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The Effect of Sedition Law on Dissent in India

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Sedition law and its deliberations have always been a debatable topic when it comes to the study of the Constitution. The law has been elucidated and applied differently by the judiciary and the executive over the cases which has caused a lot of misuse of the law. This constant conflict between the two organs of the government has created a situation of lack of any proper authority to regulate the law of sedition. The statistics provided by the Union Ministry of Home Affairs stated that: "Between 2014 to 2019 only 6 were convicted out of 326 cases registered'.[1] Also, the number of cases from 2019 is on a significant rise. Ours is the largest democracy in the world, sedition law which is used to restrict free speech and curb dissent, shakes the very foundation of democracy. In this paper, the researcher makes an argument for repealing the Section 124A of IPC[2], through the critical analysis of the number of cases pre and post-independence, how it has survived the constitutionality by various amendments to it, how the courts have subsequently applied the judgment of Kedar Nath v Union of India[3], the vagueness of the words 'disaffection' and 'government established by law' which led to a number of different interpretations of them and consequently leading to different judgments and how the problem of security of the state and public order can be addressed through other sections of IPC and through other legislations which can very well tackle this issue and lastly the recent 88-page report 2023 by the 22nd law commission of India whose suggestions of retaining the S.124A are more stringent.

[1] Karan Manral, '326 sedition cases filed in India from 2014 to 2019; only 6 convicted : Govt data' (*Hindustan Times*, 18 July 2021) <https://www.hindustantimes.com/india-news/326-sedition-cases-filed-in-india-from-2014-to-2019-only-6-convicted-govt-data-101626609219246.html> accessed 04 June 2023

[2] Indian Penal Code 1860, s 124A

[3] *Kedar Nath Singh v State of Bihar* (1962) Supp (2) SCR 769

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INTRODUCTION

The word sedition has never been used in the statute book except only at one instance in the marginal note to the section. The term sedition has been interpreted and applied differently in several cases in the last 150 years of its enactment. It came into being by Thomas Macaulay's 'Draft Indian Penal Code 1837'[4] and was inserted as clause 113 in the said Code. But when 'IPC 1860' was made the law of sedition was incomprehensibly omitted. Then after 10 years i.e. November 25, 1870, sedition law was put as section 124A of the IPC on the recommendation of James Fitzjames Stephens.[5] The law was introduced because of the increased Wahabi movement, the problem was the fear that the Muslim community may incite a religious war in India and thus it led to the genesis of the sedition law.[6] Section 124A of IPC after an amendment in the year 1898 reads as under:

"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 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 obtaining their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section.

[4] Draft Indian Penal Code 1837

[5] Nivedita Saksena and Siddhartha Srivastava, 'An Analysis of the Modern offense of Sedition' (2014) 7(2) NUJS Law Review <http://nujslawreview.org/2016/12/03/an-analysis-of-the-modern-offence-of-sedition/ > accessed 02 June 2023

[6] Gautam Bhatia, *Offend, shock, or disturb: free speech under the Indian Constitution* (Oxford University Press 2016)

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 offense under this section."[7]

In 1897 when the Kesari newspaper editor Bal Ganga Dhar Tilak's trial was taking place, Justice James Strachey held that 'a person could be charged under the said penal provision for merely attempting to incite hatred towards the Government and the level of 'disaffection i.e. any ill-will or hatred' was not material. He through this case gave an even wider interpretation of the word 'disaffection' to include hatred, enmity, dislike, hostility, contempt and other aversions and thus making it impossible for the people to raise their voices against the government.'

After a few years when Mahatma Gandhi also faced Sedition charges, he asserted that 'any Government cannot compel any person or group of people to have affection towards the Government. It is something subjective to each individual and thus each person is at liberty to express his or her disaffection until it does not lead to any form of violence or promotes violence.' He also asserted that according to his experience out of every 10 people convicted under the offense of sedition, 9 were innocent and they were arrested and charged with the said offense for merely raising their voice or expressing their opinion for the betterment of the public policy at large.[8]

