International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 12-11-2019; Accepted: 13-12-2019
www.lawjournals.org
Volume 6; Issue 1; January 2020; Page No. 61-65

Sedition Law: A comparative view in India with other countries

Tanu Kapoor
Department of law, BA, LL B (Sociology Hons) College, Rajiv Gandhi national university of law, Patiala, Punjab, India.

Abstract
On one hand, The Constitution of India, under its Article 19 (1) (a), provides the right to freedom of speech and expression to its citizens while on the other hand, under the Article 124A of Indian Penal Code (IPC), the restrictions to such freedom of speech and expression have been laid down in the form of 'Sedition Law.' There are two parts in which the research has been divided, the first one describing, 'Whether the Sedition law acts genuinely', and the second part describing, a comparative study of Sedition Law being practiced in India and other countries.

Keywords: constitution, sedition, freedom, law

Introduction
The Constitution of India under Article 19 (1) (a) states that "allcitizen shall have the right to freedom of speech and expression." This article was provided for in the constitution sinceit was thought that freedom to express ones opinion without any fear of repercussion is one of the main features of any democratic country. The Constitution itself empowers every citizen to criticize the government, have a differing opinion and it is only through discussion and debates that any society develops into a better society. Although Article 19(1) (a) provides for freedom of speech and expression keeping in mind the misuse of this freedom the Constitution however through Article 19(2) provides for reasonable restriction on the right. However this is not the only restriction on the freedom to express ones opinion, under section 124A of the IPC (provision regarding sedition) states " whoever by words, either spoken or written or by signs, or by visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection by 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 3 years, to which fine may be added, or with fine."

Objectives of Research
- To study the origin and aim of Sedition Law in India.
- To study whether Sedition Law is being practiced genuinely in India.
- To have a Comparative study of Sedition Law being practiced in India and other countries.

Research Methodology
The research follows doctrinal and qualitative method. The data is from secondary sources like books, articles, case laws, journals, law reviews etc. The research work is original and due acknowledgement has been given to the sources of this research paper. It involves descriptive analysis with critical analysis and evaluation of judicial decisions. In the course of analysis, original sources such as the decisions of the Supreme Court of India and other courts in India and abroad are consulted.

Research Design
The research begins with the explanation of Articles of The Constitution of India and Indian Penal Code which provides various rights and restrictions to the freedom of speech and expression in India. Next, the research covers the objective 'Whether the Sedition Law is being practiced genuinely in India'. In order to get a better understanding, few case laws related to Sedition law have been studied. Lastly, the research compares the Sedition Law being practiced in India and in other countries.

The Origin and Aim of Sedition Law in India
Section 124A of IPC or sedition law is a colonial law first mentioned in Macaulay's Draft Penal Code 1837 under Section 113. However it did not make into the IPC until 1870. The official reason for omission as provided by Mr. James Stephens have been through mistake and therefore this was rectified and sedition was included as offence under section 124A IPC by the first amendment act. Section 124A IPC was amended in 1898 by the Indian Penal Code (Amendment) Act 1898 (Act V of 1898) providing for punishment of transportation for life or any shorter term. While the former section defined sedition as exciting or attempting to excite feelings of disaffection to the Government established by law, the amended section also made bringing or attempting to bring in hatred or contempt towards the Government established by law punishable[1]. The reason for adding this law was also that the British feared the rise of Wahhabi Movement in Bengal, Uttar Pradesh and North Western India and to suppress that movement the law was added. Throughout the Indian Freedom struggle the colonial government used this law to suppress any form of voice raised against them. Bal Gangadhar Tilak one of the prominent leaders of India's freedom struggle has been tried and convicted under this law twice once in 1897 and 1908. Mahatma Gandhi another victim of the said law called it as "prince among the political sections of the IPC designed to suppress the liberty of the citizen."
The guidelines for implementation of this law were clarified by a constitutional bench in the 1962 landmark sedition case, Kedar Nath Singh v. State of Bihar [2]. The bench

highlighted an important caveat. An act counted as sedition if and only if it constituted an "incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace. This law has gained a controversial position in India mainly due to constitutional provision of freedom of speech and expression guaranteed as fundamental right under Article 19 (1)(a). Giving voice to the importance of the freedom of speech, John Stuart Mill advocated for the free flow of the ideas and expressions in a society. He argued that for the stability of a society one must not suppress the voice of the citizens, how so ever contrary it might be. To reach a point of conclusion and that too a right conclusion, in certain cases, open public discussions and debates are inevitable.

