

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

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Law of Sedition: A Threat to Free Speech

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ABSTRACT

The law of sedition has been receiving criticism from different corners since its inception during the colonial times in India. The prime aim behind introducing the law by the British was to suppress the voices and keep the nationalist sentiments under check in India. However, in the post-independence era, this law seems vague given the fact that freedom of speech is considered as the soul of a democratic country.

Invoking of sedition laws at many instances over the recent years has again raised questions on the undemocratic nature and validity of these laws in the present constitutional democracy. As such, it may be asserted that the law on sedition in India serves as a tool of harassment and persecution to demean the freedom of speech. Observations and arguments circulating in this regard depict that this law faces grave mishandling in the name of national security. Rule of Law prevails in India and hence, false accusation on a person for the offence of Sedition is an act that goes contrary to the spirit of constitutionalism or India's liberal constitutional order. Despite knowing that the misapplication of this law is unjustified in our democratic society, various governments have used and are still using, the sedition law, as an instrument, for curbing the dissenting voices to settle political scores. With this backdrop, the researcher explores the law on sedition under section 124A of the Indian Penal Code, 1860, by collating all the debates of repealing and amending these laws in addition to bringing forth the historical genesis of the law since its inception in colonial India. The study attempts to examine the role played by the judiciary in enriching the freedom of speech when faced with cases of sedition. Furthermore, an analysis of the responses and modus operandi of the Supreme Court while deciding the cases related to sedition has been executed to elucidate the theme with a proper methodology.

Keywords: *Freedom of speech and expression, Section 124A, India, Law of Sedition, Constitutional Democracy.*

I. INTRODUCTION

The constitution of India has bequeathed many laws from the erstwhile British Colonial rule and their continued and unaltered implementation has ignited controversy in the nation especially over the recent decades. One among such politically and legally significant laws is the law related to Sedition, which has witnessed certain amendments since independence to be

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viable and relevant to the changing circumstances such that it may withstand the constitutional test.² However, it has been observed that the law has been often misused by the State apparatus to curtail the freedom of speech and expression and certain cases prove the mishandling of the law unquestionably.² The State justifies that the law of sedition *vis-a-vis* freedom of speech and expression on the pretext that sedition in any form makes the loyalty of citizens questionable and the disloyalty jeopardizes the government at law, which eventually threatens the very fabric of state as well as public order and safety.³

Under Article 19 (1) (a)⁴, the Constitution of India guarantees the fundamental right of Freedom of Speech and Expression to all its citizens. However, as per the constitution, the implementation of this Law is subject to certain other laws imposing restrictions in the interest security of state, sovereignty and integrity of India, public order, defamation, incitement to an offence, contempt or laws imposing restrictions in relation to maintaining friendly relations with foreign states as provided under Article 19 (2)⁵.

The current study aims to review the historical trajectory of the Law of Sedition meanwhile examining its current status quo in the State as well as its uses and misuses to sabotage freedom of speech.

(A) Objectives of the Study

- The study is circumscribed to the following objectives:
- To find out the extent to which the Law of Sedition appears as a restriction on Freedom of Speech and Expression.
- To trace the historical background of anti-sedition laws in India.
- To understand the objectives behind enacting the law of sedition in by the British Raj in India.
- To analyze the tactics of the State to maintain security, law and order in the country.
- To examine the constitutional validity of the legal provisions for controlling seditious activities in India.

² Nivedita Saksena and Siddhartha Srivastava, “An Analysis of the Modern Offence of Sedition”, 7 NUJS Law Review (2014).

³ Caesar Roy, “Law of Sedition in India: A Critical Analysis”, IBR 79-95 (2013)

⁴ Article 19(1) of the Constitution of India: All citizens shall have the right (a) to freedom of speech and expression

⁵ Article 19 (2) of the Constitution of India: nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

- To explore the different lacunae and loopholes in the anti-sedition law.

