



A STUDY ON SEDITION AND FREEDOM OF SPEECH IN INDIA

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ABSTRACT

The right to freedom of expression is a critical component of the fundamental rights given by the Indian Constitution. With repeated advancements in the individual's thoughts and modes of expression, as well as revisions to Indian legislation, there is little room for bygone and dictatorial British restrictions. However, given that this antiquated statute is still in force, it is truly shocking to observe that, despite more than 70 years of independence, neither the Parliament nor the state legislatures have dared to change the requirements contained in Sec. 124. Indeed, it is worth noting that the British Parliament abolished sedition as a crime in 2009, sending a message to other nations to follow suit and embrace true freedom of speech and expression, even though the UK is said to have incorporated far more stringent laws into its counter-terrorism legislations. In New Zealand, too, the sedition statute was repealed in 2007 on the basis that it contained elements that violated natural justice and the rule of law. Australia, Canada, Indonesia, and South Korea have all repealed sedition laws. This statute continues to provide the government with an opportunity to assume the role of colonial government. Thus, the question is whether to preserve or remove Section 124A. Sedition, as a criminal offence, is also viewed as a constraint on the exercise of the freedom protected by Article 19(1). (a). The book, in its whole, seeks to ascertain if it is a legislation or a weapon that has been widely abused, thereby curtailing freedom of speech and expression.

KEYWORDS: Sedition, Freedom of Speech, Constitution, Fundamental Rights.

INTRODUCTION:

Sedition is defined in Section 124A of the Indian Penal Code as words, spoken or written, or by signs, or by visible representation, or by any other means, that incite or attempt to incite hatred or contempt for the Government established by law, or that excites or attempts to excite disaffection toward the Government established by law, and provides for the offender to be punished with life imprisonment, to which a fine may be added, or with a fine of up to one million rupees. Sedition laws in India date all the way back to the British Raj's 1860 Indian Penal Code. It was added to the Act in 1870 as an amendment. The British utilised this rule to put an end to the Wahabi Movement and imprison activists such as Lokmanya Tilak and Mahatma Gandhi.

In 1961, the Punjab High Court ruled that sedition violated Article 19's promise of freedom of expression and declared it unconstitutional. The Allahabad High Court followed suit, and the subject was referred to the Supreme Court. Finally, in *Kedar Nath v. State of Bihar*, the Supreme Court upheld Section 124A's constitutional validity.

Simply criticising the government or expressing scorn for the way the government operates does not constitute sedition. To constitute sedition, an act must be committed with the goal of causing disorder/disturbance of the public peace or law through the use of violence, and must inspire violence.

Article 19(a) of the Indian Constitution guarantees freedom of expression and speech. This is a fundamental right that cannot be revoked. It is not, however, absolute and is subject to reasonable restrictions under Article 19(2) in the interests of India's sovereignty and integrity, the state's security, friendly relations with foreign states, public order, decency, or morality, or in connection with contempt of court, defamation, or incitement to commit an offence.

Freedom of speech is a critical attribute of a democracy. A democratic country is one in which citizens have a say and the ability to express their views. Denying them their right to express themselves would undermine the very foundations of democracy.

While all people have the freedom to talk freely and express their ideas and opinions, it is important to remember that those rights come with specific responsibilities as Indian citizens. A democracy can function optimally only when the state and citizens fulfil their respective responsibilities and think first on a national level, then on an individual level.

The people elect the nation's leaders. The same people who elect those leaders and place their trust in them must be heard when they ask questions, make suggestions, or express divergent views.

LEGISLATIONS PASSED SUBSEQUENTLY:

The Unlawful Behaviors (Prevention) Act (ACT NO.37 of 1969) was adopted in 1969 to make certain unlawful activities simpler to prevent. Unlawful activity is defined very broadly as "any action, including acts, words, either spoken or written, signs, or any visible representation, that is intended to or supports any claim to bring about the cession or succession of any part of India on any ground what-

soever, or that incites any individual or group of individuals to bring about such cession or succession, or that disclaims, questions, or challenges any claim to bring about such cession or succession." The 2004 (Act No. 29 OF 2004) and 2008 (Act No. 35 OF 2008) revisions to this Act expanded its scope to encompass terrorism. The term "illegal activity" was enlarged to include any activity that results in or is intended to result in displeasure with India.

As can be seen, this Act would include a variety of behaviours that would be labelled sedition, such as causing or inciting public discontent or violence.

The Central Government enacted the National Security Act in 1980. (Act No. 6 of 1978). Section 8 (1) empowers the Central Government or State Governments to detain individuals if they believe it is necessary to prevent them from: acting in any manner prejudicial to India's defence or security' (Section 3 (1)(a)), or from acting in any manner prejudicial to the State's security or maintenance of Public order. This law, without a doubt, would cover the same substantive offences as section 124A of the Penal Code.

These Acts, in conjunction with a host of state-level safety and security legislation, we feel, now adequately 'cover the field' when it comes to dealing with public order and violence. True terrorists and security threats would almost probably not go unpunished in the absence of sedition.

Over the preceding nearly sixty years of action, a plethora of new laws have been enacted that directly address safety and security, civil disturbance, and terrorism. Among the most significant of these statutes are the Unlawful Activities Act, the Public Safety Act, and the National Security Act. Numerous sections of these Acts address the overt behaviour that sedition seeks to prohibit – encouraging violence and public unrest.

