

SEDITION LAW

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ABSTRACT

All of the laws that we have are for the benefit of society, and some were inherited from the colonial administration. The rules inherited from the colonial administration are still in effect today and the most contentious provision in Sec. 124-A of the Indian Penal Code, 1860, which deals with sedition legislation in India. The interpretation of this provision obscures the underlying spirit of the law. Sedition is defined as the illegal act of instigating people to oppose the ruling government. Sedition is defined as any act or statement that incites someone to hold anti-national beliefs against a government or has the potential to undermine the state's public peace or harmony. Sedition offenses are punishable by a minimum of seven years' imprisonment, with the possibility of life imprisonment. A sedition offense is a cognizable, non-bailable, and non-compoundable offense that may only be prosecuted in the Court. The study of how the sedition laws have been applied by various Indian courts demonstrates how they would have become outmoded for today's culture, and numerous suggestions for their implementation are presented. In India, all citizens enjoy the fundamental right to free speech. Sedition is a valid restriction under Article 19 (2) of the Constitution, which stipulates that the government may impose a reasonable restriction. Though reasonable restrictions on such rights allow for a sedition law, the scope of such legislation is a critical matter. Prosecuting someone arbitrarily for sedition is a breach of the constitution in our country, where the Rule of Law rules supreme. This article attempts to bring together all of the discussions on repealing and changing these laws. The presence of this law in our law books, as well as its punishment, appears to be inappropriate in our democratic country.

Keywords: Sedition Legislation, Indian Penal Code, Fundamental Right, Indian Constitution, Reasonable Restrictions, Democratic Society, etc.

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INTRODUCTION

Our Indian Constitution guarantees all people the right to Freedom of Speech and Expression, as specified in Article 19(1)(a). Article 19(2) defines the restrictions that apply to the freedom that is provided. Sedition is defined as an offense under Sec. 124 A of the IPC, 1860. It is described as a crime that criminalizes speech deemed hostile or detrimental to the state. The provisions listed in Sec. 124 A of the IPC, 1860 are broad and encompass defamatory activities of the government, excluding the criticism in good faith of any particular act done by the administration¹. Sedition is an offense against society because it encompasses all practices that eventually result in causing disturbances in the state or, in extreme cases, civil war, which despises the sovereign and promotes public disorder. Outright revolt against the existing order, such as words and organization, is classified as sedition. Sedition is typically described as the undermining of a constitution and the promotion of dissatisfaction with or insurgency against existing authority. Sedition is defined as any commotion that is not directed at causing direct clear & direct violence against the government. The use of seditious terminology in writing is known as "Seditious Libel". Seditious are those who indulge in or encourage sedition. Since it is blatant, sedition is generally not regarded as subversive conduct, and the blatant behaviors that may be prosecuted under sedition regulations differ by legal code. The Indian legislature has achieved tremendous progress in several areas of law. A good law is not a means for national development; rather, a good lawyer is a tool for national development. Almost all of the laws in India today are either from the colonial period or have their origins there. Many of these rules were enacted solely to oppress Indian "subjects," but they have unhappily made their way into the post-independence period as well, and have become a source of tremendous contention, much like the laws connected to sedition. Sedition is defined as "an action or utterance that results in rebellion against the government's authority." The Law of Sedition deals with Sec. 124A of the IPC, 1860, which is seen as a reasonable restriction on freedom of speech and expression. Thomas Macaulay drafted it and launched it in 1870. Sedition (Sec. 124A of the IPC) is defined as a crime committed when,

"Anyone who, by utterance, either spoken or documented, or by indications, or by means, or otherwise, incites or tries to incite disaffection for the government established by statutory

¹ <https://indianlawportal.co.in/>

provisions shall be punished with rigorous imprisonment, to which a fine may be added, or with confinement for 3 years, to which a fine may be added, or even with a fine.²"

