



Evolution of Sedition Laws in India; Safeguarding Freedom of Expression.

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Introduction

This article is an attempt to recap the history of Sedition law in India which was introduced during Colonial Regime and how it is being used now post 76 years of Independence.

The publication of a research paper discussing whether sedition infringes upon Article 19 and its constitutional validity is of paramount importance. Freedom of speech and expression is the cornerstone of any democracy, and suppressing or stifling it would be detrimental to democracy, potentially leading to autocracy or dictatorship.

Historical background

The word "Sedition" was derived from the French word *Seditio* (Going apart). Sedition is a speech or act that instigates rebellion, rioting or any breach of peace. A Seditious act is one who engages in Sedition. The concept of sedition was introduced in India during the colonial period and was used to silence freedom fighters, particularly figures like Lal Bal Pal during the struggle for independence.

The first Indian Law Commission, led by Lord Macaulay in 1833, recommended the creation of a penal code that would not only consolidate existing customs and regulations but also bring reform to Indian criminal law. Macaulay played a significant role in drafting this code, and while the term 'sedition' wasn't explicitly mentioned, the commission clarified that statements intending to incite public opposition to the government would be punishable as sedition under Clause 113.

The notion of sedition was borrowed from the English legal system, but it did not denote a specific act like rioting. Instead, it referred to offenses against public peace that didn't involve open violence. Justice Fitzgerald's 1868 description of sedition during a trial provides a comprehensive view of the term.

In the words of Justice Fitzgerald Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the sovereign or Government, the laws or the constitution of the realm and generally all endeavors to promote public disorder.

In 1870, Section 124A was added to the Indian Penal Code, which criminalized exciting feelings of disaffection towards the government. This was followed by preventive laws, such as the Dramatic Performances Act of 1876, aimed at stopping seditious activities before they occurred.

Surprisingly, there were no prosecutions under Section 124A for over two decades after its introduction. At the same time nationalist movements like the Arya Samaj and Brahmo Samaj, were gaining momentum in Bengal and Bombay which pushed for political independence and promoted a sense of patriotism.

By 1875, there were around 475 newspapers in circulation in Bengal, mostly in vernacular languages, contributing to the rise of organized political movements. The Indian Association, established by Surendra Nath Banerji in 1876, played a significant role in influencing public opinion against British policies in India.

It was also the time during which significant social reforms were introduced in India, such as the abolition of sati in 1829, legalization of widow remarriage in 1856, and the prohibition of female infanticide in 1870, aimed at improving the status of women.

Events leading to first trial under Section 124A

The first trial under Section 124A occurred in 1891 when Indian nationalism was on the rise, and the vernacular press had become more assertive.

Queen Empress v. Jogendra Chunder Bose & Ors was India's first sedition case. The Respondent – Mr. Bose was the editor of the newspaper named “*Bangobasi*”. An article was published by him, criticizing the Age of Consent Bill for posing a threat to the religion and for its coercive relationships with Indians. The article published by on the newspaper had also gave a negative impact on the British colonialism. Hence, as a consequence of this very publication made, the proprietor, the editor, the manager and the printer of the newspaper – “*Bangobasi*” were charged for the offence under Section 124 – A and 500 of the Penal Code by attempting to excite feelings of disaffection to the Government established by law in British India and with defaming the Indian Government by publishing articles. The charge of defamation under Section 500 of the code was duly struck down. And hence, the matter was put forth before the Calcutta High Court.

The Judge had in short explained the word “*disaffection*” and “*disapprobation*” provided in the definition of sedition. It was stated that disaffection refers to a feeling contrary to affection which would amount to dislike or hatred. Whereas, disapprobation referred to disapproval.

The court had also referred to the difference between the British government and the administration. While answering this, the judge had raised an issue, “were these articles intended to excite feelings of enmity against the Government, or on the other hand were they merely expressing, though in strong language, disapprobation of certain government measures?” The jury was to decide upon the issue whether the articles were published with the intention to commit the offence of sedition or not. The jury in the case was unable to return a unanimous verdict. The judge directed for a retrial before another set of jury, but the retrial never took place for an apology was issued by the respondent for the publication and hence the prosecution was terminated.

