailed under this article. An individual or a group of individuals cannot use this right to offend against the security of the state and create public disorder. The court has stated that public order is equivalent to security of the state,¹⁹ though in some circumstances it is different from security of the state. The acts that affects public order may not affect security of the state.²⁰ Further, under the restriction of right to speech and expression under article 19(2), any citizens can be prosecuted under this article for the offences against the sovereignty and integrity of the India, security of the state, public order, defamation and incitement of an offence against the state. However, the word ‘hate speech’ is not included in the restriction under article 19 (2) and disadvantage is that there is no legal definition of hate speech in any law in India. But lack of legislation on this offence cannot be the reason to escape

¹⁵ Shreya Singhal v. Union of India W.P (Cr.) NO.167 OF 2012

¹⁶ No. 26682/95, Strasbourg, July 8, 1999. At para. 62, and Partly Dissenting Opinion of Judge Palm

¹⁷ No. 35071/97, Strasbourg, June 14, 2004. At paras. 21–22, 40–1, 44, 48, 51, and Dissenting Opinion of Judge Türmen.

¹⁸ Alexander brown, What is hate speech? Part-1: the myth of hate, cross mark (Law and Philosophy, 2017, p. 435)

¹⁹ Brij Bhushan v. State of Delhi, AIR 1950 SC 129.

²⁰ Ram Manohar Lohiya v. State of Bihar, AIR 1966 SC 740

from offence of hate speech. There are certain implied laws that deals with the offence of hate speech. Section 124A of the India Penal Code, 1860 provides sedition that penalizes person for speech that incites actual violence against the state. Also, Section 153B²¹ penalizes the imputations, assertions prejudicial to national integration. Moreover, under Representative of the People Act, 1951 a person is disqualified from contesting election if he is convicted for indulging in any acts that violates freedom of speech and expression. The higher courts in India are bound to protect the fundamental rights of the citizens under article 226²² and article 32²³ of the

²¹ Indian Penal Code, 1860, s. 153B. Imputations, assertions prejudicial to national-integration.—

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine

²² Constitution of India, 1950, article 226- Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32

²³ Constitution of India, 1950, article 32- Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

constitution of India and right to speech and expression should be protected and extreme cautious should be taken in restricting freedom of speech and expression in order to avoid misuse of restrictive statutes by the state.

In order to prosecute the person under sedition law, intention of the person needs to be examined as stated by the court that in sedition case intention of the person is extremely important.²⁴ Simply raising slogan without mens rea to incite hatred or enmity or disaffection towards government do not constitute sedition.²⁵ Criticism of a government is the hallmark of the modern democracy and criticizing Prime Minister and his government does not amount to sedition no matter how bitter the criticism is, unless it excites or attempt to excite hatred or enmity against the government.²⁶ However, disloyalty by way of criticism against the government established by law may lead to sedition. The court has distinguished between criticism and disloyalty and stated that disloyalty to government is not the same thing as criticizing government and its institution without exciting feelings of enmity and disloyalty. Criticism is never a sweet comment but it has a bitter statement and sometimes it may have strong unacceptable comment but that does not meant the intention of the person is to excite disloyalty towards the government. Simply criticizing will not amount to sedition. Tolerance is a principle in a democratic system of government. However, criticism cannot be tolerated if it has the idea of public disorder by inciting actual violence.²⁷

3. Contempt against government in sedition

The Law Commission of India on sedition has pointed out the requirement to consider the issue whether contempt of government can be made punishable, like in the case of contempt of court. Article 129²⁸ and 215²⁹ of the constitution of India makes supreme court and high court the court of record, respectively. The court of record is the court that has the power to punish for its contempt. This extraordinary power of the higher courts is to be exercised only on demand of

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

²⁴ Pankaj Butalia v. Central Board of Film Certification & Ors, (2015) 221 DLT 29.

²⁵ Balwant singh v State of Punjab, AIR 1995 SC 1785.

²⁶ Javed Habib v State of Delhi, (2007) 96 DRJ 693.

²⁷ Sanskar Marathe v. State of Maharashtra & Anr, 2015 Cri LJ 3561, Arun Jaitley v. State of U.P., 2016 (1) ADJ 76.

