

Freedom of Speech and Expression: A Study on Sedition Law and the Need to Prevent Its Misuse

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Freedom of speech and expression is the quintessence of a democratic form of government. True, the State is authorised to impose reasonable restrictions in the national interest, but the judiciary will examine whether those restrictions are legitimate or not. Over the years, Section 124A of the Indian Penal Code that deals with sedition has been misused so much that this has become a big threat to the freedom of speech and expression. The Supreme Court of India has ruled time and again that a person can be booked for sedition only when there is an explicit incitement to violence. However, the law has been misused to throttle dissent as some recent cases seem to prove. Exploratory and descriptive type of research methodology has been adopted in this research paper. In the opinion survey done by the researcher through a questionnaire, a majority of respondents have suggested repeal of the sedition law. A paper on this crucial theme has become imperative to not only study the misuse of the law on sedition but also introduce necessary course corrections to protect and strengthen democracy.

Keywords: Freedom of speech, fundamental right, national interest, throttling dissent, protecting democracy

Freedom of speech and expression is the fulcrum of the Constitution of India. Part III of the Indian Constitution which consists of fundamental rights is regarded as the *sanctum sanctorum* of the Constitution. If India is regarded as the world's largest democracy, it is only because of the importance and primacy that the Constitution attaches to the citizens' fundamental rights as well as civil liberties. Under Article 19 (1) (a) of the Constitution, a citizen enjoys the freedom of speech and expression. Significantly, the media (print and electronic) derive their freedom from this Article and there is no specific constitutional provision for freedom of press as such. More important, even the citizen's right to know under the Right to Information Act, 2005, has direct correlation to this. Equally important, the Supreme Court judgment quashing Section 66A of the Information Technology Act and declaring curbs on citizen's freedom of speech and expression in Facebook and other social media platforms as illegal, *null* and *void* and *ultra vires* of the Constitution emphasises the higher judiciary's increasing concern on the citizen's most cherished right and the imperative need to protect it at any cost.

During the British rule, sedition was applicable to anyone who flouted their allegiance to the British Government. This implied that 'disaffection' meant the subjective and rather arbitrary definition of 'allegiance'. In this context, Bal Gangadhar Tilak, Annie Basant and Mahatma Gandhi were among the well known names tried for sedition. However,

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post-Independence, the law was criticised by Jawaharlal Nehru himself as an infringement on the citizen's fundamental right of free speech and guaranteed under Article 19 (1) (a) of the Indian Constitution.

Of late, this constitutional provision has come under attack by the government. Citizens speaking freely and fairly on any policy or aspect of governance and administration are peremptorily charged with sedition under Section 124A of the Indian Penal Code (IPC). This despite the Supreme Court of India's ruling that the sedition law should not be used against any citizen merely on the basis of his/her freedom of speech and expression, but only when there is an imminent threat to violence.

Methodology

The methodology adopted in this research paper is exploratory, descriptive and explanatory. Exploratory because the researcher, on the basis of the study undertaken, is convinced that this paper will lay the foundation for discovering the new frontiers of knowledge and research on this crucial subject in the future. Descriptive because the researcher will explore and explain the issue while providing additional information on the law, including the practices that obtain in other countries. More to the point, the researcher will also try to explain in greater detail the various infractions and violations of the law, fill in the missing gaps and expand our understanding on the pros and cons of the law and the imperative need for checking the abuse or misuse of the law. As for the explanatory method, the researcher makes a humble attempt to dot the *I*'s and connect the *T*'s to understand the cause and effect. The researcher seeks to explain the developments in this critical area and disseminate information to the academic community, intelligentsia and the society at large so that the research paper could influence the decision-making process at the highest level and facilitate the much-needed course corrections.

More to the point, the methodology adopted in this paper is primarily historical-analytical because whatever data available on this subject is mainly covered by secondary sources of information such as newspapers and periodicals. The two important judgments of the Supreme Court of India: *Kedarnath Singh vs. State of Bihar*; and *Balwant Singh vs. State of Punjab* – can be classified under primary sources.

