

LAW OF SEDITION IN INDIA: A CRITICAL STUDY

Mohit Shailani

LLM Student

Law College Dehradun, Uttaranchal University
Uttarakhand, India

Dr. Sushim Shukla

Associate Professor, Law College Dehradun,
Uttarakhand University
Uttarakhand, India

ABSTRACT

Presently, the law relating to Sedition under Section 124A of Indian Penal Code, 1860 has created a new controversy in the Indian constitutional jurisprudence. As the law was inserted by the British Government to uphold the imperialism and to punish the freedom fighters, the utility of the Section 124A in independent India is in question. Since 1950 constitutional regime has been established in India and under Article 19 (1) (a) freedom of speech and Expression has been guaranteed as a fundamental right and it creates a new conflict with Section 124A of the Indian Penal Code, 1860. Now, the constitutionality of the sedition law has been challenged and various interesting judicial pronouncements have been delivered by the Indian judiciary. More interestingly several governments have moved for constitutional amendment to protect that obsolete colonial legacy. However, the paradigm has been shifted now; recently, the government has prescribed an amendment to curtail down the intensity of the sedition law. This paper deals the present status of the sedition in India and discusses its utility in twenty first century.

INTRODUCTION

Every citizen has been given freedom to speak and express their views under Article 19(1) (a) of the Indian Constitution. However, this freedom is not absolute and some reasonable restrictions have been imposed on freedom of speech and expression under Article 19(2). But when a person does an act by his words, signs or representation which is held to be contemptuous towards the Government of India, then such act is punishable under section 124-A of Indian Penal Code, 1860. Sedition is an offence that criminalizes speech that is regarded to be disloyal to or threatening to the state. The provision of Section 124A is very

wide and it covers the act of defamation of the Government excluding any criticism in good faith of any particular measures or acts of administration.

LAW OF SEDITION

The term 'Sedition' means "conduct or speech which results in mutiny against the authority of the state" Law of Sedition deals with section 124A of IPC, 1860, is considered as a reasonable restriction on freedom of speech. It was drafted by Lord Thomas Macaulay and introduced in 1870.

The origin of the sedition law was connected to the Wahabis Movement of the 19th century. It was an Islamic revivalist movement and was led by Syed Ahmed Barelvi. Since 1830, the movement was active but in the wake of 1857 revolt, it turned into armed resistance, a Jihad against the British. The British termed Wahabis as rebels and carried out military operations against Wahabis.

HISTORY

In British Era, Section 124A was not a part of Indian Penal Code, 1860. But this Section was inserted into IPC by the IPC (Amendment) Act, 1870. By an amending act of 1898, this provision was later replaced by Section 124A. According to the British Era Law, under the old IPC, "Exciting or attempting to excite feelings or disaffection was considered as Sedition".

Meaning of Sedition under Section 124A of IPC, 1860

"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 shall be punishable with Life Imprisonment"

Explanation I to the Section defines the scope of disaffection and in Explanation II and III indicate what under the English Law is not considered seditious intention.

What are the activities that are Seditious in nature?

In India, what constitutes as 'Sedition' is highly debated. As per the Indian Penal Code, for an act to be called "seditious", it should have the following components:

1. Any words, which can be either written or spoken, or signs which include placards/posters (visible representation)

2. Must bring hatred/contempt/disaffection against the Indian Government
3. Must result in imminent violence or public disorder.

As per the interpretation of the Court on Section 124-A of the Indian Penal Code, 1860 the following acts have been considered as “seditious”

- Raising of slogans against the government – example – “Khalistan Zindabad” by groups. Raising of slogans by individuals casually once or twice was held not to be seditious.
- A speech made by a person must incite violence / public disorder for it to be considered as seditious. Subsequent cases have gone to further interpret it to include “incitement of imminent violence”.
- Any written work which incites violence and public disorder.

SEDITION FOUND IN OTHER LAWS

The following are some laws which cover Sedition law:

1. THE CODE OF CRIMINAL PROCEDURE, 1973

The criminal procedure code under section 95 conferred power of forfeiture upon the state government. The section states that where any newspaper, or book, or any document, wherever printed, that appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code, then the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government. The section also states that after the government notification to forfeit the newspaper, books and any documents of such nature then the police officer may seize such materials wherever found in India. The section also conferred power upon the magistrate that he may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for such materials in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be found.

The section 96 of the Criminal Procedure Code provides that any notification of forfeiture of such newspaper, books and any documents issued by the state government shall be

challenged before the High Court within the period of 2 months from the date of publication of such order in official gazette to set aside such declaration.

2. THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911

The prevention of Seditious Meeting Act, 1911 was with the purpose to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity. The Act grants power to the state government to declare the whole or any part of areas of the state to be a proclaimed area by notification in official gazette. Such notification shall not remain in force for more than six months, however, this Act doesn't preclude the state government to issue such further notification in respect of same area from time to time. The Act also denied the word "Public Meeting" as a meeting which is open to the public or any class or portion of the public. It also states that a meeting as public meeting though the place where meeting to be held is private place and even extend to such places where admission allowed by ticket or otherwise. The Act states that no public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or for the exhibition or distribution of any writing or printed matter relating to any such subject, shall be held in any proclaimed area unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously; or unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police. The Act conferred power upon the District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public Notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity. The Act prescribes that if any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. The Act states that whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the district or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested

without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

The Unlawful Activities (Prevention) Act, 1967 was enacted in-order to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto. The Act provides for the more effective prevention of certain unlawful activities of individuals and associations. The Act defines the word “Unlawful activity” in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise) – (I) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (II) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (III) which causes or is intended to cause disaffection against India.

The section 2 (o) (III) states the similar provisions as expressed under section 124A of the Indian Penal Code, 1860. The provision states that when an individual or association did an act whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise which causes or is intended to cause disaffection against India is liable to be booked under this Act.

HOW LEGAL MECHANISM SETS IN MOTION

Sedition is considered as a high-value crime in the Indian Penal Code which is against the sovereignty of the country. It is a cognizable offence which allows arrest without a warrant and police can start the investigation without the permission of the court. There are some legal procedures regarding the charges of Sedition:

1. Go to the Jurisdictional Police Station

It is the person’s legal right to file a case against the person who is committing an offence against the state such as Sedition. A person can file the complaint with the nearest Police Station where such offence when committed.

2. Lodging an F.I.R

The First Information Report (F.I.R.) is a written document which is prepared by the police organizations when they receive any information about the cognizable offence. In the case of seditious offence, it is filed by the person who has come to know about such offence and also can be filed by the police officer.

3. How Police take Cognizance

When any credible information is being registered by the complainant regarding the sedition offence, then it is the duty of Police Officer to take action for such complaint. Police have the right to arrest without warrant for such offence. There are some procedures when Police are able to arrest without warrant:

1. When the seditious act is going on before the police inspector, District Magistrate or Executive Magistrate, then they can arrest such person without any warrant.
2. If any information is received from another police officer for the arrest of the person committed a seditious offence, then the other police officer can arrest such person.
 1. F.I.R. when lodged against the person for the seditious offence.
 2. When a person who is being suspected of Sedition, then the police officer may arrest such person for the further investigation.

4. Investigation

After giving the information to a police officer in charge of a police station, the investigation is initiated. A magistrate can order a police officer in charge to investigate on cognizable offence such as Sedition. A magistrate is empowered to take cognizance upon receiving any complaint or upon a police report or upon information received from any person other than a police officer who is having knowledge of such offence is committed. A police officer may require to take the attendance of witnesses in writing.

5. Charge Sheet

After the completion of the investigation, police submits charge sheet which consists of F.I.R. copy, statement of the complainant, statement of witnesses etc.

SEDITION: DISLOYALTY IN ACTION

“Sedition” has been described as disloyalty in action. The object of sedition law is to induce discontent and insurrection, and stir up opposition to the Government and bring the administration of justice into contempt. Sedition is a crime against the society as it involves all those practices that result in conduct disturbance in the state or to lead to civil war which contempt the sovereign and promotes public disorder. [5]

6. Defences Available to a Person Charged With Sedition

To get the exemption from Criminal Liability, the following are the defences:

1. That he did not make the sign or representation or not speak or write the words, or not do any act in question.
2. He did not attempt into the contempt or attempt disaffection.
3. Such disaffection should not be towards the Government.

SEDITION: DISLOYALTY IN ACTION

“Sedition” has been described as disloyalty in action. The object of sedition law is to induce discontent and insurrection, and stir up opposition to the Government and bring the administration of justice into contempt. Sedition is a crime against the society as it involves all those practices that result in conduct disturbance in the state or to lead to civil war which contempt the sovereign and promotes public disorder.

