

Law of Sedition: An Agent of Colonialism: A Critique

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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 with the historical background and the present status of the sedition in India and discusses its utility in twenty first century.

Keywords: law of sedition, right to speech and expression, human rights violation

1. Introduction

The recent trend of applying sedition laws against human rights activists, journalists, political activists, and public intellectuals in India have raised important questions on the undemocratic nature and the upon the discretion of the ruler of these laws, which were introduced by the British colonial Government. The application of these laws in recent Jaharlal Nehru University Case has faced a widespread public criticism and has raised serious questions about the validity of these laws in a modern constitutional democracy.

From the history of sedition laws it is quite clear that these laws are part of a larger framework of colonial laws. Britain introduced sedition laws to curb all types of nationalist movement in their occupied colonies. However, Sedition law was abolished in Britain through the Coroners and Justice Act, 2009, under Gordon Brown's Labour Government ^[1].

Interestingly, it is still prevailing in India and wantonly used by both the central and state governments to curb free speech of its people. The specificity of these laws lie in the language of 'disaffection' and severity of the punishment associated with them. Moreover, it was prevailing in all British colonies including India in their most draconian form ^[2]. They mainly used these laws to show the force of imperial power in the face of rising nationalism. Unfortunately, these laws have survived even after the demise of colonial rule and continue to haunt media personals, human rights activists, political dissenters and public intellectuals across the country.

2. Legal Definition of Sedition

The origins of the legal definition of the term 'sedition' can be traced back to the colonial period. According to Webster's Dictionary sedition includes all those acts and practices which have for their object to excite discontent or dissatisfaction towards the Constitution, or the government, or Parliament to create public discord and disorder ^[3].

In other words, sedition is conduct or speech inciting people to rebel against the state. Its legal meaning is inciting violence towards insurrection of established order and lawful authority, including subversion of the Constitution. Regarding the scope as well as the legal definition of sedition, there was a difference in opinion between the Federal Court in India and the Privy Council in Britain. In defining sedition in the *Niharendu Dutt Majumdar's Case* ^[4], the Federal Court of India had held that violent words by themselves did not make a speech or written document seditious in nature and that in order to constitute sedition the acts or words complained of must either incite to disorder or must be such as to satisfy ordinary prudent men that is their intention or tendency of the same ^[5]. However, the Privy Council, in the *Sadashiv case* ^[6] overruled that decision and categorically said that the offence consisted in exciting or attempting to excite bad feelings towards the government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Thus, by comparing both the decisions it is crystal clear that while Federal Court of India considered incitement to violence was necessary ingredients of the offence of sedition but according to the Privy Council, incitement to certain bad feelings towards the Government is enough for construction of the offence of the sedition, result of violence was not a considering point.

3. Development of law relating to sedition in India

The origin of law related to sedition in India is connected to the *Wahabi* Movement of 19th century. This movement was an Islamic revivalist movement, whose focus was to condemn and also protest against any change into the original Islam and return to its true spirit. The movement was led by Syed Ahmed Barelvi. The movement was active since 1830. With the raising of 1857 revolt, this movement turned into armed resistance against the British. Subsequently, the British termed *Wahabis* as traitors and rebels and carried out comprehensive military

operations against the *Wahabis*. The movement was fully suppressed after 1870. British also introduced the term “Sedition” in the Indian Penal Code 1870 to outlaw speech that attempted to “excite disaffection towards the government established by law in India”^[7]. So it is clear that Section 124A was not in the original Indian Penal Code when it was enacted in 1860 although under Macaulay’s Draft Penal Code of 1837-39 sedition had been incorporated in Section 113 but for some unaccountable reasons it was omitted from the Indian Penal Code of 1860. However, the need for such a law was felt shortly after the penal Code came into operation and in 1870 on suggestion of Sir James Stephen, the then law member of the Government of India, Section 124A was added in the Code by the Indian Penal Code (Amendment) Act, 1870^[8].

