
EVOLUTION OF SEDITION LAW IN INDIA: A COMPREHENSIVE STUDY

Legal Upanishad Journal

Vol 1 Issue 1 | March 2023 | pp- 30-36

Amruta Patil, 5th Year Law Student, IME Law College, Ghaziabad

ABSTRACT

Sedition law was a contentious aspect of the Indian penal code before independence, and it remains so today. Sedition law is imperial era legislation, and the reasoning behind it was to endorse British rule, and those who were dissatisfied with the administration were accused under Sec.124A. In the Privy Council, the Federal Court, and the trial courts before independence, there was an interpretation of sedition law, and then after such decisions, British laws were enacted. The sedition law was amended several times. Following the Independence of India, the Indian constitution was enacted and some rights were granted to Residents and non-residents, one of which is freedom of speech and expression which is granted to Indian citizens under Article 19(1) (a), but this fundamental right is not granted as an absolute right and some limitations are there under which this right can be restricted. These restrictions are given under article 19(2).

In his 42nd report, the Law Commission report recommended that Mens rea should be clearly referenced in the Sedition act under Section 124A, and lately in 2018, the Law Commission report authored a Discussion paper on Sedition Law, which recommended that there is a need for reconsidering about Sedition Law with the assistance of legal personas. In this paper, the author will look into the law of sedition in the present day. The author will first explain what sedition law is and its origin in India and after this, the author has tried to analyse the view of the courts on this topic after the independence.

Keywords: British rule, Fundamental right, Independence, Restrictions, Sedition.

1. INTRODUCTION

The JNU agitation made headlines in 2016 with the speech made by the students of the university against the government for the hanging of the convicts Afzal Guru and Maqbool Bhatt, which led to protests at the campus, leading to the arrest of the student leader on charges of Sedition. A few more well-known names like *Bal Gangadhar Tilak, Mahatma Gandhi, Jogendra Chandra Bose, Arundhati Roy, Disha Ravi, and Disha Ravi* have also been booked for sedition under the 124A of the Indian Penal Code, 1860 in the past¹.

An archaic law that can be considered one of the most widely criticised and controversial laws in the country for restricting the right of individuals to exercise their right to free speech and expression. The view about this law can be said to be divided between the people who wish to have the law modified or even repealed and those who are tolerable with the law in force. What does the SC have to say about this? The longstanding law made in the colonial era rule has been misused by the government to become a tool of abuse for the civil liberties of the citizen. There are numerous petitions which have been filed in the Apex Court about Sedition challenging the constitutionality of the law, and countless arrests of citizens languishing in jail because of exercising their rights granted by the constitution itself².

2. SEDITION: MEANING AND CONCEPT

The Indian Penal Code, 1860 (IPC) has defined Sedition under Section 124A which is read as follows- *“Whoever by words 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*

¹ Pankaj & Dr Rana Praveen, Joydip Ghosal, Law of Sedition in India: An Analysis, 5 INT'L J. L. MGMT. & HUMAN. 901, 905-907 (2021)

² E Prema, Applicability of Sedition Laws in India: Problems and Prospects, 7 IUP L. REV. 61, 62-64 (2018)

imprisonment for life to which fine may be added or with imprisonment which may be extended to three years, to which fine may be added”³.

2.1 Punishment-

As sedition is defined as a non-bailable offence, the Code prescribes the following punishment which the judge awards based on the gravity of the act committed⁴. They are-

1. Imprisonment for up to three years.
2. Imprisonment for life
3. Life Imprisonment with fine
4. Imprisonment of up to 3 years with fine
5. Only fine

3. EVOLUTION OF SEDITION LAW

India as we now know it as the Democratic, Republic Nation was once ruled by the Britishers who had exercised their control for more than a century. They formulated their laws and regulations and implemented them to exercise administrative control over the diverse nation.

The change wasn't welcomed with open arms by many people of India, this led to starting of a revolt against the British rulers. The first one was the Revolt of 1857 which led to the need of developing a law that would define offences and punishment for them.