²⁸ Article 129- Supreme Court to be a court of record : The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

²⁹ Article 215- High Courts to be courts of record: Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

public interest.³⁰ The Contempt of Courts Act, 1971, regulates the procedure of the power of the courts to punish contempt of courts. The punishment for the contempt of court may be simple imprisonment for a term that may extend to six months or with fine or both. Under the Act, there are two types of contempt, civil contempt³¹ and criminal contempt.³² As per the Contempt of Court Act, 1971, the civil contempt means willful disobedience and criminal contempt means publication that scandalizes or prejudices or obstruct the administration of justice.³³

However, this definition is only applicable to contempt of court. It does not include contempt against government. In fact, there is no specific law in India that deals with the contempt of government. Contempt of court is different from contempt of government. Contempt of court in India is a punishable offence. In contempt of court, simply disobeying the authority of the court and willfully or deliberately disrespecting the court may amount to contempt of court. But in the case of government, it is not the same. Simply disrespecting the government without inciting to violence does not amount to sedition. The comment or expression or willful disrespect of government must incite hatred or enmity or disloyalty towards the government. Most importantly, the expression or act must be violence in nature and most particularly, in contempt of government the comments expressing disapprobation of the measure and administration or other actions of the government must excite contempt or disaffection towards the ruling government. Contempt of government is not punishable unless the comment or the act that contempt the government involves sedition. There are laws in India that may not be explicitly dealt with the contempt of government but may be made punishable when the deliberate violent comment or act is against the government and in some cases this kind of expression may be considered as contempt of government that may be punishable under sedition provision. Some offences may not be contempt in nature but may be disloyalty towards the government and may be made punishable in some offences against state like, conspiracy to wage war against the government, using spoken or written words to create a disposition in the minds of the people to whom the words were addressed and not to obey the lawful authority of the government.³⁴ As it was observed by the court in the case of *Queen empress v. Jogendra Chunder Bose*,³⁵ disaffection is calculated to excite feelings of ill-will against the government, and to hold it up to the hatred and contempt of the people.³⁶

³⁰ Dr. N.J. Pandey, Constitutional Law of India, Central Law Agency, Allahabad, 48th ed., 2011, P. 509-510, 586

³¹ Section 2 (b)- civil contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

³² Section 2 (c): criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which

³³ Bal Raj Varrma, Law of Contempt in India (N. M. Tripathi Private Limited, Bombay, 1974, p. 364)

³⁴ Section 121 (IPC, 1860): Waging, or attempting to wage war, or abetting waging of war, against the Government of India.

³⁵ ILR (1892) 19 Cal 35.

³⁶ Nivedita Saksena and Siddhartha Srivastava, An analysis of the modern offence of sedition (Manupatra, P. 127)

4. Sedition law is a threat to freedom of speech and expression

Individual autonomy is the foundation of freedom. Right to freedom of speech and expression is the most essential liberty in democratic states. Freedom of speech and expression is the natural right that is inherited as a social being. Free speech and expression are necessary for functioning of healthy democracy and a civil society. These rights are the universally recognized fundamental rights as we can witness from UDHR, ICCPR, ACHPR, ACHR, ECHR, etc.. The right which is inherited by nature.³⁷ However, this natural right is not absolute but a qualified right that has restrictions on certain grounds. In India, Article 19(1) (a) of the constitution that provides freedom of speech and expression has already imposed restrictions under article 19(2). Having these restrictions on the speech and expression sedition seem to be an additional ground in restricting on freedom of speech and expression. The law of sedition that is used to punish criticism against government has a “chilling effect” on free speech and in modern democracy where freedom of speech and expression is consider as the natural right, it becomes obsolete. Sedition law should be used only in the rarest of the rare case in such a democratic country where freedom of speech and expression is enshrined under fundamental right. Unfortunately, it has been used in liberal manner by the government to control public opinion. The restriction under the section is arbitrary as it takes away the right of the citizen to healthy criticize against the government. The punishment for the offence of sedition is also extreme and arbitrary. In the present scenario even the unwanted comment against the government is considered sedition and punish under the section 124A. Most significantly, the decision passed by five judge bench in *Kedar Nath case* is ignored. The court observed in this case that inciting disaffection will constitute only if there is direct incitement to violence. Incitement should be indented to create public disorder and violence. *Balwan singh v. state of Punjab*, the court observed that it is freedom to disapprove the measure of the government without inciting hatred, contempt, disaffection. Any disapprobation of the administrative or other action of the government without inciting hatred, contempt, disloyalty do not amount to offence of sedition.³⁸

As per the Law Commission of India, report no. 267, simply inciting violence cannot amount to hate speech. In the age of technology, speech without inciting violence may contribute to hate speech. Article 13(1) of the constitution of India states that any law that is inconsistent with the provision of part III shall be void. Part III of the constitution of India deals with fundamental rights. In this respect, sedition provision in IPC is inconsistent with article 19(1) and shall be invalid. The main purpose of Sedition provision is to restrict free speech by preserving the privilege of the ruling government. Sedition provision in India is being use against social