According to some legal scholars said that the omission was the result of a mistake, another explanation for not having the law of sedition in the Indian Penal Code was that the British Government wanted to adopt more wide-ranging strategies against the press^[9]. Since it came into operation in 1870, the law of sedition has continued to be used to restrain voices of protest, dissent or criticism of the government^[10].

4. Sedition Law and Independence Movement

British rulers used the sedition law to curb the Indian freedom movement and retain imperial power. The first reported use of Sedition law was against Jogendra Chandra Bose, editor of “Bangobasi”, in 1891 for his criticism of the “Age of Consent Bill”. He said that the bill was being forcefully imposed on Indians^[11]. During freedom struggle, targets of this law included renowned nationalists like Mahatma Gandhi, Bal Gangadhar Tilak and Annie Besant^[12]. In the case of *Queen Emperor v. Bal Gangadhar Tilak*^[13], the government claimed that some of his speeches that addressed to Shivaji killing Afzal Khan had instigated the murder of the Plague Commissioner Rand and another British officer, Lieutenant Ayherst. The two officers were killed as they were returning from a supper gathering at Government House, Pune, in the wake of praising the Diamond Jubilee of Queen Victoria’s rule. Tilak was convicted of the charge of sedition. In spite of, a spirited defence from Mohammad Ali Jinnah, who was amongst the most prominent faces of the Bombay Bar Association, the Judges convicted Tilak and sentenced him to a six years rigorous detainment with transportation.

Another famous decision was of *Annie Besant v. Advocate General of Madras*^[14]. The case dealt with Section 4(1) of the Indian Press Act, 1910, that was encircled like Section 124A of Indian Pinal Code. The relevant provision stated that any press used for printing or publishing newspapers, books or other documents containing words, signs or other visible representations that tended to incite scorn or hatred to government or any class of subjects would be liable to have its deposit forfeited. In this case, an attack was leveled against the British administration. The Privy Council ordered to seize the deposit of Annie Besant’s printing press.

Further in 1922, Mohandas Gandhi was also tried under Section 124A, along with Shankerlal Banker. They were charged with the writing and publication of three articles “Tampering with Loyalty”, “The Puzzle and its Solution” and “Shaking the Manes”, which were published in the newspaper, Young India. According to Noorani, the trial failed to deflect Gandhi from the course he had decided upon. It succeeded only in highlighting his qualities – dignity and felicity of expression

^[15]. Gandhi pled guilty and demanded that the judge give him the maximum punishment possible.

5. Prevalent Provisions of Sedition Laws in India:

5.1 Indian Penal Code, 1860

Section 124-A defines the offence of sedition. Section 124 A reads as follows -

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 established by law in India, 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.

Explanation 1-The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

So the offence of sedition under Section 124-A is the doing of certain acts which would bring hatred or contempt, or create disaffection against the Government established by law in India. Such acts can be committed by means of words, either spoken or written, or by signs, or by any kind of visible representation. The framework of this section was imported from various sources like (1) Treason Felony Act (operating in Britain), (2) the common law of seditious libel and (3) the English law identifying to seditious words. The common law of seditious libel governed both actions and word that related to citizens and the government, and also between communities of persons. It is however not clear from the provisions of the Section whether exciting or attempting to excite feelings of disaffection, hatred or contempt is punishable per se or whether exciting or attempting to excite people to tumult and disorder is necessary ingredient of the offence^[16]. Except the Section 124-A, there are other sections also which deals with the offences relating to sedition. Section 153A deals with sedition by causing class hatred. Sedition by promoting religious insult is punishable under Section 295A.

5.2 Criminal Procedure Code, 1973

The Criminal Procedure Code contains Section 95 which gives the government the right to forfeit material punishable under Section 124A on stating grounds. The section requires two conditions to be fulfilled:

1. That the material is punishable under the sections
2. The government gives grounds for its opinion to forfeit the material.

Chapter X of Criminal Procedure Code deals with maintenance of public order and tranquility and permits Police, Magistrate, Armed Forces to cause an unlawful public assemble to disperse, if necessary, by use of force and to restore public order. Acts which could be deemed to be seditious can be prevented by these pre-emptive actions^[17].

