



Sedition law: A threat to free speech and democracy

Ruchi Kumari

Assistant Professor, Department of Legal Studies, Jharkhand Rai University, Ranchi, Jharkhand, India

Abstract

India is the largest democracy in the world and freedom of speech and expression is considered as an essential element of democracy. Freedom of speech and expression plays a key role in shaping public opinion on social, political, and economic issues. It is truly a mother of all liberties. However, the sedition laws have empowered the executive to use this vaguely defined provision as a means to control public opinion and arbitrarily exercise authority. The recent instance of invoking sedition laws in several cases plainly demonstrates that the government is using this as a political tool to suppress dissenting voices. Sedition laws and their flagrant abuse attacks the very foundation of the liberties and freedom guaranteed by our Constitution. Most importantly, it has a chilling effect on journalists and activists who criticise government's rules and policies freely. The rampant misuse of sedition law shows that it is a matter of serious concern. This article analyses the sedition law that exist in India and the way its misuse impacts freedom of speech and expression and democracy. It also discusses its status in other countries around the world.

Keywords: sedition, section 124A, dissent, criticism, freedom of speech, expression, misuse

Introduction

The term "sedition" is derived from the latin word 'seditio'. 'Sed' means – apart and 'itio' means – going, thus signifying something which is 'going away from' which during Roman times meant "an insurrectionary separation (political or military); dissension, civil discord, insurrection, mutiny" ^[1]. As per Oxford Dictionary, it is conduct or speech inciting people to rebel against the authority of a state or monarch ^[2].

Sir James Stephen has defined the offence of sedition as "Everyone commits a misdemeanor who publishes verbally or otherwise any words or any document with a seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of 'seditious words'. If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a 'seditious libel' ^[3].

Section 124A of the IPC, 1860 deals with Sedition.

Section 124A provides 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 ⁵[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.

Sedition is a cognizable, non bailable and a non-compoundable offence, triable by the Court of Sessions. As per section 196(1)(a) of Criminal Procedure Code, 1973, no court is empowered to take cognizance of this offence except with the prior sanction of the Central or the State Government, as the case may be.

Section 124A of the IPC was originally part of Macaulay's Draft Penal Code of 1837-39 as section 113, but it did not find mention in the final draft of the IPC, 1860. As per Sir James F. Stephens, the omission of a section dealing with sedition in IPC was a result of mistake ^[4].

Unfortunately, Section 124-A's broad application allows the State to use it as a weapon against those who oppose its authority. Over the years, there have been a number of high-profile instances that draw attention to the contentious application of this section in Independent India, raising concerns about its compatibility with freedom of expression. Notable cases include the charges against JNU students, activists like Hardik Patel and Binayak Sen, writers like Arundhati Roy, cartoonists like Aseem Trivedi, or journalists like Siddharth Varadarajan, Kaneez Fathima, and Vinod Dua. These illustrations show how the provision has been constantly misused. Human rights activists and a number of civil rights organisations have called for the abolition of Section 124A, arguing that no democratic nation should tolerate such a draconian piece of legislation.

According to the most recent edition of the NCRB's Crime in India report, 76 sedition cases were reported nationwide in 2021, a little rise from the 73 reported in 2020. The number of these cases were 93 in 2019, 70 in 2018, 51 in 2017, 35 in 2016, 30 in 2015 and 47 in 2014. Assam recorded for highest number of cases i.e. 69— 14.52 per cent between 2014 and 2021. The second-highest number of such cases after Assam was recorded from Haryana (42 cases), followed by Jharkhand (40), Karnataka (38), Andhra Pradesh (32) and Jammu & Kashmir (32) ^[5].

One important thing to note here is that most of the sedition cases are dropped before they even go to court, which implies that this law has been greatly used as a medium to create a feeling of fear or apprehension amongst the citizens of India. The conversion rate from case to conviction is very low. This is an illustration of how governments nowadays are not willing to accept dissent or criticism, which is thought to be one of the most important characteristics of a democracy.

The law of sedition is a true example of how a colonial law has been kept alive till date to suppress political dissent.

Historical Background

Sedition law did not find place in the original draft of Indian Penal Code as prepared by Thomas Macaulay in 1860. It was later introduced in 1870 to deal with increasing Wahabi activities which aimed at reviving Muslim power in India by ousting the British. Accordingly, Section 124A was inserted in Indian Penal Code by an amendment proposed by Sir James Stephen. It is often argued that during freedom struggle, it was used by the Britishers to suppress the dissenting voices of our freedom fighters^[6].

Gandhiji criticised this section by saying that this section is the “the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.”

However, it was believed that after independence India would not have Sedition Laws. The original Constitution, as adopted in 1950, did not recognise sedition law^[7].