As the subject under study has an important bearing on the citizens' freedom of speech and expression, any study or analysis would remain incomplete if the public opinion on the subject is not sought. Accordingly, the researcher sought the public opinion through a questionnaire via Google forms on ten questions which have been analysed in the relevant section.

Research Questions

A careful reading of the current data available in the public domain and the results of the questionnaire, analysed in the appropriate section, helps the researcher formulate the following research question for this paper:

Should Section 124 A Indian Penal Code dealing with sedition be dropped or repealed with a view to protecting the citizens' freedom of speech and expression?

The sub-questions that the researcher aims to answer through the study are as follows:

- (i) Should the sedition law, in its present form, continue with a few amendments or be repealed owing to its increasing misuse?

- (ii) What is the constitutional legitimacy of the law in question in the statute book, particularly in the context of its flagrant violation of the Supreme Court of India's successive rulings by the governments at the Centre and in the States?
- (iii) What is the status of the Indian law in question vis-à-vis the international experience?

Objectives

The aim and objectives of the study is to examine the use of the law on sedition under Section 124 A of the Indian Penal Code. It has manifold objectives, the primary being to what extent the law has been misused by successive governments at the Centre and the States and the consequent threat to the citizens' freedom of speech and expression. Another important objective is to introduce necessary course corrections to strengthen the citizens' fundamental right to speech and expression in the world's largest democracy.

Literature Review

The Supreme Court of India's two rulings: *Kedarnath Singh vs. State of Bihar*, and *Balwant Singh vs. State of Punjab* – form the core of the literature review of this research paper. It lays down the principles and broad parameters under which the law on sedition can be applied and enforced. A fundamental principle enunciated by the Supreme Court in the two rulings is that sedition law under Section 124 A of the Indian Penal Code can be enforced against a person or group of persons only when his/her or their actions are an imminent threat to violence.

In a fairly exhaustive article, "Colonial relic", Noorani writes on the historical perspective of the sedition law in the late 18th and 19th centuries and its total irrelevance today (Noorani, 2016). Six documents mentioned in Noorani's article stand out for their relevance and thematic focus. Noorani writes how Donogh justifies the sedition law to stifle dissent by critics, including the Press (Donogh, 1891); how Ghosal refers to the sedition charge dropped against Jogendra Chandra, editor, owner, printer and publisher of Bengali newspaper, *Bangobasi*, at the height of the Khilafat Movement (Ghosal, 1902); Noorani's own study of Mahatma Gandhi's trial for sedition in 1922 at Ahmedabad for "the diabolical crimes of Chouri Choura or the mad outrages of Bombay" (Noorani, 2005); Shiva Rao's analysis of how the Constituent Assembly retained sedition in the Draft Constitution on October 3, 1947 and subsequently published in February 1948 (Rao, 2015); K.M. Munshi's initiative in getting sedition dropped from Article 19 (2) dealing with reasonable restrictions of the Draft Constitution through an amendment moved by him in the Constituent Assembly Debates on December 1, 1948 (Constituent Assembly Debates, 1949); and Lohia's Discussion Paper on the theme, 'The Struggle for Civil Liberties', exemplifying how the sedition law encroached upon the civil liberties and banned "all advanced opinion, thought and art" (Lohia, 2009).

Significantly, the National Law School of India University (NLSIU), Bengaluru, has done commendable work on sedition. In a 61-page monograph on the theme, 'Sedition Laws and the Death of Free Speech in India', the NLSIU's Centre for the Study of Social Exclusion and Inclusive Policy has examined the law from various dimensions (NLSIU, 2011).