(B) History of Sedition law in India

By 1837, the East India Company was trying to establish its trade and governance over India with the military backing of the government of Great Britain. The first Indian war of Independence (1857) however changed the equation to a more direct one after the Crown Administration of India came into being (1858).

The law of Sedition was introduced in India as a means to curb the national Freedom movement at a time when it had lost its relevance in Britain. The freedom fighters of India had posed a threatening challenge to the British Raj in India and the freedom movement based on Gandhi's non-violence, and civil disobedience formulae raised the critical questions about the legitimacy of the colonial rule in India. Thus, to check such activities the British government had to execute stringent actions (like arrests, detentions) and justify or secure their rule in a legal framework. In this regard, the Law of Sedition paved an easy way for the British imperialists to achieve this goal of sabotaging the freedom movement.

The rise of the nationalist movement in colonial India offered many challenges to the British government including violent actions, political assassinations and the seditious potential of revolutionary rhetoric.⁶ To suppress the violence was comparatively easier than to check the rise of anti-State sentiments and dissatisfaction.

Thus, with every detention of a revolutionary or nationalist figure, the scope of sedition law amplified in India. Unsurprisingly, Bal Gangadhar Tilak, a renowned nationalist figure, was charged with sedition in 1897 for writing an article in his Marathi newspaper, *Kesari* as well as a poem eulogizing the Maratha leader, Shivaji for his gallantry against the foreign rule in India. In 1922, when Gandhi was tried for sedition. Eventually, this Law turned out as the primary legal tool to sabotage the anti-British opinion in colonial India.

(C) Scope of the offence of Sedition under Indian Penal Code, 1860

Section 124A of IPC, constitutes two parts, with first one defining the offence and the other prescribing the punishment. Since the inception of this Section, the meaning and the scope of the offence has been the subject of debate and controversy. The prime reason for the controversy has been the language used in defining the offence that are certain words like hatred, contempt, disaffection on one hand and on the other talks about disapprobation, without mentioning such hatred, contempt and disaffection. The Section is silent concerning how or when someone might

⁶ Dr. Hari Singh Gour, Penal Law of India, 11th Edition, Vol. II, (Law Publishers India Pvt. Ltd., 2014)

be prosecuted with trying to incite hatred, contempt, or disaffection, but it does punish that endeavour.⁷

To understand the scope of the Section, it becomes imperative to study the constituents under Section 124A of IPC, as follows:

Section 124A of IPC, provides that:

- a) *Whoever*
- b) *by words, either spoken or written, or by signs, or by visible representation, or otherwise,*
- c) *brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection*
- d) *towards, the Government established by law in India*
- e) *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.*

'Whoever': In this statement, the word *'whoever'* includes the perpetrator responsible for taking recourse to a language with seditious character and in relation to written words, anyone who is found writing, publishing, printing or disseminating the seditious content by any means would be held liable under the section.⁸

'By words, either spoken or written or by signs or by visible representation or otherwise': According to section 3 (65) of the General Causes Act, 1897,⁹ "word writing or written material" includes items/evidences in printing, lithography, photography and other means of representing or reproducing written material in a visual format. The concluding words of the stamen "or otherwise" encompass any mode adopted to disseminate any sort of seditious matter.¹⁰

'Brings or attempts to bring into hatred or contempt or excite or attempts to excite disaffection': In this statement, 'hatred' refers to the expression of a severe contempt or dislike with regards the State that may be produced in written form or expressed verbally. The words 'hatred' and 'contempt' were added in the section 124A of IPC by Indian Penal Code (Amendment) Act,

⁷ Shivani Lohiya, Law of Sedition 7 (Universal Law Publishing, New Delhi, 2014).

⁸ W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India 84 (Calcutta: Thakker, Spink and Co., 1911).

⁹ Section 3(65) of General Clauses Act, 1897: expression referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

¹⁰ Ratanlal & Dhirajlal, Law of Crimes 569 (Lexis Nexis, New Delhi, Vol I, 26th edn., 2007).