Bal Gangadhar Tilak: Advocate for freedom amidst sedition laws

Bal Gangadhar Tilak was one of the tallest personalities in modern Indian history and a freedom fighter. He was born in Ratnagiri in the Bombay Presidency in 1856 and graduated from Deccan College in Poona in 1876 with a Bachelor of Arts degree and obtained an LLB degree from Bombay University in 1879. Three events which occurred during his time at Bombay University shaped his nationalist ideology.

1. The first was the trial and deposition of Malhar Rao Gaekwad, the maharaja of Baroda, by the British government in 1875 on the charges of poisoning the British Resident, though this was not proved.
2. The second event was an unsuccessful and minor uprising against the British in some parts of Maharashtra in 1876 which was allegedly led by one Vasudev Balwant Phadke. Though the uprising was quickly quelled, it left a deep impression on Tilak’s mind. This impression was not one of approval, but the realization that any uprising has to be on the same level as that of the British— through superior education and organization.
3. The third and most tragic event was the great Madras famine of 1877–78 caused due to drought and failure of crops in the Deccan, taking the lives of about 5.25 million people in the British Indian territories alone. The famine, which spread to parts of Punjab, the North-West Frontier Province and the Central and United Provinces in the second year, was made worse by the export of crops by the British during the drought which made food grains scarce for the native population and caused deaths due to starvation and malnutrition.

The above events resulted in Tilak starting two weekly periodicals in 1881: **Kesari, a Marathi vernacular, and Mahratta which was published in English**. His first brush with the law occurred in 1882 when he was imprisoned for four months, along with Gopal Ganesh Agarkar, the editor of Kesari and Mahratta. He was convicted for publishing purportedly defamatory articles against the native administrator of Kolhapur, alleging that he planned to poison the prince of Kolhapur. However, this only made Tilak more popular with the people, and he was given a reception befitting a hero when he was released from prison. Agarkar soon thereafter devoted himself to education and social reform. Tilak, having established the Deccan Education Society in 1880, joined the Indian National Congress in 1889.

Bal Gangadhar Tilak, like Bangobasi and many other orthodox Hindu public intellectuals and leaders, was opposed to the Age of Consent Bill. However, his opposition stood on a different footing than the other orthodox leaders. He believed that a foreign bureaucracy should not pass judgement on Hindu traditions and customs through legislation. He believed that instead of legislation the evil of intercourse with girl brides could be tackled through education. However, he went a step ahead from merely opposing the Bill and proposed that rather than having a general legislation like the Age of Consent Bill, social reformer leaders should bind themselves to the pledge that girls and boys should not be married until they attain the age of sixteen and twenty, respectively. The reformers, of course, refused to be bound to this pledge.

Tilak was elected to the Governor General's Legislative Council and slowly started delivering speeches against the Govt and on controversial topics like whether Shivaji Maharaj committed a sin by killing Afzal Khan. Many Anglo Indian press like Times of India started blaming Tilak and accused him under Sedition. So in order to counter the press, Tilak in the newspaper Kesari highlighted what Sedition is.

Tilak submitted that the articles on the basis of which he was charged did not fall within Section 124A. It was argued that Tilak had taken an independent line with regard to the measures against the plague and had in fact cooperated with the government in ameliorating the condition of the victims. He contended that the articles were in fact in furtherance of loyalty to the government even though they set forth certain grievances, which could not be called seditious. Further it was shown that there was no suggestion of overthrowing the British government, as such action could only be brought about by Hindus and Muslims uniting, which was something that praise of Shivaji Maharaj could not have brought about. He also referred to James F. Stephen's speech in the Legislative Council delivered while introducing Section 124A to contend that the dictionary meaning of the word 'disaffection' had to be ignored in favour of a legal meaning. He contended that 'disaffection' under Section 124A could only refer to the creation of a rebellious spirit against the government.

But the judgement came against his wish and was convicted for the offence of Sedition and was given a rigorous imprisonment for 8 months. This was the first legal action of sedition by the Colonial Government against the Indians.

