

Sedition Law in India: A Critical study

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Abstract

Sedition law was controversial part of Indian Penal system before the independence and same thing also is after the independence. Sedition law is the colonial period law and the rationale behind this was to support British rule and who had disaffection towards Government then were charged with the Sec.124A. Privy Council, federal Court, trial courts before the independence had been interpretation of sedition law and after these judgments British legislation had been amended the sedition law time to time. After the independence Constitution of India came into enforce and given some fundamental rights to citizens and non-citizens, out of them freedom of speech and expression is a fundamental right which is given to the citizens of India as per Article 19(1) (a) but this right is not absolute right, it's has some restriction which are given in Article 19 (2). So after the independence constitutionality of Sedition law was challenged, Punjab High Court and Allahabad High Court held that Sec. 124A is ultra vires but Supreme Court in the Kedar Nath Singh v. State of Bihar uphold the constitutionality of Sec.124A. Recent development by the judiciary about the Sedition law is the same which was given in Kedar Nath Singh Case; it was held in Common Cause v. Union of India. 'Tendency of violence or disorder' principle had given in the Kedar Nath Case to judge the whether the offence of sedition was committed or not. Tendency of violence or disorder are addition to the ingredients of sedition law under Section 124A of the Indian Penal Code, 1860. Law commission of India in his 42 report suggested that Mensrea should be specific mentioned in the Sedition law under section 124A and recently in 2018, Consultation paper on sedition law was published by the Law Commission of India and suggested that there is need of rethinking about sedition law with the help of legal personalities..

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Sedition law was not the part of Indian Penal Code-1860 before the 1870 and even though after the inserted Sec.124A there was not used sedition word in the marginal note or in operative part of the Sec.124A, “Exciting Disaffection” words were used in the marginal note. ‘Sedition’ word was substituted by the amendment in 1898. Indian Penal Code was drafted by the Thomas Babington Macaulay at that time(1837) Sec.113 was original Section for Sedition but final draft had not place for Sec.113 and Indian Penal Code-1860 was enforced on 1 January 1862 without Sedition law but reason was not specific mentioned, why this section was dropped. British came India for a objective to trade and later on their desired converted into rule. In the colonial period Indians were fighting against the British rule and were demanding independence from the British rule and want to have established self-Government. At that time freedom struggle was on top mode and British want to demolish the freedom struggle and punished Indians who might challenge its authority, wahabi movement was also a reason and they decided to add new Section in the Indian Penal Code-1860 by the Sedition Law, ultimately in 1870 by an Act.XXVII of 1870 , Sec.124A inserted as follows:

Exciting disaffection 124A Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation.- Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection.

Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause. This amendment was introduced by the Sir James Stephen.¹

¹ Dr. Hari Singh Gour's, Penal Law of India 1214 (Law Publishers(India) Pvt. Ltd., Allahabad, 11th Edition Volume-2, 2014)

Bangobasi case² was the first case under Section-124A and this case was tried by the Jury, Sir Comer Petheran C.J

explained the Section as:

Mr. Jackson contended that the words "disaffection" and "disapprobation" were synonymous words, and had one and the same meaning. If that reasoning were sound, it would be impossible for any person to be convicted under the section, as every class of writing would be within the explanation. But you, gentlemen of the Jury, are thoroughly acquainted with the English language, and must know that there is a very wide difference between the meaning of the two words disaffection and disapprobation. At whatever point the prefix 'dis' is added to a word, the word shaped passes on a thought the inverse to that passed on by the word without the prefix. Offence implies an inclination in spite of love; as such, abhorrence or contempt. Objection implies just dissatisfaction. It is very conceivable to oppose a man's estimations or activity but then to like him. The significance of the two words is unmistakable to the point that I feel it scarcely important to disclose to you that the conflict of Mr. Jackson can't be supported. On the off chance that an individual uses either expressed or composed words determined to make in the psyches of the people to whom they are tended to a manner not to comply with the legal authority of the Government, or to sabotage or oppose that power, if and when event ought to emerge, and on the off chance that he does as such with the aim of making such an attitude in his listeners or perusers, he will be blameworthy of the offence of endeavoring to energize alienation inside the significance of the area, however no unsettling influence is realized by his words or any sentiment of estrangement, actually, created by them. It is adequate for the reasons for the segment that the words utilized are determined to energize sentiments of malevolence against the Government and to hold it up to the disdain and scorn of the individuals, and that they were utilized with the aim to make such inclination.