1898. Similarly, the term ‘disaffection’ reflects any expression of disloyalty and enmity toward the State. This word in general includes every possible form of wrong, discontented or malicious feelings against the State.¹¹

‘Government established by law in India’: Under section 17 of IPC¹² as well as under Section 3 (23) of the General Clauses Act,¹³ the term ‘government’ refers to the Central Government of India or any State Government. The significance of a State Government established by law was recognized by the Supreme Court of India (*Kedar Nath Singh v. State of Bihar*),¹⁴ by observing that “the continued existence of the government established by law is an essential condition of the stability of the state.”

What is not sedition? Given the severity of the offence of sedition, it is highly significant to understand the scope of sedition and the things/acts that have been excluded from its ambit. Appositely, the two explanations annexed to Section 124A of IPC plainly clarify what is to be excluded from the scope of sedition, which is given under as:

- (a) Comments/statements expressing disapprobation of the measures of the Government, with a view to obtain their alteration by lawful means, or
- (b) The administrative or other action of the government.

Pertaining the explanation part in Section 124A of IPC, Justice Strachey opined:

*The object of ‘explanation’ is to protect honest journalism and bonafide criticisms of public measure and institutions, with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. So long as a journalist observes this distinction, he has nothing to fear*¹⁵.

Intention: Under this Section, it is sufficient an evidence to prove sedition when the writer’s or speaker’s writing or speech explicitly displays his/her intention of exciting disturbance or violence.¹⁶

II. ABETMENT OF SEDITION

There is no denying of the fact that Section 124A of IPC does not specifically endorse abetment of the Sedition Act. However, Section 13 of Amending Act XXVII of 1870 made Chapter V

¹¹ *Empress v. Bal Gangadhar Tilak*, ILR 22 Bom 112

¹² Section 17 of the Indian Penal Code: “Government”. The word “Government” denotes the Central Government or the Government of a State.

¹³ Section 3(23) of General Clauses Act, 1897: “Government” or “the Government” shall include both the Central Government and any State Government;

¹⁴ AIR 1962 SC 955.

¹⁵ *Emperor v. Hemendra Prasad Ghosh*, AIR 1939 Cal 529

¹⁶ Ankur Gupta, “Sedition”, available at: <http://www.rmlnl.ac.in/webj/sedition.pdf>

(Abetment) and Chapter IV (General Exceptions) of IPC made applicable to section 124A of IPC. This Amending Act XXVII of 1870 defined the offence further under Section 40 as “a thing made punishable by the code”. However, given the fact that the offence of sedition is also punishable by code, therefore, there was barely any requirement to apply Chapter V (Abetment) to Section 124A of IPC as Chapter V (Abetment) is applicable to all offences by default.

(A) Conflict between the Applicability of Sedition Law and Freedom of Speech and Expression

Freedom of speech and expression is among the strongest tools for safeguarding the democratic nature of any government. Democratic spirit and freedom of speech and expression are inseparable and in a democratic State, freedom of speech and expression provides the lucrative chances of free discussions on varied issues or problems to sort out their solutions. Undue restrictions on freedom of speech and expression make the democratic setup questionable and hence, have been declared invalid.¹⁷

Sedition in India, under section 124A, is a comprehensive term encompassing everything of act, word or speech that is estimated to disturb the peace of the State and instigate people against the Government or State Law. It needs to be mentioned that British ruler had introduced the Sedition law to serve their interests of sustaining Colonial rule and suppress the Indian national freedom movement. However, over the recent decades, various instances of charging persons with Sedition later appeared as misappropriation of this Section while considering the cases in light of the fundamental right to Freedom of Speech and Expression. Thus, the mishandling of these laws undermines the legitimate and constitutionally protected rights to legal expression of discontent, protest, dissent or criticize the Government with regards its certain policies. In 2009, the Sedition law gained currency in India even in post-Independence era despite this Law was abolished in Britain through the Coroner and Justice Act in 2009. The conflict between the Act of sedition and the fundamental right to freedom of speech and expression has been a debatable issue ever since the Constitution began to be implemented. The implementation of the Sedition Law has received severe criticisms from different corners of the nation and serious questions have been raised regarding the validity of this Law in the modern constitutional democracy.¹⁸ Since, a democracy assures that people govern themselves and ensures a free exchange of ideas, dissemination of information and knowledge and freedom of expression of opinion, therefore, it is obvious that the misuse of the Sedition Law stands questionable under