RECENT DEVELOPMENTS:

Since the Supreme Court's decision in the *Kedar Nath* case, courts have applied the same law on numerous occasions. In the last fifteen years, there have been just fourteen cases of sedition, of which only two were heard by the Supreme Court. Additionally, there have been only three convictions, one of which was by the Supreme Court. Additionally, according to a report released by the Ministry of Home Affairs, 326 seditious cases were recorded in India between 2014 and 2019, with only six convictions¹⁷. The data was given by the National Crime Records Bureau.

As a result, it is not incorrect to assert that the offence of sedition is frequently employed against the innocent in order to silence their legitimate voice and demands. 326 cases of sedition in only five years is a truly disturbing figure, demonstrating the ruling government's ill-will regardless of the states. Comparing state governments and Indian governments to the British in this regard would not be inaccurate in any way. The matter does not end here; anyone who speaks out against the ruling parties, whether at the national or state level, or who criticises their propaganda is brought to a halt by launching sedition procedures against the individual or group of individuals. Neither national nor state parties have ever ventured to revisit the sedition law's provisions; all political parties have a sense of unity in this regard.

In a recent case, *P.J. Manuel v. State of Kerala*¹⁸, the defendants posted placards on a board outside the Kozhikode public library and research gate, urging residents to boycott the state's general elections for the Legislative Assembly. The poster stated, "Regardless of political party affiliation, do not vote for the swollen masters who have grown fat through abusing the people." When criminal charges were brought against him under Sec. 124A, the court ruled that the content of the offence of sedition must be assessed according to the language and spirit of the constitution, not by British standards, and ordered his acquittal.

In another instance, *Gurjinder Pal Singh v. The State of Punjab*¹⁹, the accused petitioned the Punjab and Haryana high court for a revocation of the FIR lodged against him under Sec. 124A. At a religious ceremony commemorating the martyrs, the accused addressed the crowd, advocating for the establishment of a separate buffer state called 'Khalistan' between India and Pakistan. It was determined that even explicit calls for secession and the establishment of a new state would not constitute a seditious act. As a result, the FIR filed against the defendant was quashed.

In the second case, *Mohd. Yaqub v. State of West Bengal*²⁰, the accused admitted to being a spy for Pakistan's intelligence organisation ISI and receiving instructions from the agency to conduct anti-national operations in the country; he was thus charged with sedition under Section 124A of the I.P.C. The Calcutta High Court, citing the Kedar Nath verdict, held that the prosecution failed to demonstrate that the acts were seditious in nature and had the effect of rousing the general mass. As a result of the absence of severe evidence criteria, the accused was released.

In *Balwant Singh v. State of Punjab*²¹, the Supreme Court reversed a conviction for sedition and fostering hatred between various groups on the basis of race, religion, and so on, and acquitted individuals who chanted –“ Khalistan Zindabad, Raj Karega Khalsa, etc.”

And in the now-famous case of *Binayak Sen v. State of Chhattisgarh*²², one of the accused, Piyush Guha, made an extra-judicial confession that Binayak Sen, a public health specialist, had given him certain letters to deliver to Kolkata, these letters allegedly containing Naxal literature – some allegedly containing information on police atrocities and human rights. Convicting the defendants, the High Court noted extensive violence caused by the prohibition of Naxalite organisations, but the court could not explain how the simple possession and distribution of books could constitute sedition. Additionally, the High Court disregarded the issue of incitement to violence, which was not present in this case.

The most recent case involves *Kanhaiya Kumar* (former President of the JNU student union), *Umar Khalid*, and other students, who were accused of favouring Afsal Guru (the mastermind of the Parliament attack) and chanting the slogan 'Bharat Tere Tukde Honge'²³ during a gathering on JNU grounds. The case is still pending.

CONCLUSION:

Adlai Stevenson once said, "Every man has a right to be heard, but no man has the right to strangle democracy with a single set of vocal cords." There is a distinction between seeking and attempting to destabilise the administration and desiring and attempting to destabilise the country. The government is not synonymous with the country, since the national anthem of India is distinct from the government's national anthem, and the national flag of India is distinct from the government's national flag. Thus, there is a distinction between criticising the administration and criticising the country (which, at any cost must not be upheld). In today's atmosphere, the sedition legislation appears to be a colonial imposition that requires citizens to display no hostility, disdain, or hatred toward the established government.

As a result, it is vital to remodel it in such a way that misuse is prevented. It has been correctly stated that section 108 of the CrPC 1973 is an appropriate response to the issue of section 124A misuse. Certain new requirements should be added to Sec. 124A, such as making it a non-cognizable and bailable offence, in order to prevent unwarranted arrests and other violations of individual dignity and freedom of speech and expression; this would also prevent the legislation from being abused.

There is a need to strike a balance between free speech and sedition, as not every dissenting voice is seditious. The imposition or threat of invocation of section 124A causes individuals to self-censor their communication, resulting in a 'chilling effect' on the exercise of one's basic right to speech and expression. This is why the legislation should be repealed or altered. Thus, the judiciary must be vigilant and reconsider the sedition law. The legislation must be amended and re-examined as time and society dictate. As Justice D.Y. Chandrachud put it, "the time has come to clarify the sedition law's boundaries." *CJI N.V. Ramanna* concurs.

Individuals have an inherent right to freedom of speech and expression, and every comment, statement, thought, or opinion, whether favourable or unfavourable, is a vital component of a healthy democracy. However, liberty must be circumscribed in order to be possessed effectively.²⁷ As a result, any restrictions on free speech and expression should be audited in order to avoid unintended consequences.

sequences.

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