

## **AN ANALYSIS OF SEDITION LAWS IN INDIA: A CRITIQUE**

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### **ABSTRACT**

*A colonial legacy like sedition, has no place in a democracy like India. It expects citizen to have popular affection towards state and not to exhibit hatred or hostility towards the government which is established by law. The ability of sedition laws to suppress dissenting political opinions and citizen's right to freedom of speech and expression makes a strong case for abolishing sedition laws in India. Existence of these laws is impermissible in a democracy like India. The arbitrary use of these laws despite the Supreme Court's order to narrow the scope of sedition, itself proves that the existence of sedition laws on the statute books threatens the democratic values. The need of the hour is to bring changes to sedition laws in tune with most modern democratic frameworks like England and New Zealand.*

### **INTRODUCTION**

The recent spate in cases of charging social activists, media persons and public intellectuals with sedition have brought constitutional democracy of India into question. These laws were introduced by the British Colonial Government to suppress dissent. After the demise of colonial rule, these laws are now liberally used by central and state governments to rein journalists and curb freedom of speech. The specificity of sedition laws recline in the language of 'disaffection' and gravity of the punishment with them.

Sedition laws were applicable in England, but in the colonies they attained their most oppressive form, helping to succour imperial rule against ascending nationalism in the colonies including India. Victims of sedition law included eminent nationalists like Mahatma Gandhi, Bal Gangadhar Tilak and Annie Besant. Survival of these laws after the fall of colonial rule is ironic, as they continue to haunt the social activists, media persons, political dissenters and public intellectuals even after independence of our country. Like, Dr. Binayak Sen was denied bail by Bilaspur High Court despite widespread criticism of trial court judgment, to charge him on the alleged offence of sedition.

## **HISTORY OF SEDITION LAWS**

The law provision analogous to section 124A, the law which defines sedition in Indian Penal Code, 1980, was section 113 of draft of Indian Penal Code prepared by the First Law Commission, chaired by Thomas Babington Macaulay, later the section was excluded from Indian Penal Code as it was enacted in 1860. British colonial government in 1870 added section 124A to IPC when it felt the need for a law to smother any voices of disagreement. Mahatma Gandhi recognising it as a threat to democracy called it the 'prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizens.'<sup>1</sup>

The framers of this section imported its features from diverse sources such as The Treason Felony Act 1848, the common law of seditious libel and the English Law relating to seditious words that were applicable to communities of person in addition to citizens and the government.<sup>2</sup>

Editors of the nationalist newspapers were primarily prosecuted under the sedition law. The first among those prosecutions was the trial of Jogendra Chandra Bose in 1981. He was editor of Bangobasi newspaper. Bose published an article condemning the Age of Consent Bill for interfering with orthodox Hindu Code and its coercive nature. In his article, he also criticized negative impact of British colonialism on Indian economy. He was accused of sedition for exceeding the limits of legitimate criticism and inciting religious feelings. However, the court dropped proceedings against him after he apologized for publishing the article.<sup>3</sup>

## **RECENT DEVELOPMENTS ON SEDITION**

In spite of Supreme Court's clarification in Kedar Nath's Case<sup>4</sup>, the lower courts seem to continuously ignore this guideline regarding applicability of sedition laws as recently witnessed in the prosecution against Dr Binayak Sen. Sen's work in public health in the interiors of

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<sup>1</sup> A.G., *Noorani Indian Political Trials: 1775-1947*, New Delhi: OUP, 2009, p. 235.

<sup>2</sup> W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India*, 1 (Calcutta: Thakker, Spink and Co., 1911). Pg 4

<sup>3</sup> Aravind Ganachari, 'Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response' in M. Vandalos, G.K. Lotts, H.M. Teixeira, A. Karzai & J. Haig, Boca Raton (eds.), *Engaging Terror: A Critical and Interdisciplinary Approach* (Florida: Brown Walker Press, 2009)

<sup>4</sup> *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, AIR 1997 SC 3483; *Balwant Singh v. State of Punjab*, AIR 1995 SC 1785.

