SUPREMO AMICUS

VOLUME 31 | SEPTEMBER, 2022 ISSN 2456-9704

HISTORICAL AND CONTEMPERORARY ANALYSIS OF SEDITION IN INDIA

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With article 372 of the Constitution of India provisioning the continuance of all the laws and rules set before commencement of the constitution, Indian Penal Code 1860 became applicable in India and sedition as one of the sections of the said code. Sedition is an offence which comprises of wrongful use of one's freedom of expression by causing disruption to public order or inciting violence. Sedition has been since its inception used as a tool, first by the British and then by the various governments post-independence for sabotaging voice of dissent even for trifle matter. In this article we have discussed of how sedition evolved in India, what was the views of the constitution makers about the law. We discuss the various boundaries related to misuse of sedition that were set by the courts for e.g., Kedar Nath case and how the governments still tried to bypass them. The article sees through what was the idea of 'freedom' of our Indian philosophers like Lokmanya Tilak and Mahatma Gandhi and it can be inculcated in the present Indian society. A few suggestions are given as well for what can be the roadmap taken by the centre regarding the law.

INTRODUCTION

The supreme court in S G Vombatkere v Union of India[1] has decided to review the sedition law owing to the indiscriminate use of it by the government and low conviction rate[2]. The law had been in scrutiny from the advocates of freedom of speech and expression and the right to criticism of government in a democracy. over the years it has been experienced that the law has been used by the various governments to suppress public opinion and criticism against the government in the name of securing public order and security of the state.

Inducted in the IPC in 1870 sedition[3] has been one of the faces of suppression of voices in the Indian history, it has been drastically used by the British to suppress the national movement against those who opposed against them. National leaders like Bal Gangadhar tilak and Mahatma Gandhi were famously tried under this law.

The law had already enough aspersions in the mind off the people because of the British rule, and after independence it remained the same, with every government be it union or the state utilising the law against its political opponents, public protests etc. the extent of which can be known from the fact that data taken from 2015-20 only shows that out of the 548 people arrested in 356 sedition cases

[1] S G Vombatkere v. Union of India, 2022 SCC Online SC 609.
[2] Rahul Tripathi, *Arrests Under Sedition Charge Rises but Conviction Falls to 3%,* THE ECONOMICS TIMES, February 17, 2021, available at https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr. (Last visited on July 8, 2022).
[3] Indian Penal Code, 1860, §124-A.

only 12 have been convicted in 7 of the cases.[4]

In First part the historical journey of sedition its development and the subsequent changes bought by the British are analysed. It becomes very important to deal with the historical evolution especially with regard to his law as first it is indeed a very old law and a law which has been the same from the amendment made to it in 1898[5] by the British.

In second part the famous trials of Bal Ganga Tilak and Mahatma Gandhi has been discussed, what were their views on the law and how they interpreted it. mahatma Gandhi had famously in his trials said that though public must maintain peace and order and follow non-violence but it is the duty of government to see that public is not made to suffer beyond a limit such that people are not left with any other option[6]. And in that case government will be solely responsible for any disturbance to the tranquillity of the state.

In the 3rd part the cases after independence are discussed of what stand were taken by the supreme court and the several changes that were done by the Nehru government increasing the scope of restrictions on the article 19(1)(a)[7] by amending 19(2)[8]. The Kedar Nath judgment[9] is discussed which has been followed till date in matters of sedition.

HISTORICAL PERSPECTIVE

A. CENSORSHIP

As we know that the Britishers are the originators of the sedition law, so we must know about how the law was made and what course of events led to its making. In 1780, the first newspaper was published in India by name of Bengal Gazette by James Hickey who was an Englishman.[10] The company soon started getting irked by the circulation of the paper, because of its free speech and comments on the corrupt practices of bureaucrats of the company. The allegation made on the then Governor General of Bengal, Warren Hasting made the newspaper stand in directly conflict with the Company.[11] A new press policy was thus introduced which suppressed the freedom of press. Though the company cleverly cited different reasons for this kind of censorship. At the beginning it stated that due to the ongoing tussle between the various colonising forces like the French and Spanish, in such tough and critical circumstance the free circulation of

[4] Bharti Jain, *Of 548 Held, just 12 in 7 Cases Convicted*, THE TIMES OF INDIA, May 10, 2022, available at https://timesofindia.indiatimes.com/india/of-548-held-just-12-in-7-cases-convicted/articleshow/91451710.cms (last visited on July 8,2022).

