

THE USE OF SEDITION LAW AS AN OPPRESSIVE TOOL

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The Indian legal system has inherited various laws from the British government including the fields of criminal law, civil laws and tort laws. One of the significant law adopted by the independent democracy was the Sedition law. This offence was introduced during the British rule to suppress any form of dissent or uprising against the government. Sedition today is an offence under which any individual who while in pursuance of his freedom of speech and expression incites violence among the people against the government which poses a serious threat to the security of the state. This offence has always remained in conflict with the freedom of speech and expression of individuals but the Supreme Court through various judgements tried to ensure the delicate balance between the freedom of speech and expression and protection of the security of state along with maintaining the public order. Even with the establishment of a strict interpretation of the offence of Sedition provided under Section 124A of the Indian Penal Code, 1860, there have been various instances of misuse of this law. This paper will focus on the evolution of Sedition law, analyze major judgements, its continuous conflict with the freedom of speech and expression and the instances of misuse that have arisen.

INTRODUCTION

The common notion regarding the offence of sedition is that it is any act which excites or attempts to excite feelings of hatred, disaffection or contempt irrespective of whether there is public violence that erupts later or not and is punishable per se, but the law of Sedition entails a lot more than this. The offence of Sedition under the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), a person is required to bring hatred or contempt, or excites or attempts to excite disaffection towards the government, by words spoken or written, or by signs or by visible representation or otherwise. Section 196 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') provides for procedural safeguards against Section 124A of the IPC, by restricting the courts from taking cognizance of offences against the state unless they have received sanction or permission to proceed from the Central or the State government. Furthermore, the Supreme Court in case of *Kedarnath Singh v. State of Bihar*, laid down additional procedural safeguards which prescribes that a legal opinion of a law officer of the district must be obtained in

writing and subsequently, the state prosecutor must provide the same within a period of two weeks. All of these safeguards allow for a strict application and interpretation of the offence of sedition. In spite of these safeguards, there is continuous misuse of the law which has been exhibited by various circumstances.

EVOLUTION OF SEDITION LAW IN INDIA

The law of sedition is not new to the Indian society and has its roots to the British era. They were first introduced during the British rule in the draft Indian Penal Code under clause 113. It was proposed by Thomas B. Macaulay in 1837. And finally, in 1860 when the IPC was enacted, the section relating to Sedition was omitted. The period during which the British found it most necessary to amend the laws to deal with seditious activities was the period up to the 1870's, when there was a visible rise in the Wahabi activities. With rise in acts of mutiny against the British rule, there was a desperate need that acts of sedition were made a substantial offence of which people had explicit knowledge about. In 1870, the offence of sedition was included in the IPC under Section 124A. This amendment to the IPC was heavily drawn from the Treason Felony Act of England which focused on seditious remarks made verbally. This section was used by the British government to suppress protests or dissents or any form of criticism against the government. The punishment for seditious offences is known to be especially harsh compared to other offences in the IPC. It is a cognizable, non-bailable and non-compoundable offence that can be tried by a court of sessions. It may attract a prison term of up to seven years if one is found guilty of committing seditious acts. One of the first cases of sedition which was registered took place in 1891 when a famous newspaper called Bangobasi was charged for an article they published criticizing a government legislation. Since the jury couldn't reach a unanimous verdict, the charges against the editor of the newspaper were dropped. Further, the law of sedition was amended to include Strachey's Law in the year 1898. Some of the major freedom fighters like Mahatma Gandhi and Bal Gangadhar Tilak were charged under the same law. The trial of Tilak started in 1898 when the government claimed that one of Tilak's speeches on Shivaji killing Afzal Kahn, led to the killing of two British officials in Pune. During Tilak's trial where he was charged with sedition, Judge Strachey dismissed his defenses and convicted him based on Strachey's Law. This law expanded the scope of the definition of sedition by including the terms 'hatred', 'contempt', 'hostility', 'dislike' and any form of ill will to the government and equated the term 'disaffection' to all feelings of enmity and disloyalty. He was punished with 6 years of rigorous imprisonment. After this, Section 124A was amended with the reflection of Strachey's Law. Later, Mahatma Gandhi was charged and sentenced with sedition in the year 1922 for his published articles in 'Young India'. The nature of the offence is highly subjective which was necessary for the government to ensure that there was no threat to the stability or security of the state. Allowing for such discretion to the legislative or executive empowers them to be a repressive government which can undermine the importance of free speech. Furthermore, the case of Niharendu Dutt Majumdar v. King Emperor was especially important in the understanding of the offence of sedition. In this

