

SEDITION: A COLONIAL MANACLE FOR FREE SPEECH

Author: Anshul Sharma, IV year of B.A.,LL.B(Hons.) from Manipal University Jaipur

Abstract

Infructuous Curbs on speech and expression amount to nothing less than a definite denial of democracy. Henceforth, such infructuous curbs shall be removed as soon as possible. Section 124A of the Indian penal Code 1860 is one of such curbs for the right guaranteed by constitution. Provision has constituted lacunae that would allow government in power to misuse power to suppress dissidence and reasonable criticism. On the other hand, there are restriction mentioned under Article 19(1)(a) of Indian constitution are directly in conflict with the positive rights mentioned therein. Therefore, in this demanding situation the role of judiciary comes into existence. Curtailing the Weaponizing of colonial provision is needs of an hour. This paper specifically deals with how provision came into existence, its development in the modern era, what is the perspective judiciary and its constitutionality. This paper, Henceforth, deal with how the provision came into existence, its judicial developments, global law, and constitutionality.

BRILLOPEDIA

Rise of Colonial Provision

Freedom of speech is one of the consequential percepts of democracy which accredit an individual to strengthen the capacity of person to take decision by showing dissent and facilitate a state of equilibrium between stability & social change. Though the broad right has been guaranteed by article 19(1)(a) of the Indian Constitution, it's implementation can be halted due to colonial nature of offence mentioned under section 124A of Indian Penal Code,1860. Offence of Sedition has enmarked with polemical significance due to transmogrification of body, broad interpretation of expression of speech and desecrating the law by authority in power. Provision found its rudiment from section 113 of Macaulay's draft of penal code, 1837¹ which imposes life imprisonment as the punishment for the offence. However, due to its rigorous nature of sentence

¹ Hari Singh Gaur, Penal Law of India, vol. 2, 11th ed., Law Publishers Pvt. Ltd,2011

and high objection of member of law commission, the offence had been omitted. However, offence of Sedition again included by the act of XVII of 1870. Again in 1898, provision was amended by IPC Amendment act of 1898 and procured the sentence for life & shorter imprisonment. At last, it was amended by the act of 1955. ²

Constituent Assembly View on Provision

Freedom of speech and expression is and was indeed not a categorical right and attached some restrictions viz public order, sovereignty & Integrity, Defamation, maintain public order, Defamation, Incitement of violence etc. The very reason for exclusion of the term sedition from the constitutional provision of free speech, Then Article 13 of the constitution draft, can be well inferred from constitutional debates. Most of the members are of the unanimous decision that inclusion of the term sedition would restrict the right of free speech and expression.

In the words of MA.Ayyangar ,

..... If we find that the government for the time being has a knack of entrenching itself, however had its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The Term `sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word `sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could entrench itself unless the speeches lead to an overthrow of the State altogether. [Emphasis added]³

Consequently, Idea to exterminate the word Sedition from the restriction mentioned under article 19 successfully initiated.

² Ibid.

³ Constituent Assembly of India, 2nd December 1948

Apex Court in case of *S. Khusboo v. Kanniamal&Anr*⁴, robustly opined that criminality & morality do not coexist. Succinctly, if say free flow of the idea in a nation makes its citizen well informed which may result in good governance. For the same, it is essential that citizens be not in constant fear to face the dire consequences for voicing out their ideas, not consisting with the ongoing celebrated opinions.

Prominent Indian Cases

Section 124A had been always used to stifle the political dissidence in British era. *Niharendu Dutt Majumdar v. King Emperor*⁵, held that the indispensable constituent of the sedition is incitement of violence, not merely an abusive word. The acts or words complained ought to cause incitement and reasonable anticipation or likelihood of public disorder to constitute disaffection. The term used in provision has been analyzed in case of *Queen-Empress vsJogendra Chunder Bose and Ors*⁶, where privy council opined that Section 124A of Indian Penal Code only penalized dissatisfaction, which can be best defined as feeling contrary to affection, dislike or like or abhorrent. On the other hand, disapprobation means mere disapproval. Further in case of *Queen Emperor vs Ramchandra Narayan*⁷, giving unreasonably vast interpretation to phrase “to excite the dissatisfaction to Government” held that it is equivalent to an attempt to produce hatred towards government as established by law, to excite political discontent & alienate the people from their allegiance. In case of *Queen Emperor &Ambaprasad*⁸, while interpreting the term “Disapprobation” it is held that term shall be 'compatible' with a disposition to render obedience to the legit authority of the Government and to aid as well as support the lawful authority of the nation's Government against unlawful and illicit attempts to subvert or resist that authority. Furthermore, in*Ramnandanvs State Of Uttar Pradesh*⁹ it is categorically held that sedition is immensely objectionable, obnoxious as well as harmful and ought not to have place for colonial reasons.