[5] Arjun Raghvendra Singh, *Sedition: An Insight on History, Evolution, Shortcoming and Relevance of This Law in Post-Colonial India*, 28 SUPREMO AMICUS 122 (February 2022).

[6] D.G. TENDULKAR, MAHATMA, Vol.2 129-133 (1st ed. 1951) available at https://www.mkgandhi.org/ebks/Mahatma_Vol2.pdf.

[7] The Constitution of India, 1950, Art. 19(1)(a).

[8] *Id*., Art. 19(2).

[9] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

[10] J. Chandhuri, *Law of Sedition in India I*, 10 JUDICIAL REVIEW 385 (1898).

[11] The Better India, *How an Irishman Challenged the East India Company with India's First Newspaper*, November 4, 2020, available https://www.thebetterindia.com/241344/india-first-newspaper-bengal-gazette-james-augustus-hicky-warren-hastings-east-india-company-corruption-india-nor41/.

information about the authorities and its decisions would prove to be precarious for the company establishment.[12] And so, when the Company emerged victorious and it was asked to now remove the censorship, it cited that the respect and prestige that the company holds in front of the Indians might get distorted with the unrestricted circulation of the matters related to their officers. Some of the censorship rules were

1. That the proof-sheets of all newspapers, including supplements and all extra publications, be previously sent to the Chief Secretary for revision.[13]
2. That all notices, handbills, and other ephemeral publications be, in like manner, previously transmitted for the Chief Secretary's revision.[14]
3. That the titles of all original works proposed to be published be also sent to the Chief Secretary for his information, who will, thereupon, either sanction publication of them or require the work itself to be submitted for inspection, as may appear proper. [15]

Finally in 1818 the censorship was removed but still some restrictions were placed and the periodicals, newspapers had to abide by them. Some of the restrictions are mentioned below

1. Animadversions on the measures and proceedings of the honourable Court of Directors, or other public authorities in England connected with the Government of India, or disquisitions on political transactions of the local administrations, offensive remarks levelled at the public conduct of the members of Council, of judges of Supreme Court, or of the Lord Bishop of Calcutta.[16]
2. Discussions having a tendency to create alarm or suspicion among the native population of any intended interference with their religious observances.[17]
3. The republication from English or other newspapers of passages coming under any of the above heads, or otherwise calculated to affect the British power or reputation in India.[18]
4. Private scandal and personal remarks on individuals tending to excite dissension in society.[19]

These were the different areas upon which the commentaries of newspapers were barred, thus limiting their freedom to express their opinion on the above-mentioned matters. Nevertheless, various newspapers began to be printed, Mr. Buckingham, Editor of the Calcutta Journal used to criticise the government of the restriction placed on them and was in fact quite popular with his stance against the government and received several warnings from the governors for his comments on the government.[20] In the same way a lot of periodicals began to come up. The famous reformist Raja Ram Mohan Roy started a journal Sambad Kaumudi where he presented of what is the real essence of the

[12] CHANDHURI, *supra* note 10.
[13] *Id.*, 386
[14] *Id.*
[15] *Id.*
[16] *Id.*, 387
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] P. Sonwalkar, *Indian Journalism in the Colonial Crucible: A Nineteenth-Century Story of Political Protest*, 16(5) JOURNALISM STUDIES 629 (September 3, 2015).

Hindu civilisation[21] and tried to remove the misconceptions about Hindus that were being spread in the public through the Christian missionary journals like Samachar Darpan.