Members of the Constituent Assembly understood the perils of making sedition ‘a reasonable restriction’ on the freedom of speech and expression. They vigorously debated over this draconian piece of law and feared that this contentious law might be used by the government to imprison its hostile critics. One of the members of the Constituent Assembly, K.M. Munshi, argued that there should be no room for ‘sedition’ in independent India. Such a contentious law, in fact, is a threat to democracy in India^[8]. After a prolonged debate and discussion, the Constituent Assembly decided to omit the term “sedition” from the constitution (although preserving Section 124-A of the IPC). However, in 1951 the first amendment to the Constitution introduced reasonable restrictions on Right to free speech & expression.

Under Indira Gandhi’s administration, Sedition was made a cognizable offence under the new Code of Criminal Procedure, 1973. This authorised the police to make arrests without a warrant.

In British India, it was used to suppress the voices of our freedom fighters like Mahatma Gandhi and Bal Gangadhar Tilak. Tilak was the first person to be convicted of sedition.

It was alleged that articles published in his Marathi daily *Kesari* would incite people to undermine the government's attempts to combat the plague outbreak in India. Tilak was imprisoned for 18 months by the Bombay High Court.

In Independent India, the constitutionality of section 124A was tested for the first time in 1951 in *Tara Singh Gopi Chand Vs The State*^[9].

Section 124A of the Indian Penal Code was held to be unconstitutional by the then Punjab Haryana High court on the ground that it is violative of Article 19(1) (a). However, in *Debi Soren & Ors Vs The State*^[10], the Patna High Court maintained the constitutionality of Section 124A, ruling that the provision did not infringe Article 19.

Four years later, the Constitutional Bench of the Supreme Court in *Kedar Nath Singh v. State of Bihar*^[11], (1962), upheld the constitutionality of Section 124A and held it to be in accordance with Article 19(1) (a). The Court held that only those activities that have the intention or tendency to incite public disorder or violence will be regarded as Seditious. The Court in this case followed the view of the Federal Court in *Niharendu Dutt Majumdar v. Emperor*. The Court further observed that the purpose of the crime of sedition was to prevent the government established by law from being subverted because “the continued existence of the Government established by law is an essential condition of the stability of the State”^[12].

Further, in *Balwant Singh vs Union of India*, it has been categorically stated that “every expression of criticism is not sedition, and the real intent of the speech is to be taken into consideration before branding it as a seditious act”^[13].

In *P. Alavi vs State of Kerala*, 1982: The Hon’ble Supreme Court held that sloganeering, criticizing Parliament or Judicial setup does not amount to sedition.

Recent sedition cases reported in India *Shreya Singhal v. Union of India*^[14] (2015)

This is a landmark judgment by two judge bench of the Supreme Court of India. In this case the Court struck down section 66A of the Information Technology Act, 2000 on the ground that it is violative of Article 19(1) of the Indian Constitution. Section 66 A provided provisions for the arrest of those who posted allegedly offensive content on the internet upholding freedom of expression.

The police in this case detained two women for making offensive comments on Facebook after the passing of Shiv Sena leader Bal Thackeray. One of the ladies submitted the statement, and the other just “liked” it. The court upheld the rule that a person could not be charged under section 124-A unless their speech—regardless of how “unpopular,” unpleasant, or disagreeable it may be—had a shown connection to any violence or disturbance of the public peace.

Disha Ravi Tool Kit Case

During the early 2021 farmer’s protests, Ms. Disha Ravi who is stated to be an environmental activist was arrested from her Bengaluru home on February 13 on accusation of being a “key conspirator” in the dissemination of a toolkit related to farmer protest. She was accused of working with a pro-Khalistani organisation to develop a toolkit that was allegedly aimed at disrupting peace in India. She was booked under IPC sections for offences relating to sedition, promoting enmity and criminal conspiracy. A week later, she was released on bail by Delhi High Court.

The court observed that “offence of sedition cannot be invoked to minister to the wounded vanity of governments.” In each democratic country, Citizens serve as the conscience guards of the government. They cannot be put behind bars merely because they disagree with the policies of the government. It is recognised that differences of opinion, disagreement, divergence, dissent, and even disapproval are legitimate means to infuse objectivity into government initiatives.

The investigation into Ravi’s case is likely to be dropped, according to a recent report in *The Indian Express*, because neither Google nor Zoom have responded to the investigators’ questions. There hasn’t been a charge sheet

filed yet and isn't expected to be. According to the article, the police may now submit a closure report in the investigation.

Rajat Sharma v. Union of India (2021)

A petition was filed in the Supreme Court against the former Chief Minister of J&K, Mr. Farooq Abdullah. It alleged that Farooq Abdullah made a seditious statement by saying that he would seek assistance from China to reinstate Article 370. The Supreme Court ruled in favour of Farooq Abdullah and dismissed the petition. The Court held that the expression of a view which is a dissent from a decision taken by the Central Government itself cannot be termed as seditious. Court called it a clear case of publicity interest litigation.

