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The Judicial Standpoints of Sedition Cases in the Last Five Years

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ABSTRACT

This article aims to explore the verdicts of the Indian Courts on sedition cases, that have been on a rise, for the last five years. Article 124A of the Indian Penal Code (IPC) criminalises sedition. That it does not however takes a toll on free speech is a factor that needs to be taken into consideration. It is for the purpose of examining the judgements passed by the Courts on such cases and analysing how much of the freedom guaranteed under article 19(1)(a) of the Indian Constitution has remained unaffected in light of these pronouncements, that this research project has been taken up.

I. INTRODUCTION

The concept of sedition existed from colonial times in India. It was included as a punishable offence in the Indian Penal Code (IPC), 1860. Perceived to be harmful for the reputation of the government, section 124(A) of the IPC seeks to punish all those who "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India." In the pre-independence era, the British rulers charged several freedom fighters under this section, all of whom in their speeches or published articles vehemently criticised the ruthless administration of the British. However, the provision was not erased after independence. The Constitution of India, which was brought into effect after independence, guarantees to all the citizens freedom of speech and expression under article 19(1)(a), and classifies it as a fundamental right under part III of the Constitution. Many a times have sedition charges heckled this right of the citizens. However, the framers of the Constitution and now, the Parliament still perceives section 124(A) of IPC as essential, for it is believed to condition the right guaranteed under article 19(1)(a) of the Constitution. But at the same time, many arbitrary arrests and detentions have been reported, with people getting slapped with sedition charges for even minimal criticism of governmental policies. After the ambit of the Unlawful Activities (Prevention) Act – UAPA, was increased in 2019, such arbitrary arrests have been on a rise. Therefore, it is essential to look into the various judicial

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interpretations of this provision, primarily concentrating on the verdicts passed in the last five years.

(A) LITERATURE REVIEW

The initial requirement of sedition as a provision under the British rule, was to arrest anyone who would attempt to excite disaffection against the government (Raghuvansh 2017).[2]

The existence of sedition as an offence under the IPC paired with the right to free speech under article 19(1)(a) of the Constitution distorts the idea of political liberalism, as the liberalist theories cannot seek to undermine rights of individuals under imperative state action (as suggested by Gautam Bhatia, 2016).[3]

Section 124(A) seeks not to comfort the "wounded vanity of governments" but to promote obedience, without which anarchy would prevail, as stated in the case *Niharendu Dutt Majumdar v King (Munshi 1948).*[4]

II. MEANING OF "SEDITION" AS STATED UNDER IPC

The scope of sedition is explained under section 124A. The validity of this section was questioned in *Kedar Nath Singh v. State of Bihar (AIR 1962 SC 995),* wherein the court had held that it is constitutional and that the citizens have their rights to voice their opinion or criticise the government as long as that does not incite violence or disaffection, intense enough to result in public disorder. The meaning of the section is reflected in the keywords of this section. The "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India" phrase indicates that the spoken words or performed actions should be sufficient enough to bring about disturbance in society, thereby affecting public order. Whether such actions actually resulted in large-scale or small-scale outbreaks is not taken into consideration. Decided in the historical case of *Emperor v. Bal Gangadhar Tilak, 1897,* mere citing of words filled with hatred or contempt towards the government is enough to make someone guilty of sedition.

In *Naurang Singh, 1986*, an individual from the Sikh community raised a couple of slogans in the Gurudwara, after the Army action in Punjab. There was no retaliation after that, from any other person, neither from the same community nor from the others. The Supreme Court in its ruling decided that mere raising of such slogans does not amount to sedition.

[2] Suvir Raghuvansh, *Sedition Law in India,* International Journal of law and legal jurisprudence studies, (2017)
[3] Gautam Bhatia, *Offend, Shock, or Disturb – Free Speech Under the Indian Constitution,* (2016 edition)
[4] K.M.Munshi, *Constituent Assembly of India Discussion held on 1st December, 1948;* (2014 - 6th reprint)

With reference to the phrase "by words, either spoken or written, or by signs, or by visible representation, or otherwise", it is understood that not only the composer of the seditious material, but also those involved of circulating or publishing such material are guilty of sedition. This was reflected in the judgement of *Raghubir Singh case, 1987,* that even the act of courier of the seditious material can sometimes be held to be a part of the conspiracy. Seditious writings in the form of poetries, plays, articles, or any other literature can also be taken to be offensive. Any visual representation comprising of malice against the government, or copying articles of seditious nature, enough to arouse "disapprobation" of the administration, can be booked under sedition.[5]

