



An Application of Sedition Law in India

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The freedom of speech and expression is a basic right guaranteed by Article 19(1)(a) of the Indian Constitution. However, people are still being arrested for expressing their opinions, which does little to protect their basic rights. The definition of sedition is found in Section 124A of the Indian Penal Code, and the courts of law have repeatedly emphasized the true meaning of this section to prevent such misuse. The act of sedition was first introduced under the colonial rule in 1837 by the Indian Law Commission led by Thomas Macaulay³ as Clause 113 of the Indian Penal Code, which made it an offense to "excite feelings of disaffection against the government." The offense of sedition did not find a place in the IPC until 1870, when an amendment was made and Clause 113 of Macaulay's draft was added into the Penal Code as Section 124. This essay examines the distinction between disapprobation, which is not considered sedition, and disaffection. It also addresses the fundamental question of why such a law is required in a nation with its own government.

Exciting Disaffection

Section 124A of the Indian Penal Code (Amendment) 1898 amended the law of sedition to clarify the meaning of the term "disaffection" used in that section. This section was originally passed in 1870 and was in force for 28 years before it was changed in 1898 to clarify the meaning of the term "disaffection"⁴ used in that section. During the drafting of the Constitution, the members of the Constituent Assembly felt uncertainty in the interpretation of 'sedition', as the fundamental right to freedom of speech and expression was laid down in Article 13 of the Draft Constitution.

The Constituent Assembly supported comprehensive freedom of speech and expression and freedom of the press, but it was thought that such a right should not be absolute. An amendment was introduced by the then Assembly Member, Shri K.M. Munshi, which proposed that "sedition" be excluded as a ground for restricting freedom of speech and expression.

Post independence, sedition remained a punishable offence under S. 124A IPC even though it was removed from Article 19(2) as a restriction on the basic right to freedom of speech and expression. Three major judgments on sedition laws were passed in the 1950s, including Sabir Raza v. The State⁵, Tara Singh Gopi Chand v. The State⁶,

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³ <http://www.bbc.com/news/world-asia-india-37182206>

⁴ CLP's Indian Penal Code [With The Criminal Law (Amendment) Act, 2018] by S.N. Misra

⁵ Cri App No. 1434 of 1955

⁶ 1951 Cri LJ 449

and Ram Nandan v. State⁷. In Ram Nandan v. State, the Allahabad High Court ruled that S.124-A is "ultra vires of Article 19(1) of the Constitution, both because it is not in the interests of public order and because the restrictions imposed thereby are not reasonable restrictions. Because the limitations in Article 19(2) of the Constitution do not apply to this Section, it should be deemed invalid.

The Honorable Supreme Court overturned the ruling of the Honorable High Court and declared that Section 124-A of the Indian Penal Code was intra vires in the case of Kedarnath Das v. State of Bihar. This ruling stated that being disloyal to a legally established government is not the same as strongly criticizing its policies or actions or those of its agencies in an effort to raise the standard of living for its citizens or to ensure that such actions or policies are revoked or changed in a legal manner. In the case of Kanhaiya Kumar v. State (NCT of Delhi)⁸, the petitioner, who was charged under section 124A of the IPC, moved the High Court of Delhi seeking for bail. The Court noted that while exercising the right to freedom of speech and expression in accordance with Article 19(1)(a) of the Constitution, it must be borne in mind that Article 51A of Part IV of the Constitution lays down the fundamental duties of every citizen on the other side of the coin. In the light of the above-mentioned judicial pronouncements, it may be asserted that – unless the words used or the acts in question do not endanger the security of the State or the people; lead to some kind of grave public disorder, the act does not come under the scope of Section 124-A of the Indian Penal Code.⁹

Freedom of speech and Sedition

John Stuart Mill argued that one should not silence the voice of the people for the stability of a community, regardless of how opposing it may be. He argued that open public discussions and debates are necessary in some circumstances to reach a reasonable conclusion, and that exercising the right to free expression gives those who are silenced and unheard a platform to speak out against any praised culture. He also emphasizes that a good government is one that fosters the participation of the populace.

Views of Judiciary

The Apex Court of India in Re Harijai Singh¹⁰ emphasizes the link between a democratic society and freedom of expression. It states that people have the right to be informed about current political, social, economic, and cultural affairs, as well as the pressing issues and significant issues of the day. People must give an accurate and truthful account of what happened in order to achieve this objective.

Democracy is not a synonym for majoritarianism, but a system in which every voice is heard and every individual's viewpoint is taken into consideration. In a democracy, it is normal for different and contradictory interpretations of one account of an event to exist. The most important details in this text are that free speech is protected, and that it is necessary to accomplish greater, often supreme, societal good. In the famous words of Charles Bradlaugh, "Better a thousand times the abuse of freedom of speech than the denial of freedom of

⁷ AIR 1959 All 101

⁸ (2016) 227 DLT 612

⁹ <http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>

¹⁰ AIR 1997 SC 73

speech.”¹¹ In the case of *S. Khusboo v. Kanniamal & Anr*¹², the Supreme Court stated that the free exchange of information in society keeps its people well informed, which results in good governance. In the case of *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. and Ors.*¹³, the Supreme Court opined that freedom of speech goes to the heart of the natural right of an organised freedom-loving society to impart and acquire information about that common interest.

The Supreme Court declared Section 66A of the Information and Technology Act, 2000 unconstitutional on the grounds that it directly violated the basic right to freedom of speech and expression. Freedom of speech and opinion is a fundamental right under the constitution and is crucial to the survival of democracy. In various cases, distrust has been communicated about the likely abuse of the sedition law. In the case of *Ramesh Yashwant Prabhoo v. Prabhakar Kashinath Kunte & Ors.*¹⁴, the use of faith in political campaigns was criticized under section 123 of the Representation of the People Act, 1951. The Court held that the candidate conveyed the expectation that a monolithic *rashtra* would be established, rather than simply working on the elimination of minorities. Significantly, the use of such speech in elections is protected by Section 123 of the Act, 1951, and there is no question of invoking the provisions of 124A IPC.