Disaffection includes both a lack of loyalty and feelings of hate. Statements that do not provoke or attempt to incite hostility, contempt, or disaffection, but on the other hand, do not infringe this provision under this law. The laws about sedition have undergone numerous interpretations and implications since independence to pass the constitutionality test, but they continue to be a repressive force against the right to freedom of speech and have evolved into an instrument for many modern government entities who will use them to subjugate their residents, just like the pre-independence leaders did. The authorities of the colonial government enacted this statute for a specific reason, and it has no significance in modern society. The examination of the implementation of the sedition statutes by various Indian courts demonstrates how outmoded they are in the modern world. This study focuses on how Indian sedition laws have become outmoded for current society and India since they are potentially used for the same objectives as colonial rulers, i.e., to oppress the population. The essay discusses how the sedition law has been incorrectly and unfairly applied by various courts. The law about sedition has become ambiguous for modern society due to challenges in its application universally to all circumstances as the Indian environment has evolved in the 146 years since it was created.

HISTORICAL BACKGROUND

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Sedition is a crime in India under Sec. 124A of the IPC. This was based on treason laws similar to those in England. The Indian government is not unfamiliar with the idea of sedition, and it was created during the British colonial era when India was governed by them. Thomas Macaulay was the first person who proposed anti-sedition laws in India in 1837, but they weren't included in the IPC until 1860. Sedition legislation was enacted in 17th-century England when policymakers felt that only constructive ideas of the government should prevail because negative perceptions were harmful to the state and ruler. When it became clear that a separate provision was required to deal only with the offense, Sir James Stephen proposed an amendment in 1870 that included Section 124A.³ It was inserted into the IPC in 1870 through a Special Act XVII of 1870⁴ as Section 124A for offenses against the government in reaction to the developing extreme Wahabi movement led by Syed Ahmed Barelvi. It was intended to

² <https://timesofindia.indiatimes.com/>

³ <https://currentaffairs.adda247.com/sedition-law-in-india/>

⁴ <https://www.lawyersclubindia.com/>

quell the increasing voice of Indian leaders and politicians opposing British authority in the Indian subcontinent. Section 124A was revised in 1898 to include the phrases "bringing or trying to transmit contempt or to excite disaffection towards the administration constituted by law is criminal," and the punishment was later changed to "Life imprisonment and/or added with a fine, or 3 years imprisonment and/or added with a fine." Following independence, the Constituent Assembly considered how irritating this Section was and if it should be waived because it infringed on one of the most essential fundamental rights, but it was never repealed in practice. In 1951, while the first Constitution Amendment Bill was being introduced, Jawahar Lal Nehru highlighted that this law had no place in independent India.

The case of **Queen Empress v. Jogendra Chandra Bose & ors.**⁵ (Also known as **Bangobasi case**, 1892), in which editors of Bengali journals were accused of sedition, was the first widely publicized case involving a sedition offense. The publishers said that they had not written seditious content but simply published it and that penalizing people for defending their rights goes against the spirit of the law. The HC of Calcutta ruled that publishers cannot be released since the circulation of publications by them is intended for the target population to read them. The High Court also pointed out the difference between the phrase's "disapprobation" (a valid criticism) and "disaffection" (any feeling contrary to affection). The court determined that the crime of sedition does not violate people's rights because only disaffection is punishable.

In **Queen Empress v. Bal Gangadhar Tilak, 1898**⁶, Tilak was convicted of sedition for publishing a newspaper article, and Sec. 124A of the IPC, 1860, was interpreted and applied. In this situation, the term "disaffection" was broadly construed to include hatred, animosity, dislike, hostility, contempt, and any other kind of ill-will against the government. The court said no one may encourage or attempt to instigate such disaffection, and no one should encourage or attempt to incite hostility toward the state. In Tilak's case, a modification was proposed to make it harsher. Tilak has prosecuted with sedition again after two decades in **Emperor v. Bal Gangadhar Tilak**, (1917) and this time the division bench of Bombay HC heard the case. The court took a comparatively liberal approach, in this case, denying the definition of "disaffection" offered by the same court's one-judge bench in Queen-Empress v. Tilak, which came up with the broad term of disaffection as everything unfavorable to the attachment. This decision supported freedom of speech and expression because the real impact

⁵ Queen Empress vs Jogendra Chunder Bose, ILR (1892) 19 Ca 35

⁶ Queen Empress vs Bal Gangadhar Tilak, ILR (1898) 22 Bom 112

of the claimed seditious remarks on the public was considered when evaluating the accused's purpose.

