

THE RESTRAIN ON MY VOICE BOX: SEDITION LAW

Harshita Raj*

ABSTRACT

The Supreme Court of India led by a three-judge bench in *SG Vombatkere V Union of India* has persuasively ceased the effectiveness of Section 124A of the Indian Penal Code. Section 124 A of IPC penalized 'sedition' as a criminal offense. It has been used by sequential regimes, incorporating the governments of post-independence to vanquish the democratic and rational dissents. It is considered that the law is a prolepsis of colonial era corpse. The nation waits for the final decision of the court on the matter for reconsideration and re-examination of section 124 A of IPC which provisions Sedition as a crime. The Indian government is devoted to upholding and defending the great country's sovereignty and integrity while also being fully aware of the many viewpoints on the topic of seditious behavior that is being expressed.

Keywords: Section 124 An IPC, Sedition, Colonial era rules, Government, democratic dissents, fundamental rights.

INTRODUCTION

"Against escalating governmental repression and the detention of opposition voices, repeal the sedition legislation," cries out the voice of young people denouncing the sedition law. A few petitions seeking the Supreme Court to strike down the sedition legislation have been submitted. Jawaharlal Nehru, the first prime minister of India, spoke out against a particular section of the first Constitution of India (Amendment) Bill, 1951, saying that it was "highly objectionable and obnoxious" and that it "should have no place both for practical and historical reasons." This statement was a subliminal reference to the British-proposed law that forbade criticism of their government. As a result, history laments the loss of great leaders like Bal Gangadhar Tilak, who was charged with sedition for criticising British rule in his Marathi-language newspaper, *Kesari*, in the year 1897, and Mohandas Karamchand Gandhi, who was detained on sedition-related charges on March 10, 1922, despite having withdrawn his Non-Cooperation movement against the British. Presently the Supreme Court of India has instructed the government on the federal level to keep all pending trial appeals and proceedings deriving

*BA LLB, SECOND YEAR, LLOYD SCHOOL OF LAW, GREATER NOIDA.

out of charges scaffold under the section 124A of IPC in quiescence. The court itself finds the use of section 124A as non-complementary with the present social milieu.

RESEARCH METHODOLOGY

This paper uses the doctrinal method of research and is primarily structured upon secondary sources of information. It makes use of various statutes governing the concerned areas involved in the paper along with the judgment passed by the Supreme Court of India. Some material has also been picked up from different books and legal magazines along with websites online that contain information about the topic covered. Various judgments were studied and the relevant parts were selected and included in the paper.

WHAT IS SEDITION LAW?

According to Section 124A, sedition is defined as "whoever brings or seeks to bring into hate or contempt, or inspires or attempts to incite disaffection against, the Government established by law shall be punished with imprisonment for life, to which fine may be added.¹ The clause has the following three justifications:

1. The term "disaffection" includes disloyalty and all hostile feelings.
2. Comments criticizing government policies with the aim of changing them through legal channels without inciting or attempting to incite hatred, contempt, or disaffection do not violate this section.
3. Comments criticizing government administrative or other actions without inciting or attempting to incite hatred.²

Indian Penal Code was drafted by Lord Thomas Macaulay in 1860 and it believed that sedition law was not having a niche into it. Legal professionals are of the opinion that the sedition law's deletion was an accident. Sedition was incorporated as an offence in section 124A of IPC in the year 1890. The punishment then was transportation "beyond the sea for one's natural life", it was changed to life imprisonment in 1955. The stipulation of sedition law followed extensively to provide muzzle covers to democratic critics who dissented against the British