Zakir Hussain v. UT of Ladakh (2021): Galwan valley clashes

On 18th of June 2020, Jammu & Kashmir police registered an FIR against Zakir Hussain and co-accused Nissar Ahman Khan for a viral audio clip containing objectionable conversation demeaning India's armed forces in the backdrop of clashes between Indian Army and Chinese forces in Ladakh's Galwan valley.

The Bench of J&K High Court observed "The conversation would not constitute sedition to warrant the application of Section 124A or, for that matter, Section 153A or 153B IPC unless it had the tendency or intention of creating public disorder or disturbance of public peace by incitement to an offence. In the instant case, no evidence was found to support any prior concert or meeting of minds to commit the offences with which both have been charged by the police, nor any criminal conspiracy between the petitioner and Nissar Ahmed Khan to commit sedition". Hence, the petition was allowed by the court and all the criminal proceedings pending against the petitioner including the impugned FIR were quashed.

SG Vombatkere vs. Union of India (2022)

The most recent and significant development in the context of sedition law in India is the case of SG Vombatkere vs. Union of India (2022) where the Supreme Court of India ordered to put the section in abeyance until further notice.

SG Vombatkere, along with several other petitioners, filed writ petitions before the Supreme Court of India challenging the constitutional validity of Section 124A of the IPC on the ground that it is violative of the fundamental right to freedom of speech & expression. On 11th May 2022, a three-judge bench of the Supreme Court ordered to put in abeyance all pending trials, appeals, and proceedings with respect to the charge framed under Section 124A of the Indian Penal Code (IPC), till the Central Government reconsiders or re-examines the provision, stating that the provision could not be used to stifle the right to dissent and criticism. The Court also directed the Union and State governments to refrain from registering any FIRs under Section 124-A of the Indian Penal Code.

Supreme Court of India's decision to put the sedition law in abeyance until further notice is an important step towards protecting the fundamental right of free speech and expression in India.

Status of sedition laws in other countries

Many countries throughout the world including the United Kingdom, Australia, Newzealand have either eased or repealed their sedition laws.

United Kingdom

It is interesting to note that in the United Kingdom, which is the basis of Indian law, sedition is no longer a criminal offence. Sedition laws were repealed by The Coroners and Justice Act of 2009. However, sedition by an alien (resident but not a national of the country), is still a criminal offence ^[15].

U.S.A.

The Sedition Act of 1918 has been overturned by the US Supreme Court. Treason, seditious conspiracy and subversive activities advocating overthrow of government are currently offence under Articles 2381 and 2384 of the Federal Criminal Code. However, the law is rarely enforced to uphold free speech & expression ^[16].

Australia

The Crime Act of 1920 was Australia's first comprehensive piece of legislation to include sedition as an offence. This Act was reviewed twice- in 1984 and 1991. In 2005, amendments were introduced in Schedule 7 of the Anti-Terrorism Act (No 2) 2005. The Australian Law Reform Commission (ALRC) examined whether the use of the term "sedition" was appropriate to define the offences mentioned under the 2005 amendment. In 2010, a recommendation of the ALRC was implemented in the National Security Amendment Act 2010, changing the term 'sedition' to 'urging violence offences'.

Singapore

Singapore repealed its sedition law in 2022. The Act was repealed because of its limited application in modern times. According to the Home Ministry of Singapore, prosecutions under the statute were extremely rare and there are several new laws which can sufficiently address issues falling under the ambit of the sedition law. In 2005, Schedule 7 of the Anti-Terrorism Act (No 2) 2005 was amended.

By the introduction of The Crimes (Repeal of Seditious Offences) Amendment Bill in 2007 that came into effect from January 1, 2008, Sedition is no longer a crime in Newzealand.

Scotland repealed its sedition laws in 2010 by section 51 of the Criminal Justice and Licencing Act.

South Korea repealed its sedition laws during legal and democratic reforms in 1988. Sedition was deemed unconstitutional in Indonesia in 2007.

Law Commission's report on sedition

The Commission, in its 39th Report (1968) titled 'The Punishment of Imprisonment for Life under the Indian Penal Code' suggested that offences like sedition should be made punishable either with imprisonment for life or with rigorous or simple imprisonment which may extend to three years, but not more ^[17].

In its 42nd Report (1971), the Commission suggested the following amendments to section 124A of IPC:

- To include an element of Mens Rea in the provision.
- To widen the scope of the section by incorporating Constitution of India, Judiciary, Legislature along with

executive against whom causing disaffection would be punishable.

- To fix Seven years rigorous imprisonment and fine as punishment for sedition instead of imprisonment for life or imprisonment of three years, or fine ^[18].

However, the revision proposed by the Commission is not accepted by the Government.