More recently, Fali S. Nariman, eminent jurist, in his article "A Test of Freedom", maintained that "being anti-Indian was not a criminal offence and that it was definitely not sedition" (Nariman, 2016). Nariman quoted Lord Thankerton's speech before the Privy

Council, then the last court of appeal, which questioned British India's Federal Court stand on sedition and finally quashed the latter. In another piece, "Theatre of the Absurd", Soli J. Sorabjee, former Attorney-General of India and constitutional expert, maintained that the sedition law cannot be used "as an instrument to muzzle unpalatable views" (Sorabjee, 2016). As the paper seeks to critically examine the contours of the law in the interest of the world's largest democracy, it is expected to enrich the constitutional law and contribute to knowledge.

The research gap in this paper is the dearth of data on the application and enforcement of the sedition law in the form of research books and papers published in reputed journals. The data available are mainly perspective in nature. This, indeed, is a methodical flaw.

Findings and Analysis

Increasing Misuse of Sedition Law: Some Cases

The increasing misuse of the sedition law against individuals or organisations has given rise to misgivings and apprehensions on the citizens' freedom of speech and expression. Table 1 shows a summary of a few cases:

Table 1. Sedition law: Brazen misuse

Serial no.	Case against	Reason	Period
1.	Ramya, Actor and politician	Her statement lauding Pakistan's hospitality during her trip in response to Defence Minister Manohar Parriker's statement that "Pakistan is hell"	August, 2016
2.	Director Mohd. Sharif Niyazi, Principal Govind Chand Das and Publisher Arun K. Agarwal, Greenwales School, Burhar, Shahdol	Wrong marking of Jammu and Kashmir on India Map in the school diary	July, 2016
3.	Piyush Sethia, social and environmental activist	Protest against construction of the Mulvadi bridge in Salem, Tamil Nadu	July, 2016
4.	Asaduddin Owaisi, MP, Hyderabad	Promise of legal aid to five Muslims arrested by the National Investigating Agency	July, 2016
5.	Shashidhar Venugopal, President, Akhila Karnataka Police Mahasabha	Call for state-wide bandh in Karnataka in support of the long-pending demands of the policemen	June, 2016
6.	Union Finance Minister Arun Jaitley	His blog in Facebook against the Supreme Court quashing the National Judicial Accountability Act, 2015	Kulpahar (UP) Civil Judge Ankit Tyagi suo motu charged Jaitley with sedition in October, 2015. The Allahabad High Court quashed the case, terming it as "manifest illegality"; suspended Civil Judge Tyagi in February, 2016, for exceeding his brief.
7.	Aseem Trivedi, cartoonist	His campaign against corruption in high places	September, 2012
8.	Dr. Binayak Sen, eminent physician	The Chhattisgarh Government arrested him for his "links" with Naxalites in May, 2007.	Arrested in May, 2007, but the Supreme Court dropped sedition charge and granted him bail in 2011.
9.	Arundhati Roy, noted author	For her controversial remarks on Kashmir at a Delhi seminar	November, 2010

The latest case is the one against Amnesty International in Bengaluru following sloganeering by a group of people at a meeting called by this organisation for discussing ways and means to help the people of Jammu and Kashmir after disturbances arising out of the death of Burhan Wani in Jammu and Kashmir. Other recent cases are the arrest of Jawaharlal Nehru University Students' Union president Kanhaiya Kumar and others (since released on bail); the arrest of 13 Jat quota agitators in Haryana; the imprisonment of Gujarat Patidar quota activist Hardik Patil; and the arrest of Tamil Nadu folksinger Sivadas alias Kovan.

Effect-based Doctrine

The cases mentioned in the preceding paragraph and in Table 1 prove one thing: that Section 124A of Indian Penal Code is not correctly and strictly applied in accordance with law and in conformity with the judgments and guidelines of the Supreme Court. Section 124A broadly states that a person commits sedition if by any words, spoken or written, by signs or visible representation excites hatred or contempt or attempts to excite disaffection towards the government, instituted by law, is liable to imprisonment for life or fine or both or imprisonment extending up to three years or fine or both.

