

HOW MUCH IS TOO MUCH?

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*Anti nationalism this Anti nationalism that
How logical is the rant?*

*The vilification of one's own nation
Connotes the lost dedication*

*Hypocrites are those citizenry
As obscure as men without chivalry*

*Hey! so called citizens of India, respect your mother land
For the comforts it has provided be glad*

*Regard those who lost their lives for our beloved nation
How ratiocinative is even the exaltation?*

*Have esteem for the fellow men
Please don't fall down to the level of employing slander and libel.*

ABSTRACT

Bal Gangadhar Tilak in 1897, Gandhi in 1922, Binayak Sen¹ in 2011, Shreya Signal² in 2013- different eras but one thing in common, that is all of these aforesaid people were slammed with

¹Binayak Sen v. State of Chattisgarh, (2011) 266 ELT 193.

² Shreya Signal v. Union Of India, (2013) 12 SCC 73.

sedition charges. However, one of the major difference is that of the independence³. At the time when Tilak and Gandhi were tried under sedition, India was under the British Rule. Toady we call ourselves an independent nation, but are we really an independent democratic nation? Tilak and Gandhi fought for freedom, but do we citizens of India have freedom per se? In August 2016, an actress Divya Spandana was charged under sedition on her praising the people of Pakistan for their hospitality⁴. Is this the kind of freedom an independent democratic nation provide you with? It cannot be denied that our government use the provision of sedition for similar reasons as were used by our oppressive British rulers.

INTRODUCTION

Gandhi once said-“Affection cannot be manufactured or regulated by the law. If one has no affection for a person one should be free to give the fullest expression to his dissatisfaction, so long as he does not contemplate, promote or incite to violence. But the section (124A) under which I am being charged is one under which mere promotion of dissatisfaction is a crime⁵.” The word sedition finds no place in our constitution, although it is still camouflaged in the provision of IPC. The courts of different jurisdiction have rapidly assigned different meanings to the ambit of the term sedition.

THE ORIGIN AND THE ONGOING APPLICATION

³ Narain, Siddharth. "disaffection' and the law: the chilling effect of sedition laws in india." *Economic and political weekly*, 8th ser., 46 (February 19, 2011): 33-37. Accessed April 17, 2017.

<http://www.jstor.org/stable/41151791>.

⁴ Desk, Express Web. "'Sedition' charge against actor Ramya for 'Pakistan is not hell' remark." *The Indian Express*. August 23, 2016. Accessed April 18, 2017. <http://indianexpress.com/article/india/india-news-india/ramya-sedition-case-filed-against-actor-divya-spandana-for-pakistan-is-not-hell-remark-manohar-parrikar-2991772/>

⁵ Narain, Siddharth. "disaffection' and the law: the chilling effect of sedition laws in india." *Economic and political weekly*, 8th ser., 46 (February 19, 2011): 33-37. Accessed April 17, 2017.

<http://www.jstor.org/stable/41151791>.

In *Kedarnath v State of Bihar*⁶, the court laid down the meaning of sedition as it is comprehended today. It was held by the court that in order to attract sedition charges the incitement of violence is an important ingredient. The provision of sedition was explicitly removed from the restrictions to the freedom of speech (Article 19(2)), although it was enclosed in the draft constitution. Therefore it was inferred by the court in the case that legislatures didn't want sedition to be considered as a valid restriction to our right to freedom of speech. However, its validity was analyzed within the six grounds laid in Article 19(2) and upheld the constitutionality of sedition law under the ground of security of state and public order. After the *Kedarnath*⁷ case in the case of *S. Rangarajan Etc vs P. Jagjivan Ram*⁸, the court came up with the test of spark in the powder keg which states that the anticipated danger should have a close nexus with the expression. It should therefore not be far fetched, conjecture or remote. The Supreme Court since then has used this test to decide on the sedition cases. In *P.J Manuel v State of Kerala*⁹, where the accused affixed posters, barracking people to boycott the elections to the legislative assembly, it was held by the court that such publication does not lead to causing disaffection to the government in a modern democracy. Even in cases *K. Neelamegam v State*¹⁰ (where Chief Minister of Jammu and Kashmir tweeted about death sentence of a terrorist), *Pankaj Bhutalia v Central Board of Film Certification*¹¹ (filmmaker made a documentary on how lives of people of Kashmir is affected by violence) and *Sanskar Marathe v State of Maharashtra*¹² (cartoonist who drew cartoons foregrounding the corruption in the government) there were acquittals on the ground that the said acts fall short of inciting any violence towards the state.