III. BRIEF HISTORY OF THE SEDITION LAW IN INDIA AND PAST CASES

In the initial draft of the IPC, Lord Macaulay had mentioned about sedition under section 113. Some complications had followed wherein Mr. James Stephens had mistakenly omitted this section. It was later re-included as section 124(A) by Special Act XVII, 1870. According to Mr. Stephens, the discrepancy in the penalty assigned under English law and Indian law was a reason for the re-inclusion of the section. Criticisms are acceptable as long as they are not aimed at tarnishing the reputation of the government.

Back in 1892, in the case *Queen Empress v. Jogendra Chunder Bose and ors,* Petheram C.J. had elaborated on the meaning of "disapprobation", wherein it is essential to relate the hatred or dislike to disobedience of governmental laws. Following this ruling, Bal Gangadhar Tilak was arrested. All he had done was singing patriotic songs and delivering speeches, without any mention of overthrowing the government. However, he was charged with sedition as Justice Strachey had held that attempts to excite "feelings of enmity" were enough.

Romesh Thapar v State of Madras (AIR 1950 SC 124) was the first case on sedition post independence, wherein the SC gave the ruling that except for those remarks which are aimed at exciting disaffection, no other law that imposes restrictions on free speech and expression would be justified under article 19(2). In the following year (1951), the Punjab High Court declared section 124(A) as unconstitutional under the grounds that it had become irrelevant in the post colonial period. Moreover, it acted as a contravention to the right guaranteed under article 19(1). However, in the historic case of *Kedar Nath Singh v State of Bihar,* the Supreme Court had re-asserted the validity of the section, successfully striking a balance between free

[5] Ratanlal & Dhirajlal, *The Indian Penal Code*, (2019 - 36th edition)

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speech and expression and speech aimed at creating public disorder.[6]

(A) Relation of section 124(a) of the IPC with article 19 of the Constitution

In *Re Harijai Singh Case (AIR 1997 SC 73)* and in *S. Khusboo v Kanniamal & Anr (AIR 2010 SC 3196),* the Supreme Court explained the need of dissent and opined on issues of morality. While in the former case, the Supreme Court elaborated on the obviousness of disagreement in a democratic, liberal society where people of various communities cohabit, in the latter case, the importance to air contradictory opinion in a free and safe environment was looked into.[7]

(B) Developments in last five years

The last five years have seen a spike in the number of sedition cases. Some of the cases which lead to the courts to deliver highlighted judgements shall be discussed through the research.

(C) Shreya Singhal v. Union of India (AIR 2015 SC 1523)

In this case of 2012, it so happened that two girls named Shaheen Dada and Rinu Srinavasan were charged with sedition. After the founding member Bal Thackery, of the then ruling political party of Maharashtra i.e. Shiv Sena, passed away, the accused were said to have posted and liked offensive content on facebook, citing reasons of discontent at the strike declared thereafter. They were booked under section 66 of the IT Act of 2000. The writ petitioner, advocate Shreya Singhal questioned the validity of the same section. The petitioner brought into context, that this section turned out to hassle independent opinions and was irrelevant to the extent where it granted arbitrary powers to the authorities. On the other hand, the respondents argued that the vagueness so stated by the petitioner cannot be a sufficient ground to declare the section unconstitutional. The Supreme Court bench headed by Justice Chamleshwar and Justice Nariman struck down section 66 of the IT Act to be unconstitutional and violative of fundamental right to freedom of speech and expression as guaranteed under part III of the Constitution. However, the constitutionality of sections 69A and 79 was affirmed and the "public order" restriction under article 19(2) was made valid only in cases of proper incitements to offence and not mere advocacy. The Government could thereby take down content under sections 69(A) and 79 but section 66 was held to be derogatory to the rights guaranteed under article 19(1) and hence was eliminated.