Sedition is an offense against the State as enumerated in the IPC. The crux of this offense is 'incitement to violence' and merely using abusive words or criticizing the government or its policies does not make it an offense but there should be 'Public disorder or the reasonable anticipation or likelihood of Public disorder' which makes it an offense.[9] From the time sedition law came into being i.e. in the year 1870, it has been used to curb and thwart any kind of criticism of the Government whether it be in the form of a dissent or a protest. The problem with this section is that it was enacted during the British era for restricting the freedom movement and after we gained Independence the law of sedition was retained in IPC and through amendments

[7] Indian Penal Code 1860, s 124A
[8] *Ibid*
[9] *Niharendu Dutt Majumdar v King Emperor* (1942) SCC OnLine FC 5

it was made more stringent than what was before independence. It carries a severe penalty that could result in a life sentence. In addition to that, it is non-compoundable, is cognizable and it leads to the person charged with the offense very few remedies such as bail. Though the conviction rate under sedition is very low, the process itself is so cumbersome and tiring which equals it to other forms of punishment. According to the new database of article-14, in the last decade, 11,000 individuals were charged under sedition, out of which 816 were registered.[10] Also according to the government data by the Union Ministry of Home Affairs for 2014 to 2019, only 6 people were convicted out of 326 cases being registered.[11]

In this paper, the researcher is making an argument for repealing this British-era law, as reading down the provision as done in Kedar Nath's Judgment way back in 1962 bore no fruit. It is still being used by the executive agencies in the broadest possible way to include any lawful dissent, protest, or criticism of the government. The problem with this provision is that though the judiciary through a number of landmark cases has held that sedition law should be strictly interpreted but still it is interpreted in a very broadest way, leading to such a menace that we are seeing today.

GENESIS OF THE LAW OF SEDITION

In the 13th century, when the Crown wanted to rule among the people in England and its other colonies, one of the roadblocks to achieving its sovereignty was the press and publication medium.[12] The rulers enacted a collection of laws like '*Scandalum Magnatum*' and laws relating to the offense of treason. The laws were bifurcated to cover the whole ambit of any expression that a person can make out of his or her free will, such as: firstly, the *Scandalum Magnatum* legislation covered within itself any act (or expression) criticizing the king would be punishable within this Act and secondly, the Treason Legislation covered much more serious offenses like

[10] Kunal Purohit, 'Our new database reveals rise in sedition cases in the Modi Era' (*Article 14*, 02 February 2021) <https://www.article-14.com/post/our-new-database-reveals-rise-in-sedition-cases-in-the-modi-era> accessed 04 June 2023

[11] Karan Manral (n 1)

[12] William T Mayton, 'Seditious Libel and a Lost Guarantee of a Freedom of Expression' (1984) 84(1) Colum Law Review <https://www.jstor.org/stable/1122370> accessed 05 June 2023

criticizing the Government of the King.[13] They thought that through these enactments they could better control the people but the problem that arose was 'truth and expression of fact' acted as defenses for the offense of *Scandalum Magnatum* while for the offense of treason, only common law courts had jurisdiction and an indictment against the accused was a prerequisite before the trial could begin before the jury.[14] Because of these difficulties in controlling the public, the Star Chamber devised the 'offense of seditious libel' in the case of de Libellis Famous.[15] As the objective of this new law was to make sure that every subject respects the crown, the truth was considered as a defense. Thus, it was thought fit to include it in the Draft Penal Code for colonial India, where it was used to suppress any opposition to their rule. Thomas Macaulay completed the draft penal code in 1837. But in the year 1857, a massive revolt took place in northern and central India also known as the first War of Independence which fast-tracked the process thus in 1860, a year after Thomas Macaulay died, came 'IPC 1860' and sedition law was included in the IPC after 10 years which was mistakenly excluded in the 1860 law. It was in line with the Treason Felony Act of 1848.[16] Thereon it is used to date in India.

INTERPRETATION OF THE WORDS USED IN SECTION 124A

The debate around sedition is largely based on these two terms on how they should be interpreted. Because of the wide interpretation given to them, it has led to a lot of chaos and conflict. The law was applied in each case individually by the court. Let us look at some cases to know how the courts have interpreted the words:

Disaffection: Disaffection is defined in explanation 1 of section 124A of IPC, which says that the expression includes disloyalty and all feelings of enmity.[17] Therefore, it cannot be used against an individual since one cannot be disaffected by another individual but can be disaffected by the Government. So, it means a feeling that can only exist between the sovereign and its subjects.