¹ Section 124A Indian Penal Code, 1860

² Mayne, John D, *Commentaries on the Indian Penal Code (Act XLV of 1860)* Higginbotham and Co, London

laws and their way of governance. It was during 1898 that the most famous sedition trial took place in Queen Empress vs. Bal Gangadhar Tilak. Bal Gangadhar was charged with the case of sedition just because he criticized the colonial government in his Marathi newspaper 'Kesari'. Numerous cases have been filed against prominent freedom fighters like Mohandas Karamchand Gandhi, Shaukat Ali and Mohammad Ali who were known as the head leaders of the khilafat movement, Maulana Azad, and even Annie Besant. They have been the prominent targets of several pre-independence proceedings under section 124A of IPC. Now after 75 years of independence where India has gradually restructured itself in social, economic and political perspectives, the question arises why still it abandons people being against the government and being dissenters in a democratic land. The court made interpretations while making the move to take decisions in the matter of 124A in the way that "The disapprobation "must be 'compatible' with a propensity to relinquish obedience to the legal administrator of the Government and to support the legal authority of the Government against illegal attempts to sabotage or impede that authority," there is heated debate on this linchpin section of IPC that it curbs the freedom of speech and expression, endorsed in the constitution of India.

HOW THE SEDITION LAW HAS BEEN ANALYSED?

Why Kedarnath Singh Vs State of Bihar is so important?

This case has an interpretation in consonance with regard to Article 19 (1) (a) of the Constitution of India. The chapter VI of the Indian Penal Code, 1860, Section 124A scrutinizes the legality of sedition in India (IPC). The objective of including this clause is bestow every State with its contemporary Government the capacity to punish anybody whose actions endanger the safety, integrity and stability of the State, incite disloyalty or hatred, or otherwise hinder the operation of the State or the maintenance of public order. Therefore, the Government's presence and interference are necessary for the State to be stable. The crime of sedition must adhere to the law and spirit of the Indian Constitution and not infringe upon a person's basic rights.

CHRONOLOGY OF CASES RELATED TO THE SEDITION LAW

Succeeding the first law commission's recommendations, section 124 was included in the Indian Penal Code. In the case of Reg v. Alexander Martin Sullivan, (1868) Lord Fitzgerald provided an explanation of what sedition is? Sedition is a crime against the society that includes any actions taken to try to interfere with the state's peace by words, deeds, writing, expression,

or visual depiction. Sedition is intended to cause or encourage unrest, anger the government, and denigrate the role of the state. It's also crucial to remember that criticizing the government or political issues is not the same as sedition. Without intending to stir up or foster anger, disdain, or discontent, a person act.³

Queen Empress v. Jogendra Chandra Bose (1891) was the very case in which a trial took place for sedition in India. The chief justice of then the Calcutta High Court explained the about the term of “disaffection” and its dissimilitude with disapprobation. The high court observed that anyone who stimulates or attempts to stimulate a feeling of animosity is liable for sedition.⁴

Queen Empress v. Bal Gangadhar Tilak (1897) is probably the first case known in history where Bal Gangadhar Tilak has been tried specifically under Section 124A of IPC. This was the first case itself where sedition under section 124A is demarcated. Here the court came to judgement on lines with that the intensity of the treason towards the government is insignificant.⁵ The act of hatred, disloyalty and disaffection either sizeable or negligible will be guilty under the provision of Section 124A of IPC.

The case of Niharendu Dutt Majumdar v. King Emperor Case (1897) established that inciting violence and not just using denigrating language against the government is sedition. The court held that it is necessary to give ear and consideration to both sides of any speech, action, or written text to be considered a seditious.⁶ When the government and the law cease to obey the law, there is seditious behavior and only anarchy survives. Disaffection must be caused by the alleged acts or statements and must be based on a plausible expectation or possibility of public disruption. It is simple to qualify as sedition if they have the purpose or predisposition to do so.

The constitutional validity of section 124A IPC is being checked subsequently after the independence to till date. It is being successively checked by numerous cases one after the other. K.M Munsu advanced in an amendment in the Constitution Assembly on 1st December 1948 for discussion to abandon the sedition laws as it's against the essence of democracy. For the first time in legal history, sedition came into contemplation in the case of **Romesh Thapar**

³ R v. Sullivan (1868) 11 Cox C.C. 44 at p. 45 cited in United Kingdom Law Commission