The 43rd Report of the Law Commission on Offences against National Security dealt with sedition. Section 39 of this Bill dealt with sedition', which was only a reiteration of the revised provision proposed by the 42nd Report ^[19].

In its 267th Report (2017) on Hate Speech, the Commission made a clear distinction between 'sedition' and 'hate speech' by providing that sedition is directly an offence against the State and to qualify as sedition, the impugned provision must threaten the security of the State and the sovereignty and integrity of India ^[20].

In its 2018 Consultation paper, the Law Commission of India pointed out that 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.

The Commission further added 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 ^[21].

Recently in June 2023, The Law Commission in its 279th report titled "Usage of the Law of Sedition" recommended retention of the provision (section 124A) and suggested certain amendments to bring greater clarity to the use of the provision. The report come after a year the Supreme Court ordered to put the controversial law in abeyance with an instruction to the Central and State Governments not to file any FIR under section 124A.

The Commission made the following recommendations ^[22]:

1. To incorporate the essence of Kedar Nath v State of Bihar (1962) in Section 124A.
2. A police officer not below the rank of an Inspector, must conduct a preliminary inquiry before the First Information Report (FIR) is filed and based on the findings of the inquiry report, the Central Government or the State Government as the case may be, may or may not grant permission to file an FIR. Also, the concerned govt shall grant permission only after recording the reasons for registration of the FIR. This amendment is to be made to Section 154 of the CrPC by incorporating a proviso. It also mandates the police officer "to complete a preliminary inquiry within seven days for the purpose of ascertaining whether a prima facie case is made out and some cogent evidence exists ^[23].
3. Maximum punishment of life imprisonment, or seven years, or just a fine, depending on the nature of the case. Currently, the provision provides a punishment for a period of imprisonment of either three years or life imprisonment.

4. Insertion of the words 'tendency to incite violence or cause public disorder' in Section 124A. It defines 'tendency' as an 'inclination to incite violence or public disorder rather than proof of actual violence or imminent threat to violence'.

The Law Commission justifies the retention of Section 124A on the following grounds ^[24].

1. It is important to safeguard national security against the threat posed by extreme, anti-national, and separatist groups. They reasoned that the rise of social media had contributed to the spread of radical ideas against India, which were frequently inspired and supported by "adversarial foreign powers."
2. It is a 'reasonable restriction' to the fundamental right of freedom of speech and expression guaranteed under Article 19(1) (a) of the Indian Constitution.
3. In the absence of sedition law, anyone involved in seditious activity might be tried under the special laws such as the Unlawful Activities Prevention Act, 1967, and the National Security Act, 1980, which often carry more strict provisions.
4. According to the Report, the 'colonial legacy' is insufficient justification for striking the law in India's current democratic framework. It points out that other colonial legacies, including as the Police Forces and the All India Civil Services, are still in place without opposition on this ground.
5. The Report emphasizes that in nations where sedition laws have been repealed, other laws dealing with seditious activities have been incorporated within their treason and counter-terrorism laws.

The recent report of the Law Commission has openly supported the colonial provision and recommended for its retention. It is however submitted that the Law Commission's report lacks both thorough investigation and objectivity. The report, proposes for enhancing the minimum term of imprisonment for the offence. If the Commission's recommendation is adopted, the law will become much stricter.

Conclusion

The recent misuse of sedition laws in a number of cases have raised serious concerns about their undemocratic nature and the relevance of them in today's constitutional democracy. Differences in opinion are inevitable in a nation like India, where the population comes from a variety of cultural, religious, linguistic, and communal origins. What could be extremely advantageous for one group within society might be wholly detrimental to another.

It is true that Sedition law keeps a check on anti-national, secessionist and terrorist elements but it cannot be ignored that dissent and criticism of the government are essential elements of democracy. IPC and the Unlawful Activities Prevention Act 2019 have provisions to punish the offender who "disrupts public order" or "overthrow the government with violence and illegal means". These are sufficient for protecting territorial integrity as well as the sovereignty of India. Thus, there is no specific need to retain Section 124A IPC. The democratic values of the country are seriously threatened by the sedition law and hence it should be struck down.

India appears to be the only nation that still adheres to the sedition definition that was adopted by British India in 1870. The definition of sedition as given under Section 124A is too broad and vague to define what constitutes sedition and what does not. As a result, there are many diverse interpretations of it. It gives excessive discretion to the authorities to decide what constitutes an offense which is the main ground for its abuse. Every criticism should not be constructed as sedition.

Britain, which is the basis of Indian Laws, has already abolished its Sedition law in 2009, hence India should too be long done with this.

The Supreme Court of India's decision to put the sedition law in abeyance until further notice is a great step towards protecting the fundamental right of free speech and expression and offers a glimmer of hope for its abolition.

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