

LAW OF SEDITION IN INDIA AND ITS MISUSE

Viraj Pratap Khatter*

ABSTRACT

Sedition is an offence against the state or the government established by the law. Every person has the right to freedom of speech and expression which is provided by the Constitution of India but this right deals with the various types of exceptions that a person has no right to state anything by words either by speaking or writing, which might cause violence in the state. Sec. 124A of the Indian Penal Code deals with the provision of sedition, it is a criminal offence, and intention is an essential factor of a crime if an act is not done to cause hurt then the act might not be considered an offence, but the Hon'ble Supreme Court held that the even if the offence of sedition is not done to cause hurt or rebel in the state then also the person shall be punishable for the sedition. Sedition is a very vast term it included whether the act is done by words either speaking or words or gestures or any other things which will provoke others against the government measure or perform any anti-national activity.

India is a democratic country where the government is chosen by the citizens of India via a procedure established by the law, it is the right of a person to criticise the government measure because they are selected by them until and unless the act of the person results in conflict, but many a times government start misusing it the whenever any person criticise the government activities then that person might be charged under the sedition and in 1974, PM Indira Gandhi converted the sedition law as cognizable offences means the police have right to arrest the person without warrant and after that many people were arrested under the sedition law which results in pendency of the case and many accused person acquittal by the court because the grounds of sedition is not fulfilled, recent Supreme Court restrict the sedition law and order the government that no further cases of sedition shall be recorded till the further order. This paper highlights the sedition law in India and how it is misused by the parties.

KEYWORDS: Sedition, Section 124A IPC, Constitutional validity etc

1. INTRODUCTION

*BA LLB, SECOND YEAR, IILM UNIVERSITY, GURUGRAM

India is a democratic country, and freedom of speech is one of the jests of every democratic country means an individual have the right to speak without any fear, but these freedoms deal with certain restrictions which an individual or a group of individuals should have to follow. Generally, a person has the right to speak about the negative points of the existing governing party, although it is not an offence because parties are elected by the common public and every governing party is for the people and by the people, thus it is the right of every citizen to criticised the negative point of the government, then Many parties start to misuse the provision of sec. 124A of IPC i.e. sedition law which state that:- “whenever any person either by speaking or writing a word or by doing anything or attempts to excite disaffecting the government build by the existing laws of India, then that person shall be punishable with life imprisonment and fine might be added on it or imprisonment which may extend to 3 years and fine might be added or person punishable with the fine”.

2. ORIGIN OF SEDITION LAW

2.1 Before Independence

The Indian Penal Code, 1860 was drafted by the British parliament and the provision of sedition has been inserted under the British government, the British government was in fear that the Indian khilafat movement might start waging war against them, thus they need a law to minimise all such protest against the government and various types of Criticism against the government.

The first sedition case was recorded before the High Court of Calcutta, **Queen Empress v Jogendra Chunder Bose**,¹ in 1891, in this case, the accused person published an article in his magazine, in which he criticized the **Age of Consent Act, 1891**. It basically deals with the age of an individual for valid consent, and it also describes the legally incapable person for minimizing the possibility of rebel and then the authority put an allegation on the accused person for encouraging rebellions but the Bose was found acquittal by the jury members².

Many famous freedom fighters were also tried under this section, in 1897 the sedition case was filed against Lokmanya Tilak, he was a lawyer and active politician who supported the independence of India. He wrote and publishes their two articles in "Kesari in Marathi" and

¹ ILR (1892) 19 Cal 35.

² A Look Back At Tilak's Sedition Trials, available at: <https://www.livelaw.in/a-look-back-at-tilaks-sedition-trials/> (last visited on 15th July 2022)

“Maharatta in English” and these two articles were published in Pune, then Tilak published their article on the celebration as "Shivaji's Utterances" this report is presumed as a rebel on the British Government, then a trail under the sedition law has been initiated against the Lakmanya Tilak under section 124A of IPC, and he was punishable with 18 months rigorous imprisonment. Then Acc. To Strachey's definition the attempt to provoke common people by the feeling of the enemy, by two articles which he published in Pune, against the British government, more charges had been framed against Tilak and in the end, Tilak was found guilty and punishable with 6 years imprisonment.

Once Mahatma Gandhi, published their article in "Young India" in which he criticised the British Government, then he was charged under Section 124A of IPC for bringing and attempting to provoke, disaffection toward the existing government and he was punishable with 6 years imprisonment.