⁴ S. Khusboo v. Kanniamal&Anr. AIR 2010 SC 3196

⁵ (1942) FCR 48,

⁶ I.L.R. 19 Cal. 35.

⁷ 33 BOMLR 1169

⁸ : (1898) ILR 20 All 55

⁹ AIR 1959 Alld. 101

Recently, In the Vogue case of *Kanhaiya Kumar vs State*¹⁰, the court observed that while exercising the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution, one must keep in mind that Article 51A of the Indian Constitution specifically provides for Fundamental Duties of every citizen, which form the other essential side of the same coin.

In *Vinod Dua v. Union of India*,¹¹ (2021), Apex Court, held that every prosecution under Section 124A should strictly abide by the scope of the said Sections without contravention to law laid down by the Kedar Nath case.

Whether the Provision is Constitutional or not?

In the very first case *Tara Singh Gopichand v. State*¹², (1951), the court declared an offence of sedition under section 124A to be unconstitutional and explicitly held that such provision has no place in a democratic government. Similarly, in case of *Ramnandanvs State Of Uttar Pradesh*¹³, Court held Section 124A is ultra vires of the fundamental provision of Indian Constitution as it imposes an unreasonable restriction on Freedom of Speech and Expression mentioned under article 19. Further, said provision is not in the interest of the public.

In the case of *KedarNath Singh v. State of Bihar*¹⁴, constitutionality of Section 124A IPChas been challenged. Court held that

“Criticism of public measures or comments on government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order” [Emphasis added]

Further Court added that there shall be the two essential ingredients that has to be satisfied I.e.

¹⁰ (2016) 227 DLT 612.

¹¹ https://main.sci.gov.in/supremecourt/2020/12755/12755_2020_33_1501_28058_Judgement_03-Jun-2021.pdf

¹² 1951 Cri LJ 449

¹³ Supra note 9

¹⁴ 1962 AIR 955

- The act shall be accompanied to cause the ‘effect of subverting the Government in power by violent means.
- The act shall be with the intention & tendency to create disorder or disturbance of public tranquility or law and order by inciting violence.

International Scenario of Sedition as Offence

1) United States-

In 1918, The Sedition Act, 1918 was passed wherein section 3 mandate power to government to punish anyone making pseudo statements that interfered with the U.S. war efforts. More explicitly, if say, it includes insulting the US government, flag, Constitution, or military. However, In *Schenck v. United States*¹⁵,²⁵ the court while adjudging the validity of Sedition Act 1918, laid down the test for restricting freedom of expression. It is held that

“Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent.”

Henceforth, the case has narrowed down the scope of sedition by protecting it by the first amendment.

2) United Kingdom-

In Uk, seditious libel was repealed by *section 73 of the Coroners and Justice Act, 2009*.¹⁶ One of the cogent behind it was-

“Having an unnecessary and overbroad common law offence of sedition, when the same matters are dealt with under other legislation, is not only confusing and unnecessary, but it may also

¹⁵ 249 U.S. 47 (1919).

¹⁶ Criminal libel and Sedition Offences Abolished, Press Gazette (Jan.13, 2010)

have a chilling effect on freedom of speech and sends the erroneous signal to other nations which maintain and use sedition offences as a means of limiting political debate.”¹⁷

Conclusion

In every democratic country it is essential that its citizens indulge in constructive criticism or pointing out the lacunae in the policy of the authority. It may be possible such Expressions and thoughts used therein may be harsh and unpleasant to government or any other in rule, but that indeed shall not render such actions to be branded seditious. Though the section 124A engrafted in Indian Penal Code,1860 over a decade, it is not sufficiently interpreted or amended so to refrain the authority in power stifling the freedom of speech and expression. There are multitudinous nations which abolished the provision due to its offensive nature. The time has come for India to replace the arbitrary colonial provision or categorically abolish it.



BRILLOPEDIA

¹⁷ <https://www.liberty-human-rights.org.uk/sites/default/files/liberty-s-coroners-and-justice-report-briefing-excluding-secret-inquests-.pdf> (last visited on Jan. 5, 2017)