The Supreme Court has tried to limit the ambit of sedition into an 'effect-based' doctrine whereby incitement of hatred and violence is a pre-requisite to the application of sedition charge. This has been noted in two landmark cases: *Kedarnath Singh vs. State of Bihar*; and *Balwant Singh vs. State of Punjab*. In *Kedarnath Singh* case, the Supreme Court ruled that any criticism, no matter how strongly worded, is allowed under Art 19 (1) (a) as it does not incite hatred or violence (Supreme Court of India, 1962). In *Balwant Singh* case, the accused were slapped with sedition charges for raising pro-Khalistan slogans in 1984. However, the court ruled that mere sloganeering did not account for fomenting hatred or disaffection towards the government (Supreme Court of India, 1995).

The *Balwant Singh* case is particularly important in the light of the Jawaharlal Nehru University episode in which its student leader Kanhaiya Kumar was charged with sedition for participating in alleged anti-India activities and raising anti-national slogans. It started as a cultural programme titled 'A country without a post office' against the "judicial killing of Afzal Guru" and for the struggle of Kashmiri immigrants. However, it was targeted by the leaders of the Akhila Bharatiya Vidyarthi Parishad (ABVP), the youth wing of the Bharatiya Janata Party, who deemed the programme and participants "anti-India". Videos of Kanhaiya Kumar and fellow students raising purported anti-India slogans were circulated on social media and news channels alike, even though their authenticity was not confirmed.

From a legalistic viewpoint, *prima facie*, the sedition charge should not have been applied against Kanhaiya Kumar and his fellow student leaders even though one has to wait for the final judicial verdict on the case. Three reasons would suffice. First, the Constitution gives no definition for what constitutes an "anti-national" or "anti-India" speech. Secondly, it prescribes no punishment for the same, because it cannot be defined. And thirdly, there was no incitement to violence — this is very important for the effect-based application of sedition law — which is why the charges would not have been held in the court.

The Union Government seems to have known this which is why the slapping of sedition charge against the student leaders was more of a scare tactic to set a precedent for dissenters than an act of patriotism. This is not the first time a government has used this tactic either. Over the years, subsequent governments have been using the sedition law to suppress dissent.

Instances galore, renowned cartoonist Aseem Trivedi was charged with sedition for displaying controversial cartoons and banners at Anna Hazare's anti-corruption demonstration. One such cartoon featured a woman, draped in the tricolour, surrounded by bureaucrats and politicians ready to assault her. Trivedi was released on bail two weeks later.

Another example is Binayak Sen, charged with sedition upon discovery of Maoist literature in his possession. The Chhattisgarh Government released him in April 2011 after the Supreme Court, in a significant judgment, ruled that possession of literature did not necessarily translate to Maoist sympathies. There have been many such examples including Arundhati Roy and Piyush Sethia. On top of all this is the sedition charge levelled against as many as 8,000 people for protesting against the 2,000-MW Kudankulam nuclear power plant at Idinthakarai in Tirunelveli district of Tamil Nadu (Das, 2015). The Supreme Court stepped in and directed the Tamil Nadu government to drop sedition charges against the activists of the small coastal village of Idinthakarai. Clearly, successive governments have used sedition as a tool to harass and intimidate critics with a differing viewpoint.

The Centre and the States need to appreciate that dissent and debate are part of a healthy democracy; they should not abuse the sedition law to arbitrarily define what constitutes "nationalistic" and what does not. Educational institutes, especially, must remain free from such political interference and intimidation. Unless this is ensured, students cannot become critical-thinking and well-informed citizens.

Opinion Survey

To know the mood of the people on sedition, the researcher sought the opinion of the general public on the basis of a questionnaire through Google Forms during September-October, 2016. The results are illustrated in Figure 1.