[13] *Ibid*
[14] *Ibid*
[15] *Ibid*
[16] Treason Felony Act 1848
[17] Indian Penal Code 1860, s 124A

In Queen Empress v Jogendra Chunder Boses,[18] the court explained the meaning of the word 'disaffection'. According to it, disaffection means when any person incites another person(s) either orally or in writing to disobey the Government or to oppose the legitimate authority of the Government.[19] In Bal Ganga Dhar's[20] trial as discussed in the introduction section of this paper, the scope of the word 'Disaffection' was expanded, by making even an attempt of it as a sufficient ground to charge a person under sedition. According to this explanation of sedition, it was irrelevant whether any violence or nuisance was caused due to such an attempt to depose or topple the Government.

The court in the case of Queen Empress v Amba Prasad[21] held that even if a person or people show disapproval towards the measures of the government. It can be said that they have acted in a seditious way. Thus it made the word 'disaffection' meaning: an antithesis of affection towards the government.

In Emperor v Beni Bhusan Roy,[22] the incitement to attain Swaraj was made an offense under section 124A. However, it was held that Swaraj means the acceptance of the home rule and not an exclusion of the existing government, and thus Beni Bhusan Roy when he convened a public meeting for securing Swaraj, could not be said to have committed the act of sedition.

But according to the Federal court in Niharendu Dutt Majumdar v King Emperor[23], Kedar Nath v The State of Bihar[24] and in Bal Gangadhar Tilak's trial- in all these case proceedings a similar ratio was taken and that was: to charge a person under this section it was sufficient to show that there was public disorder (which was open to interpretation) or the likelihood of public disorder (again open to interpretation). Subverting from the earlier decisions which narrowly interpreted the term for its application.[25]

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[18] *Queen Empress v Jogendra Chunder Bose* ILR (1892) 19 Cal 35
[19] *Ibid*
[20] *Ibid*
[21] *Ibid*
[22] *Emperor v Beni Bhusan Roy* (1907) 34 Cal 991
[23] *Niharendu Dutt Majumdar v King Emperor* (1942) FCR 38
[24] *Kedar Nath Singh v State of Bihar* (1962) Supp (2) SCR 769
[25] *Ibid*

Government Established by Law: In section 17 of IPC, the government is defined as the Central Government or the State Government established by law.[26] The offense of sedition would not be committed if opposition parties try to bring down the ruling government through campaigning or criticizing the ruling government because the ruling government is not the government as defined under IPC, here government does not mean the ruling party forming the government or the bureaucrats running the government. However, the distinction between the government and the bureaucracy is very blurry, and often fair criticism of the government is taken as an offense under section 124A. Therefore any criticism of the government functionaries would fall under defamation (sec.499, 500 IPC).

CONSTITUENT ASSEMBLY DEBATE

The Constituent Assembly was opposed to including sedition as a Reasonable Restriction under Art. 19(2) of the Constitution of India. They made several points during their deliberation over omitting the offense of sedition such as:

- It was of colonial origin with the intent to thwart the movements of the freedom fighters such as Mahatma Gandhi, and B. Gangadhar Tilak and to jail them. Therefore not a requirement after Independence;[27]
- It was not at all required as, in post-independent India, the country should promote the healthy criticism of the Government considering it is a fairly new democracy and would lead to bettering the Government policies unless and until it does not lead to any kind of violence, or cause a threat to the security of the Nation or which would topple the Government.[28]

[26] Indian Penal Code 1860, s 17

[27] Maneesh Chhibber, 'How our Constitution makers debated & rejected the draconian law' (*The Print*, 26 January 2019) <https://theprint.in/opinion/how-our-constitution-makers-debated-rejected-the-draconian-sedition-law/183548/> accessed 05 June 2023

[28] *Ibid*

Therefore, the term 'sedition' departed from the Constitution on November 26, 1949 however it wasn't removed from the IPC.[29] After the Independence, it was the work of the legislature to repeal the section but they never did so. But successive governments since independence didn't repeal this law, including one held by Jawaharlal Nehru who through his statements was in favor of repealing the law[30] but under his regime itself the scope for interpretation of the law of sedition was broadened by inserting the words 'public disorder' and 'in the interest of' in A. 19(2) of the Constitution covering reasonable restrictions for the freedom of speech and expression which lead to strengthening the case for continuance of S. 124A.[31]

Thereafter during the term of Indira Gandhi, her Government made sedition a cognizable offense in the 'Code of Criminal Procedure, 1973' (hereinafter referred to as CrPC 1973) wherein the police could arrest without a warrant. Thereby making the law more stringent.

