

A STUDY OF SEDITION LAW UNDER IPC

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Abstract

Since gaining its independence, India has made great strides in every area, which has allowed it to develop. It has also made a concerted effort to pursue its goals and keep a strong presence in the international community. Even it had put in a lot of effort to promote social welfare and accord its resident's due respect. Even Nevertheless, occasionally, the government may take actions that infuriate the populace because they feel that the government is abusing its authority and abusing the law for personal gain. Sedition is one such law that has drawn criticism ever since it was passed. Since the British included this provision to suppress the voices of the independence fighters who pushed for peace and hostility towards the government, this is often recognised as the most controversial and disputed topic. When India became free of British rule, this section remained in the IPC. This is argued on the grounds that the government is allowed to act whatever it pleases and may request the defence of the security and integrity of the country. This article focuses on what is law of sedition under IPC, its background and constitutionality, some landmark judgments along with its recent development.

Keywords: Democratic country, British rule, Sedition, Constitutionality of Sedition, Article 19(1)(a).

Introduction

In a democratic country, the highest value is being given to freedom of the individuals as it aims to protect their rights but that doesn't mean we have freedom to do anything which is illegal or immoral in nature or disturbs the peace and tranquillity. Thus, there are certain restrictions which is being imposed upon us but it doesn't imply that it is infringing our right. One of the examples is of Article 19 (1) (a) of the Constitution of India states that "**All citizens shall have the right to freedom of speech and expression**"¹². It is a considered to be a touchstone of all the freedoms. It also includes Freedom of press too but the Article 19(1)(a) is not an absolute right as it imposes certain reasonable restriction which is provided under **Clause 2** of the Article 19 of the Constitution of

India to maintain the sovereignty and integrity of the state, and its public affairs throughout the country. One of the offences related to Freedom of Speech and expression is Sedition. In common language the term "sedition" can understood as anyone who by any means tries to stir up a revolt against the government.

According to the definition given in Black Law Dictionary, the term "Sedition" means "An insurrectionary movement that leans towards treason but seeks to commit an outright act; strives to disturb the peace of the state through gatherings, speeches, or publications."¹³

This is regarded as the most contentious and debatable subject since the British added the

¹² The Constitution of India, 1950, Art. 19(1)(a).

¹³ HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1523 (WEST PUBLISHING CO. 14th ed. 1968), <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf> (last visited June 11, 2023).

clause of Sedition to silence the voices of the independence fighters who advocated for peace and animosity against the government. This clause was still in the IPC when India gained its independence from British control. This is attacked on the grounds that the government is free to act however it sees fit and may solicit the protection of the nation's security and integrity. In this article we will be discussing about its what is law of sedition under IPC, its background and constitutionality, some landmark judgments along with its recent development.

Sedition under IPC

The Sedition law in India falls under the Chapter VI of IPC under section 124A of the IPC, which contains a brief statement on the laws regulating sedition in India. It consists of the offences that are encompassed by the law; however, it does not provide a specific explanation of the term "sedition". The Section 124A states that ***"any person who incites or attempts to incite hatred or contempt towards the government through phrases, gestures, or other visual representations, or in any other way shall be punished with either a mandatory minimum sentence of three years in prison or a maximum of life sentence, with or without the possibility of an additional fine"***¹⁴. There are three explanations which is being attached to this section which are as follows –

- i. "Disaffection is a term that encompasses all ill will and hostile emotions"
- ii. "Remarks that criticise the government's policies with the intent of changing them via authorised means without promoting or attempting to promote resentment, hatred, or dissatisfaction are not prohibited under this clause".
- iii. "Remarks that condemn a government policy or other conduct without encouraging or wanting the promotion of hate, contempt, or disaffection are not in breach of this section's prohibition".

The provisions of this section do not violate the fundamental right to freedom of speech and expression. The law only intervenes when an individual's statements have the potential to disrupt law and order or cause widespread chaos.

The aims of sedition are typically to instigate discontent and insurrection, to stir up hostility to the government, and to cast the administration of justice into disdain; and the very nature of sedition is to inspire the people to revolt and rebellion.

1) Background of Law of Sedition

As we all know that the father of Indian Penal Code is Sir Lord Macaulay who had drafted the IPC. When it was being formulated in the year 1860 there was no provision regarding sedition was there. However, after some time a need was being felt then in the year 1870, so it was added there on August 2, 1870 when James Stephen who is considered as the architect of the Indian Evidence Act, 1872 presented the bill and claimed that the English and Indian sedition laws were quite similar. In contrast of it the sedition statute was established in order to get down on Indians and quash revolutionary nationalists. Yet even the colonial kings claimed that the introduction of it was motivated by generosity.