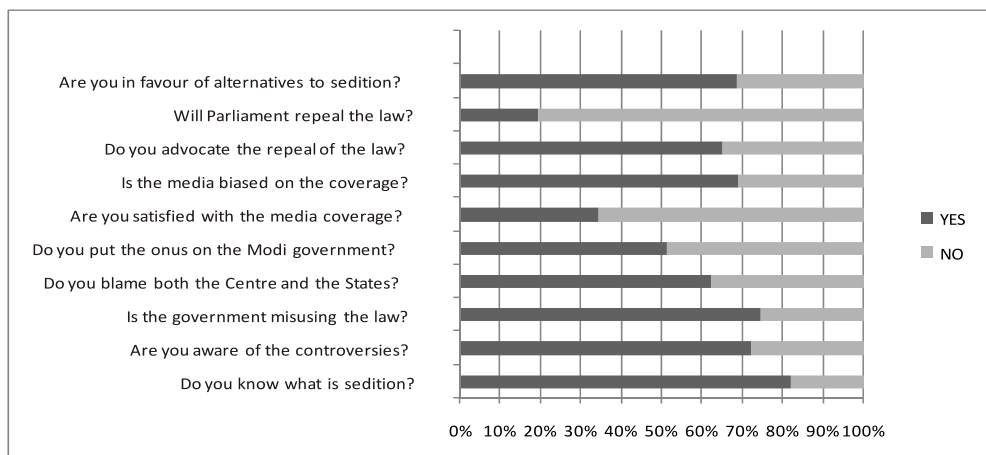


Figure 1. Survey on sedition

The researcher received responses from 127 people to the questionnaire shared in Google forms. In all fairness, it was not a well structured questionnaire. However, the researcher sought the opinion of the people to know the general mood of the nation, the small size of the sample notwithstanding. Questions ranged from their general awareness on the sedition law to its use (or misuse) by governments at the Centre and in the States and whether Parliament would be interested to repeal it in tune with the sentiment and general mood of

the people. Their opinion was sought on various aspects of the ongoing controversy such as their knowledge of the law; responsibility for misuse of the law on the Centre and the States or on the Centre alone; media coverage of the controversy and possible media bias; whether sedition law must be repealed and, if so, whether Parliament would pursue it to its logical conclusion; and whether there are any alternatives to sedition law or there is an imperative need for *status quo ante* to meet exigencies of any kind.

Significantly, as many as 91 respondents (72.2 %) said they were aware of the law and the controversies surrounding it. This speaks volumes about the degree of their political consciousness and general awareness. Only 35 respondents (27.8 %) pleaded ignorance. A major finding of the survey is the overwhelming opinion for repeal of the law. The fact that 81 out of 127 respondents (64.8 %) want the legislation to be repealed suggests that all is not well with the enforcement or application of the law and that the citizens' freedom of speech and expression is under threat. By the same token, as 44 respondents (35.2 %) want the law to be retained on the statute book, it implies that the legislation *per se* is not wrong, but needs to be enforced properly in the true letter and spirit of the law.

Another question that attracted most attention was the question on fixing accountability either on the Centre and the States or on the Centre alone for the misuse of the law. The governments of Karnataka (Amnesty International case), Chhattisgarh (Binayak Sen and later Piyush Sethia), Tamil Nadu (Sivadas), Gujarat (Hardik Patel), Haryana (Jat protesters), to mention a few, are equally wrong in misusing the law. Not surprisingly, 78 respondents (62.4 %) blamed the Centre as well as the State Governments for the malaise. An interesting feature of the survey is the opinion of the respondents on the media coverage of sedition cases. As many as 82 respondents (65.6 %) are not happy with the media coverage; only 43 respondents (34.4 %) said they are satisfied. The increasing dissatisfaction on the media coverage is also reflected on the other question on media bias in reporting cases of sedition. In all, 86 respondents (68.8 %) said there is media bias in coverage while only 39 respondents (31.2 %) disagreed.

