

The Ambiguous Nature of Sedition Law in India

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ABSTRACT

Since the colonial times, the law pertaining to sedition within the Indian subcontinent remains rather ambiguous in nature. There is no succinct way of defining sedition in India and for this reason there has been a lot of controversy and staunch criticism against sedition law in India. Law governing sedition was first introduced in India during colonial times in 1860 and was predominantly used to curb or suppress any kind of dissent or criticism of the British government at the time. Ever since then, the usage and application of the law as prescribed under section 124-A of the Indian Penal Code, 1860 has been a major concern. The law's imprecise and unclear nature gives law enforcement officials broad latitude in how they choose to implement it. The sedition law's usage of the word "disaffection" is not defined, leaving it open to many interpretations. As a result, the law has been abused and misused, frequently by the government and other authorities to settle political scores.

The indiscriminate use of the Sedition Act has a chilling effect on free speech and expression since many people are reluctant to share their thoughts out of concern that they will face legal repercussions under the Sedition Act or under the Indian Penal Code.

Keywords: Ambiguous, sedition, succinct, imprecise, disaffection.

INTRODUCTION

The Indian Penal Code (Amendment) Act 1898 (Act V of 1898) revised Section 124A of the IPC to provide for a punishment to get around for life or any shorter term. In contrast to the previous definition of sedition, which included inciting or attempting to incite feelings of hostility towards the legally established government, the new definition now includes inciting hatred or disdain for the government.

SEDITION LAW IN PRE- INDEPENDENT INDIA

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By amending the clause with *Act No. 26 of 1955*, the punishment was changed to either life imprisonment and/or a fine, or three years' imprisonment and or a fine. In India, political dissent was actively suppressed by the application of Section 124A IPC. *Jogendra Chandra Bose*²⁷⁸ was accused of sedition for opposing the Age of Consent Bill and the damaging effects of British colonisation on the economy. The court made a distinction between sedition as it was then recognised by English law and section 124A IPC when directing the jury on the matter. It was noted that the offence described in section 124A IPC was less severe than that in England, where any overt act motivated by seditious feelings was punishable. In India, however, only acts carried out with the "intention to resist by force or an attempt to excite resistance by force" were subject to this section's provisions. According to some, section 124A IPC punished disaffection rather than disapproval.

According to one definition, disapprobation is just disapproval, but disaffection is a feeling that is opposed to affection, such as hate or hatred. According to section 124A IPC²⁷⁹, "disaffection" is defined as "the use of words calculated to produce in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise", and the doing of such with the intention of producing such a disposition in his hearers or readers, it denotes all kind of animosity, antagonism, disdain, and hatred towards the government. The best generic term for all types of hostility towards the government is probably "disloyalty". What the law means by the disaffection a man must not cause or attempt to cause is that he must not incite others to feel any type of animosity towards the government.

In the case of *Niharendu Dutt Majumdar v. King*²⁸⁰ is distinction was drawn between what was understood of sedition when the Indian Penal Code was enacted (in 1860) in comparison to what was perceived of it in the year 1942, particularly when large scale protests for the independence of India, had picked up pace throughout the entire country. The court opined that sedition was not made an offence to tend to wounded or disrupted vanity of the governments, instead it is an instance where the government and law of the land are not obeyed leaving room for anarchy and violence within the society. Public disorder or the mere likelihood of public disorder thus was the gist of the offence. This disorder should have been incited by acts or

²⁷⁸ *Queen-Empress v. Jogendra Chunder Bose*, AIR 1942 FC 22.

²⁷⁹ Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).

²⁸⁰ *Niharendu Dutt Majumdar v. King*, AIR 1935 Cal 636.

words complained of therein. As an aftermath of this case, there was vehement opposition in the constituent assembly and thus the word sedition does not find a place in the constitution of India till date.

CONSTITUENT ASSEMBLY DEBATES ON SEDITION

From the constituent assembly debates during the colonial period and after, it can be deduced that, there was staunch opposition regarding the inclusion of sedition into Article 13 of the draft constitution (article 19 in the final draft) as a form of restriction on the fundamental right of freedom of speech and expression. It was a ubiquitous opinion that the inclusion of sedition into the constitution would be a reoccurrence of the colonial governance and should thus not be able to see the light of the day in Independent India. It was further opined that despite the fact that the administration of the government at the moment has a tendency to solidify itself, it must be a fundamental right of every citizen in the country to remove that government without using force, by convincing the populace, by highlighting its administrative flaws, its working procedures, and so forth.

During the previous administration, the word “sedition” had become offensive. Therefore, we agreed with the amendment that the word “sedition” should be removed, with the exception of situations in which the entire state is being attempted to be overthrown or undermined through force or other means, resulting in public disorder; however, any attack on the government itself should not be made a crime under the law. We now enjoy that independence. The court in *Kamal Krishna Sircar v. Emperor* refused to label a speech criticising government legislation declaring the Communist Party of India and various trade unions and labour organisations illegal as seditious while the British Government was defending expanding the ambit of laws on sedition. The court stated that attributing seditious intent to this type of communication would entirely stifle India's freedom of speech and expression. The case reflects the tendency of the then Government to use sedition to suppress any kind of criticism.