CASE LAWS POST-INDEPENDENCE

Before Kedar Nath Judgment (1950-1962): Sedition law was primarily developed to curb nationalist movements and to curb dissent. It was misused, overused, and abused by the Colonial government, and even after independence and to date, sedition law is abused and misused to curb criticism, protest, and dissent in India. The Romesh Thapar v State of Madras,[32] This case was an interesting one as consequently it made sedition law constitutional and solidified its existence in the statute book. Otherwise, according to Article 13(1) of the Constitution which states that any legislation which was made before the Constitution will be nullified or will be declared to be void to the extent of being against Part 3 of the Constitution. Thus, according to it- the IPC is a Pre-constitutional law in which section 124A dealing with sedition would have been declared void because it was not considered a reasonable restriction under article 19(1)(a) by our constituent assembly but led to a volte-face by Romesh Thapar case.

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[29] Utkarsh Anand, 'It's time we define what is and is not sedition: SC' (*The Hindustan Times*, 01 June 2021) <https://www.hindustantimes.com/india-news/its-time-we-define-what-is-and-is-not-sedition-sc-101622486269556.html> accessed 05 June 2023

[30] Poornima Joshi, 'Seditious citizens' (*The Hindu Business Line*, 06 June 2021) <https://www.thehindubusinessline.com/opinion/columns/from-the-viewsroom/seditious-citizens/article34745706.ece> accessed 05 June 2023

[31] *Ibid*

[32] *Romesh Thappar v State of Madras* (1950) SCC 436

In this case Romesh Thapar a communist who used to write a communist weekly known as Crossroads from Bombay and wanted to distribute them in Madras. But the Madras Government decided to stop the circulation and distribution of this weekly. Thereby he approached the Supreme Court. Madras government in its defense stated that 'as the crossroads talked about revolution, it may happen that it would cause public disorder or violence.' But public order in 1950 was not a ground to place reasonable restrictions on freedom of speech and expression. Thus, Madras Government's ban on his weekly was unconstitutional.

This prompted the parliament to quickly make the first amendment to the constitution and added the word 'Public Order' as a reasonable restriction on article 19(1)(a). However, even after this amendment, there was a lot of confusion related to sedition law but in Kedar Nath's judgment, it was put to rest by making it constitutional and narrowly interpreting it. Though the provision was read down, the executives use it in accordance with the statute book with a very wide interpretation of the words and thus nullifying the apex court judgment.

The first case in independent India relating to the law of sedition was Tara Singh Gopi Chand v The State[33] in 1951 which explicitly made it clear that sedition law was a complete roadblock to the FRs i.e. A.19 and therefore invalidated the section. After this case, the aforementioned first amendment was made in the same year.[34]

But a contrary view was taken by the Patna high court in Debi Soren & Ors v The State[35]. It validated section 124A as not violative of Article 19. But then four years later in Ram Nandan v State[36], the Allahabad high court declared S. 124A null and void.[37]

All the confusion about the interpretation and application of the law of sedition was finally settled in 1962 in Kedar Nath v The State of Bihar[38] which is considered the most landmark

[33] *Tara Singh Gopi Chand v The State* (1951) Cri LJ 449
[34] Utkarsh Anand, 'The sedition story: Complicated story of S. 124A' (*Hindustan Times*, 19 July 2021) <https://www.hindustantimes.com/india-news/the-sedition-story-complicated-history-of-sec-124a-101626370928612.html> accessed 05 June 2023
[35] *Debi Soren & Ors v The State* (1954) Cri LJ 758
[36] *Ram Nandan v State* (1959) All 101 1959 Cri LJ 1
[37] Utkarsh Anand (n 34)
[38] *Kedar Nath Singh v State of Bihar* (1962) Supp (2) SCR 769

judgment on the interpretation of sedition law. It etched the provision by emphasizing that: 'if there is any tendency to encourage violence to cause any threat to the security or cause any public disorder against a legally established Government then S. 124A could be invoked.'[39]

CASE LAWS AFTER KEDAR NATH JUDGMENT

After the above-mentioned landmark Judgment, different courts all over the country have interpreted the law on sedition in a number of cases. To analyze how the courts have dealt with the cases, this paper will focus on the most prominent cases in the recent past dealing with sedition. They are not chronologically sequenced but are grouped according to the similarity of the facts and circumstances in the cases.