The sedition law was first drafted by Thomas Macaulay in 1837 under section 113 of the then draft. The draft then was subjected to numerous omissions and revisions and was finally enacted in 1860. This was done because of the protest and criticism the British Government was put through, especially after the revolt of 1857, it was clear that a law was needed to curb the activities which were spreading hatred against the British Raj.

The original IPC from 1860 did not specifically mention any penalties for seditious speech or libel. Later, in 1870, Section 124-A was included in the IPC. Almost immediately after, in 1870, Sir James Stephen, recommended a change to the IPC that resulted in the adoption of

³ Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).

⁴ Joydip ghosal, An Analysis of Law of Sedition and Its Impact on Freedom of Expression, 1 J. LEGAL ANALYSIS & RES. (2021)

Section 124A. Sir James Stephen reasoned that this special class of offences against the government required its specific section. Following yet another amendment, the seditious speech was made illegal in 1898⁵.

3.1 The Law in Action pre-independence

The arbitrary control of the colonizer on the Indians was soon met with backlash and numerous protests by Freedom Fighters such as Gandhi, Bhagat Singh, Jogendra Chandra and many others who through their mode of writings and speeches were believed to be spreading hatred towards the existing rulers. To discourage the Indian Nationalists and Freedom Fighters, sedition was made to be a crime. In 1891, the application of this law was seen when the Bangobasi newspaper editor Jogendra Chandra Bose was subjected to trial for opposing the Age of Consent Bill by writing a criticizing article in the newspaper (Queen Empress vs Jogendra Chandra Bose).

It wasn't long before the charges of sedition were seen to be imposed on the Indian Nationalist Leaders. Bal Gangadhar Tilak was accused twice of sedition, once in 1897 on the cause of inciting violent behaviour leading to the death of two British Officers and once in 1898 where he was arrested and was then released on bail. A third occasion was in 1909 when he published articles in the Journal Punjab Kesari but was not charged with sedition.

3.2 Sedition law in the post-independent era-

When India was liberated from British rule it was very much in a raw state after the atrocities, the partition and the newfound freedom. The Indian leaders decided to retain a few laws which were formulated under colonial rule, sedition was one of them. The term "seditious" was heavily debated in the assembly concerning its relevance as it was restraining in nature of the freedom of speech and expression, after much debate it was decided that the word Sedition will not be a part of the Indian Constitution, but it was made a part of the Indian

⁵ Pankaj & Dr Rana Praveen, Joydip ghosal, Law of Sedition in India: An Analysis, 5 INT'L J. L. MGMT. & HUMAN. 901, 903-905 (2021)

Penal Code by retaining section 124A⁶. In the year 1973 under Indira Gandhi's tenure, section 124A became a cognizable offence under the code of criminal procedure⁷.

The Indian Government retained sedition in IPC which resulted in the government misusing its power to restrict the individual freedom of speech and expression. Indira Gandhi's regime made Sedition an offence in 1973 giving the State and Police the power to arrest any person who is even expressing legitimate concern or dissent against the government's rule. Sedition law has recently become a tool that is used for the minor inconvenience or criticism that the government in power faces. Many innocent people land up in jail spending years in custody before their release.

4. OUTLOOK OF THE COURTS

- In *Romesh Thapar v State of Madras*⁸(1950), the apex court stated that “*criticism of the government exciting disaffection or bad feelings towards it, is not to be regarded as a justifying ground for restricting the freedom of expression and the press unless it is such as to undermine the security of or tend to overthrow the state*”. A more liberal interpretation was adopted as pointed out by Justice Patanjali Shastri because the constituent assembly had omitted the word ‘sedition’ from the Constitution.
- In *Kedarnath Singh vs State of Bihar*⁹(1962), where the leader of a communist party made a speech at Barauni Village. In that speech, he criticized the Congress Party by calling them *goondas* (*goons*) in his speech. Due to his extensive critique of the government, he was arrested with jail time of one year. The five-judge bench of the Supreme Court stated that criticizing the government is not sedition. Despite what the Supreme Court said the accused was not given any relief and the bench upheld the constitutional validity of the law of sedition observing that it was necessary to power the state requires to safeguard itself.

