



Sedition law needs to go now

 sanskritias.com/current-affairs/sedition-law-needs-to-go-now

(Mains GS 2 : Government policies and interventions aimed at development in various sectors and issues arising out of their design and implementation.)

Context:

- The Supreme Court on Thursday quashed case of sedition filed against journalist Vinod Dua in Himachal Pradesh for allegedly making remarks against Prime Minister Narendra Modi and the government's handling of the migrant crisis during the Covid-19 lockdown last year.
- In doing so, the court also reiterated the principles in the landmark case on sedition — Kedar Nath Singh v Union of India (1962).

Section 124-A of the IPC:

Section 124A of the Indian Penal Code states: "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 attempts to excite disaffection towards, the Government established by law in [India], shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."

Increased cases in recent times:

- Recently an aggressive nationalism suppressed dissent which mock liberals and civil libertarians and several governments routinely invoked Section 124-A that penalises sedition.
- An 84-year-old Jesuit priest, Stan Swamy, and 21-year-old Disha Ravi were not spared.
- A number of CAA (Citizenship Amendment Act) protesters are facing sedition charges.
- NCRB data shows that between 2016 to 2019, there has been a whopping 160 per cent increase in the filing of sedition charges with a conviction rate of just 3.3 per cent.
- Of the 96 charged in 2019, only two people could be convicted.

The observation of the court:

- A two-judge bench of Justices U U Lalit and Vineet Saran observed that “every journalist is entitled to the protection under the Kedar Nath judgment (1962)” on the petition filed by journalist Vinod Dua.
- The Court relied on the Kedar Nath judgement in which the apex court had held that a citizen has the right to say or write whatever he likes about the government or its measures by way of criticism so long as he does not incite people to violence against the government or with the intention of creating public disorder.
- Section 124A read along with explanations is not attracted without such an allusion to violence.
- The Court concluded that statements made by Dua about masks, ventilators, migrant workers, etc. were not seditious and were mere disapprobation so that Covid management improves.
- The same were certainly not made to incite people to indulge in violence or create any disorder.
- The Court further concluded that Dua’s prosecution would be unjust and would be violative of the freedom of speech.

History of sedition law:

- Section 124-A was not a part of the original Indian Penal Code drafted by Lord Macaulay and treason was confined just to levying war.
- It was Sir James Fitzjames Stephen who subsequently got it inserted in 1870 in response to the Wahabi movement that had asked Muslims to initiate jihad against the colonial regime.
- While introducing the Bill, he argued that Wahabis are going from village to village and preaching that it was the sacred religious duty of Muslims to wage a war against British rule.
- Stephen himself was interested in having provisions similar to the UK Treason Felony Act 1848 because of his strong agreement with the Lockean contractual notion of allegiance to the king and deference to the state.

Sedition and freedom struggle:

- Mahatma Gandhi, during his trial in 1922, termed Section 124-A as the “prince among the political sections of IPC designed to suppress liberty of the citizen”.
- He went on to tell the judge that “affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give fullest expression to his disaffection so long as it does not contemplate, promote or incite to violence”.
- Strangely, the Fundamental Rights Sub-Committee (April 29, 1947) headed by Sardar Patel included sedition as a legitimate ground to restrict free speech.

- When Patel was criticised by other members of the Constituent Assembly, he dropped it.
- Constitutionally, Section 124A being a pre-Constitution law that is inconsistent with Article 19(1)(a), on the commencement of the Constitution, had become void.
- In fact, it was struck down by the Punjab High Court in Tara Singh Gopi Chand(1951)

What are the Kedar Nath Singh guidelines?

- In the landmark 1962 Kedar Nath Singh case, the Supreme Court upheld the constitutional validity of the sedition law, it attempted to restrict its scope for misuse.
- The court held that unless accompanied by an incitement or call for violence, criticism of the government cannot be labelled sedition.
- Seven principles in the Kedar Nath Singh ruling specify situations in which the charge of sedition cannot be applied.
- The expression “ ‘the Government established by law’ has to be distinguished from the persons for the time being engaged in carrying on the administration. ‘Government established by law’ is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted.”
- “Any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence.”
- “Comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.”
- “A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.”
- “The provisions of the Sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.”
- “It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order.”
- “We propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace.”

Clarification needed:

- Supreme Court has clarified the distinction between “government established by law” and “persons for the time being engaged in carrying on the administration” as the visible symbol of the state made by the Court in Kedar Nath.
- The very existence of the state will be in jeopardy if the government established by law is subverted.
- This observation did require some clarification by the Court as the state and government are not the same. Governments come and go but the Indian state is a permanent entity.
- Criticism of ministers cannot be equated with the creation of disaffection against the State.
- We must understand that no slogan by itself, howsoever provocative such as “Khalistan Zindabad” can be legitimately termed as seditious as per the Balwant Singh (1995) judgment of the Supreme Court.

Conclusion:

- The significance of the verdict lies in the Supreme Court’s subsequent reiteration of the Kedar Nath Singh principles.
- In 2018, the Law Commission had recommended that the sedition law should not be used to curb free speech.
- Thus a political consensus needed so that the criminal law revision committee working under the Ministry of Home Affairs makes the bold recommendation of dropping the draconian law.