¹⁷ M.P. Jain, *Indian Constitutional Law*, 1019 (7th edn)

¹⁸ Conflict between freedom of Speech and Expression and Sedition Available at www.lawjournals.org.com

any democratic setup.

III. CONSTITUTIONALITY OF SECTION 124-A OF IPC

The constitutional validity of section 124-A of the Indian Penal Code, 1860 was challenged as a violation of the fundamental right of freedom of speech and expression granted under Article 19(1) (a) of the Constitution. In this direction, Article 19(2) defines the reasonable restrictions imposed on freedom of speech and expression and the offence of Sedition has not been mentioned there as a ground for justifying reasonable restrictions. The question arises whether section 124-A of IPC imposes reasonable restrictions on freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution or not. The restrictions mentioned there are meant to discipline the public, maintain the law and order of the State and ensure the safety and security of the society. However, these restrictions appear as highly variable concepts. The architects of Indian Constitution were cognizant of this fact and thus, they abhorred adopting the provision of Sedition as one of the grounds justifying reasonable restrictions.

Following the implementation of the Constitution, the validity of this Section (of Sedition) was taken into account by the Supreme Court in *Ramesh Thapar v. State of Madras*.¹⁹ The petitioner (Ramesh Thapar) argued before the Supreme Court that the order of banning his paper 'Cross Roads' by the Madras State has snatched his fundamental right of freedom of speech and expression conferred on him under Article 19(1)(a) of the Constitution. However, it was brought forth that the clause (2) of Article 19 allowed the imposition of the restrictions on freedom of speech and expression only in cases where danger to public security is involved and an enactment that is capable of being applied to cases where no such danger could arise, cannot be held as constitutional or valid to any extent. Hence, in this case, the Supreme Court, finally, considered the application of the petitioner under Article 32 of the Constitution and annulled the order of Madras State that proscribed the circulation of the paper "Cross Roads" in the State of Madras.

In *Tara Singh Gopi Chand v. State of Punjab*²⁰, the implementation of section 124-A of IPC was declared as unconstitutional being contrary to the freedom of speech and expression granted under Article 19(1)(a).

To ward off this constitutional hindrance (as is evident from the above referred cases), the Constitutional First Amendment Act, 1951 was added in Article 19(2), with two words of widest import i.e., 'in the interest of' and 'public order', thereby including the legislative restrictions

¹⁹ AIR 1950 SC 124.

²⁰ AIR 1951 East Punjab 27.

on freedom of speech and expression.

Similarly, in *Ram Nandan v. State of Uttar Pradesh*²¹, the Court declared that section 124-A of IPC imposed restrictions on the freedom of speech and expression is not in the interest of public and thereby contravened this fundamental right of freedom of speech and expression. Thus, the Court declared section 124-A as a violation to the Constitution as it cannot be spared by the expression ‘in the interest of public order’. However, this decision was overruled in 1962 by the Supreme Court in *Kedar Nath Singh v. State of Bihar*²² that granted the Sedition law an explicit constitutional validity. While upholding the constitutionality of the judgment, the Court distinguished between ‘the Government established by law’ and ‘persons for the time being engaged in carrying on the administration’. The Court plainly distinguished between the expressions or acts of disloyalty to the State/Government and commenting upon the measures of the Government without inciting disorder. Hence, the Supreme Court declared that the essence of the offence of sedition requires acts, which are intended to have the “effect of subverting the Government” by violent means. More importantly, the Supreme Court elucidated that mere “strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means” does not qualify for the charge of Sedition. In addition, the Supreme Court declared that 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.”

