

“AMMENDMENTS NEEDED IN PROVISIONS RELATED TO SEDITION LAWS IN INDIA”

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“What seems fair enough against a squalid huckster of bad liquor may take on a different face if used by government determined to suppress political opposition under the guise of sedition”- Learned Hand .In order to debate upon whether the provisions of the laws on sedition should be amended or not we should first understand the literal meaning of the term sedition. In layman’s language we can define sedition as any form of action or provocation be it oral or in writing defying the government and the established order. Seditious words or statements written against the authority in power is labeled as 'seditious libel'.

The laws on Sedition in India, has assumed contentious significance largely due to the alteration in the political body and along with the constitutional provisions of freedom of speech endorsed as a fundamental right. If we look back we can make out that the law was initiated by the British who administered India, in a way to control the freedom fighters, but lately the law is infamous for being controversial and antagonistic. The roots of S. 124-A IPC is the English common law .Numerous Indians in the past have

been on the hook under this act. Renowned freedom fighters were charged with sedition including Bal Gangadhar Tilak and Mahatma Gandhi. The law on sedition can be offensive at times as well as can fall under freedom of speech in many other cases. The law of sedition as prescribed under S. 124-A IPC was also embodied in some other statutes. The historical background of this section of the Indian Penal Code dealing with sedition is of relevance. In law sedition can be defined under sec 124-A ,IPC as “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.” On the other hand, Article 19(1)(a) of the Indian Constitution provides that every citizen has the right to freedom of speech and expression which includes protection for rigorously censuring the existing government framework, policies, and administrative blueprint buckled with protection for recommending the development of other systems. Article 19 (2) of Indian Constitution provides that, each citizen of the nation holds the right to voice his or her opinion via print or electronic media coupled with restrictions .Thus, words and speech can be punished only in matters where it is being used to provoke mobs or crowds to take aggressive action. Sheer words and phrases in itself, no matter how unpleasant, do not amount to an illicit offence unless the above mentioned condition is met. Now coming to the central debatable issue whether the laws on sedition should be amended or not, it shall be answered by going through a few landmark cases.

It was April 30th 1908, when two revolutionaries namely Prafulla Chaki and Khudiram Bose tried to bombard a wagon in Muzzafarpur in order to take Chief Presidency Magistrate Douglas Kingsford's life, ill-luck two women got killed in that carriage instead. Khudiram was hanged and Prafulla committed suicide before getting into the hands of the British. Tilak in his newspaper Kesari, defended the two men and demanded for immediate swaraj. This event led to the instant arrest of Tilak by the Britishers on grounds of sedition. The judgement by Judge Dinshaw. D Davar in this case considered Tilak's articles in Kesari as livid and us coupled with sedition. Tilak was imprisoned from 1908 to 1914 in Mandalay in Burma.

The father of our nation, M.K Gandhi, was also jailed for sedition. Mahatma Gandhi was arrested by the British the police force on March 10 in the year 1922 for three politically susceptible articles in his eminent journal Young India, which was published during the period- 1919 to 1932. Gandhi was sentenced to a six-year jail term. Charges were stringently imposed on him .

Kedar Nath v State of Bihar was one of the benchmark case, the first ever case of sedition tried in the court rooms of Independent India, where the constitutionality of this very provision was challenged. The Supreme court clearly distinguished between disloyalty to the nation's government as well as commenting on the various measures of the government without rabble-rousing public disorder by different acts of hostility. Similar to the Kanhaiya Kumar case, Kedar Nath Singh, a limb of the Forward Communist Party (Bihar), was accused for quite an severe speech critical of the ruling government of that time and calling for an upheaval. He basically addressed the officials of Barauni as dogs and even addressed the members of the Congress as gundas sitting due to the people's negligence . He very confidently exclaimed that

when the people of India had the power to drive out the Britisher's they can very well drive out these gundas as well. The Supreme Court imposed a much narrower scope of the elucidation, holding only those affairs which had the intention or propensity to inflame public disorder, and that would be legally seditious.

Dr. Binayak Sen v State of Chattisgarh February 10th, 2011, is another such controversial case of sedition, accusing Dr. Sen for purportedly aiding the naxalites, and sentenced him to a life imprisonment by the Raipur Session Court. He was accused of condoning insurgents, who were playing an active role in that region, by fleeing notes from a Maoist jailbird who was his patient to another person outside the jail. Discarding every charge against him, Dr. Binayak claimed that he was under regular supervision of jail officials while his treatments thus such an act would not have been possible. Sen's censure of the killings committed by a vigilante faction that incited his arrest and consequent allegations.