case, Majumdar had been charged with sedition on grounds of him allegedly delivering violent and provocative speeches during one of the Bengal Legislative Assembly while highlighting the inefficiency of the state government to maintain law and order in the state after the Dacca riots. It was held that the mere presence of violent words would not amount to a seditious speech, there has to be incitement to create disorder as their intention.

The issue of sedition was then debated among the drafters of the constitution. In the Constituent assembly, Freedom of Speech and Expression was originally a part of Article 13 of the draft constitution. An amendment was proposed to restrict this right on grounds of 'libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State.' However, in light of the biased nature of judicial pronouncements pertaining to cases of sedition in India, along with a precipitous rise in the abuse of sedition law to incarcerate nationalists, the drafters of the Constitution felt the need to exclude sedition from the exceptions to the right to freedom of speech and expression. There was an absolute consensus among the drafters of the constitution on the oppressive nature of sedition laws and they clearly expressed the need to exclude it as a ground of restriction on the right to freedom of speech and expression. After 1947, sedition continued to exist under the IPC provision of Section 124A even though it was excluded from the Constitution as reasonable restriction to freedom of speech and expression. But after various judicial pronouncements subsequent to the establishment of the constitution, during the time when the first amendment was going to be proposed, the then Prime Minister Jawaharlal Nehru was pressurized into suggesting an amendment in order to introduce this as a restriction to freedom of speech and expression. The Judicial pronouncements that had an impact that led to the inclusion of sedition as a ground of restricting freedom of speech and expression are *Romesh Thappar v. State of Madras* where the court held that banning a publication because it threatened public safety is not protected by the Constitution under the restrictions imposed and this entailed a danger to public security, *Tara Singh v. State* where the court struck down Section 124A being violative of Freedom of Speech and Expression, *Brij Bhushan v. State of Delhi* whereby Justice Fazl Ali stated that 'public order' was in relation to 'security of the state' and inserted the phrase 'in interest of public order' in Article 19(2) and also in *Ram Nandan v. State* wherein the court highlighted the mischief possible under Section 124A of the IPC and its capability of violating freedom of speech and expression and hence it got struck down. Therefore, finally, the first amendment to the constitution included grounds of 'public order' as a 'reasonable restriction' on the freedom of speech and expression under Article 19(2). This was done even though Prime Minister Jawaharlal Nehru believed the IPC section to be 'objectionable and obnoxious'. There have been multiple judgements by the Supreme Court over the last 60 years which have upheld the importance of freedom of speech and expression while balancing the interpretation of Section 124A of the IPC as well.

THE CONFLICT BETWEEN FREEDOM OF SPEECH & EXPRESSION AND SEDATION

Article 14, 19 and 21 of the Constitution form the 'Golden Triangle'. This was laid down in the case of *Maneka Gandhi v. Union of India* where the court laid emphasis on the importance of these three articles in interpreting the basic rights of people of the country and ensuring that they act as a strong barrier against arbitrary acts of the state. The Constitution guarantees all individuals the right to freedom to speech and expression which is imbibed under the provision of Article 19(1)(a). This fundamental right has been declared to be a part of the basic structure of the constitution and its importance is paramount. But this right is not absolute and no good law can be absolute. There exist reasonable restrictions which have been placed upon this right through the provision of Article 19(2). The reasonable restrictions in this article are in furtherance of the interests of sovereignty and integrity of the state, security of the state and public order, decency or morality. The first constitutional amendment in 1951 brought in these reasonable restrictions against the absolute use of freedom of speech and expression. A citizen entails with him the right to voice his opinions about the government whether positively or negatively. In case of negative opinions, such expression is justified so long as he doesn't incite violence among the people against the government or acts in a manner intending to create public disorder. Therefore, the court has a duty to balance this right to freedom of speech and expression against the power of the state to impose reasonable restrictions in the interest of security of the state and decency, morality and public order.

