

SEDITION LIES IN THE EFFECT, NOT IN CONTENT

Relevant for: Developmental Issues | Topic: Rights Issues - Other Rights

A protest against the sedition case filed by the police against a school after a play performed by students denounced the new citizenship law, in Bengaluru in February 2020.>A

Recent charges of sedition against individuals have brought back focus to a law introduced in the Indian Penal Code in 1870. In *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court upheld the constitutional validity of sedition and noted it as being a reasonable restriction on free speech as provided in Article 19(2) of the Constitution. It made clear that a citizen has the right to say or write whatever she likes about the government, or its measures, by way of criticism or comments, as long as she does not incite people to violence against the government established by law or with the intention of creating public disorder. One wonders, if the law provides this protection, then why is this archaic, yet powerful, law often used to quell dissent?

Following the *Kedar Nath* case, the Bombay High Court, in the case of cartoonist Aseem Trivedi, issued guidelines which the police must follow prior to invoking the provisions of sedition. These *inter alia* include an objective evaluation of the material to form an opinion on whether the words and actions cause disaffection, enmity and disloyalty to the government as they must be of the magnitude that they incite violence or tend to create public disorder. The Court also directed obtaining a legal opinion in writing from a law officer of the district who must give reasons on how the pre-conditions are met. This needs to be followed by a second opinion from the State's public prosecutor. And while courts have on numerous occasions cautioned law enforcement agencies not to misuse the provisions on sedition, and follow court directions, regrettably, they are grossly ignored. The problem therefore lies in the poor implementation of the law and guidelines.

This is evident from recent reports, based on data from the National Crime Records Bureau. Between 2016 and 2019, the number of cases of sedition under Section 124A increased by 160%, while the rate of conviction dropped to 3.3% in 2019 from 33.3% in 2016.

Notably, many charged were individuals protesting government action, which the Constitution Bench in *Kedar Nath* held falls outside the ambit of sedition. Consequently, the staggering numbers have got people saying that "the aim is not to punish or convict anyone but to incarcerate them... the process itself is the punishment."

This data and the gross misuse of the legal provisions compel one to state that even though a Constitution Bench upheld the vires of the law of sedition, the circumstances now require a complete relook at the provision. After all, when the situation changes, the statute calls for a change as law cannot afford to remain static. In the Internet age, where we are all consumed by social media and where information travels at the speed of lightning, what can lead to public disorder has itself become debatable. With cyberbullies and a select few being able to make things trend, even the wrong ones, a lot has changed from 1962 when the *Kedar Nath* case was decided. Even otherwise, clutching on to a foreign legal order is no longer needed.

Interestingly, however, the present situation is the reverse. The U.K. repealed the offence of sedition in 2010 and India is holding onto a relic of the British Empire. As recent as 2018, the Law Commission of India took note of this and questioned how far it is justified to retain Section 124A, especially in view of the fact that several existing statutes take care of various actions which were earlier considered seditious. It also sought consideration on whether keeping Section 124A would serve any purpose and whether reducing the rigour of the law of sedition

would be detrimental or beneficial to the nation. The outcome of this consultative paper is unknown, but the discussion needs to be rekindled.

And till the law on sedition continues to remain on our statute book, courts must adopt what some Western countries follow: an effect-based test which examines the effects of the seditious text rather than a content-based test which reviews the text alone. As an Additional Sessions Judge recently noted while granting bail in a case on sedition, “the law of sedition is a powerful tool in the hands of the state to maintain peace and order in the society. However, it cannot be invoked to quieten the disquiet under the pretence of muzzling the miscreants.” Not for a minute is one saying that the perpetrators of violence must not be brought to book. They must, but following the process established by law.

The issue is not about liberals, the right wing, conservatives or the left wing. It’s about India as one nation. It’s about following our syncretic traditions and accepting that in a country of over 1.3 billion people, our unity rests in our diversity. After all, Vedic spirituality as one of its core ideas postulates “**Aano Bhadrah Krtavo Yantu Vishwatah** (let noble thoughts come to us from all directions)”. Following this sagacious advice, rather than asking those with a different view to prove their nationalism, let us prove ours by respecting the principles of justice, liberty, equality and fraternity as noted in the Preamble to our Constitution which assures to all individuals dignity and unity and integrity of the nation above all else. Instead of repeatedly testing the allegiance of those we disagree with, let us test our abilities by reforming our own mindset and outlook towards those who muster up the courage to voice their dissent and stand apart.

If we do this, the only ‘toolkit’ we all really need is our Constitution and the principles it enshrines to protect citizen freedoms, life and liberty. The hashtags we all need to spread and make trend are the ones which detail the #RuleOfLaw and our commitment to it and the values it puts forward as regards executive excesses and judicial restraint. What we must disseminate on all social media outlets is our allegiance to due process, the need for speedy trials and our commitment to the doctrine of presumption of innocence. It is not the alleged seditious acts that are creating fragments in our society; it is in fact the persecution of individuals and labelling them that are really creating cracks in our socio-politico ecosystem. In the words of Martin Luther King, Jr. “We must learn to live together as brothers or perish together as fools.”

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