Situation deteriorated after the mutiny in 1857 which is also known as the first war of independence in India. To not let the rebellion, happen again various steps were introduced one of which were again stalling the freedom of expression and circulation of information. According to some scholars the Britishers didn't press forward the censorship immediately after the mutiny as they feared of greater opposition from the masses and further aggravation of the situation. In 1860 the Indian Penal code (IPC) was enacted but surprisingly it didn't include sedition, some say that the reason for not including sedition was Lord Canning who was thought of as a liberal person who believed in honest and freedom of criticism of the government.[22] But, according to some scholars, it was mere accidental that sedition was not included and eventually made a part of IPC in 1870 by James Stephen[23]. One of the main reasons that can be cited for addition of sedition in 1870 in IPC was the Wahabi activities that took place during 1863-70, these were uprising that was carried on by the rebels of the 1857 independence war and based on politico-religious framework.[24]

The law was amended in 1898, The section that read as-'Whoever by words either spoken or written, 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' was now changed to-'Whoever by words either written or spoken, or by signs or by visible representation or otherwise, brings or attempts to bring into hatred and 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.'[25] The said amendment was done to bring the Press in direct purview of the sedition law. By adding 'hatred' and 'contempt' it made every opinion expressed against the government liable to be booked under sedition[26]. The amended version of 1898 of sedition is what has mainly continued since then.

SEDITION TRIAL OF BAL GANGADHAR TILAK

FIRST TRIAL

Bal Gangadhar Tilak was editor of 'Kesari' and had written articles against the administration on the backdrop of Famine (1896) and Plague (1897)[27]. He mentioned of how the administration has been totally deaf

[21] S Bhattacharya, *Indigo Planters, Ram Mohan Roy and the 1833 Charter Act*, SOCIAL SCIENTIST 57 (October 1, 1975).
[22] CHANDHURI, *supra* note 10, 391.
[23] Apurva Vishwanath, *Explained: What is Sedition law, and why Supreme Court's Directives is Important*, THE INDIAN EXPRESS, May 12, 2022, available at https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/.
[24] Siddharth Narrain, *Disaffection' and the Law: The Chilling Effect of Sedition Laws in India*, 46 ECONOMIC AND POLITICAL WEEKLY 33 (February 19-25, 2011).
[25] J. Chandhuri, *The Principles of Law of Sedition*, 33 LAW JOURNAL 185 (April 9, 1898).
[26] NARRAIN, *supra* note 24, 34.
[27] Geetali Tilak, *Study of Lokmanya Bal Gangadhar Tilak and Court Cases*, 4 MAHRATTA 5 (September 2020).

to the plight of the suffering people. The British officials objected to the views of Tilak and charged him of sedition, more so the Britishers alleged that the murder of Plague Commissioner Rand[28] was instigated by Tilak's piece on the killing of Afzal Khan by Shivaji Maharaj. The trial was filled with some vague arguments from the government side with one being regarding the definition of disaffection. Justice Strachey of Bombay High Court had said that the meaning of 'disaffection' given in IPC-124A is 'absence of affection'[29] which means any article showing absence of affection will lie under contention of being seditious, and only those articles which will be showing affection towards the government or in a way article praising the government will only be allowed. This interpretation invited criticism not only from Indians but also from the Britishers. Lord Simon in 1919 stated that interpreting 'disaffection' as 'absence of affection' is same as saying that disease means 'absence of ease'.[30] It can be clearly said that such interpretation gives plain power to the government to term anything against its interest and favour as seditious act. But anyhow despite Tilak appealing further in higher courts, he was found to be guilty and was sentenced to a one and a half year of imprisonment, but later was released with a condition of not promoting disaffection towards the government.[31]

SECOND TRIAL

On 1908 an attack which was planned on justice rather resulted in the death of his wife and daughter. This incident enrages the British and they begin to target the leaders of national movement for revenge in spite of no involvement. They once again put B.G. Tilak in sedition trials holding him responsible for inciting the attackers. Once again Tilak had to defend himself of not inciting any disloyalty or hatred towards the government. In his defence Tilak gave a very rational explanation of the sedition law which is worth mentioning. He first divided the law in two parts, the first part- 'whoever by words either spoken or written brings into hatred or contempt his Majesty', according to him makes intention irrelevant, instead what has to be seen is whether incitement against the government or contempt is of direct consequence of anything written or spoken[32] whereas the 2nd part which says- 'attempts to excite disaffection', makes the intention the crux, irrespective of whether any subsequent violence takes place. It talks only about the attempt and so it can be inferred that to judge a certain act one has to only analyse the attempt, if it was made with the intention of creating disloyalty towards the government or to heighten the already prevailing disaffection.[33]