Section 124A of the IPC provides for the offence of Sedition which criminalizes speech and expression that incites public violence. This has been held to be a part of the reasonable restrictions laid down under Article 19(2) of the Constitution in the case of *Kedarnath Singh v. State of Bihar*. This landmark judgment upheld the constitutional validity of Section 124A of the IPC. The court was required to deliberate upon the relationship between sedition and freedom of speech and expression. The question that was considered here was whether this section of the IPC came under the ambit of 'reasonable restrictions' expressed in Article 19(2). The court looked into the meaning given to this section during the British rule by the Privy Court. The court stated that only those acts should be made an offence under this section which intend to incite public violence or disorder. Further, the court held that incitement to violence was an essential ingredient to the offence of sedition. Hence, the constitutionality of the section was upheld to be reasonable and limited as the restriction imposed was in interest of public order. Only if the words, written or spoken, intend to create public disorder or violence can they be held as an offence under this section. Sedition would therefore fall within the purview of constitutional validity only if it could be included within the 6 grounds of reasonable restrictions laid down under Article 19(2) of the Constitution. Of the 6 grounds mentioned, the court interpreted section 124A under the ground of 'security of the state'. The court gave the reasoning that sedition laws were necessary to maintain public order which would ultimately be in the 'interests of security of the state' and so these laws were justified.

Even though sedition is considered as an offence 'against the state', what must be considered is the growing nature of what acts are against the state. During the British rule, it was to suppress all kind of dissent or revolution against the government to ensure that

the crown is not overthrown. But the state today consists of citizens of the country who form a democratic government and hence the crime which aims to alter the government loses grounds. For sedition to be fulfilled, there must be incitement of public disorder and violence. Merely advocating one's opinion cannot be termed as sedition. Sedition includes expression of 'disaffection' which includes all feelings of enmity or disloyalty against the state. The explanation under Section 124A exempts criticism against the government which doesn't incite hatred, contempt or disaffection. A strict interpretation of this section would show that sedition is confined to expressions which would undoubtedly result in violence among people and not just students shouting slogans against the working of the government. It is pertinent to note that in theory, the offence of sedition as prescribed by the law and upheld by the higher courts is a sound law. It is restricted in its application and doesn't interfere with the freedom of speech and expression. The conflict with Article 19(1)(a) arises only when instances of abuse or misuse of this law takes place. In the practical application of the law of sedition is what warrants a thorough check and not its theoretical application. The law allows for peaceful dissent but this has not been followed by the police and the lower courts who use this law to curb dissent.

In a democratic society, which is governed on the principle of the people, for the people and by the people, every citizen is enshrined with the right to put across their grievances, ideas and opinions freely without any fear of repercussions of being imprisoned. But such a fear does exist within the Indian democratic set-up due to the existence of Sedition Law. These laws have survived post the colonial rule in India and aim at affecting and curbing the expression of media, politicians, writers, public intellectuals and any individual who wants to voice his opinion which may be against the working of the government in this country. Though the Supreme Court upheld the constitutionality of sedition law, it narrowed the application of this offence to only cases where speech and expression of individuals incite violence among the people, the lower courts have disregarded this interpretation in various instances and have been influenced majorly by political parties' motives and pressures. This divide between the Supreme Court and the lower courts has resulted in large number of instances of injustice as the judges seems to be ignorant of the laws and the principles laid down therein. Such instances of misuse of the law eventually creates fear in the minds of individuals to raise their opinions against the government as this might result in charges against them.