In Balwant Singh & Anr v State of Punjab,[40] this case happened after the then PM Indira Gandhi was assassinated which led to the targeting of the Sikh community. It was during this time when a number of cases were registered under this provision for just raising slogans for a different independent country for the Sikhs (Khalistan). The court very rightly in the case held it to be not seditious as the casual raising of slogans did not amount to any violence or caused disturbance to public disorder.

A similar case happened in 2009, i.e. Gurjatinder Pal Singh v State of Punjab[41], wherein the accused gave a speech on having 'Khalistan' that is, a country between Pakistan and India thereby seceding from India by making a separate country for the Sikhs which would act as a buffer State between the two countries. Thus, he was booked under the sedition charges.[42]

In Indra Das v State of Assam[43] and Arup Bhuyan v State of Assam[44]. As per the SC, a person cannot be charged with sedition simply for belonging to a banned organization unless and until that person has instigated or attempted to instigate violence or public disruption. The Union government, however, wanted a review of these judgments since a banned organization was a

[39] *Ibid*
[40] *Balwant Singh v State of Punjab* (1995) 3 SCC 214
[41] *Gurjatinder Pal Singh v State of Punjab* (2009) 3 RCR (Cri) 224
[42] Nivedita Saksena and Siddhartha Srivastava (n 5)
[43] *Indra Das v State of Assam* (2011) 3 SCC 380
[44] *Arup Bhuyan v State of Assam* (2011) 3 SCC 377

part of these cases.[45] The Apex Court followed a U.S. precedent i.e. Brandenburg v Ohio[46] which stated the similar ratio that the SC held in the above-mentioned judgments. The rule that was laid down by the U.S. SC was the 'Imminent Lawless Action Test' which meant that if there is any remote possibility of instigating any public upheaval then free speech is protected but otherwise (if it is imminent in nature) then the restriction would be put.[47] In Mohd. Yaqub v State of West Bengal,[48] it was held that the mere membership of a banned organization (in this case the accused was a member of ISI and had admitted that he was a spy for them and would receive instructions to carry out acts of terrorism and anti-Indian activities) would not attract the penal provision of S.124A since the prosecution had failed to prove any act of his which was seditious i.e. attempting to incite or inciting any public disruption. Thus he was acquitted of the charge.

In Nazir Khan v State of Delhi,[49] The SC took a very archaic approach to explain the law of sedition. It stated that if any person is just criticizing the Government regardless of any incitement to violence or to cause any public rebellion, he would be charged under the law. It basically made this a compulsory inference to be drawn making the need to examine whether it is inciting or attempting to incite people to violence or not a prerequisite.

In Binayak Sen v State of Chattisgarh,[50] The accused was convicted based on a confession by a co-accused Piyush Guha. Binayak Sen had sent certain letters to Piyush Guha so that the latter could deliver them to Kolkata. The delivered letters contained naxal literature on police atrocities and human rights. The High Court while convicting the accused cited that there is widespread violence by Naxalite forces against the Indian army. However, they failed to clarify and explain how the ownership and distribution of such literature would amount to sedition

[45] Utkarsh Anand (n 34)
[46] *Brandenburg v Ohio* [1969] 395 US 444
[47] Markandey Katju, 'The right to criticize: the sedition judgment on Kishorechandra Wangkhem' (*The Hindu*, 10 April 2019) <https://www.thehindu.com/opinion/op-ed/the-right-to-criticise-the-sedition-judgment-on-kishorechandra-wangkhem/article26785176.ece> accessed 05 June 2023
[48] *Mohd. Yaqub v State of WB* (2004) 4 CHN 406
[49] *Nazir Khan v State of Delhi* (2003) 8 SCC 461
[50] *Binayak Sen v State of Chhattisgarh* (2011) 266 ELT 193

when there was no incitement to public disorder. This case of Chhattisgarh high court has been a subject of criticism since then.[51]

