CHANGE IS THE ONLY WAY TO REMAIN CONSTANT: SEDITION LAW

[*]Chanchal Pandit Mahale

ABSTRACT

Britishers enacted the Sedition Act to silence Indians who spoke out against the British administration. In democratic India, sedition laws still exist. It has been used to limit the fundamental right to free expression and speech on several occasions. Today, the administration is abusing this law to silence dissenters. The punishments for this are extremely harsh. Because the nature of society changes throughout time, it is vital for the law to evolve in order to meet the demands of society.

Keywords: Sedition Law, Free Speech, Democratic Government.

INTRODUCTION

A vague verdict and widely abused law. Sedition is defined in Section 124A of the IPC as any speech or writing, or form of visible representation, which brings the government either into contempt or hatred or may excite disaffection towards the government or attempts to do so.[1] The British government devised the sedition statute during the colonial period as a weapon to deal with any serious criticism of colonial rule and to use against Indian nationalist liberation fighters. Sedition Law is still utilized by the current administration as an oppressive instrument, as it was by the Britishers, to control expression in independent India. Sedition laws limit one's fundamental right to free speech and expression, yet they are nonetheless constitutional. Free speech is a fundamental right that is given to citizens so that they can speak out freely. They could share their positive or negative thoughts about the government freely. People have the right to criticize any government policy which they don't favour. The government is elected by the people and in India rule of law is followed, so its people's right to decide what is good or bad for them. The government misuses the sedition of the law to curb the voices of people who are against them.

[*]BA LLB, FIRST YEAR, MAHARASHTRA NATIONAL LAW UNIVERSITY, AURANGABAD.

[1] Abhishek Hari, THE WIRE, Explainer: How the Sedition Law Has Been Used in the Modi Era, January 23, 2022, (https://thewire.in/law/explainer-how-the-sedition-law-has-been-used-in-the-modi-era) accessed May 8, 2022, 12.10.pm.

The law relating to the offence of sedition was first introduced in colonial India through Clause 113 of the Draft Penal Code, 1860 ('Draft Penal Code'), proposed by Thomas Babington Macaulay in 1837.[2] However, when the Penal Code, 1860 ('IPC') was finally enacted after a period of 20 years in 1860, the said section pertaining to sedition had inexplicably been omitted. Although Sir James Fitzjames Stephen, architect of the Indian Evidence Act, 1872, and the Law Secretary to the Government of India at the time, attributed the omission to an 'unaccountable mistakes' various other explanations for the omission have been given.[3] With the rise of mutinous operations against the British, the need to make sedition a substantive offence was generally recognised, and the addition of a provision dealing explicitly with the seditious rebellion was deemed necessary. The measure containing the law of sedition was finally passed after awareness of this rising surge of nationalism at the turn of the twentieth century. On November 25, 1870, the crime of sedition was added to the IPC under section 124A, and it remained unchanged until February 18, 1898.[4] Since then the statute of sedition has been used to silence voices of protest, dissent, and criticism of the government since its inception in 1870. While the provision's indefinite invocation has garnered media attention, there has been minimal intellectual debate about the law's substance and the possibility of repeal. The punishment for the sedition is very harsh more than mentioned in the IPC, 1860. A seditious offence is a cognizable, non-bailable, non-compoundable offence that can be tried by a court of session.[5] The Prison term for this offence is up to seven years if found guilty.

In this paper, we would try to address the draconian nature of the colonial sedition law with help of various case laws which upheld the constitutional validity of the sedition law in the present time. The need to repeal and scrap the law to give absolute fundamental rights to people.