5.3 Prevention of Seditious Meetings Act, 1911

The Seditious Meetings Act, which was enacted by the British

to control dissent by criminalizing seditious meetings, unfortunately continues to be on our statute books. Section 5 of the Act empowers a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection towards the government or to cause a disturbance of the public tranquility. This legislation was specifically enacted to curb meetings being held by nationalists and those opposed to the British Government, the continuation of this legislation is completely unnecessary and undemocratic.

5.4 Unlawful Activities (Prevention) Act, 1967

According to Section 2(o) of the said Act, supporting claims of secession, questioning territorial integrity and causing or intending to cause disaffection against India fall within the ambit of unlawful activity. Section 13 punishes unlawful activity with imprisonment extending to seven years and a fine.

5.5 Insult to Indian National Flag and Constitution of India, 1971

Section 2 of the said Act states as whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

6. Constitution and Sedition Laws

The effect of these laws threatens to undermine, and gradually destroy, the legitimate and constitutionally protected right to protest, dissent or criticize the government^[18]. As a result after the Constitution of India came into operation the Constitutional validity of Section 124-A of the Code was challenged as being violative of the fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India^[19].

Article 19(1) (a) provides guarantee to every citizen freedom of speech and expression. That means every citizen of India can express their opinion freely. This right to freedom of speech and expression secures protection for severely censoring existing government structures, policies, actions and administrative schemes, coupled with protection for suggesting and recommending the required development of other systems. Freedom given under Article 19(1) (a) is not absolute one. Article 19(2) deals with the grounds of reasonable restrictions with regard to Article 19 (1) (a). Sedition has not been mentioned therein as one of the grounds justifying reasonable restrictions. Now the question comes whether Section 124-A of Indian Penal Code imposes reasonable restrictions on the freedom of speech and expression guaranteed under Article 19(1) (a).

However, this conflict between sedition and freedom of speech is not recent origin. The framers of the Constitution also have apprehended with the dilemma as to whether the word "sedition" should be used in Article 19(2) but finally they omitted it. It was witnessed that if they have the intention to insert it within Article 19 (2) they would have inserted it. Although, they decided not to use the word "sedition" in clause (2) but used the more general words which cover sedition and everything else also.

In *Romesh Thappar v. State of Madras*^[20], within 4 months of the Constitution of India coming into force, the newly established Supreme Court of India ruled on the issue of sedition. The petitioner was printer, editor, and publisher of a weekly journal in English called "Cross Road". The Government of Madras, in exercise of their power under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949 issued an order prohibiting the circulation of the journal in the state. The Court held that restriction on freedom of speech and expression can only be imposed on grounds mentioned in Article 19(2) of the Constitution. A law which authorizes imposition of restriction on grounds of 'public safety' or 'the maintenance of public order' falls outside the scope of authorized restrictions and therefore, a Constitution Bench of the Apex Court held by a majority of 4:1 that Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 violated the freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution.

In *Brij Bhushan v. State of Delhi*^[21], the validity of censorship previous to the publication of an English Weekly of Delhi was questioned. The Court struck down the Section 7 of the East Punjab Safety Act, 1949, on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression. Further, in *Tara Singh v. State of Punjab*^[22], Section 124-A, of Indian Penal Code was struck down as unconstitutional being contrary to freedom of speech and Expression guaranteed under Article 19(1) (a). The Court further held that India is now a sovereign democratic State. Government may go and caused to go without the foundation of the State being impaired. The law of sedition though necessary during the foreign rule has become inappropriate and obsolete by the very nature of the change which has come about. As a result to avert the constitutional difficulty from above mentioned the Supreme Court's decisions two words viz., 'in the interest of' and 'Public order' were inserted in the constitution by Constitution (First Amendment) Act, 1951. Further in the case of *Ram Nandan v. State of U.P.*^[23] the Hon'ble High Court held that section 124-A imposed restriction on the freedom of speech which is not in the interest of the general public and hence declared 124-A as *ultra virus* to the constitution as it cannot be saved by the expression '*in the interest of public order*'.