⁶ Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).

⁷ Pankaj & Dr Rana Praveen, Joydip ghosal, Law of Sedition in India: An Analysis, 5 INT'L J. L. MGMT. & HUMAN. 901, 903-905 (2021)

⁸ Romesh Thapar v State of Madras, 1950 AIR 124

⁹ Kedarnath Singh vs State of Bihar, 1962 SCR Supl. (2) 769

-
- In *Balwant Singh and ANR vs the State of Punjab*¹⁰(1995), the accused was charged with sedition as he was raising slogans of *Khalistan zindabad* outside a movie theatre. *But as there was* no impact on the public with the slogan, he was not charged.
 - In *Vinod Dua vs Union of India*¹¹(2020), the Supreme court was of the observation that a citizen has the right to criticize the government as long as it does not incite any violence against the government. The charges levied against the journalist were dropped as he was within his rights to express his concern regarding the testing facilities to monitor the spread of the virus.

4.1 The historic Judgement – S.G. Vombatkere vs Union of India¹²

The petition was filed by a retired army general challenging the law stating that the law is wholly unconstitutional and should be “unequivocally and unambiguously struck”. The Apex court admitted the petition and agreed to the hear plea in July 2021. In what is called to be a historic judgement on 11th May 2022 the Supreme Court issued direction with regard to the law and it needs to be re-examined. The interim order passed has been a cause of hope and relief for the public of the nation¹³.

4.2 Key points on sedition issued by the supreme court

1. If the case is registered then, the affected parties are at the liberties to approach the concerned court for appropriate relief taking into account the order passed as well as the stand of the government.
2. All the pending trials and cases are to be kept in abeyance.
3. The Government of India shall be at the liberty to issue directives to prevent the misuse of section 124A IPC¹⁴.

¹⁰ Balwant Singh and ANR vs the State of Punjab, 1976 AIR 230

¹¹ Vinod Dua vs Union of India, Writ Petition (Criminal) No.154 of 2020

¹² S.G. Vombatkere vs Union of India, WRIT PETITION(C) No.682 OF 2021

¹³ E Prema, Applicability of Sedition Laws in India: Problems and Prospects, 7 IUP L. REV. 61, 63-65 (2018)

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

5. CONCLUSION AND SUGGESTIONS

Sedition has been used as an arbitrary weapon as it gives the government the power to suppress the formation of opinion. The law was and still is a part of the IPC,1860¹⁵ and followed really well by all the governments be it the moderates or the extremist. The law on sedition was criminalized in 1973 and was made an offence based on which there were countless arrests made. The rate of conviction was still low. This itself reveals the need to modify the existing law.

As explained in the Law Commission report of 2018, it can be understood that the existing law on sedition and the interpretation of the same is not consistent with current India. The law which now has become an old relic was crafted to suppress the freedom fighters during the British era and needs to be retired. The need for change has been highlighted on various occasions. Not all governments that take office will be well-liked by everyone; some people will suffer as a result of a law's implementation because not all citizens will benefit equally. Additionally, because the constitution is based on the idea that people have the right to free speech, this right cannot be arbitrarily curbed whenever someone criticises the government¹⁶. An appropriate balance must be struck, either by providing a clear definition of what sedition means or by completely repealing it and replacing it with a much better law that protects each person's right to free speech while also taking the government's interests into account—*after all, this is a democracy*¹⁷.

¹⁵ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

¹⁶ Pankaj& Dr Rana Praveen, Joydip ghosal, Law of Sedition in India: An Analysis, 5 INT'L J. L. MGMT. & HUMAN. 901, 905-907 (2021)

¹⁷ Joydip ghosal, An Analysis of Law of Sedition and Its Impact on Freedom of Expression, 1 J. LEGAL ANALYSIS & RES. (2021)