⁴ ILR (1892) 19 Cal 35

⁵ILR (1897) 22 Bom 112

⁶ ILR (1942) 23 Lah 623

v. State of Madras⁷ in 1950. In due course the constitution first amendment 1951 came into effect which inserted two words specifically “in the interest of the security of the state” and “public order” under Article 19(2) of the Constitution of India which briefs about the restriction provided to the freedoms enunciated in the Article 19 of the constitution of India. constitution first amendment 1951 was basically for putting the restriction on freedom of speech and expression enunciated in 19 (1) (a) making it not absolutely available to the citizen of India keep in mind that freedom given may be exploited. The court ruled that the sedition law is unconstitutional as it is against the essence of democracy and has no place in the democratic government in the case of **Tara Singh Gopichand v. The State (1951)**.⁸ In a case that is comparable to this one, Ram Nandan v. State of Uttar Pradesh, (1959), the Allahabad High Court ruled that Section 124A violates the Constitution because it is ultra vires to the provision of the constitution provided fundamental rights, it restricts Article 19(1) (a) and is not in the public's best interest.⁹

Kedarnath Singh v. State of Bihar

It was a five-judge constitution bench. It upheld previous rulings of the High court of Patna. And it was the case that came in difference from all the previous cases as the judges, in this case, held a provision of section 124A is constitutional and in consonance with Article 19 (1) (a) of the Constitution of India. However, in the case, the court attempted to avoid the scope of misuse. The court held that except accompanied by incitement or call for violence, or criticism of the government, it cannot be held as sedition. The judgement obstructed insofar as seditious speech tended to incite “public disorder” highlighting the essentiality of sedition.¹⁰

The court issued seven guidelines highlighting when deprecatory speech cannot be qualified as sedition. The guidelines included some new restrictive sedition laws. The court ruled that not all speeches with disaffection hatred or contempt against the state but only speech that is likely to incite “public disorder” would be qualified as sedition.

After **Kedarnath Singh v State of Bihar**, “public disorder” is considered one of the crucial ingredients to committing the crime of sedition. This case is crucial to comprehending how fine and delicate the line is between lawful political action and attempted disaffection from the

⁷ AIR 1950 SC 124

⁸ 1951 Cri LJ 449

⁹ AIR 1959 ALL 11

¹⁰ 1962 AIR 955, 1962 SCR Supl. (2) 769

government in a democratic system of government. Therefore, justifiable political criticism of the current government would be within acceptable bounds and compatible with the basic right to freedom of speech and expression, regardless of how forcefully expressed it could be. The Supreme Court has essentially said that S. 124A cannot be taken literally.

RECENT PROMINENT JUDGMENTS WITH REGARDS TO SEDITION: -

The list has no end when it comes to cases filed and the number of trials, which is not even fifty percent of the number the case filed and convictions stands even less than five percent of the same in recent years. From Vinod Dua's case to Kishorechandra Wangkhemcha to Disha Ravi, sedition has many prominent cases on the list to be analyzed.

Vinod Dua v. Union of India (2021)

According to Supreme Court's previous decided cases, any written or spoken words that have the potential to spawn disruption to public order, harm the integrity of the nation or disruption by restoring violence is meant to be criminalized. The words used by Vinod Dua were an expression of dissatisfaction towards the management process that was taken by the government and its administrator for the covid crisis. According to him, the covid crisis could have been resolved efficiently and expeditiously but the government failed to do so. An FIR was registered on 3rd June 2021. Supreme Court observed that a citizen has the right to dissent about the governance, until and unless it incites ferocious mobs to affect the peace of the nation. It is officially permitted to criticize the government. Section 124A and 505 must be invoked only when words the word spoken or written or signs incite hatred in the mind of citizen or leads to disaffection towards the government established.¹¹

Rajat Sharma V Union of India

In 2021, Rajat Sharma and Neh Srivastava brought a Public Interest lawsuit against Farooq Abdullah, the former chief minister of Jammu and Kashmir, for his comments on the Center's decision to invalidate Article 370. According to the complaint, Abdullah had made remarks about "restoring Article 370" with "assistance from China." The Supreme Court ruled on the case in March and stated that having opposing opinions to those of the government was not