Voices that shook an Empire: Sedition during the Freedom movement

In the last decades of the 19th Century India underwent revolutionary political changes leading to formation of Indian National Congress by Allan Octavian Hume in 1885. Globally the beginning of 20th century brought geopolitical changes leading to war between Russia and Japan in 1904.

The first major announcement that ultimately led to the beginning of Swadeshi movement was the British Viceroy Lord Curzon's decision to partition Bengal into two provinces of East Bengal and West Bengal. This happened on 7th July 1905. East Bengal was a Muslim-majority province which mainly comprised parts of Assam, Chittagong and Dhaka and the Rajasahi regions of Bengal. The British government justified the decision as an administrative necessity as Bengal was too large to be efficiently administered. When the proposal to partition Bengal was officially mooted by Lord Curzon in 1904 it was met with widespread opposition across the region as it was seen as an attempt to destroy Bengali as well as Hindu-Muslim unity and nationalism which was on the rise. Not just publications like the Muslim Chronicle but even Anglo-Indian newspapers like the Statesman, Englishman and Times of India condemned the move.

The Indian National Congress was openly opposed to the partition since 1903, and Gopal Krishna Gokhale in his presidential address in 1905 called it a 'cruel wrong'. The Bengalis reacted to the partition by starting the Swadeshi Movement whereby they boycotted all foreign and British goods and products and championed the use of indigenous goods and products. Tilak

said, 'We must raise a nation on this soil. Love of nation is one's first duty. Next comes religion and the Government. Our duty to the nation will be the first. Swadeshi and Swadeshi will be our cry forever and by this we will grow in spite of the rulers.

From 1905 onwards, the Indian National Congress was divided into two groups: the moderates and the nationalists. The moderates were led by Gopal Krishna Gokhale and Phirozeshah Mehta and the nationalists by Bal Gangadhar Tilak and Lala Lajpat Rai. In 1906, the Indian National Congress session at Calcutta supported the Swadeshi Movement and called for Swaraj or self rule.

Slowly the Colonial Government faced several setbacks and they decided to stop it by imposing sedition on leaders such as Chidambaram Pillai, Bhupendranath Dutt and sending them to imprisonment for a year. India saw the rise of many leaders including Lala Lajpat Rai, Bal Gangadhar Tilak, Rash Bihari Ghose and that was the time when the Colonial Govt decided to take immediate action to stop the rising of these leaders.

Alarmed by the rise in revolutionary nationalism, the government enacted the Prevention of Seditious Meetings Act on 1 November 1907 which sought to prevent public meetings likely to promote sedition or cause disturbance of public tranquility. The Act mandated that no public meeting for the furtherance or discussion of any subject likely to cause disturbance or political excitement, or of any political subject, or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held without written notice of such meeting and only after obtaining permission for the same. People were not allowed to hold meetings in areas proclaimed to be out of bounds for such meetings by the government, and no one was allowed to deliver any speech at such prohibited meetings. Any contravention of the Act was punishable by a sentence of six months' imprisonment or a fine, or both.

The Colonial rulers found Tilak was their main leader whose articles instigated people to rebel against the Government and found him guilty of sedition under Section 124A of the IPC because of the attack on the government. Additionally, it was contended that Tilak was also guilty of promoting enmity between Englishmen and Indians which was punishable under Section 153A of the code. Thus, on 22 July 1908, Tilak was sentenced to three years' transportation each for two counts of sedition under Section 124A of the IPC, which would run consecutively, thereby totalling six years' transportation. He was also fined Rs 1000 for the third charge under Section 153A (promoting enmity between different groups on basis of religion, race, place of birth etc) of the code.

Another trial took place in 1909, in the case of Savarkar Brothers and they were given life imprisonment. This movement aggravated the Indians and they decided to fight them and decided to sacrifice anything. This was Tilak's main motive as he wanted to bring the anger in Indians and show their face against the British.

Later, Mahatma Gandhi called for a nationwide civil disobedience movement in the form of passive resistance or satyagraha in opposition to the Act. The year 1919 proved to be a watershed year for Gandhi who had only returned to India in 1915 from South Africa. His call for satyagraha was met with support from across the country which observed a strike or hartal from 30 March onwards. He eventually called off the movement due to reports of occurrence of violent activities.

