

## SEDITION VIS-À-VIS FREEDOM OF SPEECH AND DISSENT

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### ABSTRACT

Sedition laws were introduced in India during the British regime. However, at that time it was reasonable for them to introduce such laws in order to suppress the freedom of Indian citizens and for not being accountable to people for their actions. But does such laws have any place in a democratic country like India. Considering the vast misuse of section 124A of the Indian Penal Code in recent events, does it still serve its purpose given by the Parliament and Judiciary to justify the clause i.e. to maintain stability and to suppress terrorist and successionist activities in the State. This paper is aimed at, critically analyzing the significance of Sedition laws in free India. Are such laws necessary or is it just a method by which Government in power can suppress freedom of the citizens.

### INTRODUCTION

*“Now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better.”*

*~Pdt. Jawaharlal*

*Nehru*

The fear that laws like Sedition would give immense power to the Government to curb the liberty of the citizens, had always been in the minds of the leaders like Mahatma Gandhi and Pdt. Jawaharlal Nehru. And events after India's independence undoubtedly prove them right.

Sedition laws were introduced in India by the Britishers when it was a British colony. Since the time immemorial number of cases had been adjudged by the courts of India on sedition. And it is widely being misused as a tool for curbing liberty of the citizens, abstaining them from expressing their dissent and criticism on the actions of the government. They are often

termed as anti-nationals. England itself has done away from Sedition laws long time back, but India still upholds the law.

This paper will critically analyze Section 124A of the Indian Penal Code which deals with Sedition. Also, sedition with respect to Article 19 and reasonable restrictions provided under the Article of the Constitution of India.

*Firstly*, paper will give readers an insight into the inception of Sedition laws in India and some of the famous sedition cases under the British regime. *Secondly*, Section 124A of IPC will be analyzed in light of Article 19 of the Indian Constitution, the fundamental right of freedom of speech and expression. *Thirdly*, paper will deal with the most important question i.e. does dissent and fair criticism constitutes sedition? Although, according to statutory provisions mere dissent and criticism however harshly worded or expressed doesn't amounts to sedition but, attitude of authorities in recent happenings shows another picture and seems to fulfill some oblique motives in personal interest which has no relation to maintaining stability in the State.

## INCEPTION OF SEDITION LAWS IN INDIA

Before 1832, under the English law anything said or written if it expressed dissatisfaction, hatred or contempt even if it does not excite people against the government was termed as sedition.<sup>1</sup>

In 1837 the first original IPC draft was formed by the law commission which was presided over by Macaulay. Under Section 113, exciting feeling of contempt and hatred towards the government in power was considered as sedition. However, the definition was not as broad as it was in the English law and only direct incitements which lead to violence was considered as seditious.<sup>2</sup> But this draft was not included in the IPC of 1860. Section 113 of the draft was inserted in the IPC through an amendment in 1870 as Section 124A.

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<sup>1</sup>Abhinav Chandrachud, *History of sedition*(September 16, 2016)<<https://frontline.thehindu.com/the-nation/history-of-sedition/article9049848.ece>>.

<sup>2</sup> Id.

*LokmanyaTilak* was at forefront of the fight for Indian Independence and was considered as the most important activist before MK Gandhi entered the movement in early 1900s. He was one of the strongest supporters of ‘Swaraj’. He gave speeches on topics that opposed the British government of that time. He wrote articles in ‘Kesari’ for which he was charged with sedition. He was charged on the grounds of sedition when he spoke about a civil services officer. The court convicted him for the offence of sedition.<sup>3</sup>

The famous case of *MK Gandhi*,<sup>4</sup> when in 1922 he published articles in Young India magazine and was jailed for the offence of sedition. Charges by which Gandhi was charged were “tampering with loyalty”, “shaking the manes” and “attempt to excite disaffection towards the British government”. According to Mahatma Gandhi, laws like sedition curbs the liberty of citizens in India and laws has no place in a democratic country.

## CONSTITUTIONAL VALIDITY

Question of the Constitutional validity of sedition comes when, a person either for speaking or expressing himself/herself is charged with Section 124A of the Indian Penal Code. Which includes two essentials as its components:

1. “Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards, the Government of India.”
2. “Such act or attempt may be done by either words spoken or written or by signs or by visible representations.”

Sedition doesn’t mean, criticizing the administrative mechanism or officers of the Government, but in cases when the speaker does more than just fair criticism and object is to attack the existing Government so that it creates disaffection, then such speech will amount to sedition. Condemnation of government’s actions should be confined, and if in case it goes beyond the limits, Courts can penalize such person for such act. And question about intent is a significant factor in all such cases.<sup>5</sup>

<sup>3</sup>Queen Empress v. Bal GangadharTilak (1897).