In Asit Kumar Sen Gupta v State of Chhattisgarh,[52] The accused (a member of the communist party of India (Maoist): a banned organization) was charged under the sedition law for inciting an armed rebellion to overthrow the then capitalist government and he owned some Maoist literature. The court cited the case of Raghubir Singh v State of Bihar,[53] wherein the authorship of the seditious material was immaterial, and what was important was being a part of it for eg. distributing the said material. Thereby the court, in this case, convicted Asit Kumar for merely being in possession of the Naxal literature and propagating it. But this reasoning of the court was lacking in respect of the essentials of the offense of sedition. In The Superintendent, central prison, Fatehgarh v Dr. Ram Manohar Lohia case of 1960 a landmark judgment, the court said that 'it is requisite for the State to prove a proximity between the act/speech and violence/disorder to charge someone under section 124A'. The problem with the judgment of Asit Kumar was that though the literature prescribed overthrowing the government, there was no examination of how it had a tendency to incite violence. The proximity was missing.

In Shreya Singhal v Union of India,[54] Section 66A of the Information and Technology Act, 2000 which restricted online speech was struck down as unconstitutional and was held to be in violation of Article 19(1)(a) of the Constitution. The court also held that it is not a 'Reasonable Restriction' under Article 19(2). Thus, in this case, the court applied the decision of Ram Manohar Lohia that there should be proximity between the speech and the violence so caused and made a distinction between Advocacy and Incitement.

In the case of Vinod Dua v Union of India,[55] Journalist Vinod Dua was charged with the offense for criticizing the administration's handling of the situation during the Pandemic 2020,

[51] Nivedita Saksena and Siddhartha Srivastava (n 5)
[52] *Asit Kumar Sen Gupta v State of Chhattisgarh* (2011) Cri App No 86/2011
[53] *Raghubir Singh v State of Bihar* (1986) 4 SCC 481
[54] *Shreya Singhal v Union of India* (2015) 5 SCC 1
[55] *Vinod Dua v Union of India* (2021) SCC OnLine SC 414

specifically the migrant food shelter.[56] He expressed concern that if the government is unable to deal with this situation it would lead to food riots. What was interesting in this case was the use of the word 'Journalist' and not 'any individual' in the decision of the SC. It stated that as per the Kedar Nath Judgment which established the parameters of the offense, every journalist is entitled to be protected under the said case law only when the speech (whether oral or written) if it leads to any instigation of any form of violence can a person be charged and dealt under the sedition.

If we look at the Vinod Dua judgment, it provides that 'Journalists' are protected by the Kedar Nath judgment. But the question remains why only the journalists? The answer to it may be that in 2005 Andijan massacre took place in Uzbekistan and a journalist provided crucial evidence to the international media about the massacre in which a number of protesters were killed by the Uzbekistan government. After some years that journalist was booked under sedition. That's why journalists require more protection as they have the responsibility to expose the government when it goes wrong and to work without any threat.

Just before the Vinod Dua case, the apex court in Kanumuri Raghurama Krishnam Raju v The State of Andhra Pradesh on 21 May 2021,[57] stayed the action against the two news channels (Telugu channels TV5 and ABN). The channels were booked under sedition for just airing the opinion of an MP against his own party for mishandling the COVID situation in the State of Andhra Pradesh Not only for criticizing the government but also he was charged under sedition for inflammatory speeches against a particular caste group of Andhra Pradesh. The SC opined that such a use of the law of sedition is highly critical and such random FIRs seemed to be an attempt to restrict press freedom.[58]

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[56] Radhika Roy, 'Every journalist entitled to the protection of Kedar Nath judgment: Supreme Court quashes sedition case against journalist Vinod Dua' (*Live Law*, 03 June 2021) <https://www.livelaw.in/top-stories/supreme-court-quashes-sedition-case-against-vinod-dua-175128> accessed 06 June 2023

[57] *Kanumuri Raghurama Krishnam Raju v The State Of Andhra Pradesh* (2021) Crl App No 515/2021

[58] 'SC quashes sedition case against Vinod Dua, says every Journalist entitled to protection' (*The Wire*, 03 June 2021) <https://thewire.in/law/supreme-court-quash-vinod-dua-sedition-case> accessed 06 June 2023

In the recent case of S.G.Vombatkere v Union of India[59] In the year 2022, while re-examining the penal provision, the SC put the matter on hold while the Central Government would re-examine the matter and suspended the use of S. 124A and suspended any new or pending trial or proceedings under the said offense. However, the 22nd Law Commission Report under whom the study/review of the sedition law started in November 2022 after the aforementioned case the SC stayed the use of S. 124A in May 2022. Its findings are at odds with the purpose of protecting the free speech of the citizens by retaining this penal provision thereby again congealing it within the Indian laws and has made the provision more draconian.