In the year 1922 (Post Jallianwala Bagh Massacre), a peaceful procession in a village named Chauri Chaura in the United Provinces was fired upon by police officers who then shut themselves inside a police station to escape mob fury once they ran out of ammunition. The mob, however, did not relent and set the police station on fire. The officers, in their attempt to escape the blaze, were captured by the rampaging mob. Twenty-two persons were hacked to death and their bodies burnt in the blaze. The event sent shock waves across the nation. As collateral damage, Mahatma Gandhi called off the Civil Disobedience and Non-cooperation Movements indefinitely. The Govt used section 124A on Gandhi and was arrested.

In October 1930, Jawaharlal Nehru, fresh from his release from prison after serving a sentence for breaking salt laws, called for a no-tax campaign at a meeting of the United Provinces Congress Committee. He called upon landlords and peasants alike to participate in the campaign.

In the true spirit of non-cooperation, even Nehru refused to defend himself and pleaded guilty to the charge under Section 124A of the IPC. In his statement to the magistrate, he said, 'There can be no compromise between freedom and slavery, and between truth and falsehood. We realized that the price of freedom is blood and suffering—the blood of our own countrymen and the suffering of the noblest in the land—and that price we shall pay in full measure... To the Indian people I cannot express my gratitude sufficiently for their confidence and affection. It has been the greatest joy in my life to serve in this glorious

struggle and to do my little bit for the cause. I pray that my countrymen and countrywomen will carry on the good fight unceasingly till success crowns their effort and we realize the India of our dreams.' On 24 October 1930, he was sentenced to two years in prison for sedition under Section 124A and for breaking other laws.

Nehru's second tryst with sedition was to occur three years after his release from prison after his first conviction for sedition. In January 1934, Nehru traveled to Calcutta in solidarity with the repressed masses of Bengal. During his four-day stay there, he had addressed some meetings, out of which three speeches formed the basis of the sedition charge against him.

1. The first speech was delivered at Albert Hall in Calcutta on 17 January on 'The Character of the National Struggle'. After apprising the gathering of the nationalist movements across India, Nehru criticized the British government for the brutal, disgusting and vulgar mentality with which it was governing India.
2. The next speech was also delivered at Albert Hall the very next day on 'The Futility of Terrorism and the Nature of Mass Movement'. As the title suggests, Nehru was critical of terrorism as a form of nationalist movement and called it weak, futile, harmful and completely out of date.
3. The third speech was delivered in Hindi at Maheshwari Bhawan on 18 January. However, according to Nehru, the translation of the speech was grossly inaccurate, conveyed the wrong impression and misrepresented what he had actually said.

Soon after the speech, Nehru was arrested from Allahabad on 12 February on warrants issued by the Calcutta police. He was produced before the chief presidency magistrate on 13 February, who charged him with sedition under Section 124A and sent him for imprisonment for 2 years.

Dissent and Democracy: Sedition's role today

After gaining independence, India's Constituent Assembly retained many colonial-era laws as the foundation. The first challenge to Section 124A of the IPC post independence was launched in 1950 itself before the High Court of Punjab by one Tara Singh Gopi Chand against whom two prosecutions under Section 124A and Section 153A 6 of the Code had been initiated in Karnal and Ludhiana districts in Punjab

In the following years, the Indian Government began amending and adding laws suitable for the newly independent nation. One committee, led by Shri Sardar Patel, recognized that while fundamental rights included freedom of speech and expression, they couldn't be absolute and he argued for reasonable restrictions, including sedition laws, to maintain public order. This was the status till almost the year 1970.

Later in 1973, Smt Indira Gandhi introduced sedition Section 124A as a cognizable offense, incorporated into the New Code of Criminal Procedure 1973, effective from 1974.

Emergency was declared by the Central Govt in 1975 and continued for a period of nearly 2 years. All constitutional rights were suspended and freedom of speech and press were withdrawn. This was the third national emergency declared by India after 1962-1968 during the Indo China war and secondly in 1971 during the Indo Pak War.

Section 124A was used for the maximum number of times during this period against all those who spoke against the Government, attended rallies, criticized the Govt through journals etc were all arrested and imprisoned under sedition charges.