The second question for you, gentlemen of the Jury, then, will be whether, upon the evidence before you, you think that the articles circulated by the prisoners were calculated to create such feelings in the minds of their readers, and if so, whether they intended to create such feeling by their circulation.

² Queen-Empress v. Jogendra Chander Bose(1892) I.L.R 19 Cal.35

In the Queen-Empress v. Balgangadhar Tilak³ Strachey. J explained law as:

You will observe that the Section consists of two parts: First, a general clause, and then an explanation. The object of the explanation is a negative one, to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection, are not to be so regarded. We must, therefore, first consider the first or general clause of the section by itself, and then see how far the explanation qualifies it.

The offence as characterized by the primary provision is energizing or endeavoring to energize sentiments of irritation to the Government. What are "Feeling of offence"? I concur with Sir Comer Petheram in the Bangobasi Case that estrangement implies basically the nonappearance of fondness. It implies disdain, ill will, hate, antagonism, hatred and each type of hostility to the Government. "Traitorousness" maybe the best broad term, appreciates each conceivable type of awful sentiments to the Government. That is the thing that the law implies by the antagonism which a man must not energize or endeavor to energize; he should not cause or attempt to cause others to feel ill will of any sort towards the Government. You will see that the sum or force of the antagonism is totally unimportant aside from maybe in managing the subject of discipline: if a man energizes or endeavor to energize sentiments of alienation, extraordinary or little, he is liable under the Section. In the following spot, it is totally unimportant whether any sentiments of alienation have been energized or not by the distribution being referred to. The facts confirm that there is before you a charge against every detainee that he has really energized sentiments of offence to the Government. On the off chance that you are fulfilled that he has done as such, you will, obviously, see him as blameworthy. In any case, on the off chance that you should hold that charge isn't made out, and that nobody is demonstrated to have been eager to engage sentiments of alienation to the legislature by perusing these articles, still that by itself would not legitimize you in absolving the detainees. For every one of them is accused of energizing sentiment of irritation, yet additionally with endeavoring to energize such emotions. You will see that the area puts on totally a similar balance the effective energizing of sentiments of offence and the ineffective endeavor to energize them, so that, on the off chance that you find that both of the detainees has attempted to energize such emotions in others, you should convict him regardless of whether there is nothing to show that he succeeded. Once more, it is significant that you ought to

³ I.L.R 22 Bomb.112

completely understand another point. The offence comprises in energizing or endeavoring to energize in others certain terrible emotions towards the Government.

In *Queen-Empress v. Amba Prasad*⁴ It was additionally seen that estrangement implies unfaithfulness, disdain, contempt, malevolence, loathe towards the Government. English Government on the above decisions premise corrected the Sec.124A, presented the alteration Act. IV of 1898, The Indian Penal Code Amendment Act, 1898 as Section 124A of the Indian Penal Code is thus revoked, and the accompanying area is subbed therefor, specifically:-

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 Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, 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.

In this amendment added the Justice Pethern viewed in *Bangobasi case*⁵, Disaffection means a feeling contrary to affection; in other words, dislike, Contempt or hatred, and Justice Strachey viewed in *First Bal Gangadhar Tilak trial*, Disloyalty is perhaps the best general term, comprehending every possible form of bad feeling to the Government.⁶

⁴ LR 20 All 55.

⁵ Supra 2

⁶ Supra n.3

The words in Sec.124A like as her 'her Majesty'⁷, 'British India'⁸, 'British Burma'⁹ and Crown Representative¹⁰ were omitted by the amendment in Sec.124A. Act XXVI of 1955 had substituted the words 'imprisonment of life' on the replacement of 'transportation for life' or any other shorter term¹¹.

Sedition is the Cognizable, Non-bail able and Trial able by Court of Session as per the first schedule of Code of Criminal Procedure-1973(Cr.P.C) and also Non-Compoundable. Executive Magistrate may order to any person execute a bond, with or without sureties to security for good behavior from persons disseminating seditious matters under the Section.108.State Government has also power under Section 95 of the Cr.P.C to forfeited the publications and issue search warrants for the same which have seditious material in the form of newspaper, book or any document.