However, there have been cases where court has made convictions under the charge of sedition. In *Binayak Sen v State of Chattisgarh*¹³, Binayak Sen was convicted for sedition as he had possession of nasal literature. The court here failed to address as to how the possession of

⁶ 1962 AIR 955

⁷ 1962 AIR 955

⁸ 1989 SCC (2) 574

⁹ ILR (2013) 1 Ker 793.

¹⁰ *K. Neelamegam v. State*, Cri OP (MD) No. 14086 of 2011 (Mad) (Unreported).

¹¹ *Pankaj Bhutalia v. Central Board of Film Certification*, WP (C) 675 of 2015 (Del) (Unreported).

¹² *Sanskar Marathe v. State of Maharashtra*, Cri PIL No. 3 of 2015 (Bom) (Unreported).

¹³ *Binayak Sen v. State of Chattisgarh*, (2011) 266 ELT 193.

certain form of literature can be termed as a seditious act. It also failed to decide the case in the light of the principle set by Kedarnath¹⁴ case, where it is essential to be booked under sedition that the very act should lead to incitement of violence or the test of spark in the powder keg as there was neither any anticipated danger nor a proximate relation of the expression with the so called anticipated danger. On the same lines in case of Asit Kumar Sen Gupta v State of Chattisgarh¹⁵, Asit Gupta was convicted for sedition for having possession of Maoist literature and was also member of banned organization. In another case of 2007-Arup Bhuyan v State of Assam¹⁶, they incorporated the standards as laid down in the case of Brandenburg v Ohio¹⁷ which laid down “state cannot forbid your right to free speech except where [1] such advocacy is directed to inciting or producing imminent lawless action and [2] is likely to incite or produce such action.” The court said it to be a Brandenburg test¹⁸.

In all the above judgements court has interpreted as to what will come under sedition on different foundations. When can it be said that particular act will lead to incitement of violence or had an intention to incite violence? The principles set by court in Kedarnath¹⁹ case of incitement of violence or proximity test of spark in the powder keg or a new discovery of Brandenburg test as vague and arbitrary as making convictions for carrying or having possession of banned literature or being a part of a banned organization. The section is being used to convict people for what they think rather than for the degree of threat such advocacy actually models. The position of law of sedition in India was set in Kedarnath²⁰ case, but has been constantly incorrectly applied and used as a tool of torment.

SEDITION LAWS BEYOND INDIAN BOUNDARIES

¹⁴1962 AIR 955

¹⁵ Asit Kumar Sen Gupta v. State of Chhattisgarh, Cri App No. 86 of 2011 (Chh) (Unreported).

¹⁶ Arup Bhuyan v. State of Assam, (2011) 3 SCC 377.

¹⁷ Brandenburg v. Ohio, 395 U.S. 444 (1969)

¹⁸ Liang, Lawrence. "Sedition and the Status of Subversive Speech in India." The Wire. February 13, 2016. Accessed April 17, 2017. <https://thewire.in/21547/sedition-and-the-status-of-subversive-speech-in-india/>.

¹⁹ 1962 AIR 955

²⁰ 1962 AIR 955

In the USA there were primarily three sedition acts, two of them now abolished and the third one has been nullified by the supreme court. In case of *Watts v United States*²¹, Justice William O. Douglas concurred: "The Alien and Sedition Laws constituted one of our sorriest chapters; and I had thought we had done with them forever ... Suppression of speech as an effective police measure is an old, old device, outlawed by our Constitution²²." In *Yates v United States*²³ it was held that subjects could even venture to advocate the forcible oust of the United States government.

UK saw the section of sedition as having a "chilling effect" on the freedom of expression and was therefore abolished through the enactment of Coroners and Justice Act, 2009²⁴. Citizens of Canada enjoy freedom of speech as hardly any restrictions are imposed on their freedom to speak²⁵. South Korea got done with provision of sedition back in 1988 and it was held as unconstitutional in Indonesia and also in New Zealand through enactment of The Crimes Amendment Bill 2007²⁶. Repealing the inspiration from these countries, even India should scrap the sedition law as it has evidently become obsolete. According to *Kedarnath*²⁷ Judgement, the constitutionality of sedition law was upheld on the grounds of public order and the security of state, however there are various existing provisions to look into offenses against public tranquility like section 146(rioting), section 153(promoting enmity between different groups) etc²⁸. Thus an inference can be drawn that there is no need for stringent laws like sedition which is being highly misused by the government. And also as far as the security of state is considered, there is a lurch over how it is today understood as a ground for limiting the

²¹ *Watts v. United States* 394 U.S. 705 (1969)

²² "Articles: 'Sedition' Is Constitutional." American Thinker. Accessed April 25, 2017.

http://www.americanthinker.com/articles/2010/04/sedition_is_constitutional.html.