¹¹ 2021 SCC Online SC 414

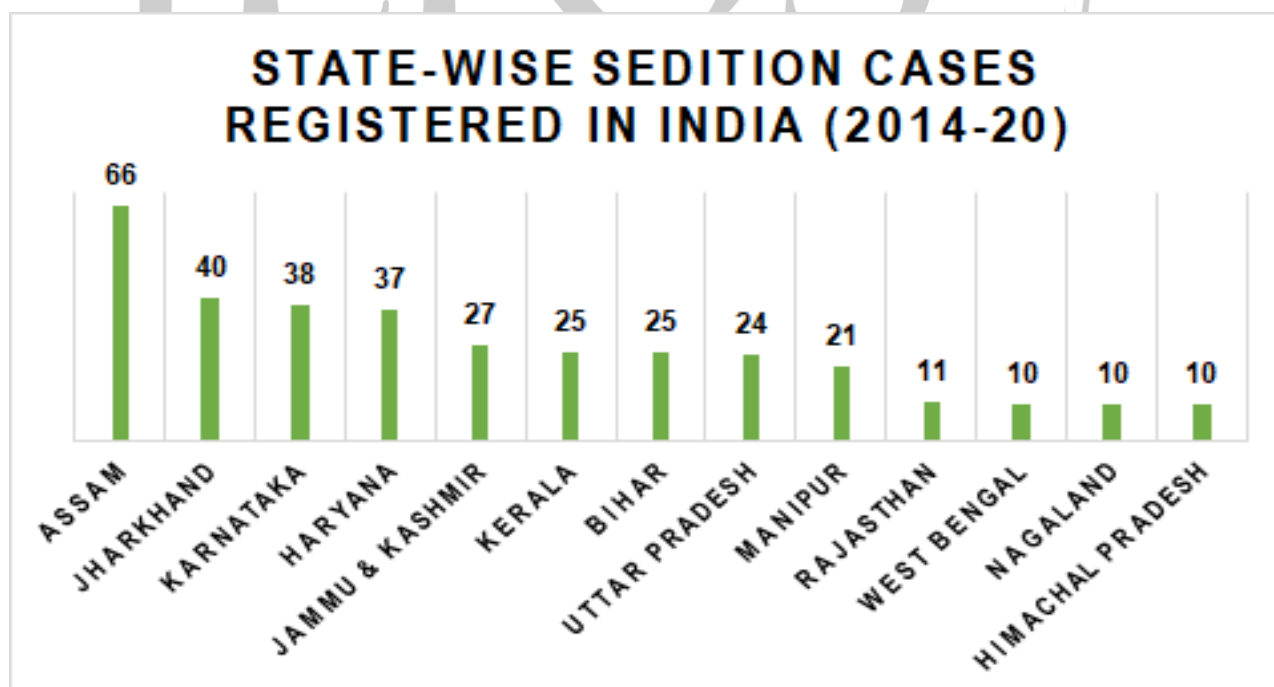
sedition.¹² The highest court rejected the argument and fined the petitioners Rs 50,000 for failing to provide evidence in support of their claims.

Disha Ravi tool kit case

Disha Ravi, a climate activist from Bengaluru, was detained by Delhi Police in connection with a toolkit on the farmer protest during the early 2021 demonstration by the farmers. She was arrested for sedition, fostering hostility, and criminal conspiracy under the IPC. A Delhi judge granted her release a little more than a week after her detention, stating that the offence of sedition cannot be employed to minister to the wounded pride of administrations. The Delhi Police's accusation that she was a part of a bigger plan to foment violence in the nation's capital on January 26th was rejected by the trial court by giving her bail.

WHAT DOES THE GRAPH TELL US ABOUT SEDITION LAW?

A sum of a total of three hundred fifty-six cases (356) of sedition as described in section 124A of IPC was lodged and five hundred forty-eight (548) individuals were arrested between 2015 to 2020, according to the report released by National Crime Report Bureau. But it was that only twelve (12) individuals were arrested and seven cases of sedition in this long duration of six years.