TRIAL OF MAHATMA GANDHI

Another famous trial of sedition was against Mahatma Gandhi in 1922 on allegation of participating in a protest against the Government in Bombay, and was also held responsible for the happenings of Chauri Chaura.[34] Gandhi in the trial tried to bring out the fact that how the sedition law is being used as a tool for suppressing the voice of the general masses and how this law compels

[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*

[32] Queen-Empress v. Balgangadhar Tilak, (1898) ILR 22 Bombay 112.
[33] *Id.*
[34] B. Sexton, *The Trial of Gandhi*, 16 CURRENT HISTORY (1916-1940) 441 (June 1922).

people to show affection towards the government. According to him, one cannot be forced to have affection to a government if one thinks that the government has not been working in the right manner, and it's quite apparent that he must have a way to express his disgust and his disaffection towards the government, as long as it does not excite violence.[35] He says "I have no personal ill-will against any single administrator, much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a government which in its totality has done more harm to India than any previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in evidence against me"[36]. Such bold stance made by Mahatma Gandhi tells us how opposed to the sedition law he was when applied for merely showing disaffection towards the government as long as it is not in direct relation to any kind of violence.

It can be noted from these trials that how indiscriminately sedition was used against the national leaders to suppress them, to suppress the voices of people who asked difficult questions to the Colonisers and worked for awakening of the Indian masses against the injustice being done to them. Such indiscriminate use, and that too, against the national leaders involved in freedom struggle of India meant that sedition became metaphorically a law which demonstrated the suppressing power of the Britishers, inciting hatred from the masses towards it. Such 'disaffection' against the said law[37] was clearly seen and visible through the debates when the constituent assembly members were discussing and deliberating on constitutional provisions especially those related to the freedom of expression.

CONSTITUENT ASSEMBLY DEBATES

Studying the making of constitution is a great way to know exactly as to what really was the locus standi of India as an independent nation about such law or provision and to what extent was free speech considered to be guaranteed to people who now are to be ruled by themselves.

Any law made has not only to be understood by the literal meaning of it but has to be understood through the context of the situation in which the law was made and what was the intention behind making the law, which we call as legislative intention and lastly the interpretation given by our Supreme Court is a way to find out what the law actually means. Constituent Assembly can tell us of what the context regarding freedom of expression were in the country and what was the intention behind provisions regarding restriction on the same, or if those restrictions had relation to sedition law or not.

Article 19(1)(a) of our constitution gives people 'right to free speech and expression' and article 19(2) provides the restriction to the same. It is during discussion of the aforesaid articles through which we get to know of the boundaries of freedom of expression as well as extent of limitations

[35] TENDULKAR, *supra* note 6, 137.
[36] *Id.*

[37] J. Bakhle, *Savarkar (1883–1966), Sedition and Surveillance: The Rule of Law in a Colonial Situation*, 35 SOCIAL HISTORY 70 (February 2010).

that can be imposed. What is interesting here to know is that the draft of Article 19(2) contained sedition, it said

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or which undermines the authority or foundation of the State"

So, sedition formed part of the restriction to the fundamental right of speech and expression, but it being only a draft, it would be more apt to say that it was to be decided if sedition inter alia was to be one of the criteria of restricting a person right of expression. The most emphasising point made about sedition was of the confusion and doubt that accompanies it. Sedition law as have been mentioned earlier, was heavily and indiscriminately used against Indians even for slightest of criticism of the government. K.M. Munshi a very learned and active member of the constituent assembly had explained pretty well how blatantly sedition was used by the Britishers. He said "A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A."[38]

Sedition was said to have become a 'equivocal' word and it was suggested to replace it with what it actually means eradicating any confusion. So, 'undermines the security of, or, tends to overthrow the government' was added in place of 'undermines the authority or foundation of state'. This amendment was moved by K.M. munshi[39] and adopted by the assembly with most of the members sighting that how the word 'sedition' in India itself had become obnoxious and has created an image of colonial hegemony in minds of the Indians.