People were arrested without warrants or notifications of families and many people went underground during the 21 month period. The law and order got disrupted and there was chaos in the country. The 21 month period of emergency was one of the darkest and unforgettable days Indian Democracy faced.

So the freedom of speech and expression which is a cornerstone of Indian Democracy has been under constant threat due to the use of archaic colonial law which is a "Death Kneel" to Democracy.

In addition to sedition, Governments in recent times have employed Strategic Lawsuits Against Public Participation (SLAPP) as a tactic to silence criticism. SLAPP lawsuits target individuals or organizations for their speech or communication with the government about public concerns. This technique has been used to stifle political leaders and suppress socio-political movements, as seen in the case of Hardik Patel in 2015.

Sedition, a colonial-era law, has been repeatedly misused by governments in power. It restricts freedom and contravenes Article 19 of the Indian Constitution. **After 76 years of independence, there is a pressing question: is this law still necessary?**

Former Chief Justice of India, Shri N. V. Ramana, aptly stated, **"The use of sedition is akin to giving a saw to a carpenter to cut a piece of wood, and he uses it to cut down an entire forest."**

Section 124A of the Indian Penal Code suffers from vagueness as it lacks a precise definition of the offense. Additionally, the law must prevent arbitrary and discriminatory enforcement, but the language of Section 124A does the opposite.

In view of the adverse effect of the section on individuals and organizations that work for unity, integrity, and equitable development of India and its citizens, it is felt necessary to make changes in section 124A from the Indian Penal Code 1860.

Reforming Sedition: The path to modernization

The Govt introduced the Bharatiya Nyaya Sanhita by bringing an end to the Indian Penal Code. This is the first step by the Govt to abolish the colonial interpretation of the Sedition law. In the Bharatiya Nyaya Sanhita Act, Sedition has been repealed and put under section 150 of the new act and with proper punishments prescribed and offers a wider scope compared to the older section 124A.

So what's the difference between the Sedition Law in IPC and the new Bharatiya Nyaya Sanhita 2023?

Section 124A- "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 India** shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Section 150 of BNS-Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine

The key change in the draft Section 150 is removal of the old provision in which a person convicted of sedition could get away with a fine. Section 150 of the bill prescribes imprisonment for life or imprisonment which may extend to seven years, in addition to the fine, as punishment. So, in a way, punishment has been made more severe.

Words **"disaffection towards the Government established by law in India"** have been removed from the old Section 124A of IPC. It directly targets secessionism, separatism, and a call for armed rebellion – words like "contempt" or "hatred" against the Government of India removed. It also includes "electronic communication" and "use of financial means" as tools for perpetuating an act "endangering sovereignty, unity and integrity of India." Earlier sedition law required very harsh words and some action like an example of uprising against the country. Under Section 150, merely words by themselves will attract the charge of having participated in anti-national activities.

Offences like Terrorism, organized crimes and criminal activities have been included in the new Act.

Drawing the curtain: A parting note

The evolution of sedition laws and the safeguarding of freedom of expression have been complex and intertwined throughout history. While sedition laws have been used to suppress dissent and restrict free speech in the past, societies have increasingly recognized the importance of protecting the fundamental right to express ideas and opinions.

Today, the balance between sedition laws and freedom of expression varies across countries, reflecting diverse cultural, political, and legal contexts. It is crucial for societies to continue evolving these laws, ensuring they align with democratic principles, protect against incitement to violence or hatred, and respect the right to peacefully dissent.

In the modern era, digital communication and the global nature of information dissemination pose new challenges in defining and regulating sedition. Striking the right balance between safeguarding freedom of expression and addressing genuine threats to society remains an ongoing, complex endeavor that requires thoughtful consideration and adaptation in the face of changing technologies and social dynamics. Ultimately, the preservation of both free speech and the rule of law remains a cornerstone of democratic societies.

Lastly, I would like the readers to ponder over the questions:-

1. **Will the New Bharatiya Nyay Sanhita remove the colonial marks from the books?**
2. **Secondly, should Sedition be removed from the new Act or is it essential to keep Sedition still in the provisions of law?**

Thank you

Jai Hind

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