In the light of the braze misuse of the law, 85 respondents (68.5 %) wanted it to be scrapped. Instead, they wanted alternatives to tackle exigencies. Only 39 respondents (31.5 %), who preferred *status quo ante*, felt that the government—at the Centre and in the States—should be armed with a tough statute like Section 124A IPC to deal with exigencies and that nothing should be left to chance. An equally interesting, but disturbing, response is the apprehension among 100 respondents (80.6 %) that Parliament would not be interested in repealing the sedition law, given the current mood of the Narendra Modi government on the issue. Only 24 respondents (19.4 %) believe that Parliament would do the needful.

While the respondents' opinion on the lack of confidence on our representatives to amend or repeal the law cannot be lost sight of, there is reason to believe that the Union Government is committed to re-examining the law. Union Home Minister Rajnath Singh, in the wake of JNU students having been charged with sedition, has said in Rajya Sabha that since the definition of sedition is "wide", the Law Commission of India is currently examining the issue after which an all-party meeting will be convened. In its 42nd Report, though the Law Commission of India had noted that the sedition law was "defective", it was in favour of *status quo ante*.

International Experience

For an objective assessment of the subject, one needs to draw lessons from international experience. Table 2 provides a glimpse of the practices that obtain in some countries. It

suggests that sedition no longer commands the importance it once had. While most countries are beginning to accept the fact that the law is obsolete and anachronistic, some are exploring the possibility of repealing it.

Table 2. Sedition law: Of practices and riders

Countries with Sedition law	India, Saudi Arabia, Malaysia, Iran, Uzbekistan, Sudan, Senegal, Turkey, Hong Kong, Australia, Singapore
Law scrapped	United Kingdom, New Zealand, Scotland, South Korea, Indonesia
Law with qualifications	<p>The USA has the law, but many parts have been struck down over the years.</p> <p>Germany retains the law due to "pro-Nazi sensitivities".</p> <p>In Australia, prosecutions are few; law is almost a dead letter. Move afoot for repeal.</p> <p>Nigeria allows its citizens to criticise its government, but not in a "malignant manner".</p> <p>The Singapore legislation is an extreme case. Freedom of speech and expression is not a primary right in that country. It is qualified by public order.</p>

The British Government was fully convinced that sedition is an "arcane offence" and consequently repealed it in 2009. The lawmakers in London felt that the utility and significance of the sedition law may have been justified earlier when freedom of speech and expression was not seen as an important right. The then Justice Minister of the United Kingdom, Claire Ward, while moving the Bill to repeal the sedition law, was forthright in her assessment: "the existence of these obsolete offences in this country has been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom" (Tharoor, 2016).

The USA is another country where the sedition law is not enforced. Though it is not clear why the lawmakers have not repealed it yet, one can make a safe bet that any attempt to scrap it will be greeted by the people. More important, the US Supreme Court, like the Supreme Court of India, has always been championing the cause of fundamental rights, especially the freedom of speech and expression. In the landmark *Brandenburg vs. Ohio case* (1969), the US Supreme Court ruled that "the government cannot seek legal reprimand against speech unless it seeks to incite immediate and likely lawless action". At a time when freedom of speech and expression is interpreted as the touchstone of democracy, the expression "immediate and likely lawless action" has come to be accepted as the "jurisprudential criterion for assessing whether sedition could be applied to a case in all modern democracies" (Tharoor, 2016).

Discussion

The preceding analysis suggests that the law on sedition is draconian in its nature, extent and scope and hence has no place in a functioning democracy like India. Established by our colonial masters in 1870, it was initiated as a repressive law to clamp down on dissenting voices against the colonial rule like Bal Gangadhar Tilak and Mahatma Gandhi.

In 1848, under Lord Macaulay's rule, the definition of sedition was an attempt to bring hatred, contempt or disaffection to the government established by law. In 1942, it was the Federal Court that clearly asserted that an act was seditious only if the disaffection was accompanied by an appeal to "violence or disruption of public order". This definition becomes extremely important to understand the law on sedition in its totality. After the Privy Council dismissed the Federal Court's definition, the Supreme Court of India, after Independence, chose the Federal Court's definition and Section 124A IPC that sedition is only applicable to acts that cause "violence or disruption of public order" or are an "incitement to violence" and public order.