GOVERNMENT NATURE AFTER INDEPENDENCE

The rationale for the criminalisation of such acts is generally that it fosters "an environment and psychological climate conducive to criminal activity" even though it may not incite a specific offence.[6] Following independence, the nature of government changed. India was no

[2] Arvind Ganachari, Evolution of the Law of "Sedition "in the context of the Indian freedom struggle in nationalism and social reform in a colonial situation 54 (2005).
[3] Walter Russel Donogh, A treatise on the law of sedition and cognate offences in British India, (http://archive.org/details/onlawofsedition00dono/page/n23/mode/2up?view=theater), accessed May 8, 2022, 5.15.pm.
[4] The Indian Penal Code, §124A, No.40, Acts of the Parliament, 1860.
[5] The Code of Criminal Procedure, Schedule No 9, No. 2, Acts of Parliament, 1973.
[6] Modechai Kremnitzer & Khalid Ghanayim, *Incitement, Not Sedition* in FREEDOM OF SPEECH AND INCITEMENT AGAINST DEMOCRACY 147, 197 (David Kretzmer & Francine Hazen eds., 2000).

longer under the colonial authority and had its own government after the constitution. The crime of sedition, however, remains in the IPC. Sedition is a crime against the state however it is important to examine the changing nature of the state while making a decision. When the IPC was first implemented, the British government was the ruling monarch. However, following independence, the Indian constitution became the most powerful legal authority. People's representatives have now been elected in a free and fair democratic election in India. As a result, the beloved crime of sedition is no longer essential. In the case of Tara Singh Gopi Chand v. State,[7] The Court distinguished between a democratically elected government and a government established under foreign rule in striking down 124A as being ultra vires Article 19(1)(a) of the Constitution. In the former, a government can gain power and then be forced to relinquish it without jeopardising the state's foundations. Because of the change in government, a statute against sedition has become outmoded and unneeded. The sedition legislation and term that existed in the past are no longer applicable or construed. Time transforms society and its nature. Today's society is more powerful than ever. Citizens are mature enough to understand what words or actions can lead to violence against the government and what can jeopardise the state's stability. Fundamental rights cannot be curtailed based on the government's wishes. This factor is critical in establishing the level of incitement required to justify a speech ban. As a result, the audience must be considered when making such a decision.

In S. Rangarajan v. P. Jagjivan Ram[8] ('Rangarajan'), the Court held that "the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It gives an indication of what sort of acts might be considered seditious when it observes that the film in question did not threaten to overthrow the government by unlawful or unconstitutional means, secession, or attempts to impair the integrity of the country.

CONSTITUTIONAL VALIDITY OF SECTION 124A OF IPC

Current practises are inconsistent with the judicial objective expressed at the time of the Kedar Nath[9] decision. According to precedents, there are certain criteria that prove sedition law unconstitutional. When a statute or a rule is attacked on the grounds of "over-breadth" or

[7] Tara Singh Gopi Chand v. State, 1951 Cri LJ 449.
[8] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.
[9] Kedar Nath Singh v. State of Bihar, AIR (1962) SC 955.

"vagueness", the argument is not that it should be struck down because there is a "possible abuse of power." The argument is that the language of the statute or rule is either broad enough or vague enough so as to encompass both constitutional and unconstitutional applications within the terms of that language.[10] Using this analysis, the exact meaning of the word "disaffection" in Section 124 of the Penal Code is ambiguous and indeterminable. Despite the clarification of vocabulary in the section's explanation to include disloyalty and emotions of hostility, the provision's meaning remains hazy. Article 19(1)(a)[11] gives the individual a fundamental right of free speech and expression which is restricted by article 19(2)[12] pertaining to sedition law. Given the ambiguity of this provision's practical application, it should be declared unconstitutional.

Furthermore, applying the vagueness test in which an individual must be aware of the provision's articulation, what it tries to condone, and the repercussions associated with it. Because of the mystery surrounding the provision, an individual may be sceptical of its validity, resulting in a negative externality such as the chilling effect. The IPC section 124-A has a negative impact on the general public. This clause establishes sedition as a criminal offence and provides for exorbitant damages and penalties in cases of sedition. Sedition accusations in India, on the other hand, are not confined to cases "in the interest of public order," but also include defamation, deviations from established standards of morality and decency, and so forth. The provision serves as a deterrent to citizens exercising their right to free speech, which is guaranteed by Article 19(1)(a) of the Constitution. There is no proof or provision that can show a relation between free speech and public disorders. In absence of such a provision, the chilling effect imposed by Article 19 of the Constitution may prevail in society, which is in direct conflict with the articulation of the freedom conferred under Article 19(1). (a).