Annie Besant vs. Advocate General of Madras⁷, which dealt with Sec. 4(1) of the IPA (Indian Press Act), 1910, was another case that led to criticism of the statute on sedition. The court upheld previous court interpretations and confiscated Annie Besant's printing presses for allegedly seditious content.

In 1922, **Mahatma Gandhi** was indicted, among others, for three articles published in the periodical Young India. Justice Strongman presided over this trial. The judge expresses his unwillingness to find him not an offender of sedition and condemns him to imprisonment of 6 years.

SEDITION IS FOUND IN OTHER LAWS

Here, the following Sedition legislation is covered by the following laws:

- IPC {Indian Penal Code}, 1860 (Section 124A)
- CrPC {The Code of Criminal Procedure}, 1973 (Section 95)
- The Prevention of Seditious Meetings Act, 1911 (Section 5)
- UAPA {The Unlawful Activities (Prevention) Act}, 1967 (Section 2(o) (iii))
- The Prevention of Insults to National Honours Act, 1971 (Section 2)

Firstly, “**The Indian Penal Code, 1860**”⁸, is the primary body of legislation in India that criminalizes sedition. Sedition is described under **Sec. 124A of the IPC** and mentions the punishment for it. The main elements of sedition include expressing or attempting to express contempt, hate, or disaffection towards the government. Furthermore, the section's justifications emphasize that mere disapproval of state acts or activities intended to bring about positive change through constitutional means without evoking sentiments of hatred, contempt, or discontent does not constitute sedition.

Secondly, “**Section 95 of the CrPC (Code of Criminal Procedure), 1974**”, authorizes the government to forfeit any publication deemed improper. The reasons for forfeiture have been

⁷ Annie Besant vs Advocate General of Madras, AIR 1919

⁸The Indian Penal Code, 1860 (Act 45 of 1860)

clarified further, with sedition, as defined in section 124A of the IPC, 1860, being the first such basis.

Thirdly, British officials introduced “**The Prevention of Seditious Meetings Act, 1911**”⁹, to suppress opposition by criminalizing seditious meetings. Section 5 of the Act authorizes a Commissioner of Police to prohibit a public assembly in a declared area if such a meeting, in his/her judgment, is likely to encourage sedition or disaffection or to produce a disruption of public calm. Given that this act was introduced to prohibit the gatherings organized by nationalists to challenge the British government, the continued application of this act is unwarranted and unneeded.

Fourthly, “**The UAPA {Unlawful Activities (Prevention) Act}, 1967**”¹⁰,

One such legislation, the Unlawful Activities Prevention Act, has provisions that might be misused by the ruling government and are equally harmful to the freedom of speech and expression as the sedition law.

“Unlawful activity” is defined under Section 2(1)(o)(iii) of the UAPA

The UAPA, 1967, criminalizes events or activities that are detrimental to India's sovereignty, unity, and integrity. A succession of modifications to the Act has increased its rigor and broadened the extent of the state's ability to regulate such actions. From 2016 to 2019, the era for which the National Crime Records Bureau (NCRB) provided UAPA numbers, a total of 4,231 FIRs were registered under various sections of the UAPA, with 112 cases culminating in convictions. This frequent application of UAPA indicates that it is frequently misapplied and exploited as have previous anti-terror legislation in India in the past, such as POTA (Prevention of Terrorism Act) and TADA {Terrorist and Disruptive Activities (Prevention) Act}. The discussion will therefore center on the fact that, if Sec. 124A of the Indian Penal Code, 1860 is found to be illegal because Article 19(1) protects (rather than explicitly prohibits) speech and expression that simply creates disaffection, Sec. 2(1)(o)(iii) of UAPA, 1967 must also be modified to remove the elements that are bought from Sec. 124A of the IPC. If the Law of Sedition is illegal which is not an integral part of any violent, illegal, criminal act, then removal of this law on one hand and keeping the other i.e., UAPA, would be irrational. Fifthly,

