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Sedition Laws - Shackle to Free Speech

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Introduction

The Legislative, Executive and the Judicial Wing of the India has undergone various transmission to eradicate the provisions which were beyond the ambit of reasonableness and tilted towards arbitrariness of the Sovereign Authority. The framers of the Constitution of India has made every possible effort to Project and Compile the Constitution of India as the Peoples Constitution and the Preamble also reflects the same stating ‘We the People Of India Solemnly resolve to constitute India...’¹. Right from the enactment till the present time, our Constitution has undergone through various amendments and they all were inclined towards making the Constitution Stronger and to strengthen the Rule of Law or in the other way to promote the Constitutionalism in the Country.

Inspite of all these efforts, amendments, changes there are certain things which do exists now also and that too in its colonial format. The Pre Independent India has seen the terror of he laws which were intentionally drafted and implanted to curb the voice of the Indians who were challenging the shore of the Queen. Among some of the major draconian law there exists the the concept of Sedition in India.

If we look at the bare prevailing status of the Sedition law in India we can find its trace in the form of Section 124 a of the India Penal Code. This Non Bailable Provision of Indian law threatens those who by any chance make any attempt to bring hatred against the Sovereign Power or the one who makes an attempt to excite the disaffection against the Government. The extent of punishment for this act is extended to the maximum of the life imprisonment to the person. This draconian law was enacted the during the colonial rule to curb the revolutionaries in 1807 but the irony of this provision is that it is prevailing in its raw form as it was existing during the Pre Independent India.

¹ Preamble- Constitution of India.

Position of Sedition Law during the Colonial Rule.

During the Era of Colonial Rule the Britishers has drafted a law to quell the protestors and to quieten the protests and criticism against the throne and the arrest were made without any warrant by the Britishers. If we look into the inception of the Indian Penal Code we could trace that there was no existence of any such provision in the Code but later in the year 1807 this draconian law against the protestors and the Freedom Fighters were introduced and the after effect of this law was severely faced by protestors who showed the dissatisfaction against the throne. Sedition was one of the major weapon in the hands of Britishers to suppress the various moments initiated in the the different parts of the country and to crush the leaders who were initiating and leading the particular movement. If we look back into the history, We will found that Bal Gangadar Tilak was the first prominent figure of the Nationalist Movement who fought for the Independence. It was alleged by the Britishers that the Newspaper of Tilak named Keshri was indulged in the act of publishing articles which agitated the public against the throne and develop a sense of dissatisfaction against the then Government. Finally in 1897 Bombay High Court found Tilak guilty for the act of Sedition under Section 124 a of the Indian Penal Code and awarded him the punishment for 18 Months of Imprisonment. It will be interesting to mention that this case was decided by the jury which has given their views in the manner of 6:3. Six White Jurors given their judgement against the tilak and three Indians were in the favour of him². So ultimately along with this case, the cases on multiple occasion arises and were quelled by the Sedition law.

Position of Sedition Law in Independent India.

If we look into the position of Sedition Law in the Independent India we could trace that in the Constituent Assembly the word 'Sedition' was not taken and dropped in the year 1948. K.M Munshi was the first person who initiated the discussion to drop this draconian law from the Constitution of India. He moved an amendment to exclude the term 'Sedition' from the Constitution. As in draft constitution it was mentioned under the Article 19(1) (a) to put a restraint on the absolutism of the freedom of speech and expression. But afterwards in the Final Draft of the constitution of India and when it was adopted the existence of the word "Sedition" was disappeared from the Constitution³.

Similarly During the regime of the first Prime Minister of India Pandit Jawaharlal Nehru in the year 1951 initiated a constitution amendment which carries the provision to put a restrain on the absolutism of the

² *Indian Legal And Constitutional History- M P Jain.*

³ *CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I*

freedom of speech and expression and a tilted aim was there to suppress the section who speaks or express their dissatisfaction from the Government. The insertion of 19 (2) to suppress the agitation against the Sovereign authority this restriction was enacted. In continuation with the same another major changes were brought in the year 1973 during the Era of Indira Gandhi where she has completely repealed the Laws of the colonial era and the Code of Criminal Procedure 1898 has undergone a complete change and in the Independent India for the first instance Sedition was empowered as a cognisable offence. After that various Government Overthrown the Power but no objection was made to this Law. Although the objection to this Law was made by the First Prime Minister itself where he coined it as Highly Obnoxious and Mahatma Gandhi also termed the provision of sedition as 'Prince among the existing laws which were in existence to suppress the political agitation of the Citizen'. But no efforts were made to drop down this Black Law from the Law.