In spite that Dr. Sen, claims that the body's real job was to clear the village land that was rich in bauxite, iron ore and diamonds for it to be excavated. Sen's arrest received a lot of international attention, he was also awarded in the year 2008-the Jonathan Mann Award for global health and human rights by the U.S.-based Global Health Council recognizing his services to the poor and the aboriginal communities in the country. Later in the same year, a letter was sent by 22 Nobel laureates to the Indian government criticizing the confinement of Dr. Sen, asking for his acquittal. It was also mentioned in the letter that they also hope to express their concern over Dr. Sen who was confined exclusively for serenely exercising his basic human rights, also that he was charged under internal security laws that do not accord with the international human rights values.

A contentious political activist and cartoonist Aseem Trivedi, best identified for his anti-corruption crusade, his cartoons depicting protest against corruption was arrested on charges of sedition, in 2010. Amit Katarnayea, a legal advisor for a Mumbai-based

NGO filed a case against Trivedi, condemning his derogatory and insolent sketches, depicting the House of Parliament as a commode as well as the National Emblem in a negative image replacing the lions with fanatical wolves, during the Anna Hazare campaign against corruption and posting them on social networking pages and sites .Members of the India Against Corruption (IAC) alleged that the cases were imposed on Trivedi by the government as they were annoyed with their anti-corruption campaign. Mayank Gandhi member of the IAC stated that the case had been simply planted because Tivedi had latched on ,in the BKC remonstrations organized by Anna Hazare and voiced his opinion against corruption. Thus the government is trying to dart his gripe in this way. Aseem's case gravely questioned the freedom of speech as well as expression in the nation where a young man got detained for satirizing apparent corruption in the nation. It's alright that some might find his cartoon odious and disrespectful, but sentencing life imprisonment for such an act is too harsh and extreme.

Shreya Singhal v Union of India is a colossal case in the nation's jurisprudence as the judgement which came down in the same set down Section 66A of the IT Act, required to be in contravention of Article 19 (1) of our Indian Constitution that guarantees the right to freedom of speech as well as expression to all its citizens. A law student , Shreya Singhal filed a petition in the year 2012 in quest of an amendment in section 66A, that was triggered when two young girls in Mumbai were arrested, for a Facebook post that was critical in comment of the shutdown of Mumbai city after the demise of the Shiv Sena chief, Bal Thackeray; one of the girls posted the comment whereas the other simply liked the same. Now the critical part about this judgement is the court's decree that any individual could not be just tried for sedition unless their speech, how much ever offensive or unsuitable, should have an recognized link with

any aggravation to violence or commotion in the public order. The Supreme Court differentiated between incitement and advocacy, clearly affirming that the latter is only liable to be punished by law. After the prolonged wait of three years, the Supreme Court gave its decree in 2015. In spite of all that, Shreya was not at all discouraged. She expressed her feelings over the same that despite the concern pending before the Supreme Court, the police continued to arrest individuals under IT act within the purview of section 66A.

Another equally significant and controversial case was that of Arundhati Roy where the Delhi Police registered a case of sedition against this well known writer, uncompromising Hurriyat head Syed Ali Shah Geelani, revolutionary poet Varavara Rao and few others accused of anti-India speeches at a conference in Kashmir on 21 October 2010, 'Azadi-The Only Way'. And so this case, without any delay had been registered under Sections 124 A (sedition), Section 13 of the Unlawful Activities (Prevention) Act, 153 A and B (promoting hostility between diverse groups coupled with acts detrimental to upholding of accord and imputations, assertions, harmful to national amalgamation), 504 (insult anticipated to inflame breach of serenity) and 505 (statements conducing to public harm) of the IPC. The case under Section 156 (3) of the Criminal Procedure Code had been converted into FIR soon after considering the legal opinion for the same. The other people accused along with Roy, comprises of the Delhi University professor Geelani acquitted in the Parliament attack case, Sujato Bhadra Sheikh Shaukat Hussain, and, Shuddhabrata Sengupta. Directing the police to register the case under pertinent provisions, Magistrate Navita Kumari Bagha had stated that there was prime facie convincing evidence not in favour of the accused.

Praveen Togadia case is also a very famous case of sedition in the country. The Rajasthan government spanked sedition charges on the VHP leader in the year 2003 after the defiance that is of a state ban distributing tridents to the Bajrang Dal members. The charges included a crack to engage in a war against the country. Mr.