In the case of "Queen-Empress vs Jogendra Chunder Bose"¹⁵ in which an article was published in the Bengali magazine called Bangobasi. So, the staff of that magazine company were all convicted for sedition for opposing the British government's decision to raise the legal age of consent for sexual relations. The charges were dropped against the accused when they tendered an apology to them. This was the very first instance which was being recognised by the Indian Courts as Sedition¹⁶.

¹⁵ Queen-Empress vs Jogendra Chunder Bose (1892) ILR 19 Cal 35.

¹⁶ Malavika Parthasarathy, *Sedition Law in India: A Timeline - Supreme Court Observer*, Supreme Court Observer, <https://www.scobserver.in/journal/sedition-in-india-a-timeline/> (last visited June 17, 2023).

¹⁴ The Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).

In "Queen Empress vs Bal Gangadhar Tilak"¹⁷, the court found that the speeches that inspired the assassinations of WC Rand and Lt. Ayerst were the cause of the murders. The leading judge expanded the definition of "disaffection" with the government to include "disloyalty," "ill-will," and "enmity." Additionally, it was believed that the intensity of these sentiments was irrelevant. After Bal Gangadhar Tilak's trial in 1897, an amendment was being done which made the sedition legislation in India harsher and more barbaric in nature.

In the case "Re: Mohandas Karamchand Gandhi... vs Unknown,"¹⁸ Mohandas Karamchand Gandhi, who was arrested for sedition in March 1922. During the trial, M.K Gandhi spoke of sedition as the "**prince among the sections of the IPC designed to suppress the citizen's liberty.**" He believed it as a "privilege" to be arrested under the clause.¹⁹

2) **Essential of Section 124A of IPC**

The essentials this section are as follows –

i. The Act of Inciting or Attempting to Incite Hate or Contempt Towards the Indian Government

As per the reading of the section, it can be easily said that any action or attempt towards to incite hatred or contempt rather than actual acts of doing so. Therefore, whether or not he actually accomplishes in his actions is irrelevant. It suffices if he solely makes an effort to incite dislike or loathing. Although people might hold hatred or distaste in their hearts, the law does not just address these feelings. There is no doubt that the law cannot comprehend a person's true sentiments and punish them accordingly. That's why it is being said that "*the act must be coupled with guilty intention along with the guilty act to term*" it is as crime.

¹⁷ Queen Empress vs Bal Gangadhar Tilak (1917) 19 BOMLR 211.

¹⁸ Re: Mohandas Karamchand Gandhi ... vs Unknown (1920) 22 BOMLR 368.

¹⁹ Sakshi & Nikita, *India's Spiralling Sedition Crisis & Why A Dilution Of The Law Will Not Prevent Its Misuse — Article 14*, <https://www.article-14.com/post/india-s-spiralling-sedition-crisis-why-a-dilution-of-the-law-will-not-prevent-its-misuse-61a83b9694436> (last visited June 17, 2023).

ii. Such an Action or Try May Be Carried Out by Spoken or Written Words, Using Signs, or Through a Visible Depiction.

As per this essential, if anyone through by any means mentioned above puts up an act or drama then it would make that person be liable for the offence of sedition. The distribution or circulating of any material which is inciting any hatred towards the government and disturbs the public peace too, then it would be fall under the offence of sedition only.

3) **Constitutionality of the Law of Sedition**

Since its inception, this was the most controversial and disputed provision in the IPC, and the constitutionality of this section was also contested in several cases across decades. Some judges considered it unconstitutional, while others ruled it constitutional. The cases are as follows –

i. Tara Singh Gopichand v State²⁰ – It was argued that Section 124A violates the language and spirit of Article 19(1)(a) of the Constitution. The East Punjab High Court ruled that "the clause violated the Constitution because it restricted people's freedom of speech and expression in a way that was not authorised by the document. The court held that Section 124A has no place in the new democratic polity that India has embraced".

ii. Ram Nandan v State of Uttar Pradesh²¹ – The Court ruled that Section 124A placed limits on freedom of speech and expression that were not in the best interests of the general public, infringing on the basic right to free expression. As a result, it determined Section 124A to be unconstitutional since it cannot be justified by the phrase "in the interest of public order."

iii. Kedar Nath Singh v State of Bihar²²– In this case the court ruled that "this section is not unconstitutional and believed that the section strikes the harmony between the human's basic right and its necessities and it acknowledges

²⁰ Tara Singh Gopichand v State, 1951 CriLJ 449.