(D) Pankaj Butalia v. Central Board of Film Certification (221 DLT 29, 2015)

Film maker Pankaj Butalia had made a sixty one minute documentary named "Textures of

[6] Law Commission of India, *Consultation Paper*, (2018)
[7] Ibid

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Violence" which focused on interviews taken of violence affected people in Kashmir from 2003 to 2015. The Central Board of Film Certification (CBFC) challenged this documentary, accusing some parts of it to be seditious in nature, which allegedly included remarks against the Indian state and also against the armed forces. It also made false assertions against him stating that he had been given an opportunity of making oral submissions, when Mr. Butalia had not availed of any. Mr. Butalia, defended by advocates Colin Gonsalves, Fatima Quraishi and Kamlesh K Mishra, appealed to the High Court of Delhi regarding this. Considering the orders passed under the Cinematograph Act, 1952, Delhi HC pointed out that mere utterances cannot arouse anti-national sentiments. Moreover, in such instances, the element of intention gains importance. References were made to the 1935 case of Kamal Krishna Sarkar v Emperor, 1950 case of *Manohar Damodar Patil v. Government of Bombay.* Here again, the importance of art 19(1) were upheld and thereby, the Delhi HC gave a ruling in favour of filmmaker Pankaj Butalia and scrapped the arguments pitched in by the CBFC to be improper and irrelevant.

(E) Sanskar Marathe v. State of Maharashtra & Anr (2015 Cri LJ 3561)

A FIR was filed against a political cartoonist and social activist, Aseem Trivedi, who was arrested on 30th January, 2012) and booked for sedition. He was accused of disrespecting the national emblem, the Parliament, the Constitution of India and the government through his cartoons published on "India Against Corruption" website. Initially, through an ad-interim order, Trivedi was released on bail of Rs5,000/-. However, the case continued in the Supreme Court. Reference was made to cases like *Balwant Singh and another v. State of Punjab, 1995* and *Nazir Khan v. State of Delhi, 2003.* The Court, headed by Chief Justice Mohit Shah and Justice N.M.Jamdar, decided that in the former case, the prosecution had admitted that no disturbance was caused due to the raising of slogans and in the latter case, decided that "disloyalty in action" must follow. It further held that under article 19, there is an implied permission granted to "express one's opinion by words of mouth, writing, printing, picture pr in any other manner." It informed that defining the scope of the aforesaid article was difficult owing to the various social interests which should be given equal weight to. Finally, the Court stated that comments irrespective of how strongly worded they are, as long as they do not excite feelings to generate acts of public disorder or disobedience, cannot be considered as penal. Aseem Trivedi was acquitted on these grounds that cartoons or caricatures are elements or signs to express wit or humour and therefore, owing to the facts of the case, cannot be held as seditious in nature. In this case too, the Court upheld the fundamental rights over section 124(A).

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(F) Kanhaiya Kumar v. State (NCT of Delhi) (2016, 227 DLT 612)

The students of Jawaharlal Nehru University (JNU) had organised a poetry reading occasion at the Sabarmati Dhaba on 9th February, 2016. Although after the initial permission, the JNU authorities claimed to have got to know that the programme might contain raising of anti-national slogans and disallowed it. However, the programme was still held. The writ petitioner, Kanhaiya Kumar sought his release on bail and claimed that he had not raised any of the anti-national slogans the charges of which were brought against him. He was defended through senior advocates, Kapil Sibal and Rebecca M. John, and other eminent advocates like Mr. Sushil Bajaj, Ms. Vrinda Grover, and others.

Kapil Sibal advocated his case by harping on the point that mere raising of the slogans cannot be deemed to threaten national integrity. Assertion was made on the aspect as to how JNU was "a hub of intellectual students" and that there right to freedom of speech was an issue here. The improbability of the petitioner, who was then the president of JNUSU and the other co-accused members of the Students' Union, raising these slogans can be asserted through the fact that JNU is a place where students from all over the country come to study. It should be a portrayal of national unity. Advocate Tushar Mehta, who was pleading for the state, opined that the students carrying posters of Afzal Guru and Maqbool Bhatt were available on record, and this, if ignored, can prove to be demoralising for the frontline warriors of the country.

However, after the Court had heard both sides, the decision given on 2nd March, 2016, held that the petitioner was acquitted on anticipatory bail of rupees ten thousand only, keeping in mind the fact that his mother was the only earning member in the family and was an anganwadi worker. It also held that while exercising one's rights under article 19(1), one has to also remember to sync his speeches or words with the fundamental duties provided under article 51A of the Constitution.