<sup>4</sup>*Mahatma Gandhi was charged with sedition 95 years ago: All about the sedition law*(10 March 2016).

<sup>5</sup>*VishambharDayal v. Emperor AIR (1941) Oudh 33.*

Sedition protects elected government from the attempts of overthrowing the government by use of violence and through illegal means. The existence of government that is established by law is essential condition for the stability of State. Sedition was included in the IPC to protect the very existence of the state. So that violent means can be avoided to change the government and bring stability in the country for the Government established by the law. But it is sedition only when intention is to attract those people from stop obeying the law and lawful authority.<sup>6</sup> Writing seditious material, alone does constitutes sedition. Distribution or circulation of such seditious material can be sufficient.<sup>7</sup>

The government that is established by law, should have a continued existence and should maintain stability. Hence, section 124-A penalizes any unlawful act done in order to destabilize the government that is established by law or any act which might subvert the Government by exciting contempt or hatred, or giving rise to disaffection against government. Such acts may give rise to the feelings of disloyalty towards the Government and imports the tendency to create public disorder that may result in actual violence or to incitement of such violence. However, the section has clearly indicated that strong or harsh words said or spoken by lawful means to express disapprobation with regards to the measures of existing Government in order to improve or alter would not be an offence under the section. Disloyalty towards the established Government is not same as to comment in harsh or strong terms about its measures or acts.

Tara Singh was a Sikh political and religious leader. He was charged with sedition when he gave speeches against the British rule in India and also for his involvement in some dispute at the Golden temple at Amritsar. In *Tara Singh v. State of Punjab*,<sup>8</sup> Section 124A of IPC was struck down being regarded as unconstitutional as violative of freedom of speech and expression under Article 19 of the Indian Constitution.

In *Brij Bhushan v. State of Delhi*<sup>9</sup>, Court ruled that, censorship prior publication is not permitted. In response to this, Central Government amended Article 19(2) and added “in the

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<sup>6</sup>Bhagwati Charan Shukla v. Provincial Government(1946) Nag 865 (SB).

<sup>7</sup>Raghuvir Singh v. State of Bihar(1987) SC 149.

<sup>8</sup>AIR (1951) Punj 27.

<sup>9</sup>(1950) SCR 594.

interest of” and “public order” as reasonable restrictions under Article 19 of the Constitution. This was the first ever constitutional amendment in India.

In *Ram Nandan v. State of UP*, Hon'ble court held Section 124A as ultra-vires and in contravention to Article 19 of the Constitution.<sup>10</sup>

For some people section 124-A, of the Indian Penal Code is constitutional does not contravenes Article 19(1) (a) due to the expression “In interest of public order” in Article 19(2). This expression “in the interest of public order” has a wider connotation and so it not only includes Acts that would disturb public order, but also much more than that.

In *Kedarnath vs. The State of Bihar*<sup>11</sup> court held that anything done by lawful means even if it is against the government in power without exciting hatred, disaffection or contempt and does not result in violence is not an offence under the Section. Court also held that, sedition is a reasonable restriction to Article 19 of the constitution. However, ‘State’ doesn’t mean executives or the administrators, it means the Government established by law. Which only can be removed by lawful means and then would not amount to sedition.

With regard to cases under Section 124-A Courts need not see the effect caused on the minds of people to whom it was addressed and Judges needs to concern themselves with the way in which the speech was constructed and such speech needs to be taken, as whole and not in pieces. A person may criticize, comment or express dissent upon any of the measures or act done by the Government and can freely express his/her opinion about it.<sup>12</sup>

## IS CRITICISM SEDITION?

Section 124A of the Indian Penal Code defines, what would constitute as sedition and what would amount to the offence of sedition. Sedition according to 124A is, “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 shall be punished with [im-prisonment for life], to

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<sup>10</sup>AIR (1959) All. 101.

<sup>11</sup>KedarNath v. State of BiharAIR (1962) SC 955.

<sup>12</sup>Sanskar marathe v. state of Maharashtra and ors. (2015).

which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine”.

And explanations provided in the section describes “disaffection” as feelings of disloyalty and enmity. However, the alteration in the present government by lawful means without exciting contempt, disaffection and hatred would not amount to an offence under this section.

In *Queen Empress v Jogendra Chunder Bose*, Hon'ble Chief justice said that, a person who excites feelings in contrary to “affection” will said to have committed sedition. He further explained the difference between “disaffection” and “disapprobation”.<sup>13</sup>

The words said or written should appear to the person whom they were addressed as the feelings of disaffection, hatred or contempt towards the government established by law is sedition.<sup>14</sup> To identify whether such speech is an attempt to excite such feelings should be viewed from standpoint of the persons to whom it was addressed. This section of the Indian Penal Code puts such attempt whether successful or not on the same footing. Attempt is punishable even if it is an unsuccessful one. And this is the reason for the frequent misuse of this section by the government in power.

