International Journal of Psychosocial Rehabilitation, Vol. 23, Issue 05,
2019 ISSN: 1475-7192

The Sedition Laws in India with Special Reference to Shreya Singhal Vs. Union of India

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Abstract--- *This research paper talks about the case of Shreya Singhal Vs Union of India in detail and the sedition laws corresponding to it. It is a very famous case in recent times, where the Mumbai police had arrested two women, ShaheenDhada and RinuSrinivasan in 2012, for posting allegedly offensive and objectionable comments on facebook about the propriety of shutting down the city of Mumbai after the death of a political leader, Bal Thackeray. The offence against the state. With the Commencement of Indian Constitution in 1950, Article 19(1) (a) provides to every citizen a fundamental right to freedom of speech and expression. With this development Sedition Law contained in Section 124-A comes with direct conflict with fundamental right under Article 19 (1)(a). The decision in ShreyaSinghal is immensely important in the history of Supreme Court has adopted the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. Also, the paper compares the Indian Sedition laws with the sedition laws of several countries along with their current scenario. In this study, a survey has been conducted among the students, professors, advocates and judges to know their opinion about the existing Sedition laws in India and also their view on the judgement of this case. Therefore, this paper critically analyzes the sedition laws implacable in the case of Shreya Singhal VS. Union of India.*

Index Terms--- *Advocacy, Article 19(1)(a), Sedition Law, Censorship law, International Scenario.*

I. INTRODUCTION

In a nation like India, the government and its people are continuously in split. Today's life presents many issues. Under people's welfare cover, the government is implementing various types of policies, schemes, plans etc. The confrontation, then, is inevitable. The government uses different modes to regulate the resenting voices and among those laws is an important tool and one of those laws is the law of sedition. The crime classified as sedition under section 124-A is closely associated with treason- an offence against the state. Several people have tried and were punished under the above section during the imperial rule, including the father of the nation and several freedom fighters. But after independence the stuff has undergone significant change. The IPC provision is read with constitutional provisions to see whether the right to freedom of speech is exercised in permissible limits and whether the action of the state against any person is just or not. This article covers different issues in relation to sedition law in India.

The statute of sedition as set out in Section 124A of the Indian Penal Code has certainly had an exceptional track record. This highly controversial provision, when enacted in 1860, did not form a part of the Indian Penal Code, although

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Received: September 2019 | Revised: October 2019 | Accepted: November 2019

it was proposed to be included in the draft prepared by the Indian Law Commissioners in 1837. Section 124A is observed to have been originally enumerated under section 113 of Macaulay's draft Penal Code of 1837-39, but it was inly in 1870 that the IPC1 (Amendment)Act added the provision for sedition.2 This clause was eventually replaced by an amending Act of 1898 by current Section 124A. According to Arvind Ganachari, the framework of this section has been imported from various sources the amended sedition law i.e. Section 124-A-the Treason Felony Act (operating in Britain), the common Law of seditious Libel and English law relating to seditious words. The Law of Sedition in India has assumed controversial importance largely because of constitutional provision s of freedom of speech and expression guaranteed as a fundamental right under Article 19(1) (a) of part III of the constitution. Sedition Laws have been found in the following laws of India: Section 124-A of Indian Penal Code, 1860; Section 954 of the Code of Criminal Procedure, 1973;) Section 55 of the Seditious Meeting Act, 1911.

With the beginning of the Indian Constitution in 1950, Article 19(1)(a) provides a constitutional right to freedom of speech and expression for every person. With this development, as a result of the Privy Council Decision in K.E., Sedition Law found in Section 124-A explicitly conflicts with fundamental rights under Article 19(1)(a). K.E. v. Incident Sadashiv Narayan.

II. STATEMENT OF THE FACTS

Two women, Shaheen Dhaba and Rinu Srinivasan, were arrested by the Mumbai police for posting allegedly offensive and objectionable comments on Facebook about the property of shutting down Mumbai after the death of a political leader, Bal Thackeray. Police arrested the two girls pursuant to Section 66A of the Information Technology Act of 2000 (ITA), which punishes anyone who sends information that is extremely offensive through a computer resources or communication device, or with the knowledge of its falsity, the information is transmitted for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred or ill will.