2.2 After Independence

Even after the independence Indian government follow the same provision of sedition law as created by the British Government before the Independence, in 1951 first case of sedition has been recorded before the Punjab High Court (After Independence), and the Hon'ble Punjab High Court declare that the section 124A of Indian Penal Code is an unconstitutional and the Hon'ble Allahabad High Court also suggested the same verdict of Punjab High Court in 1959, the Allahabad HC stated that the sedition law acts as a banner in the freedom of speech. In 1962 the government of India filed an appeal before the Hon'ble Apex Court of India; the court suggested that the speech against the government of India or any political party would not be considered an illegal act,³

3. INTERPRETATION OF SEC. 124A

As the sec 124A of IPC deals with the offence of Sedition this sec states that- "any person who states or attempts any hatred or disaffection towards the existing government of India, the statement is either in written form, spoken, by signs then that person shall be punishable with the life imprisonment and fine might be added on it, or the imprisonment which might be

³ Anti-sedition law needs the bin, available at: <https://economictimes.indiatimes.com/blogs/et-editorials/anti-sedition-law-needs-the-bin/> (last visited on 15th July 2022).

extended up to 3 years and fine might be added or even an accused person might be punishable with fine only.”⁴ This deals with 3 EXPLANATIONS-

- EXPLANATION 1- The term "disaffection" is used in sec. 124A, it also includes disloyalty and other various types of feelings of the enemy against the government
- EXPLANATION 2- the comments which strongly disapproved the measure of the existing government intending to get alternation in the

Sedition is an offence against the state, when even any person states any given hated speech against the state or the government established under the provisions of the Indian law then that person trial under the Sedition law, many famous personalities even our father of the nation and other freedom fighters were also tried under this offence. The term sedition is a very comprehensive term and it cuddles all such practices whether the offence is done by words, either by speaking or by writing, or any gestures which act as a hated or encourage people against the existing government or the state. The object of sedition is to encourage dissatisfaction and revolt against the opposition to the government and bring the administration of justice into action⁵

In **Nazir Khan v. the State of Delhi**⁶ the Hon'ble apex court of India held that the sedition law has been described as disobeying in the action and the law of sedition includes all such practices which are done either by speaking, writing, gestures or any other act which might encourage people against the government or which may lead to civil war.⁷

3.1 Constitutional Validity

Sedition law is an offence against the state, which means if any person says anything against the existing government, then that person might be charged under the sedition law, to minimise such things or misuse of sedition law the constitutional validity of sedition law has been challenged, the Hon'ble Supreme Court of India held in **Kedar Nath Singh v. the State of Bihar**,⁸ sec 124A of IPC which deal with the sedition offence is not considered unconstitutional

⁴ In Indian Penal Code, 1860 (ACT NO. 45 OF 1860) S. 124A

⁵ Ratanlal and Dhirajlal, the Indian Penal Code P.NO- 224, 14th floor, Building No. 10, Town-B DLF Cyber Cell, Phase-II Gurgaon-122002 (36th Edition 2021 reprint)

⁶ AIR 2003 SC 4427

⁷ *Ibid*

⁸ AIR 1962 SC 955

and the hon'ble court also mentions their opinion that only when the act either by writing or oral or another way, is done to destroy the public order, laws enforce in India. Only this section endeavours to create a balance between Fundamental Rights and the interest of public order.⁹ Court also held that every person has the right to give a speech, or write any comment with the aim to criticised the measure of government measure until and unless the statement of the person does not provoke people to start rebelling against the government established by the Indian law or do not harm the state.

In **Common Cause v. UOI**¹⁰ the Hon'ble Apex court of India held that, while the prescribed authority deals with the offence of sedition, then the authority must aware of the principles, suggested by the SC in **Kedar Nath Singh v. the State of Bihar**.

3.2 Essential ingredients for the offence of sedition

As per the provision of sec. 124A of IPC following things should be checked before filing a sedition case. Following are the two essential grounds: -

- The accused person must have done something which might be presumed or provoke people to start violating the government established by the law, attempting to spread hatred or disaffection against the Indian government.
- The attempt of doing such things is either by spoken or written words, by any gestures or any other which might provoke others against the government of India.

A simple reading of ingredient No.1 we figure out that, this section only deals with the attempt of doing any such things against the Indian government, but it is an essential ingredient of the Sedition offence¹¹ to cuddle the punishment under this sec. **Asit Kumar Sen Gupta v. the State of Chhattisgarh**¹² the Hon'ble court held that attempting to give any hatred feeling to provoke people against the state is well enough to cuddle the punishment under this sec.