According to Mill, this could be achieved through the right to freedom of speech. The right not only makes it possible to highlight the popular opinion of a society but also provides a platform to the suppressed and unheard people who wish to voice against any celebrated culture. Mill further points out that a good government is the one where the intelligence of the people is promoted.

Going through the background of this law it becomes clear that the reason this law was introduced in India was clearly to suppress any form of dissenting voice against the colonial government which would arouse any form of discontent against the government and hence endangered there rule over the country

Is Seditionlaw Being Practiced Genuinely in India?

In India, a person can be charged with Sedition for commenting or even liking a Facebook post, criticizing a yoga guru, cheering a rival team, drawing cartoons, asking provocative questions in a university or not standing in a cinema hall when the National Anthem is being played.

Taking an example, when an actress-politician, Divya Spandana, returned from a trip to Islamabad, she found that Pakistan is not hell as it is considered. She reposted it on the remark of the former Defence Minister of India, Manohar Parrikar, who remarked that going to Pakistan is hell. A lawyer filed a private case in a local court, seeking to get her charged with sedition for "appreciating the people of Pakistan", India's neighbour and rival. According to the lawyer, by saying that people in Pakistan are good, she has committed sedition as this is an anti-national statement. For decades, successive governments have used a colonial-era sedition law - the dreaded section 124A of the antiquated Indian Penal Code - against students, journalists, intellectuals, social activists, and those critical of the government. Mahatma Gandhi, who was charged with sedition, famously said the law was "designed to suppress the liberty of the citizen". In the decades after independence in 1947, the law was used against people accusing the ruling Congress government of corruption and tyranny, and little-known Communist leaders who exhorted people to "overthrow the government and capitalists". In 1951, the Prime Minister Jawaharlal Nehru described the law as "highly objectionable and obnoxious". In 1962, the Supreme Court imposed limits on the use of the law, making incitement to violence a necessary condition. More than half-a-century after the top court imposed restrictions on using the law, authorities appear to be flouting it with impunity. According to the report of National Crime Records Bureau, as many as 47 sedition cases were reported in 2014 alone, across nine states. Many of these cases did not involve any violence or incitement to violence. A total of 58 people were arrested in connection with the cases while the government has only managed one conviction.

- In September 2001, cartoonist Aseem Trivedi was arrested after a complaint that his cartoons mocked the constitution and national emblem. The charges were dropped a month later following widespread criticism and public protests.
- In 2012 and 2013, an astonishing number of 23,000 men and women who protested against a nuclear power plant in Tamil Nadu were held for "waging war against the state" and sedition - 9,000 of them for sedition alone.
- In March 2014, 60 Kashmiri students in Uttar Pradesh were charged with sedition for cheering for Pakistan in a cricket match against India. Authorities dropped the charges following legal advice from the law ministry.
- In August 2014, authorities in Kerala charged seven young men, including students, with sedition after a complaint that they had refused to stand up during the national anthem in a cinema.
- In October 2015, folk singer S Kovan was held in Tamil Nadu for two songs criticising the state government for allegedly profiting from state-owned liquor shops at the expense of the poor.
- In February 2016, student leader Kanhaiya Kumar was arrested and charged with sedition for allegedly shouting anti-India slogans. He was later freed on bail.These incidences reflect that application of Sedition Law in India is very arbitrary.

The most obvious concern is that in each of these (and numerous other) cases, the charges were filed and sometimes arrests made even without the provision of proof of actual incitement to violence. Currently, even discussing the violation of a people's rights for decades and the question of their sovereignty is deemed as unpatriotic, unacceptable, and violent. This effectively sends out the message that it is preferable to not speak out on contentious issues than to speak out and offend invisible sensibilities. But the latent and larger issue is the possibility for a slow dissolution of criticism of the state. Former Madras High Court judge K. Chandru describes sedition law as a 'political law.' It is always misused by the political class. The Supreme Court has clearly said that mere speech doesn't qualify as sedition. Sedition law is always misused in India. In Tamil Nadu, singer S.Sivadas was booked under sedition for singing against TASMAC shops and the government. If a law is likely to be misused, then it is an arbitrary law. An important mark of a robust civil society is the space for dissent as much as discussion. When there are issues that governments implicitly and unilaterally declare as having just one side, the erosion of this foundation has already begun.