After the independence, Constitutionality was challenged of Sec.124A on the ground of Freedom of Speech and Expressions are fundamental rights under Article 19(1)(a), and Sec.124A does violate this rights, and it should be declared unconstitutional. In the constituent assembly debates, there was draft for restriction on the freedom of speech and expression on the base sedition but this draft was dropped out.

During the conversations Shri M. Ananthasayanam Ayyangar stated:

In the event that we find that the legislature for the present has a talent of digging in itself, anyway awful its organization may be it must be the principal right of each resident in the nation to oust that administration without savagery, by convincing the individuals, by uncovering its deficiencies in the organization, its technique for working, etc. The word 'dissidence' has gotten disagreeable in the past system. We had along these lines affirmed of the correction that the word 'subversion' should be expelled, with the exception of in situations where the whole state itself is looked to be toppled or subverted forcibly or otherwise, prompting open issue; however any assault on the administration itself should not to be made an offence under the law. We have picked up that opportunity and we have guaranteed that no legislature might dig in itself, except if the addresses lead to a topple of the State inside and out¹².

⁷ Omitted by Adaptation Order, 1950

⁸ The word 'British India' was substituted by the Adaptation Order, 1948, the Adaption Order, 1950 and Act III of 1951 and now reads as 'India'

⁹ The word 'or British Burma' were inserted by the Adaption Order, 1937 and omitted by the Adaptation Order, 1948.

¹⁰ The words 'or the Crown Representative' were inserted after the word 'Majesty' by the Adaptation Order, 1937 and were omitted by the Adaption Order, 1948.

¹¹ Act XXVI of 1955

¹² Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol.VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.

Grounds which are surrendered

Article 19(2) of The Constitution Of India 1949 for limitation on Freedom of Speech and Expression, for example, Nothing in sub proviso (an) of condition (1) of Article 19 will influence the activity of any current law, or keep the State from making any law, to the extent that such law forces sensible limitations on the activity of the privilege presented by the said sub proviso in light of a legitimate concern for the power and honesty of India, the security of the State, neighborly relations with unfamiliar States, open request, conventionality or profound quality or comparable to disdain of court, criticism or affectation to an offence.

So Freedom of Speech and Expressions are not absolute rights. Every citizen may enjoy these fundamental rights with the restrictions are given in the Article 19(2). Two cases including thought of the major rights of the Right to Freedom of Speech and Expressions were decided by the Apex Court with specific interpretation of Article 19 and restrictions there on. Romesh Thappar v. The State of Madras¹³ and Brij Bhushan v. The State of Delhi¹⁴ were two cases in which Kania C.J., Pazl Ali, Patanjali Shastri, Mehr Chand Mahajan, Mukherjea and Das, JJ, decided the above cases on same day (May 26, 1950). In Romesh Thappar considered that sedition as an offence without the “tendency of violence or disorder”, the minority opinion gave it a meaning that would necessarily include the “tendency of violence or disorder”¹⁵. However in the Brij Bhushan Sedition was not directly in the issue but Fazal Ali Jobserved “sedition owes its gravity to its tendency to create disorder” but it was not majority viewed.

Before the Romesh thappar and Brij Bhushan cases, Federal court and Privy Council had different viewed on the tendency to cause disorder or Violence for the offence of sedition. Federal court in the Niharendu Dutt Majundar v. King¹⁶ observed that Rule38(1)(a) read with Rule 34(6)(e) of the Defence of India Rules under the Defence of India Act, 1939, which was similar to section 124A, the offence to be committed only if have tendency to violence or disorder. But Privy Council had followed the literal rule and overruled that judgment in the case of King Emperor v.

¹³ A.I.R 1950 SC 124

¹⁴ A.I.R. 1950 SC 129

¹⁵Manoj Kumar Sinha and Anurag Deep, Law of Sedition in India and Freedom of Expression 39(The Indian Law Institute, New Delhi)

¹⁶ 38 FCR(1942)

Sadashiv Narayan¹⁷, observed that bad feelings towards the Government are sufficient to committed the offence, and followed the precedent of Bal Gangadhar Tilak case¹⁸, and need not tendency to disorder or violence for the offence.¹⁹

Constitutionality of the Sec.124A was challenged in the following cases-In the Tara Singh Gopi Chand v. State,²⁰ Punjab High Court held that Sec.124A and 153A are unconstitutional, violate the fundamental rights of citizen to Freedom of Speech and Expressions after judicial review under Article 13(1) of the Constitution of India.