The aforementioned cases are being discussed in this research paper to understand what the judiciary has interpreted over the years. Summarizing them:- When any individual or any group of people has/have any inclination to incite or attempt to incite any public disorder to topple a legally established government, then S.124A of the IPC would be used to prosecute them.

SUGGESTIONS

In the recent past, there have been cases of alleged misuse of the law for eg. 19-year-old Amulya Leona was booked under sedition for raising the slogan 'Pakistan Zindabad'; the Pathalgadi movement in 2018 in Jharkhand for asserting their right and carving on the stone the guarantees mentioned to the Tribals in schedule 5 of the Constitution. They were booked under sedition; a 9-year-old child's line in a school play sent mother and teacher to jail for sedition; the JNU incident where an event named 'A country without post-office' was organized to protest the judicial killing of Afzal Guru and Maqbool Bhatt; anti-CAA protests in 2019; COVID-19; the Hathras incident where the journalist from Kerala Siddique Kappan was booked under sedition (among other things) on their way to report the incident in Hathras; 21-year old Disha Ravi and 84-year old Jesuit Priest, Stan Swamy were also not spared.

[59] *S G Vombatkere v Union of India* (2022) SC 470

According to the statistical data prepared by the NCRB for time (2016 to 2019), the cases registered under S.124A grew by 160% however there was a major drop in the conviction rate from 2016 to 2019 which was, 33.3% to 3.3%.[60]

The colonial-era law after independence survived constitutionality because of amendments to the constitution and through Kedar Nath's judgment. Though read down and narrowly interpreted, it is used by executive agencies to suppress fair criticism of the government and its policies. They use it as it is written in the statute book, by using the wide ambit of the word 'Disaffection' and 'Government Established by Law'. Through the data, it is clear that the conviction rate is very low, but the very process of arrest without any warrant and not getting bail makes a person guilty even before the court decides the matter. Eventually, many people are acquitted, but it is used as a suppression on them to stifle their voice and to create fear in the minds of the people for raising any form of opinion against the government.

From the consultation paper of the law commission on Sedition dated August 30, 2018, this research paper makes a case for the repeal of S. 124A. As very rightfully written in that report, other law provisions can be used in place of section 124A, they are:

- Chapter VI talks about offenses against the state in section 121 i.e. whoever wages war or attempts to wage war or abets to wage war against India. It is a more serious offense than murder.
- Section 121A of the IPC is a conspiracy to commit any of the offenses punishable by section 121.
- Section 122 deals with collecting arms and ammunition etc. with the intention of waging war is also made punishable.
- Section 123 deals with concealing (with intent to facilitate) a design to wage war.
- Section 131 and 132 of IPC in chapter VII of the IPC deals with abetting mutiny.

[60] Rahul Tripathi, 'Arrests under sedition charges rise but conviction falls to 3%' (*The Economic Times*, 17 February 2021) <https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr> accessed 06 June 2023

- Then chapter VIII deals with offenses against public tranquility from sections 141 to 160. Sections 141-145, 149-151, and 157-158 deal with unlawful assembly (with cognate offenses).
- Sections 146-148, and 152-153 deal with rioting.
- Section 153A deals with promoting enmity between classes and Ss. 159-160 deal with affray.
- Section 505 deals with 'Statements conducing to public mischief' which makes it *an offense to make, publish or circulate any statement, rumor or report….2. with intent to cause fear or alarm to the public, whereby any person may be induced to commit an offense against the State or public tranquility…'*

Through these relevant sections, as mentioned above, it can be seen that sedition is the only section that punishes a speech while other sections punish the act and it is placed in chapter VI which includes very serious forms of offenses. Thus the law of sedition can be repealed and these sections can be used to control any Maoist, Secessionist, Naxalite, and Terrorist activities in the country. Not only these sections but also another argument that the United Kingdom in 2009 has already done away with seditious libel, makes a strong case to scrap this law. Also, India is bound by the International Covenant on Civil and Political Rights, which protects freedom of speech and expression as the right of all individuals. Also, various states have their own laws to deal with the issues of violence and public disorder.