Whereas the Supreme Court of India in *Kedar Nath Singh v. State of Bihar*^[24] has held that Sedition under Section 124A of the Indian Penal Code is Constitutional in nature. While upholding the validity of Section 124A Supreme Court observed that:

Though the section imposes restrictions on the fundamental freedom of speech and expression, the restrictions are in the interest of public order and are within the ambit of permissible legislative interference with the fundamental right. There is a conflict on the question of the ambit of Section 124A between decision of the federal Court and of the Privy Council. The Federal Court has held that words, deeds or writings constituted an offence under Section 124A only when they had the intention or tendency to disturb public tranquility, to create public disturbance or to promote disorder, whilst the Privy Council has taken the view that it was not an essential ingredient of the offence of sedition under Section 124A that the words etc., should be intended to or be likely to incite

public disorder. Either view can be taken and supported on good reasons. If the view taken by the Federal Court was accepted Section 124A would be use constitutional but if the view of the Privy Council was accepted it would be unconstitutional. It is well settled that if certain provisions of law construed in one way would make them consistent with the constitution, and another interpretation would render the unconstitutional, the Court would lean in favour of the former construction. By application of harmonious construction, keeping in mind the reasons for the introduction of Section 124 A and the history of sedition the section must so construed as to limit its application to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence.

The Court further held that

Any spoken or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the government established by law is subverted. Hence, the continued existence of the government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124A has been characterized, comes under Chapter VI relating to offences against the State. Hence, any acts within the meaning of Section 124A which have the effect of subverting the government by bringing that government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. However, the Section has taken care to indicate clearly that strong words used to express disapprobation of the measures of government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to government established by law is not the same thing as commenting in strong terms upon the measures or acts of government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

Thus, the Supreme Court upheld the constitutionality of the sedition law, but at the same time curtailed its meaning and limited its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. The judges observed that if the sedition were to be given a wider interpretation, it would not survive the test of constitutionality^[25]. Explanation to the section makes it clear

that criticism of public measures or comment on governmental action, however strongly worded, within reasonable limits under Article 19(2) and consistent with the fundamental rights of Article 19(1) (a) is not affected. It is only when the words have the pernicious tendency or intention of creating public disorder or disturbance of law and order then the law of sedition steps in^[26]. The Supreme Court in subsequent cases has upheld this interpretation^[27]. Lastly, it has also been emphasized that the courts must take into consideration the growing awareness and maturity of its citizen while determining which speech would be sufficient to incite them to attempt to overthrow the government through the use of violence. How the words and acts would endanger society that differ from time to time and depends on the stability of that society. Thus, meetings and processions that would have been considered seditious 150 years ago would not qualify as sedition today. This is because times have changed and society is stronger than before^[28]. This consideration becomes crucial in determining the threshold of incitement required to justify a restriction on speech. In *Maneka Gandhi v. Union of India*^[29], the Supreme Court held that criticizing and drawing general opinion against policies and governmental measures so long as they do not abuse that power to the injury of others including the state is consistent with freedom of speech and expression. Liberty is given to all to express their opinions within a reasonable limit. The law of sedition offends the fundamental principle of freedom of speech and expression which are now universally recognized. In *S. Rangarajan v. P. Jagjivan Ram*^[30], the Court held that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It gives an indication of what sort of acts might be considered seditious, when it observes that the film in question did not threaten to overthrow the government by unlawful or unconstitutional means, secession or attempts to impair the integrity of the country.

7. Some Recent Cases of Sedition

In 2009, V Gopalaswamy (Vaiko) was slapped with sedition charges for his statements against India's sovereignty in speech on Sri Lanka's war with LTTE^[31].

In 2010 Arundhati Roy and others were charged under sections 124A (sedition), 153A (promoting enmity between classes), 153B (imputations, assertions prejudicial to national integration), 504 (insult intended to provoke breach of peace) and 505 (false statement, rumour circulated with intent to cause mutiny or offence against public peace when she spoke at "Azadi-the Only Way" a conference in Jammu and Kashmir^[32].