Even though police released the women later and dismissed their prosecution, the incident invoked considerable media attention and criticism. These women also filed a petition, questioning Section 66A'a statutory validity on the grounds that it violated their right to freedom of expression.

In Singhal V. Union of India, (2013) S.C.C 73, the apex Court of India initially issued an interim measure prohibiting any arrest under Section +66A unless such arrest is accepted by senior police officers.

III. RELEVANT PROVISIONS

Apart from section 124-A of the Indian Penal Code, 1860 there were various provision that were challenged being laid down under the Information Technology Act, 2000 and Constitution of India. The major provisions challenged were: Section 66A, 67A and 69A of the Information Technology Act, 2000 and Article 14 and 18(2) of the Constitution of India.

[1] https://indiankanoon.org/doc/1641007/
[2] 4 (Stronk 2017; Carroll 1920)

Received: September 2019 | Revised: October 2019 | Accepted: November 2019

IV. JUDGMENT

In a lengthy judgement, which widely discussed Indian English and US jurisprudence on free speech, the Apex Court struck down Section 66-A of the Information Technology Act (ITA), read down Section 79 of the Information Technology Act.3 Speaking for the court, Justice Nariman addressed the different requirements that are applicable to adjudicating when speech limitations may be considered appropriate, as provided for in Article 19(2) of the Constitution of India. The Court held that Sec 66A was ambiguous and overbroad, and thus fell into disregard of Article 19 (1)(a), since the statute was not narrowly tailored to specific instances of speech which it aims to curb.

By fact, the Court also found the 'chilling effect' of an ambiguous and over-broad statutory language on speech as a basis for striking doen the provision. The court also held that the prohibition of 'public order' pursuant to Article 19(2) of the Constitution would not extend to advocacy' cases, but only to' incitation.4

The challenge on the grounds under Article 14 of the constitution of India, the Court held that "we are unable to agree with counsel for the petitioners that there is no intelligible differentia between the medium of print, broadcast and real live speech as opposed to speech on the internet. The intelligible differentia is clear- the internet gives any individual a platform which requires very little or no payment through which to air his views."

In addition, the Apex Court read Section 79 and Rule 3(4) of the Intermediaries Guidelines on the liability of intermediaries, mostly those hosting content and offering online services, as per the Act. While the section itself uses the term "receiving actual knowledge" of illegal material as the principle by which the recipient is liable for the removal of the content, the court stated that it must be understood to mean knowledge gained that a court order was issued requiring that the infringing material be removed.

Finally, the court also upheld the secret blocking process pursuant to section 69A of the Act, by which the government may choose to remove content from the Internet, maintaining that it did not suffer from the infirmities set out in Section 66A or Section 79, and is a narrowly drawn provision with adequate safeguards. Accordingly, the court held that the provision that infringes the right of a citizen to have freedom of speech and expression on the internet. As such, the clause in question is constitutionally invalid and as such, completely struck down.

V. LEGAL FRAMEWORK OF SEDITION LAW IN INDIA

Section 124-A of the Indian Penal Code, named 'Sedition', explains sedition in broad and magnanimous terms. It reads ―whoever, 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 aims to excite disaffection towards the Government established by Indian law‖ shall be punished with life imprisonment.5

The descriptions which the Indian Penal Code gives are that the term disaffection includes disloyalty and all the

[3] 5 http://www.legalservicesindia.com/article/article/shreya-singhal-v-u-o-i-2473-1.html
[4] 8 http://www.wipo.int/edocs/lexdocs/laws/en/in/in099en.pdf
[5] https://indiankanoon.org/doc/1142233/

Received: September 2019 | Revised: October 2019 | Accepted: November 2019

feelings of hatred. It also reads that the comments expressing firm disapproval of the government's measures, with an opinion to obtain their desired changes by legal means, without exciting or attempting to excite hate, contempt or disaffection, do not constitute an offence under this section. Comments expressing strong disapproval of the government's administrative or other action without exciting or attempting to arouse hatred, contempt or disaffection, in accordance with section 124-A, do not constitute an offense as per this section. Thomas Macaulay initially drew up the law.