Chhattisgarh has been appreciated universally.<sup>5</sup> He languished in prison for participating in documentation of the gross violations by the state sponsored vigilante groups called Salwa Judum. Trial Court accused him on frail charges and his bail application was rejected by Bilaspur High Court.<sup>6</sup>

Even today, sedition law is being used as a weapon to curb any political dissent and also any alternate political philosophy which contradicts the ideology of the ruling party. Binayak Sen, Arundhati Roy, Dr R. Rati Rao, Bharat Desai, Manoj Shinde, V Gopaldaswamy are few of the many names that appear when one looks through the recent history of how sedition law is being applied. These individuals merely expressed their perspective on specific activities of the government, which was far from inciting violence against the state. When one looks at these prosecutions, it appears that a divide exists between Supreme Court, High Courts and District Courts. Judges in various courts neglect the interpretation of sedition laws given by Supreme Court, which results in various instances of miscarriage of justice. This issue is graver at the level of the district courts and the investigating authorities. There emerge a lot of cases where the accused is either granted bail or acquitted by High Court, who was earlier sentenced guilty by trial court for 'sedition'. The punishment of the person charged with sedition starts with the legal process. Despite the fact that they are acquitted at the end, they have to undergo a long legal process, which in itself is a punishment for those who dare to express their opinion against the activities of the government.

It seems as if the upper echelons of the judiciary are totally disconnected from the lower echelons, with the continuous harassment of individuals by lower courts and the investigating authorities for no reason in law. Case of Binayak Sen is one of the most noticeable examples of the arbitrary nature of sedition laws.

The uncontrolled abuse of these laws in spite of the Supreme Court's judgment in Kedar Nath's case defining the scope of the law has made a very strong case for repealing sedition laws. Section 124(A) continues to haunt 'freedom of speech and expression' which has proved Mahatma Gandhi's thoughts about Section 124(A) correct. Existence of a draconian law of such a nature in India raises question on the world's biggest democratic set-up.

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<sup>5</sup> 'Nobel Laureates Rally Behind Binayak Sen' *The Hindu* (India, 9 Feb, 2011)

<sup>6</sup> Jyoti Punwani, 'The Trial of Binayak Sen' *Economic and Political Weekly* (India, 25 December, 2010).

## **COMPARING SENTENCING**

The punishment for sedition under section 124(A) of Indian Penal Code, 1860 is absolutely disproportionate to the charge. The analysis of punishment for other similar charges under IPC makes this disparity obvious. Chapter 6 of IPC (Offences against the State) includes Sedition in contrast with crimes like ‘unlawful assembly’ and ‘rioting’ that are included in chapter 8 (offences against Public Tranquillity). Promoting enmity between religious groups is punishable under section 153(A) of IPC by a maximum imprisonment of three years and under section 153(B) imputations prejudicial to national integration is punishable by a maximum imprisonment of three years, and even if the offense is committed in a place of worship, the maximum punishment will still be five years imprisonment. Similarly, the quantum of punishment outlined in the IPC against public tranquillity are not as harsh as compared to sedition. For example, the punishment for unlawful assembly under section 143 of IPC is imprisonment of maximum six months. The inordinate nature of the punishment for sedition under section 124(A) of IPC makes it very difficult for the accused to get bail and has immensely serious consequences for those convicted of sedition.

## **COMPARITIVE LAW**

Few previously colonized nations retained sedition laws after achieving autonomy from their colonial rulers. Many of these countries have decriminalized sedition or the courts have extremely narrowed its scope. While sedition law have been repealed from the statute books in United Kingdom and New Zealand, sedition laws have fallen into disuse in United States and Nigeria.

## **UNITED KINGDOM**

In Britain, the sedition and criminal libel evolved from the crime of treason. Under the Treason Act, 1795, any act which threatens the person of the King, his government or the constitution, would be regarded as a crime of treason. The Treason Felony Act, 1848 is still in force today in England.

In United Kingdom the last prosecution for sedition was in 1972. *R v. Chief Metropolitan Stipendiary Magistrate ex parte Choudhury*,<sup>7</sup> was the last case where it was attempted to prosecute a person for sedition. All the following attempts to prosecute political activists and intellectuals have failed. The accused were charged for publication of Salman Rushdie's book, titled 'Satantic verses'. The book was considered to be a vituperative attack on Muslim religion, which sparked violence in the U.K. It was attempted to prosecute Mr. Salman Rushdie and publisher for the offence of sedition. However, the summon application failed as there was no intent to provoke violence or defiance of the United Kingdom democratic institutions by either of the accused.