Togadia was arrested on April 13 2003 on accusations of violating prohibitory commands and the ban on the distribution of `trishuls' then faced this noval charge under Section 121-A of Indian Penal Code for scheming against the nation and intimidate it by criminal vigor Such an offence is punishable by life imprisonment and its trial can be held only in the sessions court. Mr. Togadia was given ample time till April 30 to move his bail application in the sessions court till then his judicial remand was extended. Togadia had faced 19 criminal cases for such hate speeches with the maximum number of such cases against any individual in the nation as of August 2013.

The Punjab and Haryana High Court had found that the Sant Samaj leader Baljit Singh Daduwal, was slapped with charges of sedition in the Sarbat Khalsa congregation November (2015) around six months ago, where he did not utter even a single statement or word which could be considered as an attempt to wage any war or similar situation against the state. The FIR was registered against Daduwal and others participating therein, on sedition charges. Daduwal was arrested consequently. Daduwal was granted bail by Justice M S Bedi .After critically examining the speech delivered by Daduwal, Justice Bedi stated that not even a single statement or word was in no manner an attempt to wage a war against the Indian Government nor promoting hostility between diverse groups..Justice Bedi clearly stated that he had very minutely gone through the contents of Daduwal's speech delivered at the congregation where Daduwal stated that in the presence of the very sacred Guru Sri Guru Granth Sahib Ji, all the people attending the congregation should overlook their individual grievances and that all the sects of Akali Dal, Shiromani Akali Dal, Independent Akali Dal 1920, United Akali Dal and Dal Khalsa, were requested to employ themselves for the welfare of Khalsa Panth and also that he should be addressed as Bhai and not Baba or Sant. The Shiromani Akali Dal (Amritsar) president was as accused of four different cases of sedition.

It is very important to note that the Indian law on sedition, the events at the public meeting, even if completely exact, do not come anywhere close to establish any such offence. There are cases, which it is clear that purportedly seditious speech or expression might be punishable if and only, the speech is being provocative or of flammable nature to the public order. cases have. In another such case ,the Supreme Court explicitly stated that any speech that amounts to provocation to impending unlegislated action can be criminalize. In the very famous 66A ruling, the Supreme Court drew a clear difference between the term “advocacy” and the term “incitement”, and that only the latter could be punished.

Thus simply advocating any revolution or even sadistic overthrow of the State, does not in any manner amount to sedition, unless there is any form of incitement to violent behavior, and more significantly to 'imminent' aggression. For instance, we can observe in cases, where words and speech can be criminalized and are punishable only in situations where it incites mobs or crowds to react violently. sheer words or phrases, no matter how repugnant, do not lead to any criminal offence unless the above mentioned condition is met.

The recent bubbling case on sedition was that of Kanhaiya Kumar . On 12 February 2016 he was arrested by the Delhi police. and a case was registered against him on Feb 13, under Sections 124-A IPC and 120-B . He was charged over an event prearranged by some students at the JNU campus against the execution of Afzal Guru. Kanhaiya Kumar denied every such accusation against him that he neither out cried any slogan nor said anything that was against the integrity of the nation. He clearly stated that he had full faith in the Indian Constitution .Kanhaiya Kumar's arrest soon transformed into a major political hullabaloo and drew sharp reactions from round the nation.

On 2 March 2016, the Delhi High Court granted Kanhaiya an interim bail of six months Delhi conditional of a 10,000 rupee bail bond and an undertaking that he would never partake in any anti-national motions. No recordings were found against him of participation in anti-national slogans.

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The colonial era along with the British Government in India had inserted (Sec 124A) in

the code for the very purpose of suppressing the Indians to voice their opinion. Thus the law on sedition was made inflexible which was quite different from the English law. The English law did not define the term sedition but the Indian code defined it. The privy council had clearly mentioned that if the law defines the offence in clear cut terms, the courts should definitely go by that very definition along with the prescribed text of Sec 124A, a plain speech or statement which could cause hostility towards the government and nothing more would be calculated within the purview of sedition. And thus the law of sedition was enforced in India.

Every other strong criticism of the government, causes some amount of hostility towards them. In a democratic government, the people change such governments through the vote procedure. No democracy can afford to charge citizens with sedition and imprison them and that also extreme punishments like life imprisonments for demonstrating or uttering things to which they have complete freedom. Thus, the sedition laws requires urgent amendment. The British themselves repealed it in their own nation even though they themselves were the ones who brought in the toughest array of sedition during their rule in India. There is an burning call for a review and amendment of the sedition laws in India.