⁹ The Prevention of Seditious Meetings Act, 1911

¹⁰ The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967)

there is “**The Prevention of Insults to National Honours Act, 1971**”¹¹, which limits free speech and expression if it insults the nation's dignity. The Act further defines insulting the national flag as hanging the flag in any form, stitching on the flag, padding the flag, wearing the tricolor, covering the speaker's desk with the tricolor, or even printing the tricolor on handkerchiefs as disrespecting the national flag. The term "flag" refers to any image, photograph, or sketch of a national flag. The maximum penalty under the Act is three years' imprisonment, a fine, or both. Despite the presence of several laws criminalizing sedition in addition to the aforementioned statutes, the definition, substance, and content of Sec.124A of the IPC, 1860 remain the principal law penalizing the offense of sedition. Furthermore, the legality of any laws to restrict the freedom of free speech and expression under the guise of calling it seditious arises from the fact that it is seen as a reasonable limitation when challenged in a court of law. As a result, it is critical to examine the core of such limits through constituent assembly deliberations.

STATISTICS OF SEDITION LAW CASES

It is seen that the cases of sedition were registered around the country between 2015 and 2020 under the contentious "colonial" era sedition law, according to statistics from the Union Ministry of Home Affairs, according to news agency PTI (MHA)¹². However, only 12 people arrested in seven sedition cases were convicted throughout these six years. In 2020, there were 73 sedition cases around the country; 93 in 2019, 70 in 2018, 51 in 2017, 35 in 2016, and 30 in 2015. According to the data, 897 cases were filed under the Unlawful Activity (Prevention) Act, 1967 in 2015, 922 in 2016, 901 in 2017, 1,182 in 2018, and 1,126 in 2019. The conviction rate of sedition cases was 33.3% in 2020; 3.3% in 2019; 15.4% in 2018; 16.7% in 2017 and 33.3% in 2016. A total of 44 persons were arrested under the sedition cases in 2020, as compared to 99 in 2019; 56 in 2018; 228 in 2017; 48 in 2016; and 73 in 2015. Between 2015 and 2020, 290 of the 548 people were between the ages of 18 and 30, with the remaining being between the ages of 30-35. Over the previous three years for which the NCRB has provided crime statistics, Assam had the highest arrests for sedition (2018-2020).

¹¹ The Prevention of Insults to National Honours Act, 1971

¹² <https://www.hindustantimes.com/>

LANDMARK JUDGEMENTS OF SEDITION CASES

The first case is “**Brij Bhushan v. the State of Delhi**”. The constitutionality of Sec.7(1)(c) of the East Punjab Public Safety Act, 1949, was questioned in this case. The SC of India ruled (5:1) that the clause was unconstitutional because "sedition" and "affecting public tranquillity" are distinct concepts, and disruption of public order and tranquillity does not always imply seditiousness; hence, a prior restraint on publications cannot be imposed. "Public order" was not one of the restrictions under Article 19(2) at that time. As a result, the Supreme Court, in the absence of restrictions such as "public order," deemed the preservation of the freedom of speech and expression to be more important than restrictions imposed by the state to curtail it.

In “**Romesh Thappar v. the State of Madras**”¹³, the constitutionality of Sec. 9 (1-A) of the Madras Maintenance of Public Order Act, 1949 was challenged, and the provision was declared unconstitutional, where the court held (5:1) that law to restrict the right to freedom of speech and expression cannot be declared seditious unless it is aimed solely against undermining the security of the country under Article 19(2) of the Constitution of India. Restrictions on free speech based on disruption of public order could not be upheld since "public order" was not included in article 19(2). As a result, the challenged clause was deemed invalid. The Supreme Court emphasized free expression over the constraints that the Act sought to impose under the garb of sedition. In “**Tara Singh Gopi Chand v. The State of Punjab**”¹⁴, the Hon'ble HC of Punjab ruled that Section 124A was unconstitutional because it violated the basic right of "freedom of speech and expression" granted by Article 19(1)(a) of the Constitution of India. Eight years later, in “**Ram Nandan v. State of Uttar Pradesh (1959)**”¹⁵, the Allahabad High Court stated that Sec. 124A of the Indian Penal Code, 1860, hampered the very root of free speech.