Expression not amounting to sedition

The court has stated that not all criticisms amount to sedition and that the true purpose of the speech must be taken into account before attributing seditious intent to an act. In the case of *Balwant Singh v. State of Punjab*¹⁵, the Court decided not to punish two individuals for carelessly yelling insults at the State several times. In the case of *Javed Habib v. State of Delhi*¹⁶, speaking out against the Prime Minister or his actions, criticizing government policies, or inferring from the leader of the government's speeches and deeds that the leader was hostile to a particular community is not considered sedition under Section 124A of the IPC. In the case of *Pankaj Butalia v. Central Board of Film Certification & Ors.*¹⁷, the Delhi High Court held that when judging sedition, intention is highly significant and the need to look into the context of the speech is reiterated. It is important to assess an offence under section 124A IPC by assessing the act holistically and fairly without assigning isolated passages excessive weight. The Allahabad High Court ruled in *Arun Jaitley v. State of U.P.*¹⁸, that objecting to a Supreme Court ruling regarding the National Judicial Selection Commission would not constitute rebellion. The court stated that any actions in the context of s. 124A of the IPC that have the effect of subverting or causing disaffection towards the government by holding the government in contempt or hatred will be part of the penal legislation. In certain situations, the criticism of a failed law conveyed through burning the Constitution or expressing dissatisfaction with members of Parliament by a visually disparaging cartoon or photo of Parliament cannot amount to sedition because the demonstrations can always be routed in an idea of India that has been frustrated by its elected representatives or a law that has demeaned or dissatisfied citizens of India.

¹¹ <http://davidduke.com/freedom-of-speech/>

¹² AIR 2010 SC 3196

¹³ AIR 1995 SC 2438

¹⁴ AIR 1988 SC 775

¹⁵ AIR 1995 SC 1785

¹⁶ (2007) 96 DRJ 693

¹⁷ (2015) 221 DLT 29

¹⁸ 2 2016 (1) ADJ 76

Restrictions imposed is arbitrary and unreasonable

In the case of Charan Lal Sahu v. UOI¹⁹ the SC observed that the Constitutional validity of the Act should be judged by considering the subsequent events. According to the NCRB Report 2015²⁰, 30 cases were reported under sedition during 2015, and 73 male individuals were investigated for sedition charges. It is specified in Papnasam that the constraint enforced under Article 19(2) is unconstitutional if it is arbitrary or excessive in nature. IPC 124A is poorly framed and has a chilling effect on speech, putting it beyond the scope of protection provided for in Article 19 (2).

Why does India need to scrape off sedition law?

The sedition law in India can be contested for the following reasons:

1. Colonial Rule: This legislation has been used by the British Government to censor its own rebellious criticism, speech, and viewpoint. Even though India has specific laws to address both internal and foreign efforts to overthrow the government, this colonial rule is still in place there. As a result, such a regulation is meaningless in a democratic republic, where the people have the ultimate power.
2. The crime of sedition is diminishing in relevance. The study of the Indian Penal Code reveals that its other clauses are adequate to resolve both challenges of violence and public order, leaving S.124(A) obsolete.
3. Law of sedition: Most likely, the political groups' sole tool for achieving their objectives is the legislation against sedition. When there is dissent against the way the government is run or its policies, the governing party abuses its power to suppress it. In light of the fact that the law has been opposed by India's highest court on numerous occasions, it is said that the law has not yet been amended or abolished.

Chapter VIII of the Indian Penal Code includes crimes against public tranquillity. These include rioting²¹, assaulting or obstructing a public servant attempting to suppress a riot²², provoking a riot²³, and promoting enmity between different groups on the grounds of religion, race, place of birth, residency, language, etc.²⁴ It also provides a provision for penalizing actions that were harmful to national integration.²⁵ It also involves being a member of, joining, hiring people to participate, or continuing an unconstitutional assembly. Minor skirmishes are the subject of an offense of 'affray',²⁶ which punishes two or more people who disrupt public peace by fighting in a public place.²⁷ Thus, any act of this sort that was 'prejudicial to the maintenance of peace and harmony' would be punishable.

¹⁹ Charan Lal Sahu v. Union of India, (1990) 1 S.C.C. 613

²⁰ NCRB, Crimes in India 2015, NATIONAL INFORMATION CENTRE – GOVERNMENT OF INDIA (2015)

²¹ Section 146 of The Indian Penal Code, 1872

²² Section 152 of The Indian Penal Code, 1872

²³ Section 153 of The Indian Penal Code, 1872

²⁴ Section 153 A of The Indian Penal Code, 1872

²⁵ Section 153 B of The Indian Penal Code, 1872

²⁶ Section 141 of The Indian Penal Code, 1872

²⁷ Section 159 of The Indian Penal Code, 1872

CONCLUSION:

The sedition legislation in India needs to be repealed as it is now used to torment people who express their opinions or take on the government. Private member bills have twice attempted to repeal it in the last ten years, but both efforts have been blocked by governments. The 21st Law Commission published a consultation paper in 2018 asking for views on the repeal of sedition, but the Commission's term ended before it could issue its recommendations.²⁸ In Parliament, when asked by Minister of State for Home Affairs Nityananda Rai whether sedition law is likely to be revoked, he was crisp but consistent in his response, "There is no plan to scrap sedition. It is important to maintain arrangements for the successful war against anti-national, secessionist and terrorist elements."²⁹



²⁸ Livemint.com

²⁹ www.aninews.in /