In the meantime first amendment in the Constitution of India was done and Article19(2) has been substituted by the following clause:

Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

After this amendment Tara Singh Gopi Chand v. State²¹ judgment was ineffective and Sec.124A and 153A were constitutional. But in the case Sagolsem Indramani Singh v. Manipur State²² Court held that merely tends to excite disaffection would not be barrier on the freedom of speech and expression and that's to extent Sec.124A would be ultra vires.

Allahabad High Court in Ram Nandan v. State²³ held that Sec.124A of the Indian Penal Code is ultra vires. "The words used in the amended Cl.(2) of Art.19 are "interest of public order" and not "maintenance of public Order" still what is "in the interest of public order" necessarily tends to the maintenance of it and so there must be some real

¹⁷ AIR 1947 PC 82.

¹⁸ Supra note 3

¹⁹ Supra note 15 at 37

²⁰ A.I.R. 1951 Punj.27 at pp.29,30, Cr.L.J.449

²¹ Ibid

²² A.I.R 1955 Manipur 9 at p.15: 1955 Cr.L.J. 184

²³ A.I.R 1959 All. 101 at p.129

likelihood of public disorder taking place either immediately or in the near future, and where there is no such possibility

the interest of public cannot be said to be affected.”²⁴

In *Kedar Nath Singh v. State of Bihar*,²⁵ Supreme Court overruled the choice of *Ram Nandan v. State*²⁶ and held that Sedition law under sec.124A is Constitutional with the accompanying perceptions:

...as a rule, we imagine that the section precisely expresses the law all things considered to be accumulated from an assessment of an extraordinary number of legal proclamations. The first and most key obligation of each Government is the conservation of request, since request is the condition point of reference to all development and the development of human joy. This obligation has no uncertainty been here and there acted so as to aggravate the cure than the malady; however it doesn't stop to involve commitment since some on whom the obligation rests have performed it sick. It is to this part of the elements of government that as we would like to think the offence of rebellion stands related. It is the appropriate response of the State to the individuals who, to assault or undercutting it, look for class="bracket">(to get from the entry referred to above) to upset its peacefulness, to make open unsettling influence and to advance issue, or who affect others to do as such. Words, deeds or works establish subversion, on the off chance that they have this expectation or this inclination; and it is anything but difficult to perceive any reason why they may likewise comprise dissidence, on the off chance that they look for, as the expression seems to be, to bring Government into disdain. This isn't made an offence so as to priest to the injured uselessness of Government, but since where Government and the law stop to be obeyed on the grounds that no regard is felt any more drawn out for them, no one but rebellion can follow. Open issue, or the sensible expectation or probability of open issue, is accordingly the substance of the offence. The demonstrations or words griped of must either prompt to clutter or should be, for example, to fulfill sensible men that is their expectation or inclination.

Any law which is sanctioned in light of a legitimate concern for open request might be spared from the bad habit of protected shortcoming. In the event that, then again, we were to hold that even with no propensity to turmoil or aim to make aggravation of peace, by the utilization of words composed or verbally expressed which simply make

²⁴ Supra 1 p.1239

²⁵ A.I.R. 1962 SC 955.

²⁶ Supra 23

alienation or sentiments of ill will against the Government, the offence of subversion is finished, at that point such an understanding of the areas would make them unlawful considering Art.19(1)(a) read with clause(2).

It is all around settled that if certain game plans of law comprehended in one way would make them unsurprising with the Constitution, and another comprehension would deliver them illicit, the Court would lean for the past turn of events. The game plans of the zones read generally, close by the explanations, make it reasonably apparent that the portions target delivering reformatory simply such activities as would be normal, or have a penchant, to make issue or agitating impact of open congruity by resort to violence. As adequately pointed out, the explanations added to the essential body of the portion explain that investigation of open measures or comment on Government action, in any case vehement, would be inside reasonable cutoff focuses and would be unsurprising with the key right of the option to talk uninhibitedly of talk and verbalization. It is exactly when the words, made or communicated, etc which have the harmful inclination or point of making open issue or exacerbation of legitimacy that the law steps in to hinder such activities in light of an authentic worry for open solicitation. So deciphered, the territory, as we might want to think, discovers an amicability between particular fundamental rights and the energy of open solicitation.