The federal court of India held that the essence of the offence of sedition is the encouragement of people to the violence against the government established by the law¹³ but this decision was

⁹ Ratanlal and Dhirajlal, the Indian Penal Code P.NO- 224, 14th floor, Building No. 10, Town-B DLF Cyber Cell, Phase-II Gurgaon-122002 (36th Edition 2021 reprint)

¹⁰ common cause v. UOI, Writ Petitions Civil No- 683/2016

¹¹ Balwant Singh v. State of Punjab, AIR 1995 SC 1785

¹² AIR 384 SC 2014

¹³ Ratanlal and Dhirajlal, the Indian Penal Code P.NO- 225, Gurgaon (36th Edition 2021 reprint)

eventually overruled by the Privy Council in **Sadashi v. Narayan State**¹⁴, and council held that in respect of the act whether done by either writing or spoken words, by any gestures or misrepresenting. No person cannot shut another person's eyes to change the perspective regarding the political party. It is not an essential factor of sedition that the act must have been done to destroy public peace and harmony if a person unknowingly performs which might result in provoking people against the government, then that person shall be charged for the sedition offences. Hon'ble chief justice Sinha observes in **Kedarnath's** case that the

4 MISUSE OF SEDITION LAW

Sedition is an offence against the state, which is a non-bailable offence as per schedule I of CRPC. And it is also one of the heinous crimes against the state as it might be starting various other heinous crimes against the state which might cause huge loss to the society; thus, it is very important to stop such types of persons. However, India is a democratic country where citizens are awarded various types of rights and every person has freedom of speech which is confirmed by the Constitution of India, Government is chosen by the citizen of India, and every person has the right to criticise the measure of the government until and unless the statement of that person initiates a war against the state, but many governing parties start misusing this provision whenever any person states anything against the government then government files a case against that person for attempting to destroy the public peace under sec. 124A of IPC. During the time of PM Indira Gandhi, the sedition law was declared a cognizable offence means police have the right to catch the accused without a warrant, and at that time arrest without a warrant was not permissible¹⁵. But still, the government has taken such serious steps to stop people from criticising them. Then many arrests under sedition law has been recorded after this step, even when any person raise any question against the government measure then that person was charged under the sedition law and when the case went before the Judiciary the accused were acquitted by the court because the ground of sedition was not fulfilled. Sedition law was implemented to protect the country and the government established by the law, but many governments start misusing it as there is a sudden increase in sedition cases recorded, there have been 50 sedition cases recorded from 1947-2014, and then 51 in 2017, then 70 in 2018¹⁶

¹⁴ AIR 1947 SCC 526

¹⁵The Case to Amend Sedition Law, India's Self-Inflicted Wound Available at: <https://theleaflet.in/the-case-to-amend-sedition-law-indias-self-inflicted-wound/> (last visited on 17th July 2022)

¹⁶Sedition Law in India – Is a Possible End to an Era of Misuse Around the Corner? Available at: <https://www.jurist.org/commentary/2022/06/bharti-bhartiya-sedition-supreme-court-india/> (last visited on 17th July 2022)

out of the total 230 sedition case in 2020 only 23 cases charge sheets was filed, the rest cases are still pending before the judiciary.

5. IMPORTANCE OF SEDITION LAW

Sedition law is one of the essential provisions mentioned under the IPC, which was implemented to protect the government against the various types of unnecessary criticisms, and barriers in government activity and minimises the activities which might be converted into anti-national offences, there is the various reason which suggested that why we need sedition law?

- Sedition is an offence against the state; we need it to maintain social integrity and security.
- Sedition is very important as it established a fear among the person who planning anti-national activities.
- Sedition is very important to manage public order.
- It helps in managing the proper balances between fundamental rights and the national interest.
- Protecting Public property is the responsibility of the government, and sedition law helps the government with that.

6. CONCLUSION

Sedition is an offence against the state, in which a person states any hated words either by words or speech, or by gesture or anything which might cause violence against the government established by the law, it is a common principle of criminal law that the offences should also include an intention means a person should have an intention for doping offences, but the Hon'ble Supreme Court of India suggested that in case of sedition if a person did anything mention under 124A even without the intention of doing such thing then also the person shall be punishable under the sedition law. Government start misusing this provision, if any person states any or criticised the government measures then that person is charged under it. In 1973, at the time of PM Indira Gandhi, the sedition law was converted into cognizable offences, which means police have the right to arrest any person with a warrant and after that step, many

cases were recorded, and only 10% of cases charge sheet was filed and rest will be pending before the judiciary and in many, the accused person was acquitted by the court because the case does not fulfil the essential ingredients of the sedition law prescribed by the sec. 124A of IPC. Recently the Hon'ble SC updated the sedition law provision and ordered the centre that no further case of sedition shall be recorded till the further order, because of the huge misuse of this sedition law.