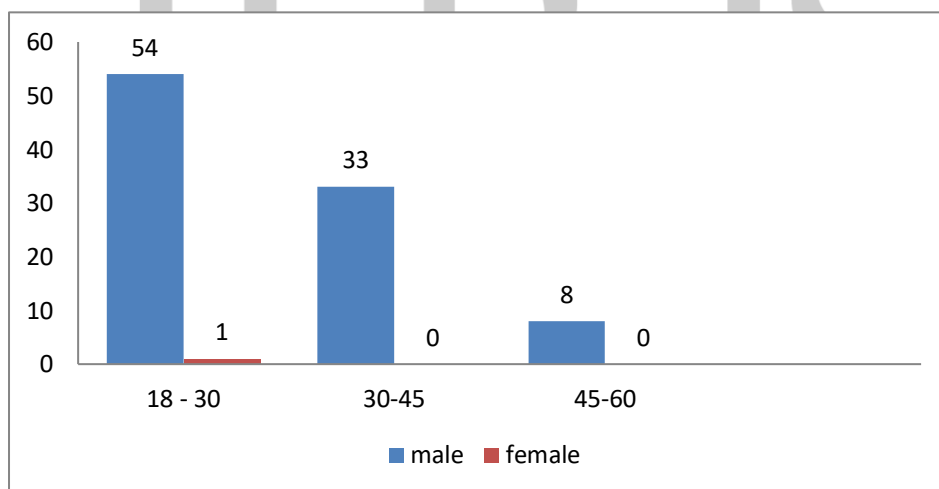


¹² (2021)5 SCC 585.

Image courtesy: NDTV e-newspaper

The above graph is the depiction of the number of cases of sedition registered in the term 2014-2020, in different states namely Assam (66), Jharkhand (40), Karnataka (38), Haryana (37), Jammu and Kashmir (27), Kerala (25), Bihar (25), Uttar Pradesh (21), Rajasthan (11), West Bengal (10), Nagaland (10) and Himachal Pradesh (10). The graph has a clear depiction that Assam topped this survey report which was conducted by NCRB, having the maximum number of cases logged for sedition. There were as many as 44 individuals who were arrested under section 124A IPC, 1860 in 2020, whereas 99 individuals were arrested in 2019, 56 in 2018, 48 in 2016, and 73 in 2015. total cases registered under section 124A across the country were 73 in 2020, 93 in 2019, 70 in 2018, 51 in 2017, 35 in 2016 and 30 in 2015. The conviction rate of sedition cases was 33.3% in 2020, 33% in 2019, 15.4% in 2018, 16.7% in 2017 and 33.3% in 2016 as per reports released by Home Minister in 2020. The Supreme Court asked the question to the center that why is such misuse of the pre-colonial corpse of law is so prevalent in India after 75 years of Independence in 2020.

Number of individuals who speak for themselves – NCRB report



The X-axis depicts the age group

The Y- axis depicts age in number

Pendency rate of case = 69.4 %

Convicted = 02

While the number the cases filed under section 124A IPC have increased by 160% in 2019 (93) as compared to 2016 (33), the rate of conviction fell from 33.3% in 2016 to 3.3% in 2019, according to NCRB.

CONCLUSION

Sedition laws and the increasing abuse of them by governments of all colors (even those run by the opposition) are a significant topic of concern. Sedition laws and their flagrant abuse undermine the entire basis of these rights, which are guaranteed by the Indian Constitution, as well as personal liberty and the right to free expression, which are characteristics of liberal democracy. The judiciary must reconsider this oppressive statute immediately due to the pressing requirement. Aside from preserving the country's freedom of expression, modifying the legislation and providing strong restrictions to prevent its indiscriminate usage will enhance India's democratic standing even though its total abolition may not be possible. The Indian Penal Code 1860 section 124A was passed to eradicate and suppress any remaining social reforms of resistance. Such a tendency goes against democracy's fundamental rights principles. Such a clause needs to be equally balanced between the right of people and the law restricting it. The hallmark of a democracy, freedom of speech and expression, is being threatened by the sedition statute. Citizens must actively engage in discussions and voice their constructive criticism of government initiatives in order for a democracy to exist. The executive arm of the government is now able to exploit the vaguely defined provision to control public opinion and arbitrarily exercise authority thanks to the sedition legislation. The sedition legislation is being used to encourage citizens to follow rules set out by the government.

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