In Shreya Singhal v. Union of India[13], In this instance, the Court emphasized the need for a substantive and procedural study of the limiting statute in order to evaluate its reasonableness. When the basics of this case are applied to Section 124-A IPC, a substantive examination reveals that the provision is overly wide in its construction of "disaffection," thereby passing the overbreadth and vagueness test. The punishment's procedural analysis would reveal it to be

[10] Gautam Bhatia, *overbreadth,* 'Defining the Political: The Supreme Court's FCRA Judgments.', (https://indconlawphil.wordpress.com/tag/overbreadth/#:~:text=When%20a%20statute%20or%20a,to%20encompass%20both%20constitutional%20and) accessed May10, 2022, 3.57.p.m.
[11] INDIAN CONST. art 19(1)(a).
[12] INDIAN CONST. art 19(2) "authorises the government to impose, by law, reasonable restrictions upon the freedom of speech and expression "in the interests of… public order".
[13] Shreya Singhal v. Union of India, (2015) 5 SCC 1.

a harsh provision. Given the ambiguity surrounding the actual manifestation of disorder and violence, life imprisonment as a punishment for the mere possibility of inciting violence through speech appears to be overabundant, achieving a chilling effect. As a result, the restriction on free expression and its identification as an offence under Section 124-A of the Indian Penal Code (IPC) do not appear to be fair. Schenck v. United States[14] highlighted the needed proximity between the act of speaking and the act of inciting violence.

IDEA OF FREE SPEECH

Bhatia in his book "Offend, Shock, or Disturb: Free Speech under the Indian Constitution"[15] gives two approaches namely 1) Moral paternalistic- Individuals are not endowed with abundant freedom because it considers them as corruptible and intrinsically savage with a proclivity for violence. 2) Liberal autonomous- This approach is more accepting and permissive, treating individuals as entities capable of making their own decisions. It also acknowledges an individual's intellectual talents and places fewer limits on them. Kant's ideology is also seen in his work. Based on the assumption that all people are equal, everyone's ability to speak and express themselves should be equal. As a result, no fringe, political, or majoritarian group should be able to asphyxiate another's expression.

Dworkin[16] supplied two grounds as the foundation for arguments in favour of free speech. To begin with, allowing individuals to freely discuss and express themselves allows for the promotion of good policies while also acting as a check on relatively bad ones; nevertheless, this method necessitates an inherent understanding of the concept of free speech. Freedom of speech and expression is a basic human right, not just a fundamental one. Society changes as a result of free speech and the right to express diverse viewpoints. A state cannot be called democratic until it guarantees the unrestricted exercise of the right to free expression. Individuals can participate in democracy and communicate their criticisms, ideas, and views through freedom of speech. Every time mere criticism about government policies cannot be always termed as sedition.

[14] Schenck v. United States 1919 SCC OnLine US SC 62.
[15] Bhatia, Gautam, 2016, Offend, Shock, or Disturb: Free Speech under the Indian Constitution. 1st Edn., Oxford University Press, USA.
[16] Venkataramanan, K., *The Hindu*, How free can free speech be? February 26, 2016 (https://www.thehindu.com/opinion/op-ed/how-free-can-free-speech-be/article8289947.ece) accessed May 11, 2022, 4.10.p.m.

In Javed Habib v. State (NCT of Delhi)[17], The Delhi High Court goes on to explain that when the leader of a political party becomes the Prime Minister, any criticism of the person or his policies as Prime Minister cannot be considered sedition. It is not necessary that criticism be delivered in a humble and respectful manner. It's also possible that such criticism will inspire individuals to vote against such leaders or political parties in the future. However, such harsh criticism that results in disagreement with the government's policies cannot be deemed to be a sedition offence. S. Rangarajan v. P. Jagjivan Ram[18] it was held that the freedom of speech and expression protects the right to create an opinion and express it in a way that does not defame the other person to whom such criticism is addressed. Democracy allows for free policy debate and critique.