²¹ Ram Nandan v State of Uttar Pradesh, AIR 1959 All 101.

²² Kedar Nath Singh v State of Bihar, 1962 AIR 955.



only those statements, written or spoken, etc., which have the detrimental tendency or purpose of causing chaos so in the interest of maintaining public order, the judiciary steps in to prevent such behaviour.". The Court also said that people have the right to disagree with or criticise the government or its policies as long as they are not encouraging others to act violently against the governing authority or do so with the aim of causing upheavals.

4) Laws of Sedition in other Countries

The Law of Sedition existed all throughout the world and was present in all legal systems. A number of nations had strict sedition laws, while others did not. With the passage of time, several nations have repealed and completely deleted this legislation from their systems, saying that it infringes human rights, is obsolete, and so on. The nations that abolished it are as follows:

- i. United Kingdom – In the United Kingdom the Sedition law was there from 1972 which was later abolished in the year 2009 claiming an infringement of one's freedom to free speech and freedom of expression.²³
- ii. Australia – It had its law of sedition from the year 1920 which was later abolished in the year 2010.
- iii. South Korea – It had abolished its law of sedition in the year 1988.
- iv. Indonesia – Its abolished its law in the year 2007 only.
- v. New Zealand – It had abolished the law of sedition in the year 2007.
- vi. Pakistan – Recently, it also abolished the provision Section 124-A from the Pakistan Penal Code which deals with Sedition citing that it is inconsistent with the Pakistani constitution.²⁴

The majority of nations have struck down sedition provisions from their constitutions, but still, there are certain nations that have not done away with their sedition laws such as India which still have kept the provision intact. Many

individuals criticise the national government's stance, arguing that if other nations have successfully removed it from their systems, why not India? However, this premise does not carry much weight because their living environment, political climate, and so on are significantly different from India. As a result, citing this reason, it is not feasible to totally eliminate the law focusing on sedition.

5) Recent Development

In the recent time, the topic of sedition was in the limelight due to the 22nd Law Commission of India which has presented its final report ("Usage of the Law of Sedition") on the constitutionality of the provision It had taken its stand as to retain this provision and proposed to make the law more aggressive in its nature and the punishment should also be enhanced to seven years too²⁵.

This was criticised by a number of legal figures and citizens on the grounds that making such strict provisions would give the government the upper hand and cause the greatest amount of suffering for the individual since the government could do anything it pleased in regards to the security, integrity, or public affairs of the nation. On the grounds that granting this much authority to the machinery may lead to corruption, this is not being justified.

Conclusion

As stated by the great political philosopher Sir Jean Jacques Rousseau "Man is born free but everywhere in chains". The meaning of this phrase simply means that there would always be a restriction upon a human being no matter what the circumstances are there. It is good in the aspect that it helps in striking a proper balance in society. The Law of Sedition was brought up by the colonial rulers to suppress the voices of the revolutionary nationalists but when India regains its independence from them the law was retained in the IPC which was

²³ Dr Prashant Prabhakar Deshpande, *Sedition Law in historical perspective – Part – II*, Times of India Blog, <https://timesofindia.indiatimes.com/blogs/truth-likes-and-politics/sedition-law-in-historical-perspective-part-ii/> (last visited June 17, 2023).

²⁴ The Wire Staff, *Pakistan: Lahore High Court Strikes Down Colonial-Era Sedition Law*, <https://thewire.in/south-asia/pakistan-lahore-high-court-strikes-down-colonial-era-sedition-law> (last visited June 17, 2023).

²⁵ Kieran Correia, *The Law Commission's Report on Sedition Misunderstands What the Courts Said*, The Wire, <https://thewire.in/law/sedition-free-speech-law-commission-supreme-court> (last visited June 17, 2023).



criticized on the several ground that it is harsh in its nature and the government may use it for serving its purpose. However, in protecting the national integrity of the nation the government can take any steps to protect it but in protecting too it should not take any actions which are beyond its authority and should have a humanistic approach while dealing with the offence of sedition. The ability to speak freely and raise one's voice is now a fundamental human right and is a cornerstone of democracy in the current day. Thus, every speech or related aspect should not be treated as sedition, and the government while detaining any offender under the charge of sedition, should aim to protect his/her human rights too. In today's time when we are evolving day by day and making significant growth in every sector and flourishing in it too so our laws should also be needed to be more adaptive to current times as the laws are for the people so they should be dynamic and not static. It should contain all the things which are needed to be there to provide easy solutions to the problems and make the objective of the law successful.

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