Comapritive Study of Sedition Law in India and in other Countries India

Sedition was not acceptable to the framers of the Constitution as a restriction on the freedom of speech and expression, but it remained as it is in the penal statute post-independence. After independence, section 124A IPC came up for consideration for the first time in the case of Romesh Thapar v. State of Madras[3]. The Supreme Court declared that unless the freedom of speech and expression threaten

the security of or tend to overthrow the State', any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution.

The colonial government had no interest in providing people freedom of speech and expression in fact it was toxic to their proper rule over the country. If people were allowed to question the government or disagree with it, it would be a barrier for the ruling country to utilize the resource of the country for their own benefit. Why would any colonial government allow its decision to be questioned?

But in a democracy to have such law which criminalises ones freedom to express discontent against the government raises a serious question over the democracy and its principles. There have been instances where both state as well as the central government have used this law as a weapon to suppress any voice of dissent against their government.

Take for instance the case of Aseem Trivedi v State of Maharastra an Indian cartoonist and activist best known for his anti-corruption campaign. His famous and controversial cartoon for which he was charged for sedition was one where the Parliament was depicted as a commode & the national emblem in negative manner having replaced the with rabid wolves. Now this was his way of showing his disappointment with the government which according to him was corrupt but as the government did not like it they pushed a charge of sedition against him. This led to widespread protest among other activist who claimed that Indian government has become intolerant due to its series of scandals. The question which arises here is "does criticizing India or the government count as sedition?" Markandey Katju said "Politicians must learn to be tolerant. This is not a dictatorship." A bench consisting of Chief Justice Mohit Shah and Justice M N Jamdar of the Bombay HC reiterated by saying "the charge of sedition under sec 124 A of the IPC aims at rendering penal only such activities as would be intended, or have a tendency to create disorder or disturbance of public peace by resort to violence.

The judgement said "A citizen has a right to say or write whatever he likes about the government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the government established by law or with the intention of creating public disorder.

Another example will be of Arundhati Roy who is a fierce critic of government policy in Kashmir and anywhere else. She was charged with sedition after her comment made at a conference on "Azadi-the Only Way" which stated that "Kashmir is not an integral part of India. If convicted of the charge she could have been given a life imprisonment.

If we go by the statement it was a mere opinion which in no way intended to wage a war against the government established by law or incite violence. So on what basis a charge of sedition was filed against expreher? If we see it is the government which according to their whims and fancies has charged people of sedition. However courts through its various judgement has tried to clarify that a mere criticism of the government could not be put under sedition until and unless there is the intention or tendency to incite public disorder or violence against the government. In another landmark case of Kedar Nath Singh vs. State of Bihar it is also the first case of independent India, where the Supreme Court draw a line between disloyalty to the government and expressing discontent on the measures of the government.

Therefore, if we analyse this law from its origin it could be clearly concluded that this draconian law was introduced in fact forced on us by the colonial government to suppress the uprising movements of that time which threatened and questioned the rule of the government and surely it served its purpose when freedom fighters like Bal Gangadhar Tilak, Mahatma Gandhi were charged under it. Interestingly we still follow this law post Independence. From time to time even our democratic government has used this law as a weapon to suppress any voice of dissent which according to me is threat to proper functioning of the democracy. Surprisingly this law does not find any place in the statue of the England, hence it is time we do away with this law since we already have laws to keep a check on the speech of person which are more reasonable than this law. It would only be called democracy when a person is allowed to think, express and write his opinion without any fear of repercussion following his act.

United Kingdom

The offence of sedition can be traced to the Statute of Westminster 1275 when the King was considered the holder of Divine right. [4] In order to prove the commission of sedition, not only the truth of the speech but also intention was considered. The offence of sedition was initially created to prevent speeches inimical to a necessary respect to government' [5]. The De Libellis Famosis [6], case was one of the earliest cases wherein seditious libel, whether true or false was made punishable'. This case firmly established seditious libel in United Kingdom [7]. The rationale of this judgment was that a true criticism of government has a greater capacity to vilify the respect commanded by the government and cause disorder, and therefore needs a higher degree of prohibition. The global trend has largely been against sedition and in favour of free speech. While abolishing sedition as an offence in 2009, the then Parliamentary Under-Secretary of State at the Ministry of Justice of the United Kingdom reasoned that:

Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today… The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom… Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech [8]. Act, 2009.