Though there is another argument in this regard that, to let the law of sedition continue, the section should be made non-cognizable so that the people are not arrested of one's own accord. And also to make it a bailable offense. But Kedar Nath's judgment has long before in 1962 read down the provision but it also said that the tendency to incite violence would amount to sedition. Now this 'tendency' word can have a wider connotation. And it is this idea which gives discretionary and arbitrary power to the government that is used to book people for sedition and thus the misuse of the law continues.

After the S.G. Vombatkere decision which stayed the law until the Government reviews it. The 22nd Law Commission Report has come nearly a year after stating that it has retained S.124A

with Procedural safeguards and enhanced jail term. The law commission has made three recommendations:

- To include the ratio of the Kedar Nath case in the provision;
- To make the amendment by removing the oddity i.e. the jail term is either life imprisonment or 3 years imprisonment or with a fine therefore enhancing the jail term by 7 years or life imprisonment;
- As per the commission, there must be a prerequisite for filing an FIR against any individual under the said offense, which is- an FIR can only be lodged when a police officer (not below the rank of an Inspector) first makes a preliminary investigation and then makes a report on whose basis the Central or State Government would authorize the filing of the FIR.[61]

The reasons that the commission has given for retaining it are: for the union and integrity of India and justifying it as a reasonable restriction under Article 19(2) of the Constitution. But there are several issues with these recommendations which are stated below:

- As per the first recommendation i.e. applying the ratio of Kedar Nath, it would suffer from the same consequences of the judgment since the phrase 'tendency to incite violence' is still having a wide scope of interpretation that any Government can do to make the arrests under the said section. The report defined the phrase as a mere inclination to incite violence or cause public disorder rather than proof of actual violence or imminent threat to violence.
- Even with the enhanced jail term reducing the discretion of the judges on sentencing would be of no significance as the conviction rate is extremely low and the only issue with this charge is the pending trial and the imprisonment during the trial curtailing the liberty of those who are charged with sedition.
- The third recommendation of making the permission of the Central or State Government a pre-requirement for registering the FIR suffers from the defect of not providing any set

[61] *Ibid*

of parameters for the Government to authorize or not to authorize the filing of the FIR against an individual.

Therefore the researcher makes the case for repealing the provision of section 124A altogether rather than reading it down, diluting its language, or narrowing its interpretation as in any of these ways it will bring back the provision in a different variance or form. The recommendations made by the 22nd Law Commission are not in-tune with the current social milieu.[62] The ball is again in the court of the Judiciary to interpret the word sedition as in the most brilliant and landmark judgment of Ram Manohar Lohia. In the Ram Manohar Lohia case, the court used the 'Proximity Test' to say that even if there is violence but if that violence is far-fetched and not immediate then your freedom of speech is protected. It is a better judgment than the Kedar Nath judgment.

CONCLUSION

Citizens have the right to criticize the government. They have the right to voice their opinion on the decisions, measures, and enforcement undertaken by the government and government functionaries. The hyper-nationalism should not be used to weigh down an individual through sedition law just because he or she has a different opinion. It should not become a form of punishment even before the judgment is passed. It must be noted that the people who are booked are activists, students, poets, artists, thinkers, and cartoonists who don't have arms or ammunition to overthrow the government but have their own positive and negative opinions. They cannot be termed as anti-national as then- what would be the distinction between them and the terrorists? One of the most crucial tenets of a democracy is freedom of speech and the misuse of section 124A of IPC directly threatens that right. As many people who are booked under sedition are later set free, the process that is- arrest and jail itself becomes a punishment. Thereby the law of sedition should be scrapped. With this 76th year of Independence let us liberate ourselves from this colonial-era law and give ourselves a healthy environment where

[62] Apurva Vishwanath, 'What Law Commission said on Sedition law' (*The Indian Express*, 06 June 2023) <https://indianexpress.com/article/explained/explained-law/law-commission-sedition-law-explained-8645168/> accessed 08 June 2023

we can criticize the government, protest, and dissent against the government policies without any fear of the action taken against him or her.