

RELEVANCE OF SEDITION LAWS IN THE POST COLONIAL ERA: IS IT IN VIOLATION OF ARTICLE 19(A) OF THE INDIAN CONSTITUTION?

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Abstract

On multiple occasions, the mere act of legitimate criticism has been used to accuse several writers, artists, social activists and cartoonists of sedition by governments throughout the country. Their work is considered to be anti-national. The people of this state have a democratic right to express dissent, but this has been viewed as a threat for quite a while now. Statistics suggest that only an extremely small percentage of the people arrested for sedition are convicted of the crime. Hence, people believe that these arrests have been made only to discourage dissent towards government propaganda and harass those who seem to have different views. This has called for an increase in demand for the repealing of sedition laws in India. However, this can be tricky as such an act might be used to mock free speech. This paper seeks to analyze the intricacies of the sedition law in India to understand whether the law is truly in violation of our freedom of speech and expression. There is a fine line between subverting the government and criticizing it. It is this grey area that is being used as an excuse to make unnecessary arrests by the government and make derogatory comments that incite violence by the public.

Keywords: Sedition, Indian Penal Code, Freedom of speech and expression, Fundamental right, democracy

Introduction

Sedition refers to any act which may be by way of conduct or speech that incites people to rebel against the authority of a state or a monarch. It attempts to overthrow the government by spreading views that are against the nation and that has the potential to ruin the public peace and harmony of the state. It is an offence that is cognizable, non-bailable and non-compoundable which can be tried by the Court of Sessions. This law was introduced in 1870 by Lord Thomas Macaulay to curb the Wahhabi activities against the colonial government. It was later used to

quell the activities of freedom fighters like Gandhi and Tilak. Today, people have been arrested for cheering for a rival cricket team or not standing up while the national anthem was being played in a cinema hall. Subsequently, these people have been accused of inciting violence. The laws on sedition originated during colonial rule in India when the British wanted to ensure concrete control and authority over the Indians. However, today, the question is whether the government needs to possess some powers as a colonizer, especially in a democracy where the freedom of speech and expression is a fundamental right¹. Thus it is important to understand the views of the sedition committee and the Indian independence committee to understand whether these laws can in any way be modified or whether these laws are even required in the first place.²The courts are trying to strike a balance between the freedom of speech and expression and the prevention of offences against the Indian state. The constitutionality of sedition laws in India has been established by the landmark judgement of Kedar Nath v. State of Bihar. It also stated that incitement to violence is an essential element of sedition in India. There is a fine line between subverting the government and criticizing it. It is this grey area that is being used as an excuse to make unnecessary arrests by the government and make derogatory comments that incite violence by the public.

Abolition of Sedition Laws in the UK

Britain decriminalized sedition in 2009 as they felt that the sedition laws were made during a time that did not regard freedom of speech and expression as a fundamental right. Back then, kings were considered to be divine entities and questioning their actions would be the equivalent of questioning God's actions. The same laws were implemented in British colonies as well. Today, such laws cannot be considered to be progressive as they are not in the spirit of democracy. To ensure freedom and further the spirit of democracy, one must be allowed to express their views about the government that they have very carefully elected. The British government felt that the sedition laws were being used as a tool to suppress political dissent. Such oppressive regimes needed to be taken down and hence the Coroners and Justice Act of 2009, in its 73rd section, abolished three types of sedition which include sedition and seditious

¹ R. K Misra, "Freedom of Speech and the Law of Sedition in India" 8JILI 117(1966)

² R. K Misra, "Freedom of Speech and the Law of Sedition in India" 8JILI 117(1966)

libel, defamatory libel and obscene libel. Before this, the Criminal Justice and Immigration Act of 2008 decriminalized blasphemy and blasphemous libel.

Legal Position in India

Today, section 124A of the Indian Penal Code 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".³ The Indian Constitution guarantees us the freedom of speech and expression⁴ under Article 19(1) and imposes certain restrictions on the same under Article 19(2). Two changes were introduced concerning these provisions by the Constitution (Amendment) Act of 1951. Firstly, it expanded the boundaries for legislative restrictions on free speech by introducing additional grounds. Secondly, it provided that the restriction imposed on the freedom of speech must be reasonable.⁵

It is to be noted that the word 'sedition' is not mentioned in the Indian constitution. This was done so that the minorities had an opportunity to voice their opinion. Article 19 of the International Covenant on Civil and political rights calls for a law that backs speech limiting state action to protect national security and respect the rights and reputations of people in power.⁶ India has ratified this covenant and is bound by Art 51(c) of the Indian Constitution to abide by it.

