



DATE - 23 June 2021

Countering a political act that has a legal garb (The Hindu, GS-2, Polity)

Context:- A film-maker from Lakshadweep named Aisha Sultana was recently booked for the alleged offences of sedition and statements prejudicial to national integrity. Ms. Aisha then moved the Kerala High Court for pre-arrest bail and further the court allowed interim bail to her on June 17. Thus got temporary relief from incarceration.

What is sedition:-

- The word sedition is defined in IPC section 124A.
- An offence committed when “any person by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to

excite disaffection towards the government established by law in India”.

History of sedition law in India:-

- It was 1st enacted in England.
- The law was drafted in 1837 by Thomas Macaulay.
- Indian Penal Code (IPC) was enacted in 1860.
- In 1870 a Section 124A was inserted. This amendment was introduced by James Stephen.

Punishment for the Offence of Sedition:-

- Sedition is a non-bailable offence.
- Punishment may range from imprisonment up to three years to a life term, to which fine may be added.
- A person charged under this law is barred from a government office or a job.
- They have to live without their passport.
- They must produce themselves in the court at all times as and when required.

Action History of Sedition law in India

before the independence:-

- In 1891, J.C. Bose, who was the editor of bangobasi, tried under IPC section 124 A for the first time.

- Prosecution of Bal Gangadhar Tilak in 1897 on the pretext of creating disaffection among the British subjects.
- M.K. Gandhi was tried in 1922 under sedition law.
- Mahatma Gandhi wrote an editorial in Young India for a countrywide agitation during civil disobedience movement by demanding the repeal of Section 124A in 1929.

What is the current debate around sedition

Law:-

- The law creates a conflict with the right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution.
- Sedition law is not even part of the “reasonable restrictions” on free speech under Article 19(2).
- Centre and the States both have the power to invoke the section against activists, writers etc.
- Sedition law mainly applies to silence political dissent by accusing dissenters of promoting disaffection now a days.
- According to the National Crime Records Bureau, 35 cases of sedition were reported in 2016.
- National Crime Records Bureau (NCRB), between 2016 and 2019 there was a 160% increase in the registration of sedition cases at the same time the conviction rate during this period fell from 33.3% to 3.3%.

Indian freedom fighters were totally against this section during Indian national

movement then why did they retain it after independence?

- Right-wing extremism as well as by left-wing extremism were on the rise
- Scarcity of food which would have caused havoc in society if unwanted elements would not have been tackled.
- The challenge of settling millions of Partition refugees because of partition.
- The conflict with Pakistan over Kashmir.

How is the sedition law being misused:

- lower courts have routinely failed to apply these parameters which are set out by the higher judiciary.
- There is a complete lack of percolation of settled judicial opinion to lower levels of the judiciary so we need that Judiciary should address this systemic lapse.
- Magistrates have the power to order a police investigation into cognisable offences.
- We have seen for example, in *Lalita Kumari vs. Uttar Pradesh* (2013), the Supreme Court has specifically laid down that registration of an FIR is mandatory if information received by the police discloses a cognisable offence but from recent cases, it is unclear how the court or the police could conclude that the contents were seditious.
- State can use section 124 A to chase those who challenge the government power so trying someone under sedition charges ends up acting as a deterrent against any voice of dissent or criticism.

Major Supreme Court Decisions on Seditious Law:

- **Brij Bhushan vs the State of Delhi.**
- **Romesh Thappar vs the State of Madras.**
 - The Supreme court specifically said that a law which restricted speech on the ground that it would disturb public order was unconstitutional.
 - Disturbing the public order will mean nothing less than endangering the foundations of the State or threatening its overthrow there by application of sedition.
 - Article 19 was amended and there clause (2) was added or rewritten to replace “undermining the security of the State” with “in the interest of public order”.

Kedar Nath Singh vs State of Bihar.

- It upheld the constitutionality of sedition.
 - It also limited its application to “acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence” so the supreme court created a bar on the application of this act..
 - It distinguished these from “very strong speech” or the use of “vigorous words” strongly critical of the government.
- **Balwant Singh vs State of Punjab:-**
 - The Supreme Court held that mere sloganeering which evoked no public response can not be tantamount to sedition.

Why the sedition act should be abolished:-

- Word Sedition is not mentioned in the Constitution and during the Constituent Assembly debate the opinion was for free speech so that people can make their voices felt by the Government. The essence of democracy is a criticism of the Government.
- The United Kingdom who is the mother of such laws has abolished sedition laws ten years back.
- Law Commission of India has pointed out that the definition of sedition does not take into consideration disaffection towards (a) the Constitution, (b) the legislatures, and (c) administration of justice.
- The court in Navtej singh Jauhar case found that pre-constitutional legislation has no legal presumption of constitutionality. So the pre-constitutional sedition law can also be challenged on this basis.
- India ratified the International Covenant on Civil and Political Rights in 1976 which binds India to promote free speech..

Why is the Sedition law not abolished?:-

- There is a need to retain the provision to combat anti-national, secessionist and terrorist elements there by upholding sovereignty, integrity of India.
- This power was required by the state to protect itself according to the supreme court.
- The Law Commission had already rejected the idea of repealing the section.
- The Commission opined that “Section 124A should be invoked only in a few cases with rigorous scrutiny but not for political dissent.

Law commission recommendation:-

- Dissent and criticism of the government are essential ingredients of a constructive and robust public debate in a vibrant democracy.
- So there lies little difference between the pre- and post-Independence eras if the country is not open to positive criticism.
- Right to criticize one's own history and the right to offend are rights protected under free speech under Article 19 of the Constitution which lies with constitutional remedy. It should not be misused as a tool to curb free speech.
- Every restriction on free speech and expression must be carefully scrutinized to avoid unwarranted restrictions thereby people's confidence in democracy.

Way forward:-

- Sedition law must be applied to the specific cases, a general criticism can not attract the charges of sedition law.
- We must understand that, sedition law is for integrity, sovereignty of India not for the political party.
- Political dissent must not attract this law.
- Either parliament or judiciary should draw the boundary of application of law.
- Appropriate penalties for law enforcement agencies if misused.
- Definition should be narrowed down.

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