1. Whether Sedition Laws are tilted towards Curbing the Fundamental Rights?

The Constitution of India has facilitated the Citizen of India with various liberties and rights with reference to having equal right among the citizen, removal of arbitrariness and promoting equal opportunity and treatment of law was given to the Citizen as the constitutional right. Similarly Under the Provision of Article 19 of the Constitution of India the citizens were facilitated with the right to freedom of speech and expression. Where people were given the power to have the freedom of expressing their views, freedom of speech and giving their views with reasonable restrictions which were verified under through the test of just, fair and equity test of the Constitution. Similarly if we look into the organisation of the electoral system of the India we will come across that its based on representative form of Government. It is the Public who elects their representative to the Parliament and House. So its the People who choose their representative to raise their voice in the house. Similarly like the Representative Electors form their Government and run the country. But the irony is that if the same people on any policy issue or any dissatisfactory instance makes any comment or shows any dissatisfaction toward the Government he himself have chosen then he will be put behind the bars without any justification. In any democracy it is the right of the people to do health criticism of the Government. But this healthy criticism is totally on the discretion of the people running the Government. In the multiple occasions its been evident that how the Government has quell the voice of the people which was against the Government. Through this Sedition concept actually sometimes the Democratic setup is slowly moving towards the totalitarian concept. It is not only curbing the voice of the People but also their fundamental right has been curbed.

2. Whether it's a totalitarian approach to the democracy of India?

The basic concept of any Democratic setup is where the say of the people will be the supreme. The famous saying for the democracy is 'of, for any by the people'. Similarly if we talk about the status of people in the largest democracy of the world then here also undoubtedly we can say that it is the people who chooses their representative and the functions were discharged by the representative Government. But if we look into the Presence of Sedition Law and how bluntly its been used to crush the voice of the people in the democracy like India then the position and the say of the people will be under doubt that whether they have the say over the election of people or not. In any Democratic Setup the two basic Negative approach which were considered as the essence of the Democracy is Protest and Dissatisfaction. Similarly the people who runs the Government and holds the power should be accountable to the people and even if any section of wing of the society is dissatisfied then the Government should work in a manner to resolve their conflict and to work in a positive approach rather than working in a negative way of curbing or suppressing their voice. If there will be no space for the dissatisfaction and to raise their voice. If there is no space of dissent then there is no existence of the democracy will be diluted.

In the Multiple Instances we have seen that how bad this draconian law could be for the Democracy. In 1951 the Punjab and Haryana High Court while deciding a matter with reference to Section 124 a of IPC contended that it is a complete restraint over the essence of the Article 19 of the Constitution of India and the court also instructed the then Government to immediately work on the eradication of the suppressing nature of this law and to make the law in consonance of the Fundamental Rights⁴. But Later in the year 1954 the Patna High Court has upheld the validity of the Section 124 a of the IPC stating that it is not the violation of the Article 19 of the Constitution⁵. But later Allahabad High court in one of its Judgement decided that the provision of the Sedition is against the fundamental rights of the citizen and should be struck down⁶. Finally in the year Supreme Court of India in one of its landmark judgment upheld the constitutional validity of the Sedition Law and contended that a lawfully formed government should be protected from the threat of reducing the stability of the Government. Similarly this Five Judge Bench stated that the words of the Section 124 A of the IPC should identify and apply to the section who disturbs the law and order of the

⁴ *Tara Singh Gopi Chand Vs The State. High Court of Punjab (India) Cri LJ 449*

⁵ *Debi Soren & Ors. v. The State (1954 CriLJ 758)*

⁶ *Ram Nandan v/s State Of Uttar Pradesh Criminal Revn. 1727 Of 1957*

Country and who act in a malicious manner to disturb the stability of the Government. It should no where act in any manner which results in the infringement of the basic fundamental right of the citizen⁷.

In the concluding remark it could be undoubtedly stated that in the multiple occasions the misuse of the Sedition law has been witnessed by the different section of the society who on different occasion reflected their descent towards the the existing Government and has faced the consequences for the same. So in the times when the world is adapting their electoral system from the India and moulding it towards the people centric opinion, Where the originator of the Sedition

Law, Britain has itself curbed this draconian law in the country its a alarming time to shed off this Negative approach from the Constitution of India.



⁷ *Kedarnath v State of Bihar* 1962 AIR 955