(A) Reports of Law Commission of India

The Law Commission of India undertook the assignment of reviewing and revising the Indian Penal Code in 1968. In 1971, the Law Commission in its 42nd Report suggested amendment(s) to section 124A of IPC, as:

- Including a mens rea element in the section;
- In addition to the State/government itself, includes other State bodies, such as the Indian Constitution, judiciary, and legislature, against whom creating disaffection would be punished.
- Punishment under this section of Sedition should be seven years rigorous imprisonment and fine instead of life imprisonment or imprisonment of three years, or fine.²³

²¹ AIR 1959 All 101.

²² AIR 1962 SC 955.

²³ 42nd Law Commission Report (1970), “Indian Penal Code” available at: <http://lawcommissionofindia.nic.in/1-50/report42.pdf>

The Law Commission of India clearly distinguished ‘sedition’ from ‘Hate Speech’ in its report on ‘Hate Speech’ in 2017. The report established that a hate speech affects the State indirectly by disrupting public tranquility while as sedition is directly an offence against the State *per se*. In addition, it was clarified that the impugned expression must challenge the sovereignty and integrity of India and security of State to be considered as Sedition.²⁴

The Law Commission opined of amending the Indian Penal Law and accordingly suggested a Draft Amendment Bill named, the Criminal Law (Amendment) Bill, 2017 with new sections i.e., section 153C (prohibiting incitement to hatred) and section 505A (causing fear, alarm or provocation of violence in certain cases) annexed as Annexure-A for consideration of the Government.²⁵

Thus, with regards the Sedition Act, it becomes evident that the language of the writing to be charged with Sedition must carry a tone that may promote enmity or hatred against the State and the accused must be proved of having intended the consequences of this act.

(B) Recent Incidents of Sedition Law in India

Analyzing various incidents of charging persons with sedition *vis a vis* the freedom of expression, it appears that in the contemporary India, the law of sedition accrues controversial significance given the major changes in the body politic and especially due to the constitutional provision of freedom of speech and expression as a fundamental right under Article 19(1) (a). The law of sedition is placed under section 124-A of the Indian Penal Code, 1860. The recent nationwide upsurge in invoking sedition laws against journalists, intellectuals and human rights activists has raised important questions on the undemocratic nature of such laws that were introduced by the British Colonial Rule in India.

The recent episodes of charging certain people (Arundhati Roy, Dr Binayak Sen, Sudhir Dhawala, Aseem Trivedi and Kovan) with sedition recollect the pre-independence scenario of India under the British rule, when Sedition was legally used by the British government to suppress the nationwide voice for independence.²⁶ Binayak Sen, a pediatrician by profession, who was charged of sedition on 24th December 2010, Sen was charged with sedition on the pretext of his writings sympathetic to Maoists²⁷ and Sudhir Dhawale, a social activist and editor of *Vidrohi*, was charged with the offence of sedition merely for fetching a computer from a

²⁴ The Law Commission of India, 267th Report on Hate Speech, 2012.

²⁵ The Law Commission of India, 43th Report on Offences against National Security, 1971.