After going through what changes were brought, we must now understand what was the idea behind such changes, what was the intent in making those changes. The very first bone of contention raised immediately after the article was introduced for discussion was of the restrictions imposed on the right given, it was said that the rights people of India had envisaged were being taken away by putting them under the direct control of the executives. One of the member Sardar Hukum Singh said that imposing such restriction is like taking out the soul from the said provisions[40], and in this way the freedom of people, will face precarious situation. Broadly speaking, if a country gets independence, it wants freedom and not be subjugated by anyone or particularly wants to do away with those subjugations against which it fought. Adding to that if the country is democratic then freedom of expression is cornerstone to it. And so, it is quite natural that the members had their reservations that the restrictions can put country back to the era of state dominance that it wanted freedom from. There were suggestions of giving

[38] Constituent Assembly Debates, Volume No.7, December 2, 1948 *speech by* K.M. MUNSHI.
[39] *Id.*
[40] Constituent Assembly Debates, Volume No.7, December 2, 1948 *speech by* SARDAR HUKUM SINGH.

judiciary the power to determine the balance between the scope of restrictions and freedom to free speech, as there were aversions of the executive using the restrictions to their benefit. This suggestion however was not adopted and it was said that the phraseology used in the article for restriction has been in fact derived from the judicial precedents in itself.

UNDERSTANDING FREEDOM

Sedition law in India is faced by is twofold. First is the obvious limitation that it puts on the freedom of expression, speech and to criticise the government. Second problem with sedition is the legacy issues, with the past of the said law filled with the suppression of our heroes of independence and indiscriminate usage by the British, its conspicuous that a law with such history will suffer animosity from the people.

Putting in line with the restriction of freedom of individuals, it must be thought that if we have been guaranteed the liberty of expressing ourselves, after fighting for it against the colonizers, then why at the first place we should tolerate any kind of limitations upon us. We fought the foreign powers to get rid of the suppressing forces, but then why did we applied or allowed the executives to apply the restriction again on us. For once not only thinking about sedition we must ask ourselves as to the freedom that we will get even after abrogation of sedition will be complete or there will be still some restrictions prevailing as given in the article 19(2) of the constitution. To answer such question, we have to understand first as to what exactly freedom is. Freedom according to the Indian philosophers means self-rule in the righteousness of manner. According to Vivekananda who was the pioneer of the Indian renaissance freedom is an integral part of a human life, it must be complete, without any outside control and enjoyed to the extent that it does not prove to be harmful to others. He speaks

"Liberty of thought and action is the only condition of life, of growth and well-being. Where it does not exist, the man, the race, the nation must go down, Caste or no caste, creed or no creed, any man, or class, or caste, or nation, or institution which bars the power of free thought and action of an individual- even so long as that power does not injure others- is devilish and must go down."[41]

The wide description and broadness with which Vivekananda defines freedom, one can delineate that in his opinion, liberty of thought and action has a wide spectrum and a huge role to play in any society. It is quite discernible how he has placed 'freedom', subject to not causing injury to anyone, over all subsisting societal norms and named such norms or rules devilish which try to act as barrier in enjoyment of freedom. Accordingly, freedom is not something which needs to be acquired from someone, in Indian philosophy philosophers like Tilak and Gandhi talked about freedom in context of swaraj that is self-rule. As famously put by Tilak 'swaraj is our birth right'[42] and so freedom is an intrinsic part of human life and does not require sanctions or any licence. Another Indian philosopher Bipin Chandra

[41] *Letter from* Swami Vivekananda et al. *to* his disciples in Madras *dated* January 24, 1894.

[42] Deepak Tilak & Geetali Tilak, *Lokmanya Tilak's Visionary Thoughts Towards Nationalism and Nation Building*, 11 INTERNATIONAL JOURNAL OF DISASTER RECOVERY AND BUSINESS CONTINUITY 530 (2020).