United States

The United States Constitution proscribes the State from enacting any legislation curtailing the first amendment - right to expression. Sedition was made a punishable offence in the United States through the Sedition Act of 1798 [9]. This Act was repealed in 1820. In 1918, Sedition Act was again enacted by the U.S. Congress to protect American interests in the First World War.

The restriction on free speech has, however, been narrowly construed in subsequent cases. In Yates

v. United States, [10] the Supreme Court distinguished advocacy to overthrow as an abstract doctrine from an advocacy to action.

The U.S. Constitution though forbids apparent restrictions on speech, there are various doctrines that are practiced to

avert hate speech. The doctrines such as 'reasonable listeners test, present danger test, fighting words' are just examples. The chilling effect concept had been recognised most frequently and articulated most clearly in decisions chiefly concerned with the procedural aspects of free speech adjudication.

Australia

The first comprehensive legislation that contained sedition offence was the Crime Act 1920. The provisions on sedition in this Act were broader than the common law definition as subjective intention and incitement to violence or public disturbance were not the sine qua non for conviction under these provisions. The Hope Commission constituted in 1984 recommended that the Australian definition of sedition should be aligned with the Commonwealth definition.

Subsequently, the sedition provisions were again reviewed by the Gibbs Committee in 1991. It was suggested that while the offence of sedition should be retained, convictions should be limited to acts that incited violence for the purpose of disturbing or overthrowing constitutional authority. In 2005 amendments were made in Schedule 7 of the Anti-Terrorism Act (No 2) 2005, including the sedition as an offence and defences in sections 80.2 and 80.3 of the Criminal Code Act 1995. The Australian Law Reform Commission (hereinafter ALRC) reviewed whether the use of the term sedition was appropriate to define the offences mentioned under the 2005 amendment.

The Recommendation of the ALRC was implemented in the National Security Legislation Amendment Act 2010 wherein the term sedition was removed and replaced with references to urging violence offences.

Conclusion

In a democracy, singing from the same songbook is not a benchmark of patriotism. People should be at liberty to show their affection towards their country in their own way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means. Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the Government of the day, a person should not be charged under the section. Expression of frustration over the state of affairs, for instance, calling India no country for women', or a country that is racist for its obsession with skin colour as a mark of beauty are critiques that do not threaten the idea of a nation. As compared to other countries like United Kingdom, United States and Australia, India's perception of Sedition Law is different. While the law has been abolished in other countries on the basis of it being arbitrary, it is still valid in the eyes of Law in India. The political parties in power are misusing the Sedition Law against those who are putting their views in favour of opposition. Somebody putting forward his/her opinions regarding a particular issue cannot be charged with Sedition unless the thoughts provoke the public in general against the government. The Law should be applied only after completely investigating the motive and result of the said opinion. While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinised to avoid unwarranted restrictions.

References

1. See KI, Vibhute PS Pillai's Criminal Law 335 Lexis Nexis Butterworths, Nagpur, 2012.
2. Kedar Nath, Singh v. State of Bihar, AIR, 1962, 955.
3. Romesh Thapar v. State of Madras, AIR, 1950, 124.
4. See English PEN. A Briefing on the Abolition of Seditious Libel and Criminal Libel, 2009.
5. William T Mayton. Seditious Libel and the Lost Guarantee of a Freedom of Speech Colum. L. Rev. 1984; 84:91.
6. 77 Eng, Rep. 250 KB, 1606.
7. Supra note 5.
8. Criminal libel and Sedition Offences Abolished, Press Gazette, 2010, 13.
9. Section 2 of the Sedition Act, defines sedition as. To write, print, utter or publish, or cause it to be done, or assist in it, any false, scandalous, and malicious writing against the government of the United States, or either House of Congress, or the President, with intent to defame, or bring either into contempt or disrepute, or to excite against either the hatred of the people of the United States, or to stir up sedition, or to excite unlawful combinations against the government, or to resist it, or to aid or encourage hostile designs of foreign nations, 1798.
10. Yates V. United States, U.S. 1957; 354:298.