In 2010 Binayak Sen was accused of sedition by the Chhattisgarh Government for allegedly supporting the outlawed Naxals and thereby violating the provisions of the Chhattisgarh special public security act (CSPSA) and the Unlawful Activities (Prevention) Act 1967^[33].

In 2010, Noor Mohammad Bhat, a lecturer from Gandhi Memorial College was arrested for setting an anti-India question paper^[34].

In 2011, a nationwide anti-corruption movement gathered pace in the leadership of a veteran Gandhian Anna Hazare demanding Jan Lokpal Bill. Aseem Trivedi became a part of the movement and started a cartoon based campaign to support

the movement. He launched a website www.cartoonsagainstcorruption.com consisting of his sharp anticorruption cartoons targeting corrupt system and the politics. Unfortunately, his website was suspended by Crime Branch, Mumbai for displaying objectionable pictures and texts related to flag and emblem of India^[35].

In 2014 Kashmiri students from Swami Vivekananda Subharti University in Meerut who cheered for Pakistan during the Asia Cup were charged under sedition law.

In 2015 the Gujarat Government arrested a Patel leader, Hardik Patel, under sedition for sending messages containing “offensive language against the Prime Minister, the State Chief Minister and Amit Shah, the President of BJP”. These cases are indicative of a high level of intolerance being displayed by governments towards the basic freedom enjoyed by citizens. Democracy has no meaning without these freedoms and sedition as interpreted and applied by the police is a negation of it^[36].

In February 2016, Jawaharlal Nehru University student union president Kanhaiya Kumar was arrested on charges of sedition under Section 124-A of Indian Penal Code. However this arrest has raised a political turmoil in the country with academicians and activists marching and protesting against this move by the government. While those associated with JNU, past and present feel that the government is stifling and ruthlessly suppressing dissent, there is another part of the population that believes Jawaharlal Nehru University for long has been supporting anti-India activities and the students involved must be punished for this act. Protests by both sides are continuing. On 2 March 2016 the videos purporting to show this activity were found to be false and he was released after three weeks in jail^[37].

8. Conclusion

It can be concluded from the lengthy list of examples cited above; the law has been used in numerous ways to restrict the freedom of speech and expression in India. These restrictions cross all cultural, religious, political, and national boundaries.

India acceded to the International Covenant on Civil and Political Rights, 1966, under Article 19 of the Covenant provides that a legislation which tries to impose restriction on freedom of speech and expression must pursue one of the aims listed below, namely, the right to reputations of the others or the protection of national security, public order or of the public health or morals.

The raising agitation and debate against sedition creates anxiety to the Government and as a result currently the Indian Penal Code (Amendment) Bill, 2016^[38] has been moved to the Lok Sabha. The proposed amendment moved as “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 principles of democracy, secularism or national unity enshrined in the Constitution of India or when such words or actions directly results in the use of violence or incitement of violence and results in the commission of a grievous offence 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.”

The proposed amendment is yet to pass in the Lok Sabha. Most interestingly, the phrase “*the Government established by law*” is substituted to the phrase “*the principles of democracy,*

secularism or national unity enshrined in the Constitution of India”. The reason behind that Government is the part of the State or nation, not the state itself. Therefore, disaffection towards the government does not means disaffection to the state. Moreover, government may go and caused to go without the foundation of the State being impaired. If the provision is remained same the ruling party may choked down the voice of the opposition by charging sedition against them.

Moreover, according to the proposed amendment every speech or expression containing hatred or dissatisfaction is not ipso facto comes with the ambit of sedition. Only when such words or actions directly results in the use of violence or incitement of violence in the public then it comes within the purview of the offence sedition.

We hope that this positive and well appreciated amendment of the Penal Code can fill the lacuna of the sedition law in India. Last but not the least, the quantum of the punishment provided for the offence also needs to be rationalized. Perhaps, a maximum punishment of three years of rigorous imprisonment and fine would be appropriate, taking into consideration the gravity of the offence.

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