Pal mentions of how the west has a very negative way of defining freedom, it defines it as an absence of restraint, regulation and subjection. This kind of norm means that the people have obtained a lisence from the state for expressing themselves and the day state would want, the restraints, subjections will again get imposed on the subject. On the other hand, what Bipin Chandra Pal says is that in the Indian Philosophy, we believe in total freedom and what total freedom means is Swaraj which in fact in his own words mean

"Swaraj does not mean absence of restraint or regulation or dependence, but self-restraint, self-regulation, and self-dependence."[43]

This theory explains the vast contours of freedom that is instilled in an Indian society, which doesn't rely on any system or institution but rather proposes freedom as an inbuilt part of the society superstructure. But accordingly, what has also been mentioned and with the same gravity by the same philosophers is self-realisation of the responsibility that comes with the rights. Mahatma Gandhi says "the exercise of right depends on one's sense of duty"[44] and Vivekananda as already mentioned says that Freedom can only be enjoyed to an extent till it doesn't harm others. Gandhi applies his principle of truthfulness to one's freedom, he says that freedom should only be enjoyed when a person is on the path of truth on the path of righteousness and one must not breach them, according to him a person following path of righteousness will exercise his freedom in a good manner but if one does not have the sense of duty towards the society and rather works in a destructive manner then he/she must be curtailed from using its freedom for prevention of harm.

The fact is quite clear that absolute freedom carries with itself the absolute duty and self-restraint. Our Constitution, it can be said, has also been structured along the same lines with article 19(2) to 19(6) acting as the self-restraining power to the rights mentioned preceding it.

After talking through contours of freedom we realise that restriction is necessary and that restriction does not totally obliterate freedom but act as a safeguard to it. the only thing but the thing of probably highest ambiguousness is the extent and nature of restriction that can be applied so that the restraint does not overpowers the freedom of the individuals. To ponder upon these questions, we must visit some of the landmark cases that will give us different perspectives on what the balance between free speech and restriction should be and where does sedition find itself on this balance scale.

AFTER INDEPENDENCE

Brij Bhushan v. State of Delhi[45] and Romesh Thappar v. State of Madras[46] are two cases occurring in 1950 which gives us the interpretation for the first time of our constitution regarding scope of restrictions that can be put on article 19(1)(a). In Brij Bhushan case the chief commissioner of Delhi had restricted an English weekly of Delhi, Organiser for publishing highly objectionable material in exercise of section 7(1)(c) of East Punjab Public Safety

[43] International Seminar on GANDHI AND THE TWENTY FIRST CENTURY (January 30 - February 4, 1998)
[44] *Id.*

[45] Brij Bhushan v. State of Delhi, 1950 SCR 605.
[46] Romesh Thappar v. State of Madras, 1950 SCR 594.

Act,1949. By the order it was required for the weekly to have the material to be published scrutinised. It was also said to submit all the images, materials related to Pakistan or partition to the police. The order said

"Whereas the Chief Commissioner, Delhi, is satisfied that *Organizer*, an English weekly of Delhi, has been publishing highly objectionable matter constituting a threat to public law and order and that action as is hereinafter mentioned is necessary for the purpose of preventing or combating activities prejudicial to the public safety or the maintenance of public order."[47]

Almost on the same lines was the Romesh Thappar case in which a weekly journal known as Crossroads was banned under Section 9(1-A) of the Madras Maintenance of Public Order, Act, 1949, for disturbing public safety and order with its materials published. Here a thing to note is that public order was not present in 19(2) till the first amendment of constitution in 1956.[48] In both the cases the restrictions were made for ensuring 'public safety and public order' and it was appealed to the court that both these criteria are not in consonance with the restrictions mentioned in 19(2)[49] and hence it is ultra vires to ban or regulate free speech on the basis of public safety or order. What the court had said in its verdict that it accepted the reasoning given by publishers in both the case sand declared both the orders void.. It was pointed out that public order and public safety provided a very broad spectrum to limitations on free speech, wider than what has been allocated through article 19(2) in which the restrictions are only to be applied when a grave intensity of offence is incited or incitement is made such as to overthrow the government. Also citing the removal of sedition from 19(2), the judges said that the removal of sedition in itself talks about the intent of the constitution members of limiting the powers of executive to curtail free speech and expression.[50]