The Supreme Court has expressed the necessity for sedition laws with suitable reasons to support their arguments in many important cases which will be further discussed in this paper. This will help us get a better understanding of how this law works and whether it is necessary at all.

³ Indian Penal Code, 1960 (No. 45, Acts of Parliament, 1860)

⁴ INDIA CONST. art. 19, cl. 1

⁵ INDIA CONST. art. 19, cl. 2

⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

Important Judicial Decisions

1. *The Queen-Empress v. Bal Gangadhar Tilak (1897)* - was the first case to identify and apply section 124(a) of the IPC. Tilak published an article supporting and praising the efforts of the Maratha warrior Shivaji's movement against the British. He was accused of sedition. The case gave the interpretation of disaffection as "hatred, dislike, hostility, contempt and every form of ill will to the government. Mr. Justice Strachey rejected the contention that there can be no offence under the section unless rebellion or armed resistance is incited or sought to be."⁷ This case also led to the 1989 amendment of the IPC provisions on sedition.
2. *Kedar Nath v. State of Bihar (1962)* – it was the first case on sedition in India post-independence. The sedition laws of India and the enforcement of fundamental rights were in question. The court did not want to interpret the section, instead, they based their judgement on the political conditions of 1942 when the Federal Court decided the Niharendra Majumdar case.⁸ The Court in the Kedar Nath case refused to interpret it literally and instead adopted the interpretation that was an outcome of the legal and political conditions of 1942 when the Federal Court decided the Niharendu Majumdar case. This judgment of Sir Maurice Gwyer, when delivered, was indeed a bold and progressive step.⁹ The essence of democracy was disregarded by the principles laid down in this case. The Court held that "there must be boundaries to the Section, as only acts which tend to cause public disorder or violence should fall under the Section and the Court also distinguished between 'The Government established by law' and 'the persons for the time being engaged in carrying on the administration'.

The government established by law is the symbol of the State, undermining the power of the state can harm the security of the state and the people living in it. This means respecting the existence of the government is required for the stability of the state. Sedition is an offence against the state. This justifies that every act that comes in the boundaries of Section 124A is an

⁷ *The Queen Empress v. Bal Gangadhar Tilak*, (1917) 19 BOMLR 211

⁸ *Kedar Nath v. State of Bihar*, 1962 AIR 955

⁹ R.K Misra, "Freedom of Speech and the Law of Sedition in India", 8 JILI 117(1966)

offence against the state.”¹⁰ However, the wrong use of this Section is a violation of freedom of speech and expression, Article 19.

3. *SanskarMarathe v. State of Maharashtra(2012)* –“ held that citizens have the right to say or write anything criticizing the government and its measures as far as it does not incite violence or create problems in law and order. A display of anger and disgust through his cartoons does not attract a charge of sedition. The Court also accepted a set of guidelines, as pre-conditions to police for invoking sedition charges only if an act was an incitement to violence or disturbed public order. A legal opinion in writing, along with reasons, must also be submitted before any charge of sedition was to be applied in any case.”¹¹ It was also held that sentencing someone to life imprisonment for such an act is way too drastic.
4. *Shreya Singhal v. Union of India (2015)* - the right to freedom of speech and the right to carry out business on the internet is protected by the constitution. Section 66A of the Information Technology Act 2000 was invalidated.¹² In 2015, the judgement of the case differentiated between ‘advocacy’ and ‘incitement’ and only incitement is punishable by law.