²³ *Yates v. United States*, 354 U.S. 298 (1957)

²⁴ "UK government abolishes seditious libel and criminal defamation." United Kingdom. Accessed April 18, 2017. <http://humanrightshouse.org/Articles/11311.html>

²⁵ MacKinnon, PETER. "Conspiracy and Sedition as Canadian Political Crimes." *Law journal*: 622-43.

<http://lawjournal.mcgill.ca/userfiles/other/2803069-mackinnon.pdf>.

²⁶ Raj, Nishant. "Here's How Sedition Laws Differ In These 10 Countries Compared To India's." ScoopWhoop. Accessed April 25, 2017. <https://www.scoopwhoop.com/Sedition-Laws-In-Different-Countries/#.bt1hrjvnr>.

²⁷ 1962 AIR 955

²⁸ Saksena, Nivedita, and Siddhartha Srivastava. "An analysis of the modern offense of sedition." *NUJS law survey*, 121st ser., 7 (April & may 2014): 121-47. Accessed April 17, 2017. HeinOnline

freedom of speech and affection. Thus both the grounds on the basis of which constitutionality of sedition was upheld today stands in a highly doubtful position.

TIME FOR A REVOLUTION

Nehru described provision of 124A as “obnoxious and highly objectionable one in body of law.”²⁹ Law on sedition has always been subjected to criticism by not only the freedom fighters, but also the framers of the constitution, historians and social activists as it is a tool with the government to restrict any criticism against it.

In case of *Tara Singh v State*³⁰, section 124A was held to be unconstitutional. It was stressed by the court that there is a demarcation between government elected by its citizens and government established by foreign rulers. The modern democracy has citizenry who are much more aware and mature. The laws like sedition were enacted in colonial period to fulfill specific purpose and such laws cannot find place in present era where citizens are “free” and government is a mere representative of its citizens³¹. Freedom of speech allows different ideas to float where people with different rationals and say come forward with their views, which ultimately leads to the promotion of truth. Different ideas coming from different people promotes diversity. The government cannot be allowed to decide for us as to what we can say. We are autonomous beings and restrictions like sedition on our freedom to speech is nothing but a restriction on our autonomy. It is evident from the recent case laws that provision of sedition is used as a tool to suppress the views of the citizens. Section 124A is increasingly being blindly used as a weapon to curb criticism. Criticism however at the end of the day helps us to evolve, grow and become a “tolerant nation”.

CONCLUSION

²⁹ Saksena, Nivedita, and Siddhartha Srivastava. "An analysis of the modern offense of sedition." *NUJS law survey*, 121st ser., 7 (April & may 2014): 121-47. Accessed April 17, 2017. HeinOnline

³⁰ 1951 CriLJ 449

³¹ Saksena, Nivedita, and Siddhartha Srivastava. "An analysis of the modern offense of sedition." *NUJS law survey*, 121st ser., 7 (April & may 2014): 121-47. Accessed April 17, 2017. HeinOnline

DISCARD THE OBSOLETE

It is true one should not resort to acts of libel or slander, or make remarks against our own nation, but convicting a person for voicing his views under a criminal offense of sedition is obscure to its core and cannot be said to be a reasonable restriction to our freedom and to free speech as affection for one's nation comes from within and cannot be forced through a law.

There is a pressing need to look into the judgment of the Supreme Court and proclaim sedition unlawful. India is a democratic nation and political discussion is important for the education of public as it guards towards the proper functioning of the democracy. If someone jeopardizes the security of India he ought to be punished under fitting laws. The law of sedition is excessively provincial, excessively risky and excessively ruinous of the fundamental flexibilities of the general population. It ought to be trashed. According to Chanakya "Love or affection towards an individual or nation, is indicated by good action not merely by words. The adoration towards nation is expressed by works of welfare equally done by the ruler and the ruled. The ruler himself must be engaged, in welfare of the country and also should select officials examining their involvement with the public good. Self-centered people greedy of the power should be kept away."³² Therefore it can be said that sedition law is incompatible with the constitution and has no place in the contemporary world and the way sedition charges are being used is far too much of a restriction.

³² "Quotes by Chanakya @." Quote Addicts. Accessed April 25, 2017. <http://quoteaddicts.com/author/chanakya>.