United Kingdom Law Commission recommended to repeal the offence of seditious libel in 1977.<sup>8</sup> The Joint Committee on Human Rights considered these recommendations of Law Commission while preparing a note on freedom of press and crime of seditious libel.<sup>9</sup> Since the political speeches are protected by ECHR, these crimes would be in violation since they would have a "chilling effect" on censure of government. Therefore, these crimes would be violative of Article 12 of the Human Rights Act, 1998, which was enacted to meet the obligation under ECHR. Eventually, the offences of sedition and seditious libel were abolished through the Coroners and Justice Act, 2009. However, any seditious act would still be prosecuted under section 3 of the Aliens Restriction (Amendment) Act, 1919.

The primary consideration for abolition of sedition was the framework of the offence which was outmoded. Sedition laws were against the values of constitutional democracies. Even though the prosecutions were infrequent, even the intermittent application of the law had a "chilling effect" on freedom of speech and expression.

## NEW ZEALAND

In New Zealand, the offence of sedition has the similar understanding of sedition in United Kingdom. Seditious offences are set out in sections 81 – 85 of the Crimes Act of 1961. Sedition

<sup>7</sup>*R v. Chief Metropolitan Stipendiary Magistrate ex parte Choudhury* [1991] 1 All ER 313

<sup>8</sup>The Law Commission, *Treason, Sedition and Allied Offences* (Working Paper No 72), para 78 & 96(6) (1977); The Law Commission, *Criminal Law: Report on Criminal Libel* (Cm 9618, 1985).

<sup>9</sup>Written evidence submitted by the Joint Committee on Human Rights, available at: <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/362/362we14.htm>> accessed 8 December 2017

was abolished by the Crimes (Repeal of Seditious Offences) Amendment Bill, 2007. There are two noteworthy sedition trails which are even mentioned in the background note of the Crimes (Repeal of Sedition Offences) Amendment Bill, 2007. The trail of James Liston in 1922. Liston was prosecuted for questioning the Anglo-Irish Treaty and glorifying the rebels of the Easter Rising of 1916, while giving a speech on the Irish question at the Town Hall in Auckland. He was later acquitted by the Supreme Court of Auckland. In 2006, Timothy Selwyn, a political activist was charged of sedition for breaking the window glass of then-Prime Minister Helen Clark's office and calling other New Zealanders to take "similar action" on their own, through two pamphlets that he published and distributed. He was convicted only for the seditious statements in the pamphlet asking other like-minded New Zealanders to take similar action.<sup>10</sup>

The Crimes (Repeal of Seditious Offences) Amendment Bill, 2007 pointed towards the "tainted history" of the archaic sedition laws. Certain opinions might be disliked and unreasonable but criminalising them is not appropriate. It's against the democratic principles and in particular, the Bill of Rights in 1990. In practice, these laws were uncertain and outmoded, they were mostly used to suppress political opposition, and therefore these offence had to be repealed.<sup>11</sup>

New Zealand's Parliament, while repealing and not replacing sedition, said that modern constitutional democracies such as United States, Canada, Australia or England had let the sedition laws fall into disuse. It is not necessary to retain the offence of sedition in the statute books. The elements of the offence can be addressed by other criminal law provisions.

United Kingdom and New Zealand both had almost similar consideration while abolishing sedition laws i.e. the definition and framework of sedition is vague and uncertain. The sedition laws refer to historical context which are now obsolete. The law is archaic and offends the values of modern democracies.

### **CONCLUSION AND RECOMMENDATIONS**

A colonial legacy like sedition, has no place in a democracy like India. It expects citizen to have popular affection towards state and not to exhibit hatred or hostility towards the government

<sup>10</sup>*R v. Selwyn, Bell* [2003] EWCA Crim 319

<sup>11</sup>Crimes (Repeal of Seditious Offences) Amendment Bill, 2007, available at <http://www.parliament.nz/NR/rdonlyres/0B8AD487-C576-4BCE-9A31-FD96362817F7/56750/1523CrimesSedition3.pdf>

which is established by law. The ability of sedition laws to suppress dissenting political opinions and citizen's right to freedom of speech and expression makes a strong case for abolishing sedition laws in India. Existence of these laws is impermissible in a democracy like India. The arbitrary use of these laws despite the Supreme Court's order to narrow the scope of sedition, itself proves that the existence of sedition laws on the statute books threatens the democratic values. The need of the hour is to bring changes to sedition laws in tune with most modern democratic frameworks like England and New Zealand.