²⁶ The Telegraph, *Call to review misused sedition law*, May 24, 2016

²⁷ Prabhat Singh, *A quick history of sedition law and why it can't apply to JNU's Kanhaiya Kumar*, available at <http://www.newslaundry.com/2016/02/16/a-quick-history-of-sedition-law-and-why-it-cant-be-apply-to-jnus-kanhaiya-kumar/#>

member of the banned CPI (Maoist). Likewise, Bharat Desai, a newspaper editor, was accused of Sedition for simply questioning the competence of some police officers and their nexus with criminals. Such attempts of misusing the Sedition law on people including some popular figures like Arundhati Roy raise the same fundamental question (of freedom of speech and expression) as was upheld in Bal Gangadhar Tilak case. Similarly, dozens of cases reflecting the misappropriation of Sedition Law have been reported from the Kashmir valley, where, for example, a teacher was charged with Sedition for allegedly setting questions related to the political unrest in the valley. Unsurprisingly under such a state of affairs, the officials accused charged, a student who protested against army atrocity in Kashmir and another one who supported Pakistan during an India-Pakistan cricket match, with sedition. Arundhati Roy, Syed Ali Geelani and Varavara Rao faced charges of sedition for expressing their opinions in a seminar on unrest in Kashmir. Roy had opined that no one could be forced to feel proud of being an Indian as it represents a natural instinct and must not be forced upon an individual. Also, suppressing the voice and expression of opinion of writers in a democratic country is pitiful. This law received momentous attention on Aseem Trivedi's (a cartoonist) arrest with charges of insulting the National Flag and the Constitution. Trivedi was charged for publishing anti-corruption cartoons while featuring national symbols on his website with a defaming style. In case of cartoonist, Aseem Trivedi, The Mumbai Press Club condemned the levelling of sedition charge against him and insisted on erasing the Sedition Act from the Indian Penal Code 1860.²⁸

Similar episodes of misusing the Sedition Law continued to appear as for example in case of the editor of a magazine, 'Nishan', Lenin Kuma, who was arrested in the 2008 under the charges of Sedition following his publication of the Kandhamal riots in the magazine. In the 2010, E. Rati Rao, the editor of the PUCL-Karnataka Kannada news, received the same fate after his magazine published an article that allegedly accused the State government for promoting communalism and taking recourse to fake encounters. In a serious case, Bilal Ahmed Kaloo, a Kashmiri youth, was booked under section 124A, 153A and 505(2) of the Indian Penal Code 1860 and the petitioner's appeal reached before the Supreme Court in 1997. Following the judicial process, the Apex Court reprimanded the trial court for adopting a casual and partial approach in dealing with such serious cases and the Supreme Court could not find any suitable evidence justifying the crime of the appellant. Thus, the court cautioned the State of mishandling the Law of Sedition as misappropriation of this law threatens the foundations of democratic edifice of the nation and debars the citizens of their constitutional right to criticize, disagree or

²⁸ Afternoon Voice, *Drop sedition law from penal code, demands Mumbai Press Club*, September 12, 2012,

disapprove the policies of the State.

An expression merely depicting difference of opinion cannot qualify a person as ‘anti-nationalist.’ Another JNU student activist, Umar Khalid, was branded as a supporter of *Jaish e Mohammed* (a terrorist outfit based in Pakistan) and a terrorist following the expression of his views on national television.²⁹ Kanhaiya Kumar, the President of Jawaharlal Nehru University Student’s Union also met the same fate of sedition, while he was allegedly found protesting against death sentence of Afzal Guru, the noted convict of Parliament attack of 2001.

IV. CONCLUSION

There is no denying of the fact that it becomes imperative on any government to maintain public order, secure peace and protect national integrity, but at the same time, the government should refrain from misusing any constitutional tool/Act to sabotage a voice or opinion that differs from it within the legal framework. From the current study, it appears that the Law of sedition has witnessed recurrent episodes of misappropriation by the authorities and for preserving the democratic spirit of the constitution this Law should not be used as a tool to restrict freedom of speech and expression. Furthermore, it appears that the usage of vague terminology in the provision defining offence of sedition has resulted in miscarriage of justice and the recent incidents of mishandling of the Law of Sedition reflects the severity of the situation. The study shows that the ambiguity in section 124A of IPC, has made it difficult for the judiciary to adjudicate upon the said provision of law.

²⁹ Kunwar Khuldune Shahid, *Accepting anti-nationalism*, The Nation, February 18, 2016