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The Court said that “no person can be tried for sedition unless there is an active connection with causing any violence or public disorder. The Supreme Court held that the expression of views on an online platform which may annoy, insult or cause an inconvenience did not fall within the reasonable exceptions of the exceptions to the freedom of speech and expression.”¹³

¹⁰ *Kedar Nath v. State of Bihar*,1962 AIR 955

¹¹ Criminal Public Interest Litigation No. 3 of 2015, Bombay High Court

¹² *Shreya Singhal v. Union of India*,(2013) 12 S.C.C. 73

¹³ *Shreya Singhal v. Union of India*,(2013) 12 S.C.C. 73

Constitutional Basis

In the case of *Ram Nandan v. State of U.P.*, the Hon'ble High Court stated that section 124 A is a hindrance to the freedom of speech and is thus violative of the rights and interests of citizens as a result of which the High Court declared Section 124 A of IPC as ultra vires¹⁴ But the Supreme Court overruled this decision in the case of *Kedar Nath v. State of Bihar*.

The law of sedition was interpreted in the decision of the Supreme Court in the Kedar Nath Singh Case as it is understood today. The court heard the issue about the constitutionality of Section 124A of the IPC as a possible violation of Article 19(1)(a) of the Constitution which is a core fundamental right. It was clear to the court that the crime of sedition must apply to crimes that rise against public tranquillity as opposed to political crimes.¹⁵ If one was to look at the history of India before the drafting of the Constitution and the debates and discussions of the members of the Constituent Assembly on Article 19 of the Constitution, the law of sedition had been specifically excluded to limit the freedom of speech and expression, though it was included in the draft Constitution. This indicates the legislative intent to not consider sedition as a valid exception to this freedom. The constitutionality of section 124A of the IPC was protected under the pretext of 'security of the State' listed as one of the six reasonable restrictions of Article 19(1) of the Constitution.¹⁶

The divergence for the number of interpretations for the term 'sedition' in light of the Constitution is due to the reason such term was omitted by the drafters and to avoid any ambiguity in interpretation, they implied the term 'security of the State' to differentiate the crimes like sedition. The reasoning of the Court while interpreting the concept of sedition, was that this would prove to be a handy tool to maintain public order which will be in the interest of the security of the State and hence would be justified. In the case of *Brij Bhushan v. State of Delhi*, the ground of 'public order' was joined with 'security of the State' where the insertion of

¹⁴ *Ram Nandan v. State of U.P.*, AIR 1959 All 101

¹⁵ *Kedar Nath v. State of Bihar*, 1962 AIR 955

¹⁶ Siddharth Narrain, "Disaffection' and the Law: The Chilling Effect of Sedition Laws in India", Vol.46 NO.8 Economic and Political Weekly 33 (2011)

the words ‘in the interest of’ before the public order in Article 19(2) was observed to have provided a wide magnitude of powers extended to the State to curb the freedom of free speech.¹⁷ In the case of *Bilal Ahmed Kaloo V. State of Andhra Pradesh*, the Supreme Court made it clear that criticizing a public measure or passing comment on government action is justified until it comes under the reasonable restriction of Article 19(2). It doesn’t matter whether the usage of words was strong or not; it will only matter if the words have the pernicious tendency or intention of creating public disorder or disturbance of law and order.¹⁸

Conclusion

India is a democratic country and hence its citizens must enjoy the right to express their concerns about the nation. These concerns may be expressed in the form of debates, articles, constructive criticism and other such methods. The current law of sedition in India, including the case laws, clearly indicates that it must be applied only to cases that disrupt public peace and order. However, multiple governments have been using these provisions to protect their image and punish any individual or party that tries to expose their ulterior motives. The Courts have to protect and ensure that an individual avails his rights as mentioned under Article 19 and Article 21 of the Indian Constitution. They also have to distinguish between instances that are the mere expression of opinions and those which are used to incite violence and disrupt public order. Making the law of sedition extremely narrow and harsh would be against the spirit of democracy that the Constitution seeks to give us as mentioned in the Preamble. Moreover, democracy is also a part of the basic structure of the Constitution. It must also be noted that the very countries that promulgated these laws in India have abolished the same in their land as freedom of speech and the rights of their citizens have been given utmost importance. Thus, India must learn to let go of what is outdated and irrelevant to today’s day and age and work towards establishing a more progressive society.

¹⁷ *Brij Bhushan v. State of Delhi*, 1950 AIR 129

¹⁸ *Bilal Ahmed Kaloo V. State of Andhra Pradesh*, (1997) 7 Supreme Today 127