In the 1860s, it was not part of the Penal Code, and was even dropped from the law. It was first introduced in the 1870 IPC. Many Indian freedom fighters, including Mahatma Gandhi and Bal Gangadhar Tilak, were convicted of sedition during the struggle for freedom. The then prime minister Jawaharlal Nehru was categorical in his conviction that the crime of sedition was inherently unconstitutional when the first amendment was adopted, which also had extensive limits on the free speech. He had told "now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reason. The sooner we get rid of it the better it is".

In the survey conducted, it was found that the majority of the target audience believed that in a democratic country like India, the presence of such laws for sedition is not required.

VI. JUDICIAL INTERPRETATION

The Judicial dispute over the purview of Section 124-A initiates with the Calcutta High Court's ruling that it is necessary for the purpose of the section that the terms used are used to excite feelings of ill will against the government and uphold it against the people's hatred and contempt, and that they were used with the intention of creating these feeling. 6The claim that there can be no offense under the section unless instigated or sought incitement to rebellion or armed resistance was vehemently rejected. The cat or words that have been complained of must either cause chaos, or be such as to satisfy fair men that is their intent or inclination. Later the privy Council expressly overruled this interpretation given by the Federal Court.

Section 124-A's relationship to the IPC and Art 19 of the Indian Constitution is a strained relationship. The Indian Constitution guarantees freedom of speech and expression which implies the right to express one's own convictions and opinions without restriction s by words of mouth, writing, printing, pictures or any other means. The fundamental rights contained in Article 19(1) are those great and basic rights which are recognized as the natural rights inherent in every citizen. The basic requisite of validity of law with reference to Article 19 is that it should not be arbitrary and restrictions or limitations imposed on the rights under Article 19(1)(a) must comply with the reasonable restrictions mentioned in Article 19(2). Legislation can only be considered illegal and unconstitutional if the test of arbitrariness and prejudice that would make it violative of Article 14 of the Constitution is not clear. Sedition is a serious crime against the state – threat to stability and challenge to the state's authority not just opposition, though strong, or resistance to the government's policy. It's right that it's hard to decide where to draw a line but it's also right that the line needs to be drawn as far possible.

In a 2015 judgment, the Supreme Court in Shreya Singhal v. Union of India stated that one had to distinguish between

[6] https://indiankanoon.org/doc/493243/

Received: September 2019 | Revised: October 2019 | Accepted: November 2019

–advocacy and – incitement, and that only – incitement is punishable. Paragraph 87 of Justice Rohinton Nariman's judgment exposes the red flag to the dangers of restrictive words that limit freedom of speech and thought. Data that could be grossly offensive or that causes irritation or discomfort is vague words that carry a very large amount of protected and innocent expression into the net. A person that, by way of writing, address or even support, disseminate information that may be a view or point of view on political, literary, science or other matters that may be unpalatable to certain sections of society, any serious opinion that conflicts with the morality of the day would be caught in his net. Such is the section's breadth and the chilling effect on freedom of speech would be complete if it is to survive the test of constitutionality. Words and expressions can therefore only be criminalized and enforced in cases where they are used to provoke mobs or crowds to violent action.7 The decision of the supreme Court would be on the vires of the infamous section 66A of the Information Technology (IT) Act 2000 and now they appreciate the way in which the Apex Court had safeguarded the right to freedom of expression and speech. While having appreciation for the conclusion that the court reached on the constitutionality of section 66A, there is ample support for the reasoning of the court from the quarters of legal practioners and academicians.

VII. CONCLUSION

Section 124A, on the face of it, appears clear in that it seeks to penalize any activities that lead to disloyality against or feelings of contempt or enmity against the government. The Shreya Singhal judgement offers a very clear exposition of the difference between advocacy and incitement, as the latter is essential to prove an offence under Section 124A while the former is not a criminal activity. Thus, in this case it was clear that two girls arrested for posting their views on social media have not constituted the offence of sedition. This paper also throws a light on the cases which constitute the offence of seduition. Thus, in recent times, the Shreya Singhal case is given utmost importance as it clearly states what action can come under Sedition and the judgement is given in order to secure the rights of the citizenship.

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Received: September 2019 | Revised: October 2019 | Accepted: November 2019