³⁷ Mark J. Richards, freedom of expression, available at <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo9780199796950105.xml#:~:text=Freedom%20of%20expression%20is%20a%20fundamental%20international%20human%20right.&text=Article%2019%20of%20the%20ICCPR,public%20health%2C%20or%20public%20morals.>

³⁸ Nivedita Saksena & Siddhartha Srivastava, an analysis of the modern offence of sedition (manupatra, P. 139)

activists, political opponents as we can witness from incidents like *Aseem Trivedi*,³⁹ a cartoonist who was arrested for mocking constitution, parliament and national flag of India, another incidents was *Arundhati Roy*,⁴⁰ and *SAR Gilani*,⁴¹ who were arrested for anti-national speech. As it was report, in 2012-2013, sedition provision was slapped on thousands of people protesting against Kudankulam Nuclear Project Plant in Tamil Nadu.⁴² Another incident in recent year is in Jharkhand where thousands of tribal farmers were accused of sedition for opposing acquisition of land for development project.

There are three pillars of government, that is, legislative, executive and judiciary and press is consider as the fourth pillar of the government in a democratic system of government. It is equally important in the functioning of the government in healthy democracy.⁴³ Right to freedom of press and right to information is a fundamental right under the constitution of India. Article 19(1)(a) of the constitution of India talks about freedom of speech and expression. Freedom of press is an intrinsic right under the article. However, this right is not absolute and media is duty bound to provide only truthful and objective information to the people. It is assumed that media plays an important role in democracy by informing the public about the policies of the government and it also provides platform to the public to share perception regarding the ongoing policies in the country. The accountability of the government depends on the role play by the media. In this technology era, a healthy democracy is inseparable from press as it is used to build up public opinion. Media also helps to communicate between state and its people about the government. There are certain reasonable restrictions have been place in the freedom in the interest of the public order, sovereignty of the state, incitement to violence, security of the state. Also, while exercising this right one has to be careful about the reputation of the person because once the person is arrested under sedition provision he becomes the topic in social media and the reputation of the person becomes questionable in the society.⁴⁴

³⁹ Indian cartoonist Aseem Trivedi jailed after arrest on sedition charges, 10 september 2012, available at <https://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition>

⁴⁰ Sedition case registered against Arundhati Roy, Geelani, 29 november 2010, available at <https://www.ndtv.com/india-news/sedition-case-registered-against-arundhati-roy-geelani-440611>

⁴¹ SAR Geelani booked for sedition in Press Club of India incident, 12 February 2016 available at https://economictimes.indiatimes.com/news/politics-and-nation/sar-geelani-booked-for-sedition-in-press-club-of-india-incident/articleshow/50959449.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁴² Kudankulam nuclear plant row: Protesters live under the shadow of sedition, December 6 2016, available at <https://www.hindustantimes.com/india-news/kudankulam-nuclear-plant-row-protesters-live-under-the-shadow-of-sedition/story-pRw5tO3AiF2Neh1rZrRI4I.html>

⁴³ Tonnie O Iredia, Trends In Sedition Laws: Implications For The Practice of Journalism in Developing Societies (IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 23, Issue 1, Ver. 2, January. 2018, p. 44-45)

⁴⁴ J. Ramanjaneyulu, Role of the media in protecting human rights in India – a socio legal dimension, (Ph. D thesis in law Sri Venkateswara University, Andhra Pradesh, India June 2014, p. 1-4)

5. Abuse of sedition law is a threat to Indian democracy

Democracy is the best system of government because in a democratic system of government people are the most important element and the government runs the state on their behalf. In this system of government the rights of the minority is protected. Even though democracy has different meaning, sovereignty of the people and rule of law are the main elements that mould healthy democracy. As Abraham Lincoln, former president of America, stated, democracy is the form of the people by the people and for the people. India being one of the popular democratic country in the world has put restrictions on the freedom of speech and expression. There are already ground of restrictions on freedom of speech and expression and Section 124A is another restriction on the free speech and expression.

The law of sedition is a draconian law against the citizens of India who are not in favor of the ruling government. Even though the section continued to play its role in protecting the government from unlawful activities like violence against the government, it is not clear whether the contempt against the government amounts to sedition and as a result there has been a rampant misuse of this section by the government. As a result, vagueness and ambiguity of legal provision leads to misuse of the law. The person is booked under the provision of sedition for criticizing the state and especially when the comment is complains about the menace of abuse of power or when it is not in favor of the ruling government. There are many incidents that have happened in the recent days. For example, facebook page case, charge on criticizing against yoga expert, charge against students for cheering Pakistan, charge on Jammu & Kashmir university lecturer, sedition charge on the cartoonist, sedition case registered against Arundhati Roy, a great Indian author, for highlighting atrocity committed by armed forces, etc.. The sedition provision has undermined the rights of the citizens to dissent, protest and criticize against the government in a democratic India.