REASONS TO CHANGE OR SCRAP THE LAW

India has a population of 1.4 billion people. There are 1.4 billion different versions of reality, and any of them can appear seditious to someone. Everyone has their own thoughts and ideas. As a result, there is a pressing need to define or reassess what sedition is and what activities fall under it. In its 2018 report, the Indian Law Commission addressed the topic of sedition. 'In a democracy, singing from the same songbook is not a benchmark of patriotism… one must indulge in constructive criticism and debates… expressions used in such thoughts might be harsh and unpleasant.'[19]

According to National Crime Records Bureau data, 70 instances of sedition were filed in 2018, 93 cases in 2019, and 73 cases in 2020. However, out of all of the instances, only two were found guilty. Because there are no proofs, authorities are unable to submit charge sheets in many cases of sedition. These cases are still ongoing because they are complete without merit. Politicians and the administration are abusing the law. All of this demonstrates the law's limitations. In modern India, the legislation against sedition has to be repealed. In many cases, small children and young women were bullied and terrorised as a result of sedition. As a result, I believe we are dangerously flirting with fascism when the state tries to terrorise people with laws. As a result, administrators find this tool useful. Remove the tool and replace it with specific laws against hate speech and inciting violence. That is reasonable, but elevating ordinary disagreement to the level of anti-national insurgency or rebellion is not. The point is

[17] Javed Habib v. State (NCT of Delhi), 2007 SCC OnLine Del 891: (2007) 96 DRJ 693.
[18] S. Rangarajan v. P. Jagjivan Ram, (1989) SCR (2) 204.
[19] Law Commission of India, Report No.267 Hate Speech (https://lawcommissionofindia.nic.in/reports/Report267.pdf).

that if harsh legislation remains on the books, it will be abused. It's also pointless to apply ointment thereafter. This has been a part of the law for over a century. It has been proven through experience that it does not function. It has resulted in a lot of abuse in the past. It's past time to toss it aside and come up with something new.

CONCLUSION

Although we have been free of British dominion for 75 years, oppressive British laws continue to obstruct our progress. India is the world's largest democracy. However, the existence of a sedition statute casts doubt on its democratic nature. The existence of such a provision in a progressive state looks to be redundant. The linked punishment makes the provision draconian. The continuation of such a clause chills freedom of speech and expression, which is a supposedly fundamental right guaranteed by Article 19(1)(a) of the Constitution. It could be argued, based on the repeal of the statute of sedition in England, that the law of sedition is now obsolete. Other statutes govern the upkeep of public order and can be used to guarantee public peace and tranquility. In view of the foregoing observations, the Indian legislature and judiciary should examine the existence of sedition legislation in the statute books. These rules are relics of colonial oppression, and they may jeopardise citizens' rights to dissent, protest, or criticize the government in a democracy. The freedom of speech and expression is the lifeline of any democracy, and stifling, suffocating, or gagging this would sound a death knell to the democracy and usher in autocracy and dictatorship.[20] The democratic form of government itself demands its citizens' active and intelligent participation through public discussion.[21] It includes criticism of the government or its policies, and the right to free speech and expression protects it. However, the sedition legislation restricts the extent of the fundamental right to free speech and expression. As a result, the Indian constitution's guarantee is called into question.

The Hon'ble Supreme Court in M.C. Mehta v. Union of India[22] had once held and we quote: "Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static." India has changed dramatically since independence. Citizens' attitudes regarding government have shifted, and their patriotism for the country has grown. It is now

[20] LIC v. Manubhai D. Shah, (1992) 3 SCC 637: AIR 1993 SC 171.
[21] Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.
[22] M.C. Mehta v. Union of India (1987) 1 SCC 395.

time to consider the need for sedition law. Sedition law in democratic India has become obsolete, and it must be updated as time passes. It is simply impeding the progress of the country and must be repealed.