DEFENCES AVAILABLE TO A PERSON CHARGED WITH SEDITION

To get the exemption from Criminal Liability, the following are the defences:

1. That he did not make the sign or representation or not speak or write the words, or not do any act in question.
2. He did not attempt into the contempt or attempt disaffection.
3. Such disaffection should not be towards the Government.

TAKE ON ABOLISHING THE LAW OF SEDITION – SHOULD THE INDIAN LEGAL SYSTEM ABOLISH THE LAWS PUNISHING SEDITIOUS ACTIVITIES?

In today’s scenario, the sedition law expects that citizens should not show enmity, contempt towards the Government established by the law.

- There are some dark areas which lies between actual law and its implementation.
- Thus the laws need to amend those dark areas.
- In India, there are so many divisive powers acting together in which such laws are necessary evils in a country like India.
- It is the need for such law that those activities which are promoting violence and public disorder should be stopped.

DISAFFECTION AND THE STATE

- A seminar titled with 'Azadi, the Only Way' was organized by the Committee for the release of a Political prisoner in Srinagar.
- The controversy arises when Sedition was charged against Arundhati Roy, Syed Ali Shah Geelani, Varavara Rao and others who spoke at the said Seminar.
- Media reported that the Central Government was not in favour of initiating proceedings in this case.
- There are reports though of cases having been filed in New Delhi.
- Intimidation of cases being filed in other parts of the country against Roy, Geelani and other who spoke at the seminar.

FAMOUS TRIALS OF SEDITION

1. Jogendra Chunder Bose

Jogendra Chunder Bose was an editor of Bangobasi. He was charged with Sedition for voicing against Age of Consent Bill.

Cartoonist Aseem Trivedi

During a rally of Anti-Corruption crusader Anna Hazare in Mumbai, he had been accused of putting up banners mocking the constitution and posting the same on his website. He was charged under Section 124A of IPC, Section 66A of Information Technology Act and Section 2 of Prevention of Insults to National Honour Act.

Kashmiri Students

60 Kashmiri Students were cheering for Pakistan in a Cricket Match against India. So they were charged with Sedition in March 2014.

Simranjit Singh Mann: The Shiromani Akali Dal-Amritsar president was as charged with four different cases of sedition. Mann had raised pro-Khalistan slogans on June 6, 2005 in the golden temple complex on the 21st anniversary of Operation Blue Star. Mann was named in the assassination of former Prime Minister Indira Gandhi, but investigations could not substantiate the charges and hence he was not prosecuted in that case.

Binayak Sen

He was a pediatrician by profession and was allegedly supporting Naxalites. For which he was charged with Sedition by Chhattisgarh Government.

Akbaruddin Owaisi

On December 22, 2012, he purported hate speech at Nirmal. He was slapped with the charge of sedition by the District Police of Karimnagar.

Kanhaiya Kumar, Student of JNU

JNU Student Leader, Kanhaiya Kumar was arrested in February 2016 on the charge of sedition. He was arrested for inciting violence through unlawful speech, allegedly spread not all over India but also across the world. This arrest has raised political turmoil in the country by which academicians and activists protesting against this move by the Government. On March 2, 2016, the videos purporting to show this activity were found to be fake and he was released after three weeks in jail.

CONSTITUTIONALITY OF LAW OF SEDITION IN INDIA

Kedarnath Singh v. State of Bihar

- It was held that the law is constitutional and covered written or spoken words that had the implicit idea of subverting the Government by violent means.
- With an intention to create public disorder, Citizens can criticize the Government as long as they are not inciting people to violence against the Government.

- Supreme Court upheld the validity of Section 124A, it limited its application to acts involving intention or tendency to create disorder, or a disturbance of law and order, or incitement to violence.

Balwant Singh and Anr v. State of Punjab

- After the assassination of Prime Minister Indira Gandhi, the accused had raised the slogan “Khalistan Zindabad” outside a cinema hall.
- It was held that two individuals casually raising slogans could not be said to be exciting disaffection towards the Government. Section 124A would not apply to the circumstances of this case.

Romesh Thapar v. State of Madras

- The petitioner contended before the Supreme Court that the said order of banning his paper ‘Cross Roads’ by the Madras State.
- It has contravened his Fundamental Right of freedom of speech and expression conferred on him by Article 19(1) of the Constitution.
- The Supreme Court held that the Article 19(2) where the restriction has been imposed only in the cases where problem to public security is involved. Cases where no such problem could arise, it cannot be held to be constitutional and valid to any extent.
- Supreme Court quashed the order of Madras State and allowed the application of the petitioner under Article 32 of the Constitution.