(G) Arun Jaitley v. State of U.P. (2016 (1) ADJ 76)

A FIR was launched against the petitioner, ex-finance minister, Arun Jaitley, on grounds of sedition, after his speech in the parliament contained words which were allegedly seditious in nature. A lot of submissions of evidential matters were made. The Court again held the essentiality of article 19 was brought into context. It also noted that the phrase "Government established by law" was important. The speech, which was a critique of National Judicial Appointment Commission, did not contain any material which could be held to excite public disorder, nor feelings of hostility or disaffection towards the government, and hence cannot be held as seditious in nature.

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It was considered to be a fair criticism. As a citizen, criticism of governmental policies or measures, do not tantamount to sedition. However, while adjudicating, the Court also harped on the fact that attempts to subvert the connotation of government, or incite violence, would make it fall under section 124(A) of the IPC.

(H) V.A.Pugalenthi v. State (Crl O.P.No.21463 of 2017)

In this case, the petitioner along with sixteen others filed a petition in the Madras High Court against the charges of sedition that were levied on them. Eminent lawyers who were pleading the case were Mr. N.G.R. Prasad from the petitioner's side and Mr. Vijay Narayan from the respondent's side. Prasad pleaded that the petitioners had distributed pamphlets on the birth anniversary of Anna Durai, the former Chief Minister of Tamil Nadu, and that the protests by the students that followed were a protest against the NEET examinations and did not have any co-relation to the circulars. Moreover, he contested that it is the fundamental right assured to every citizen of the country to peacefully protest or demonstrate and no amount of violence was involved. Mr. Narayan, from the respondent's side, contested that those public demonstrations against the NEET examination were disrupting the normal life of the public. Moreover, the FIR launched against the petitioners cannot be held as illegal as the pamphlets circulated had the mention for calls to agitate against the NEET examination.

The Court held that the pamphlets contained remarks to agitate against the state and central governments on the issue of NEET examination and prima facie constitutes offence of sedition, but also cautioned the government not to take actions against peaceful protestors.

(I) Hardik BharatBhai Patel v. State of Gujarat (2016 Cr LJ 225 (Guj): 2016 (1) RCR (Criminal)542)

A FIR was filed when during a rally in Nava Vadaj Area, with a view to curb the unrest, the police took some coercive steps to put the mob in order. The protest meet was organised for demanding reservation. The appellant was charged under section 438 of the Criminal Procedure Code. He had asked for anticipatory bail. Public prosecutor, Mr. Mitesh Amin was against the application. That the facts of the case showed, that the applicant did not indulge in activities which could disrupt law and order across the state, the Court granted the anticipatory bail on grounds of discretion.

The police is part of the executive wing. If a person makes a provocative speech, following which, even few members of the police force can be subjected to violent acts, it would be taken as an offence committed against the whole police force or the service *en bloc*. It would then be held as seditious in nature, and would prima facie considered to be offensive, inciting violence

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or even waging a war against the government of the state.

IV. CONCLUSION

Protests have been widespread in the country after the Citizenship Amendment Act (CAA) was passed on 12th December, 2019 and amendments were made to the National Register of Citizens (NRC) in the same year. Many of the protestors have been booked under sedition charges following the mass marches, citing reasons of lawlessness i.e. disobedience to governmental laws and public unrest. Arrests of Sharjeel Imam, Safoora Zargar, Umar Khalid on grounds of sedition were brought to limelight. Many human rights activists were also put behind the bars for voicing their opinions on sensitive issues which were allegedly taken to be seditious and that which may excite disapprobation towards governmental policies. Some of them have been under imprisonment for an indefinite time period and are devoid of rights to free and fair trial.

However, from the cases that have been highlighted in this research, the Supreme Court or the respective High Court rulings in majority of the cases, have been in favour of upholding the fundamental right of speech and expression that is guaranteed to the citizens by the constitution under article 19(1). The courts have diligently levied at the circumstances of the cases concerned, and announced verdicts which would strike a balance between the free speech and the reasonable restrictions. In the decisions, the courts have also justified fact that section 124(A) of IPC should not become a tool for oppressing dissent in a democratic society, but to ensure public order and stability in the administrative system.

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