Consequently, any word, spoken or written, will be deemed to be seditious in nature only if it is accompanied or backed by an imminent threat to violence and not otherwise. This was upheld by the Supreme Court in *Balwant Singh vs State of Punjab* where slogans like '*Khalistan Zindabad*'; '*Raj Karega Khalsa*' were not termed seditious because, however disturbing they might be to the idea of the nation state, they were not an "imminent threat to violence" or an incitement to violence. Similarly, in *Kedarnath vs State of Bihar* and *Indra Das vs State of Assam*, the court upheld that as there was no "incitement to violence", the sedition charge did not hold good. More to the point, the Supreme Court ruled in a now-defunct Terrorist and Disruptive Activities (Prevention) Act (TADA) in 2011 that "a member of a terrorist organisation could not be convicted for mere membership, unless he had been involved in inciting people to lawless action" (Bhatia, 2016). Similarly, in the Shreya Singhal case, the Supreme Court, having distinguished between 'advocacy' and 'incitement', ruled that incitement alone could be punished consistent with Article 19 (2) of the Constitution (Bhatia, 2016).

Surely, this gains prominence in the Jawaharlal Nehru University case where Kanhaiya Kumar and other student leaders were arrested for raising slogans that are still under investigation. As the nuances of the law on sedition are crystal clear, mere sloganeering should not be construed as sedition. Even vocal expressions of hatred and contempt towards the government – at the Centre and in the States – are no ground for sedition unless they have been an incitement to violence or a threat to disruption of public order.

Critiquing the judiciary's role in the hanging of Afzal Guru does in no way amount to sedition as clearly proved by all the student leaders having been released on bail. Critiquing the government and criticising the administration is a right that makes a participatory democracy like India functional in letter and spirit. Under Article 19 (1) (a) of the Indian Constitution, the right to dissent is a guaranteed facet of free speech. The fact that sedition has not been included in reasonable restrictions under Article 19 (2) of the Constitution is both symbolic and explicitly indicative of the fact that it is archaic and draconian.

Kanhaiya Kumar demanding *Azadi* or freedom from corruption, hunger or caste politics might make him an anti-national in the eyes of some citizenry but it cannot legally make him guilty of sedition. Notwithstanding the high standards set by the Supreme Court, as elucidated above in some cases, the government and the police have been using sedition as a political tool to clamp down on any ideology that does not conform or align with its own. The symbolic as well as literal assertion of power by making use of sedition reposes the danger of understanding the ideas of nationalism in homogenous terms. Like the founding fathers of the Constitution having asserted that sedition is not made an offence to "minister the wounded vanity of governments" (Nariman, 2016).

The irony of this statement cannot go unnoticed in the recent context. Also in most cases of sedition charged by governments, conviction is not even the point. The process is

the punishment. The symbolic, hegemonic legitimisation of what is “national” is the point. The politicisation of a singular discourse is the point. Are state-manufactured ideals and symbols of nationalism enough to brand one as anti-national? Under the right to dissent, critique and criticise, can a citizen not express dissatisfaction with the policies and programmes of the government? Treatment to sedition in a democracy like ours is self-reflective of the confidence of a government in itself.

There is a need to revisit this law. Undoubtedly, sedition has become irrelevant today. It is also anachronistic and out of sync with the present-day society which is modern, liberal, democratic, humane and forward looking. The fact that sedition is a relic and was used by the British as a tool of oppression and exploitation of Indians and, more important, to muzzle dissent, makes it all the more irrelevant today.