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order"[51]

the above judgements made it quite clear that the liberty of free specch had a very big scope in the Indian constitution and it has to be an act of directly challenging the security or overthrowing of state that will only come under restriction. The executive, which was the Jawaharlal Nehru government decided unhappy with such liberal interpretation of the restriction tried controlling or ascertaining the government's authority through the 1st Constitutional amendment. The amendment added certain terms like 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 were added[52]. What it did was to broaden the areas restriction and especially the addition of public order which being a pretty common term with wide meaning and usage. It can be seen that that had the amendment happened before the decision of above to cases, the

[47] Brij Bhushan v. State of Delhi, 1950 SCR 605, ¶ 1 (per M. Patanjali Sastri J.).
[48] Romesh Thappar v. State of Madras, 1950 SCR 594, ¶ 1 (per M. Patanjali Sastri J.).
[49] *Id*. ¶ 2.
[50] *Id*. ¶ 9.
[51] *Id*. ¶ 10.
[52] The Constitution (First Amendment) Act, 1951, §3.

coram could not have declared the orders from the authorities as void and probably providing freedom to those publishers would have become difficult.

The government did try to balance out its act before the public by also adding reasonable restrictions in the clause so that to prevent the government misuse and that the limitations imposed are not arbitrary. Jawaharlal Nehru said in the Parliament that he and his government is not in favour of laws such as sedition and will work to get rid of it. he spoke

"Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons….. The sooner we get rid of it the better"[53]

But here another thing that will be good to know that addition of the word reasonable was also discussed in the constituent assembly, but the idea was later dropped for it was thought that such a word will do nothing but give rise to more of ambiguity. As there are no parameters of deciding what will account to be reasonable, and who will decide what is reasonable. In fact it can be said that adding such words of caution have found to be of no use as the government in whatever it does finds itself to be reasonable and correct and ultimately the question of reasonableness has to be decided by the court which was already being done before reasonable was introduced in the clause.

In 1958, the Allahabad high court struck down the sedition law as it rendering it unconstitutional. Justice Gutur in his judgement says

"As a result of the conventions as has been remarked of parliamentary government, there is a concentration of control of both legislative and executive functions in the small body of men called the Ministers and these are the men who decide important questions of policy. The most important check on their powers is necessarily the existence of a powerfully organised Parliamentary opposition. But at the top of this there is also the fear that the government may be subject to popular disapproval not merely expressed in the legislative chambers but in the marketplace also which, after all, is the forum where individual citizens ventilate their points of views. If there is a possibility in the working of our democratic system - as I think there is - of criticism of the policy of Ministers and of the execution of their policy, by persons untrained in public speech becoming criticism of the government as such and if such criticism without having any tendency in it to bring about public disorder, can be caught within the mischief of Section 124-A of the Indian Penal Code, then that Section must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the State is involved, and is capable of striking at the very root of the Constitution which is free speech (subject of limited control under Article 19(2))."[54]

We can say that the judges through this verdict tried to hold that the discussion, debate, criticism and deliberation by public being a necessity in a democracy has to be made unscathed and free from any sort of curtailments. But in Kedar Nath v. State of

[53] Ram Nandan v. State, AIR 1959 All 101, ¶132.

[54] *Id*., ¶88 (per Gutur J.)

Bihar[55] sedition was held to be constitutional by the Supreme Court, and also came up with its interpretation on the law to make it weak and restricting its scope, preventing curb on general discussions and criticism of the government. The court validated sedition in so far as when an act is done to disrupt public order and disturbing the tranquillity in the society, posing threat to security of the state or incitement to overthrow the government. The court has necessitated sedition for control over such speech or expression which tries to create an uprising or rebellion against the state. In Niharendu Dutt Majumdar v. King-Emperor regarding the government duty for maintenance of public order the court had said

"The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of Government that in our opinion the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt."[56]

Thus, be it any government, it carries with itself the responsibility of progress and development of the country and public order or tranquillity is one of the pre requisites for that to happen, and so, government should have some powers to put some control or more so to maintain law and order in any area. But this kind of power can also result in the government dictating its terms on the people for all sorts of political reasons. The court in Kedar Nath case did provide the government with its limit and tried to balance out between both the requirements of freedom as well as restrictions but what experience says is that the line has certainly been blur or at least the line between restriction and freedom has appeared blur to the government. There have been numerable cases of misuse of sedition, one of the recent examples was one against Vinod Dua[57] for uploading a video criticising the government of the migration of labours and of taking political advantage of the Balakot airstrikes. These kinds of cases where there cannot be seen any incitement to violence or any threat to public order nor did he asked the people to overthrow the government, it was mere pointing out of the failures of government which he had every right to.