Even a simple criticism or comment against the state is taken under sedition and thus depriving the rights to criticize and express their opinion on state. In a democratic system, it is normal to have opposition party creating disaffection against the ruling government. It is the right of the people to create public opinion against the policies of the government. It is the process to draw attention to its short comings like corruption, misuse of power by the government, etc.. The government is not a permanent form. It may go on changing with times. Opposing government, protesting against its policies and carrying out campaign through legitimate means cannot be construed as sedition but it is the right of the people in a democratic system.

There has been a lot of controversy relating to the misuse of the law of sedition in India. Initially when the section was added in the Code, it was not favored by the drafters of the Indian constitution because the section was used to curb the voice of the people against the great nationalists. The abuse of sedition provision to incarcerate nationalists was the main reason why

the final drafters of the Constitution did not include in the restriction of freedom of speech and expression under article 19(2). But in the present scenario the law plays as an important role against the people who are not in favor of the ruling government and it is used by the government as a weapon to deprive the freedom and as an instrument to suppress bona fide criticism. Jawaharlal Nehru stated that section 124A did not deserve a place in the scheme of the IPC.⁴⁵ Sedition provision is not desirable in the eyes of the citizen of India and as we can witness from the recent incidents that the abuse of sedition in India is rampant

The section is vague and ambiguous the section is used as the weapon for the ruling government to attack on anyone who criticizes its ideology base work. As it was clearly explained in *Shreya Singhal case* that only incitement against the government is a criminal activity but advocacy is not a crime.⁴⁶ But in practice it is not the case and failure of the government to follow the judgment of the case also leads to misuse of law and it is evidential that there has been an increasing numbers of sedition cases in recent decade. As per National Crime Reports Bureau, the number of sedition cases increased between 2015 to 2018. As per the record, between 2016 to 2018 332 people were arrested under sedition provision out of which only seven were convicted.⁴⁷

6. Conclusion

In spite of the fact that sedition provision helps the government to curb secessionist movement and anti-national propaganda, it has an arbitrary affect. Sedition is a non-bailable offence under IPC. When the person is accused of sedition it becomes difficult for the accused to even secure bail, even if the person is booked for trivial offensive speech. In such a case, the long process of trial becomes punishment. Another problem is the misuse by the government. Though the parliament has made it clear that the provision is needed to “effectively combat anti-national, secessionist, terrorist,” elements, it has been used by the government to control criticism against its policies. Right to freedom of speech and expression is a natural right and a human right. Human beings are entitled by nature to freedom of speech and expression. Of course, this freedom is not absolute, it has certain restrictions for the protection of the state and public decency or morality but that does not allow the government to curtail the right in an arbitrary manner. India being party to various international human rights treaties and conventions should either repeal or alter the draconian provision of sedition in IPC. The stringent provision of sedition under IPC has the unreasonable and arbitrary restrictions on the natural rights of the

⁴⁵ Mahima Makhija and Asha Sundaram, The Sedition Laws in India with Special Reference to *ShreyaSinghal vs. Union of India* (International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, p. 116

⁴⁶ Mahima Makhija and Asha Sundaram, The Sedition Laws in India with Special Reference to *ShreyaSinghal vs. Union of India*, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, p. 118)

⁴⁷ Only 4 sedition cases saw conviction in 4 years: NCRB, January 10 2020, available at <https://www.deccanherald.com/national/only-4-sedition-cases-saw-conviction-in-4-years-ncrb-793187.html>

people which ultimately violate human rights. It takes away the natural right of the people by limiting the fundamental freedom provided under the constitution of India. Sedition is a crime against the state and there is no need of a specific provision for an offence committed against the state or government because there are already various provisions that deals with offences against the state in IPC and protects the security of the government and its sovereignty and in this respect, the offence of sedition can be curbed under such provisions. Offence of sedition can also be contained in other provisions that governs public order, public peace, public tranquility, contempt of the lawful authority, etc.. Moreover, the law of sedition has become obsolete in a modern day where freedom of speech and expression is a fundamental right. We can take the example of United Kingdom that has repealed sedition law. There are other laws that covers offences like hate speech, contempt against government, etc.. The study suggest to amend sedition provision and define in structure manner so as to be used only in serious cases and not forgetting the democratic system of the government and minimize the punishment under the provision.

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