So interpreted, the area, as we would like to think, finds some kind of harmony between singular basic rights and the enthusiasm of open request. In *Balwant Singh v. State of Punjab*²⁷ Apex Court held that mere slogans do not constitute the crime of sedition under Sec.124A unless public disorder, or the reasonable anticipation or like hood of public disorder. However, in pursuance of the ratio of *Kedar Nath Singh* case, the Apex Court started incorporating the United States of America doctrine of “clear and present danger” in the cases *Arup Bhuyan*²⁸ and *Shreya Singhal*²⁹ etc.³⁰

Law Commission of India had been suggested in his 42nd report³¹ that Incorporation of *mens rea element as intending or knowing* in the section, and added words Constitution of India, Legislatures and the administration of justice (Judiciary), along with the executive Government, and maximum punishment for sedition at seven years rigorous imprisonment and fine, but Government had not adopted this suggestion to amend in the Sec124A.

²⁷ A.I.R. 1995 S.C.1785 at p.1789

²⁸ *Arup Bhuyan v. State of Assam* 2011 (3) SCC 377

²⁹ *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

³⁰ *Manoj Kumar Sinha and Anurag Deep, Law of Sedition in India and Freedom of Expression* 23(The Indian Law Institute, New Delhi)

³¹ Law Commission of India , 42nd report

<http://lawcommissionofindia.nic.in/1-50/Report42.pdf> (Last visited on 12 March 2020)

In Common Cause v. Union of India³² Supreme Court held that principal given in the Kedar Nath Singh v. State of Bihar³³ should be followed by the public authorities and ‘tendency of violence or disorder’ are ingredients of the sedition law.

Consultation paper on ‘Sedition’ was published by the Law Commission of India on 30 August 2018.³⁴ In his report Law Commission of India fined in order to study revision of section 124A further, the following issues would require consideration:

- (i) The United Kingdom nullified dissidence laws ten years back referring to that the nation would not like to be cited for instance of utilizing such draconian laws. Given the way that the segment itself was acquainted by the British with use as an instrument to mistreat the Indians, how far it is advocated to hold s.124A in IPC?
- (ii) Should subversion be not re-imagined in a nation like India – the biggest popular government of the world, taking into account that option to free discourse and articulation is a basic element of majority rules system guaranteed as a Fundamental Right by our Constitution?
- (iii) Will it be advantageous to think about an alternative of renaming the area with a reasonable substitute for the term subversion and endorse discipline in like manner?
- (iv) What is the degree to which the residents of our nation may appreciate the option to insult?
- (v) when the option to insult would qualify as detest discourse?
- (vi) How to find some kind of harmony among s.124A and right to the right to speak freely of discourse and articulation?
- (vii) In perspective on the way that there are a few resolutions which deal with different acts which were prior viewed as dissident, how far would keeping segment 124A in the IPC, fill any need?
- (viii) Given the way that all the current rules spread the different offences against the individual and/or the offences against the general public, will decreasing the apparatus our of s.124A or canceling it be impeding or helpful, to the country?

³²(2016) 15 SCC 269.

³³ Supra 25

³⁴ Law Commission of India , Consultation Paper on Sedition , 30 August 2018

<http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf> (Last visited on 12 March2020)

(ix) In a nation, where scorn of Court welcomes punitive activity, ought to Scorn against the Government built up by

law not welcomes Discipline?

(x) What could be the potential shields to guarantee that s.124A isn't abused?³⁵

Law Commission of India recommended that The Commission trusts a solid discussion will happen among the legitimate illuminators, legislators, Government and non-Government organizations, the scholarly world, understudies or more all, the overall population, on the above issues, with the goal that an open agreeable change could be achieved³⁶.

This is mere a consultation paper by the Law Commission of India and which suggested for debate to has or has not the Sec.124A, if has what should be the form of the Sec.124A, before this consultation paper Law Commission of India had been suggested to amend the Sec.124A in his 42nd report³⁷ but Government had not adopted this suggestion.