In this whole discussion of sedition law, it is quite amusing that a law is to be used when it is needed but contrary to that sedition law is not in need of how much it has been used which can be seen through the low conviction rates over the years. One very interesting proposition regarding the need of sedition

[55] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[56] *Id.*, ¶18.
[57] Vinod Dua v. Union of India, 2021 SCC OnLine SC 414.

and why it should be deemed obsolete was provided by Justice Beg

"In the former society, there being no law courts, the parties have no peaceful means to seek a redress of their grievances. Every person, therefore, is a law unto himself. He has to resort to his own strong arm to enforce his rights. This leads to disorder and anarchy. When on the other hand, law courts are established, a peaceful mode of settlement of disputes between parties is provided. This leads to the disappearance of disorder and anarchy and prevalence of law and order. The position of India under the British regime is comparable to the former State. The government in such a regime rested not on the will of the people, but was the result of a complete subjection of the same. The domination was both external and internal. The government rested on military occupation of the country, by force. Under such a political system, the Government was envisaged as something immutable, unchangeable and permanent. The appeal to the tribunal of the people, which is an absolutely peaceful remedy provided after, the Constitution for settling all disputes and bringing about all political and, constitutional changes, however sweeping and radical, did not exist under such a regime. Creation of bad feelings against the government under such a regime had, therefore, the inherent tendency to produce disorder, insecurity of the State or even anarchy. After the Constitution, however, the situation has altered. The Constitution has provided a tribunal for changing the government as well as the constitutional and political structure of the country by appealing to the electorate of the country. The position has now been reversed and, the people, instead of being the servants of the government, have now become it masters"[58]

So, what has been explained above can be seen though the less conviction rate in cases of sedition, it won't be an exaggeration to say that India has always had democratic values which can be seen through the philosophies of self-rule and self-restraint[59]. We are the home to the oldest democracy and have held tolerance and acceptance as one of the core values of our culture. As a result of which right from the time of independence Indians have been quite mature at understanding and using their democratic powers. Many protests have been held in the country and people charged with sedition, but almost every time sedition has not been able to be proved the cases have been made only for political interest. The people have passed enough test from the government and the low conviction has showed that Indians have clear idea of their freedoms as well as its boundaries. It is time for the government to acknowledge the people democratic value and remove such laws which have been historically only a way of suppression of voice of the people.

CONCLUSION

Now at present when the government has decided to review sedition law, one must keep in mind of the possible repercussions of any replacement of the law or deletion or any changes to the law. What can be the changes that can be made is thing to discuss and deliberate upon, one can say that we should try and make the law less strict as it is today.

We can make the offence bailable or making it non-cognizable or both. This can surely

[58] Ram Nandan v. State, AIR 1959 All 101, ¶107 (per Beg J.)

[59] TENDULKAR, supra note 6.

reduce severity related to the law and will reduce the power at hands of the executives while exercising the law.

Another way approach can be rather than making the law weak we can make it stricter with narrowing of its spectrum of areas on which the law can apply. The areas can be for example when any speech or expression pertains to pose direct security threat on the government or acts as direct provocation for the destruction of public property then the same law with the same strictness can be applied. This kind of a definition can help in increase efficiency of the law.

Change of name can also be step that can be taken by the government for dealing with the legacy issues related to sedition law. A new law accompanied with a new name can help, as at present sedition law is generally hated because of its past of as a tool of British to suppress our freedom fighters. A suggestion to the judiciary will be to try to remove whenever and in whichever way possible the ambiguities in a law. Especially where contravention of fundamental rights are concerned the judiciary must try and give more firm interpretations so that any power of authority cannot transgress them, like it happened with sedition that even after the decision in Kedar Nath case governments continued to misuse it.

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