“**Kedar Nath Singh v. the State of Bihar**” was the Court's first case of sedition in independent India. Kedar Nath Singh was accused after making an outlandish speech in which he condemned the then-Central Government and called for a revolution. In this decision, the Supreme Court affirmed and condemned S.124A at the same time. The SC of India ruled in this case that while the statute of sedition is legal, it cannot be used to stifle free expression. The Constitutional Bench ruled that sedition may only be used if it can be proven that

¹³ Romesh Thappar vs State of Madras, AIR 1950 SC 124

¹⁴ Tara Singh- vs State, AIR 1951 SC 441

¹⁵ Ram Nandan vs State, AIR 1959 All 101

someone's statement incites violence among the populace and may cause public unrest. The Constitutional Bench further ruled that delivering a speech critical of a certain political party or government is not seditious. Sedition is triggered by any act of separatism, whether by persuasion or force.

In “**Balwant Singh v. the State of Punjab**”, the Supreme Court acquitted Balwant Singh, who had been accused under Sec. 124A of IPC in 1995. The Supreme Court reversed the sloganeers' seditious convictions, ruling that such chants do not encourage violence.

CONSTITUTIONAL VALIDITY OF SEDITION

Several times, the judiciary has called into question the constitutionality and necessity of colonial law. Sedition laws have been used more frequently, raising the question of whether such a law is required in a secular and prosperous country. Assam and Jharkhand account for one-third of all registered cases of sedition. The questioning constitutionality of sedition started in 1958 with many judgments as follows: Firstly in 1958 the Allahabad high court justice Raghubar Dayal in the **Sabir Raza case** stated that critic the state government, member of parliament, or government policy giving critic speech such speech cannot be penalized under sedition or other laws like destination even if it disrupts the public order of that area. We cannot conclude that the concern of threatening the security of the nation was decided by the Court Of session in such a way that the state might be overturned and a republic destroyed. In 1962 the court held that words of disloyalty towards the government in strong terms will not be falls under sedition unless when causing public violence by acts of violence hence this only is applicable when it like of causing violence. Whereas in 2016 an NGO filed a writ to challenge the extensive use of section 124. NGO alleged that government authorities ignored the judgment of the Kedar Nath case and misusing the sedition case heavily oppressed the voice or right to freedom of speech of students, journalists, and intellectuals the court held that the judgment of the Kedar Nath case gives sufficient guidelines for sedition. it was unnecessary to reconsider it. The current challenge to the Law has reached the Supreme Court of India due to the use or misuse of the law of sedition against those who criticized government acts. In recent months writ petition is filled apex court directed those proceedings under section 124A should be kept in abeyance and ordered the central government to re-examine the sedition law. They have also given the message that there should be a balance between civil' freedom and the state's security.

CONCLUSION

The Law of Sedition, like many other laws, was handed to us by the Colonial Government in terms of Sec.124 A of IPC, 1860, and we continue to rely on it to this day and maybe in the future. The Colonial government enacted the law of sedition because they intended to imprison everyone who spoke out against them. In the current situation, there are people in our nation who proudly speak ill of their own country if they disagree with the government, its policies, or the way it operates. These almost 200-year-old restrictions have no place in modern society and are proving to be a burden rather than a blessing, limiting people's rights. Almost all prosperous nations have either eliminated or toned down their sedition laws in response to the current circumstances. These laws cannot be used to force individuals to embrace whatever the state does, and citizens ought not to be penalized just because they disagree with the government's ideology and policies. Several types of laws are creating lines between individual freedom or civil liberties of the person and the state's obligation to provide security in a case of a traditional dilemma. It's the responsibility of the state judiciary NGO to strike or balance the constitutional freedom and imperative of anti-terror activities. It also makes a feel that it is against the Indian Constitution it should be considered by the law commission actively on the recent court judgment. Sec.124A of IPC, 1860, was enacted to suppress and remove the last forms of resistance in society. Such a propensity contradicts the inherent principles of democracy. The existence of such a provision in a modern country like India looks to be redundant. The clause is severe because of the severity of the penalty. The continuance of such a clause chills the right to freedom of speech and expression, which is ostensibly a basic right granted by the Indian Constitution Article 19(1)(a). To keep up with the changing demands of society, India's sedition laws must adapt and alter.