POST CONSTITUTIONAL DEVELOPMENTS

Sedition remained in the Indian penal legislation after independence even though the Constitution's founders did not approve of it as a limitation on the right to free speech and expression. Section 124A IPC was first brought up for discussion after independence in the

case of *Romesh Thapar v. State of Madras*.²⁸¹ The Supreme Court ruled that any measure restricting free speech and expression would not be covered by Article 19(2) of the Constitution²⁸² unless it poses a threat to the “security of or tends to overthrow the State”. Due to the ruling in *Romesh Thapar*, two more restrictions “friendly relations with foreign State” and “public order” were inserted to Article 19(2) by the first Constitutional Amendment. That restrictions on the right to free speech and expression could be imposed in cases of “serious aggravating forms of public disorder that endanger national security” rather than “relatively minor breaches of peace of purely local significance.”

Section 124A of the IPC was found unconstitutional by the Punjab High Court in *Tara Singh Gopi Chand v. The State*²⁸³, because it violates the right to freedom of expression. Observing that “a law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has occurred”, speech and expression are protected under Article 19(1)(a) of the Constitution. In the case of *Raghubir Singh v. State of Bihar*,²⁸⁴ the Supreme Court ruled that it is not essential to engage in both conspiracy and sedition to commit an offence. That the defendant should have actively tried to incite hatred, contempt, or disaffection, or that he should have written the seditious content.

IS SEDITION VIOLATIVE OF FREEDOM OF SPEECH

Democracy is not just another name for majoritarianism; rather, it is a system that values every voice and counts every person’s opinion, regardless of how many people support it. A democracy is where it. It is only inevitable that different accounts of the same incident may have contradictory interpretations. It is important to take into account all points of view, not just the dominant ones, and to acknowledge opposing and critical viewpoints as well. Because it is essential to achieving a larger, frequently ultimate, social goal, free speech is protected.

People must actively and intelligently participate in all areas and affairs of their society and the State under a democratic system. They have a right to be informed, with the goal to enable them to consider and form a broad opinion about the same and the way in which they are being managed, tackled, and administered by the Government and its functionaries. About current

²⁸¹ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.

²⁸² INDIA CONST. art. 19(2).

²⁸³ *Tara Singh Gopi Chand v. The State*, AIR 1987 SC 149.

²⁸⁴ *Raghubir Singh v. State of Bihar*, AIR 1951 Punj. 27.

political, social, economic, and cultural life as well as the hot topics and significant issues of the day. A society with an open exchange of ideas has well-informed citizens, which leads to excellent administration. It is vital for the same that people not be in a continual. They are afraid of suffering severe repercussions for speaking up and expressing opinions that differ from the popular opinion at the time. To accomplish this goal, the public needs an accurate and unbiased description of what happened so that they can develop their own judgement and make their voices heard, own thoughts and opinions on these topics, then decide on their next course of action.

The indiscriminate use of the law governing sedition has an intimidating impact on freedom of speech and expression since many people are reluctant to share their thoughts out of concern that they will face legal repercussions under the Indian Penal Code. The Sedition statute has been repeatedly called for to be repealed by activists and legal professionals. In order to comply with the freedom of speech and expression guaranteed by Article 19(1)(a)²⁸⁵ of the Indian Constitution, the Supreme Court and other high courts have frequently emphasized the need for a more specific and clear definition of sedition.

SUGGESTIONS TO IMPROVE SECTION 124A OF THE IPC

Narrow the scope of the section: Currently, section 124-A criminalizes any act or speech that is deemed to be 'disaffection' towards the government. This is very broad and could be misused to suppress legitimate dissent. Narrowing down the scope would help minimize the risk of misuse. Clearly define "disaffection". Disaffection is a broad phrase, which may cause misunderstanding and uncertainty.

Law enforcement and the public would both benefit from a more thorough and precise definition to help them understand the restrictions that apply. Introduce graduated penalties: Currently, section 124-A imposes a maximum sentence of life imprisonment, which is very harsh. Introducing graduated penalties proportionate to the offense committed would provide more flexibility for the judiciary to deliver appropriate punishment. Sedition is a crime against the State, hence more evidence must be presented in order to convict someone of it. This is vital to shield legitimate criticism and dissenting views from unjustified State interference and

²⁸⁵ INDIA CONST. art. 19(1)(a).

suppression. The right to free expression must be upheld, and any restrictions must have just and acceptable justifications.

The Constitution's Article 19(2)²⁸⁶ must be followed while interpreting Section 124A IPC²⁸⁷, and the restriction's reasonableness must be carefully examined in light of the relevant facts and circumstances. On the other side, there have also been cases where individuals have been accused of sedition for voicing claims that do not in any way jeopardize the safety of the country.

CONCLUSION

No careless exercise of the right to free speech or expression qualifies as seditious. A person shouldn't be penalised for simply having an opinion that conflicts with the current administration's policies and inside the division. Critiques of the current condition of affairs, such as declaring India "no country for women" or a racist society because of its concern with skin colour as a standard of beauty, do not "threaten" the concept of a nation. Sedition cannot be committed and should not be committed by disparaging the nation or a specific component of it. If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to criticize one's own history and the right to offend are rights protected under free speech. Although it is crucial to safeguard national integrity, it shouldn't be abused as a weapon to stifle free speech. In a healthy democracy, dissent and criticism are necessary components of a robust public discussion of policy matters. Therefore, to avoid unjustified limits, every restriction on the right to free speech and expression must be carefully examined.

²⁸⁶ INDIA CONST. art. 19(2).

²⁸⁷ Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).