The following acts are not considered seditious

- Improvement or alteration by lawful means with the disapproval of the measures of government.
- The strong words which are expressing disapprobation of actions of the Government and not encouraging those feelings which generate public disorder by acts of violence.
- To improve the condition of the people or to secure the alteration of those acts by lawful means without the feelings of enmity and disloyalty which involve excitement to public disorder or the use of violence.

NATIONAL CRIME RECORDS BUREAU STATISTICS ON SEDITION

When all the crimes are committed against the state or government, it disturbs public order. According to the data from 2014-2016 of NCRB, 165 people were arrested on the charge of sedition. During 2014, 47 cases were reported under sedition. Of the total sedition cases, Jharkhand and Bihar have reported 18 cases and 16 cases respectively. Besides, 5 cases in Kerala, 2 cases each in Andhra Pradesh, Assam, Chhattisgarh and Himachal Pradesh were also reported during 2014.

According to the NCRB, the latest crime data shows the cases of sedition fell from 2014 to 2015. A total of 30 sedition cases were registered in 2015, less than in 2014. Tamil Nadu topped the list for committing the crime against state including sedition. Of the 6,986 cases were registered in 2016, 1,827 cases were reported from Tamil Nadu, followed by U.P. 1,414, Haryana 1,286 and Assam 343 cases. In the last three years across the country, 165 people were arrested on the charge of sedition. According to the reports of NCRB, 111 people were arrested in four state i.e., 68 in Bihar, 15 in Haryana, 18 in Jharkhand and 10 in Punjab.

CONCLUSION

Sedition is the serious offence in the violation of Article 19. So there is a need that sedition laws should have expressly contained words which satisfied the restrictions of Article 19(2). The purpose of restricting speech under Sedition Act is the protection of National Security. It has been made clear through judicial interpretation over the past 50 years that Section 124A of the IPC is constitutional and is required to ensure stability of the State and give the Government the tools to effectively combat anti-national, secessionist terrorist elements. However, there is a difference of understanding between the principles laid down by the Apex Court and actual implementation of Section 124A of the IPC which has seen many call for an amendment to the Section and terming Section 124A of the IPC as draconian. There should be specified mechanism which ensures that the sedition laws should be interpreted and applied according to the guidelines given by the Supreme Court. However, given the focus on national security, we might only see the law on sedition being made stronger.

REFERENCES

1. SN Mishra, *The Code of Criminal Procedure*, 97 (Central Law Publications, Allahabad. 2006).
2. JN Pandey, *The Constitutional Law of India*, 86 (Central Law Agency, New Delhi, 2016).
3. Section 124A of the Indian Penal Code, 1860

4. Caesar Roy, "Law of Sedition in India – A Critical Analysis", 49 Nyaya Deep 49 (2015).
5. AIR 1962 SC 955
6. Section 96 (2) of the Criminal Procedure Code, 1973
7. Section 2 of the Prevention of Seditious Meeting Act, 1911
8. Section 3 (1) of the Prevention of Seditious Meeting Act, 1911
9. Section 3 (2) of the Prevention of Seditious Meeting Act, 1911
10. Section 4 of the Prevention of Seditious Meeting Act, 1911
11. Section 5 of the Prevention of Seditious Meeting Act, 1911
12. Section 6 of the Prevention of Seditious Meeting Act, 1911
13. Section 7 of the Prevention of seditious Meeting Act, 1911
14. Preamble to the Unlawful Activities (Prevention) Act, 1967
15. Section 2 (o) of the Unlawful Activities (Prevention) Act, 1967
16. Section 2 (c) of the Code of Criminal Procedure Code, 1973
17. Section 154 of the Code of Criminal Procedure Code, 1973
18. Section 173 of the Code of Criminal Procedure Code, 1973
19. (2003) 8 SCC 461
20. Narrain Siddharth, "Disaffection and the Law: The Chilling Effect of Sedition Laws in India" 4 EPW 33 (2011)
21. (1892) 3 SCC 291
22. <https://www.indiatvnews.com/news/india/8-high-profile-sedition-cases-in-history-of-independent-india-57728.html> (accessed on 23/06/2020)
23. GP Singh, *Principles of Statutory Interpretation*, 540 (Wadhwa, Nagpur, 2006)
24. AIR 1962, SC 955
25. AIR 1985 SC 1785
26. 1950 SCR 594
27. N. Saksena, *An Analysis of The Modern Offence of Sedition*, 7 NUJSR 120 (2014).