It goes to the credit of the Supreme Court that in an important observation on September 5, 2016, in response to Advocate Prashant Bhushan's petition on behalf of his NGO Common Cause, a Bench comprising Justice Dipak Misra and Justice U.U. Lalit has made it clear that the government cannot charge sedition or defamation cases on anyone criticising it. The Bench went a step further and ruled that “constables do not need to understand Section 124 A IPC. It is the magistrate who needs to understand and follow the guidelines as laid down by the Supreme Court while invoking sedition charge” (Criticism of Government is No Sedition: SC, 2016). The law is crystal clear now as has been clarified by the Supreme Court and the government – at the Centre and in the States – would do well to follow and obey the ruling in letter and spirit. More important, the magistrates have an onerous responsibility to call a spade a spade and follow the Supreme Court's ruling whenever they need to hear a case of sedition.

Currently, the Supreme Court is seized of the issue. A jury formed by the Supreme Court is reviewing whether the law needs to be amended. The focus area is on the words stated in the law “act against the State”. It has also decided to examine if abusive language against public figures on social media can constitute sedition leading to a person being booked under the law while admitting a plea by a Madhya Pradesh politician who had criticised Chief Minister Shivraj Singh Chauhan on Facebook. This researcher is of the opinion that notwithstanding the constitutional freedom of speech and expression, people cannot use abusive language against anyone, more so a constitutional functionary, in their utterances, actions and decisions, either in the print, electronic or social media. The problem with social media is that it has no filters and this has made the citizens' utterances and actions all the more responsible.

Additionally, the Law Commission of India is also looking into making amendments to the law. Union Home Minister Rajnath Singh has announced this in the Lok Sabha. It is good news if there is a refreshing change in the Union Government's attitude towards the most controversial piece of legislation. Parliament, in the larger interest of the nation and the world's largest democracy, should repeal it. As criticism is a celebrated facet of democracy, Parliament, which is the citadel of citizen's civil liberties, should rise to the occasion and stop the misuse of sedition law by scrapping it from the statute book.

Recommendations

Sedition in India is not unconstitutional. According to Fali S. Nariman, noted jurist and constitutional expert, sedition should be treated as an offence *only* if the words spoken or written are *accompanied* by disorder and violence and/or incitement to disorder and violence. Similarly, mere expressions of hate, and even contempt for one's government, are

not sedition, according to Nariman.

In the opinion of Soli J. Sorabjee, constitutional expert and former Attorney-General of India, Parliament should repeal Section 124A IPC to protect the citizens' freedom of speech and expression. Alternatively, it should amend or "strike down actions not in conformity with the section", according to Sorabjee.

According to Allahabad High Court Chief Justice Yashwant Varma, action should be taken against judges invoking Section 124A without proper examination and valid reason on the ground that it is "manifest illegality". Kulpahar (Uttar Pradesh) Civil Judge Ankit Tyagi has been suspended for charging *suo motu* Union Finance Minister Arun Jaitley with sedition for writing an article against the Supreme Court judgment on the impugned National Judicial Accountability Act in his Facebook blog.

The Supreme Court should penalise the Centre and the States (as the case may be) for willful disobedience of its ruling that one should be charged with sedition only when there is an imminent threat to violence and public order.

Compensation should be paid to victims in case of wrong application of the sedition law. This may act as a strong deterrent.

If Parliament, in its wisdom, deems that the existing Acts are adequate enough to deal with offences and that the sedition law cannot be repealed, it should amend Section 95, Criminal Procedure Code, 1973, and remove references to sedition.

Parliament should explore the possibility of repealing the following Acts to prevent misuse of the sedition law by the executive and the police: The Prevention of Seditious Meetings' Act, 1911; the Unlawful Activities (Prevention) Act, 1967 together with dropping reference to "disaffection"; and the Criminal Law Amendment Bill.

Limitations: The subject suffers from adequate scholarly literature in the form of papers in research journals. Whatever literature is available today pertains to the late 18th century during which authors of books have examined the pros and cons of the law on sedition at that time. Secondly, owing to paucity of time, the questionnaire is not well structured; it should have had a larger sample size for better results.

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