Year	2016	2017	2018
Cases reported during year	35	51	70
Total cases for investigation (including pending cases)	86	156	190
Cases sent for trial that year	16	27	38
Cases convicted in the year	1	1	2

*This data released by the NCRB in the Month of January 2020

³⁵ Ibid

³⁶ Ibid

³⁷ Supra 31

As per the National Crime Records Bureau(NCRB) report on Crime in India 2018 which was released on January 2020 shows that Sedition cases between 2015 and 2018 nearly doubled and conviction ratio is very poor that shows whether our investigation agencies are not able to prove sedition charges in the competent court or booked in the sedition charges are political vendetta.

Conclusion

There is no doubt Sec.124A has been used as a political weapon in maximum cases, the conviction ratio of Sedition offence is very poor rather than other, Sedition cases are registered by the Police but cognizance of the case cannot be taken by the Court without the permission of Government as per Section 196 of the Criminal Procedure Code - 1973.

On account of CBI v. Ashok Agarwal³⁸, the Court expressed that it is the commitment of the authorizing position to examine all the records and realities introduced by the arraignment and apply their own brain on the equivalent so the assent would be allowed as per the law. Severe adherence to as far as possible is to be trailed by the endorsing authority. Further, it was held by the court in the case Roopesh v. Province of Kerla³⁹ that the indictment will acquire authorize under Section 196 of the CrPC for arraigning of solicitor for having submitted an offence under Section 124A of the IPC⁴⁰. But in the most of cases did not follow the principal of Kedar Nath Case⁴¹, so by this reason these cases did not have merit, and failed in the judicial proceedings, so accused were discharged or acquittal in the most of the cases which were registered by the police and trialed by the court after the sanction by the prescribed authority. Right to Freedom of Speech and Expressions are fundamental right under Article 19(1)(a) with some restriction imposed under Article 19(2). Freedom of Speech and Expression is the backbone of democracy and without this we cannot image the constitutionalism in any Country. It is also true that freedom of speech and expressions are not absolute right but have some restrictions. Disaffection or Disapprobation towards the elected Government are not sedition unless and until there are tendency of violence or disorder. It was held by the Supreme Court in the Kedar Nath Singh v. State of Bihar⁴². Mere slogans do not constitute the crime of Sedition unless and until tendency of

³⁸ (2014) 14 SCC 295

³⁹ (2020) 1 KLJ 296, 20-09-2019

⁴⁰ <https://www.scconline.com/blog/post/2019/11/19/ker-hc-sanction-under-s-196-of-crpc-ought-to-have-been-obtained-for-an-offence-under-s-124-a-of-penal-code-1860/> (Last visited on March 16, 2020)

⁴¹ Supra 25

⁴² Ibid

violence or disorder, it was held in *Balwant Singh v. State of Punjab*⁴³ by the Supreme Court. In 2016 Supreme Court in *Common Cause v. Union of India*⁴⁴ again given same viewed which was in *Kedar Nath Singh v. State of Bihar*. Judiciary viewed in present time is cleared that there must be balance between the right to Freedom of Speech and Expression and Sedition law towards the disaffection against the elected Government and ‘tendency of violence or disorder’ are essential for sedition law. It is no doubt that Sedition Law is a part of colonial legislation but it is well clear that mere criticize the policy of the Government is a right and no one shall be charged for sedition law for this. Freedom of Speech and Expressions are the root of democracy and without this how a man may criticize the Government policy which are against the society, human beings or others. It is no doubt that Seditious speech which have tendency to disturb public disorder or to violence could not be permitted by any country in the world, in the name of Right to Freedom of Speech and Expressions. In the World some Countries have not law by the name of sedition but they have other penal laws like as Hate speeches, offences against the State, unlawful Activities etc. to punish them. These types of activities on the name of Freedom of Speech and Expressions are not allowed by any Countries. Perhaps Right to Freedom of Speech and Expressions have some reasonable restrictions which are given in Article. 19 (2). Judiciary had been made balance between the above issues in so many cases which are above discussed.

We have seen in the above discussed case laws, Judiciary have been strictest interpretation of the sedition law and uphold the Constitutionality of the Sec.124A with the principal that at least, a proximate connection with any incitement to disrupt public order or to violence. In the *Dr. Vinayak Binayak Sen v. State of Chhattisgarh*, High Court held that circulation of seditious material is also sufficient for penalized under the Sec.124A.⁴⁵

Indian judiciary with uphold the validity of sedition law had specified thought that sedition law has all parameters which are essential for a valid law and tendency of violence or disorder are essential ingredient of said offence.