Attempting to remove the ministers in power from their office or agitating against any Act of the government in power without any unlawful means is not regarded as seditious.<sup>15</sup>

Thus, positive criticism without exciting hatred, dissatisfaction, contempt and without inciting violence is not Sedition under Section 124A of the Indian Penal Code. Same was held by the Hon'ble court in *Balwant Singh*<sup>16</sup> the accused raised some slogans when Smt. Indira Gandhi was assassinated, which did not excite any hatred, contempt or violence towards the existing government and thus did not constituted sedition under the section.

Sedition has been regarded by the court as a reasonable restriction over the freedom of speech and expression provided by the Constitution of India. However, over the period of time this law has been used by the government to suppress the freedom of citizens to criticize the acts of the government in power and to curb their right to dissent.

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<sup>13</sup>(1892) ILR 19 Cal 35.

<sup>14</sup>Bal Gangadhar Tilak(1897)22 Bom 528.

<sup>15</sup>Dhirendra Nath Sen(1938) 2 Cal 672.

<sup>16</sup>Balwant Singh v. State of Punjab(1995) 3 SCC 214

There had been many cases of misuse of Section 124A recently like, In *Kundakulam case*<sup>17</sup>, an entire village of Tamil Nadu was arrested and was charged with section 124A. The villagers were protesting against the nuclear plant in Kundakulam. Which according to the government was incitement to hatred, contempt and violence. Government ordered displacement of a tribe in Jharkhand, to which the tribal people opposed and rejected the said order of the government. Government charged the whole tribe with sedition.<sup>18</sup> Two Bombay girls posted on Facebook criticizing the decision of the government to shut down the city on the death of political leader Bal Thackeray. Girls wrote that it is not due to respect that Bombay has been shut down but due to fear. Both of them were charged with the offence under section 124A.<sup>19</sup>

According to the statistics provided by National Crimes Record Bureau, Sedition cases had been doubled since 2014. And these cases did not even attempt to incite any sort of violence or caused violence.<sup>20</sup> Conviction rate in the cases of sedition is very low and most of the accused are acquitted. Home Minister, Nityanand Rai expressed his views on the law as, it being necessary to combat terrorist and anti-nationalists.<sup>21</sup> However, at present Section 124A seems to fulfill some oblique motives, that have no relation to the stability of the State.

Debates in case laws has always been regarding whether, this section punishes a person who excites hatred or disaffection towards the government or a person whose attempts or actions that might incite violence. Moreover, disaffection might not always incite public disorder. Affection and disaffection are something what a person feels and if it doesn't cause disorder then punishing in this case would just be a method to curb the freedom of the person.

The intention of the person shall be such as to incite disaffection towards the Government in order to make him liable under Section 124A, but proving such intention is a difficult task for

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<sup>17</sup>8856 enemies of state: An entire village in Tamil Nadu lives under shadow of sedition (September 12, 2016).

<sup>18</sup>Mass Sedition of Jharkhand Adivasis who Revoked Constitution to Save Land (20 November 2019).

<sup>19</sup>So much for freedom of speech: Mumbai girls jailed after Facebook post about Bal Thackeray which 'hurt religious sentiments' (20 November 2012).

<sup>20</sup>National Crime Records Bureau Ministry of Home Affairs, *Crime in India 2016 statistics*.

<sup>21</sup>Only 4 sedition cases saw conviction in 4 years: NCRB (10 January 2020)

"There is no proposal to scrap the provision under the IPC dealing with the offence of sedition. There is a need to retain the provision to effectively combat anti-national, secessionist and terrorist elements."

Courts. Courts need to play a significant and creative role in deciding the cases of sedition. There had been no serious discussions about this law in India.

## CONCLUSION

Sedition laws since its inception are being widely misused. People expressing their dissatisfaction or dissent are regarded as anti-nationals. This law when introduced, was to curb the dissent of the Indians in the Colonial India under the British regime and it served its purpose by penalizing any person who stood against the Government. But such laws have no place in a democratic country, where every person has the right to express their views with regard to actions of the government. And even if the provision cannot be removed in entirety, it should only be invoked when territorial integrity or sovereignty of India as a State is in question and not otherwise. Also, Courts need to play a significant and creative role in deciding the cases of sedition. Time is now ripe to initiate serious discussions on topics like Sedition which were introduced in *Colonial India* and are still blindly followed in *Democratic India*.