Law commission of India in his reports and consultation paper suggested to amendment in the sedition law and should be free debate about his need and relevancy in the present scenario. 42nd report⁴⁶ of the Law commission of India had added Incorporation of *mens rea element as intending or knowing* in the section, and added words Constitution of India, Legislatures and the administration of justice (Judiciary), along with the executive Government,

⁴³ Supra 27

⁴⁴ Supra 32

⁴⁵ 2011 (266) ELT 193 (Chhattisgarh).

⁴⁶ Law Commission of India, 42nd report

<http://lawcommissionofindia.nic.in/1-50/Report42.pdf> (Last visited on 12 March 2020)

and maximum punishment for sedition at seven years rigorous imprisonment and fine, but Government had not adopted this suggestion to amend in the Sec124A. Consultation paper on sedition law has some relevant questions to determine the need of sedition Law. These questions were in the mind of academicians, students, advocates, judges and general public but they have not authority to make law.

Dr. Banda Prakash (M.P Rajya Sabha) had asked on 3 July 2019 in Rajya Sabha that regardless of whether Government is pondering to scrap dissidence law which is pilgrim time law appropriate on free residents of the Republic; and assuming this is the case, by when and if not, the reasons therefor? Answer by Minister of State in Home Affairs (Shri Nityanand Rai) (a): There is no proposition to scrap the arrangement under the IPC managing the offence of Sedition. (b): There is a need to hold the arrangement to successfully battle antinational, secessionist and fear monger components.⁴⁷

It is clearly mentioned by the Government in Rajya Sabha that there is no proposal to scrap sedition law but has the favour to continue with law.

Few Members of Parliament also had private member bill regarding amend the sedition law and had presented bills in the Parliament but these bills did not passed in the Parliament because not presented by the Government, who had majority in the parliament. These bills are The Indian Penal Code (Amendment) Bill, 2017 By Shri Karunakaran, The Indian Penal Code (Amendment) Bill, 2016 By Shri Bhartruhari Mahtab, The Indian Penal Code (Amendment) Bill, 2016 By Shri Saugata Roy, The Indian Penal Code (Amendment) Bill, 2015 By Dr. Shashi Tharoor, and The Indian Penal Code (Amendment) Bill, 2012 By Shri Baijayant Panda.

In the present scenario there is no doubt that colonial sedition law under section 124A should be reconsider by the legislation. Incite violence or have the tendency to create public disorder test givenSupremecourt in the Kedar Nath Singh case⁴⁸and later on in Common Cause v. Union of India⁴⁹ followed the same principle which is given in the Kedar Nath case. United States of America doctrine of “clear and present danger” followed by the Supreme court indirectly in the cases Arup Bhuyan⁵⁰ and Shreya Singhal⁵¹ etc.⁵²these changes shows that there is need to review the

⁴⁷ <file:///C:/Users/user/Downloads/sedition%20rajya%20sabha.pdf> (Last visited on 19 June2020)

⁴⁸ Supra note 25

⁴⁹ Supra note 32

⁵⁰ Supra note 28

⁵¹ Supra note 29

⁵² Supra note 15

Sedition law and amend the law but this amendment should be able to fight the present situation of the crime in which sedition law deals and sovereignty, integrity, unity of the Country should not be effected. Elected Government is the key of the democracy and there should be no conspiracy against the Government and other hand asking questions from the government by the opposition or public, opposed Govt. policies which are against the public, criticise the unethical things and undemocratic rules and regulation are strength of the democracy. The right of freedom of speech and expression under the Article 19(1) with the restriction under Article 19(2) is the fundamental right under the Constitution of India, 1949. Free speech is the backbone of the democracy but this right availed as per Article 19(1) and Article 19(2). So there should be balanced between the sedition law and the freedom of speech and expression.

As per above discussion and analyzed of sedition law my suggestions are that there should be amendment in the Section 124A, Incite violence or have the tendency to create public disorder and Mensrea should be part of the sedition law and expiation be added that mere slogan or ill-will would not amount to sedition. There should be an impartial mechanism to grant the permission of trial. It is no doubt that terrorism, nexalism and anti-nationalism are the challenges before the Government. So there should be proper legislation to fight against them legally but for this we should not carry colonial legislation which was as per their requirements and present situations are different and need are different, Present law should be according present challenges and that legislation should be fair and reasonable.