THE MISUSE OF SECTION 124A

The law of sedition is backed by the state's interest to ensure its stability. India has become a country where one can be charged with sedition if he/she does not stand for the national anthem in a theatre, or supports a rival team during a cricket match, or respectfully condemns a negative view opined about a neighbouring country. The misuse of this archaic law has inflated to such an extent that a person can be slammed with sedition charges just by liking someone's status on social media. In the year 2014, a total of 58 persons were arrested in connection with such cases, out of which the government has managed only one

conviction. Some of these recent instances of misuse of sedition charges can be seen in the following cases-

Binayak Sen (2007)

The award-winning doctor and civil rights activist was arrested by Chhattisgarh police in May 2007 on charges of sedition. Binayak Sen had met Narayan Sanyal, allegedly a Maoist ideologue, 33 times between May 26th and June 30th of 2007 passing out seditious letters and passing them to one Piyush Guha who was arrested on May 6th with three of these letters. Mr. Sen was thereby alleged to be part of an effort to establish an urban network of the banned extremist group CPI (Maoist), and was convicted in 2010 for the offence of sedition by a sessions court. Furthermore, the Chhattisgarh High Court dismissed his application for suspension of sentence and grant of bail during the pendency of the appeal. The Supreme Court allowed Sen's appeal and held that mere possession of documents does not suffice to prove a charge of sedition and that merely sympathizing with a cause cannot amount to sedition.

Arundhati Roy (2010)

The Booker prize winning novelist was facing a threat of arrest after an alleged sedition complaint was lodged against her. She along with Kashmiri separatist leader Syed Ali Shah Geelani were facing the charges for claiming that the disputed territory of Kashmir was not an integral part of India. It was alleged that the speeches given by the accused were anti- Indian speeches Arundhati Roy spoke about the charges and stated that this is a way of threatening her with legal action and a way to silence the voices of young journalists but it will have the opposite effect.

Aseem Trivedi (2011)

The complaint against the cartoonist was filed on November 2011 with the Bandra- Kurla complex police for displaying derogatory sketches depicting the National Emblem and the Parliament in a bad light. The complainant said that these cartoons were further uploaded on social networks thereby hurting the sentiments of the nation. Mr. Aseem Trivedi stood for his freedom of expression and claimed that if a person in this country can't express his anger against the government then he would prefer to be behind the bars rather than to enjoy his freedom in such unreasonably restricted sense. He had a vehement support of the then chairman of Press Council of India Markhandey Katju and Mr. Katju wanted to personally ensure that these politicians and police officers are booked. The arrest sparked a nationwide protest and initiated a debate whether such a colonial era law should continue to exist in the independent India. The Bombay High court bench comprising of Mohit Shah, C.J. and N.M. Jamdar, J. reiterated that freedom of speech and expression cannot be encroached upon using laws of sedition unless there is no incitement of violence or intention of disrupting public order.

Kashmiri students during Asia Cup (2014)

Around 67 students studying engineering in a college of Meerut were charged with sedition by Uttar Pradesh police for cheering Pakistan's victory over India. After Preliminary investigation, all 67 students were expelled from the Swami Vivekananda Subharti University. After which, Omar Abdulla reached out to his Uttar Pradesh counterpart Akhilesh Yadav and said that the punishment was unacceptably harsh and that a charge like this could ruin the future of the students. Through all this, the students were claiming that the FIR is illegal and that they merely cheered the more talented team and did nothing wrong.

Not standing during the National Anthem (2014)

M Salman along with 5 others was arrested and charged with sedition under section 124A of the Indian Penal Code for allegedly sitting and hooting while the national anthem was playing at the movie. While rejecting his bail, the court said that Salman's behaviour was anti-national and his offence was serious than murder. Harihara Sharma, one of the accused said that few persons asked their reluctance to stand and asked them to go to Pakistan after which there was an altercation after the National Anthem was over. Mr. Sharma further stated that the family was in shock and they were afraid of the police as they think he has links to anti-national outfits. Salman's arrest led to an outrage in Kerala by the human rights activists.

S. Kovan (2015)

The 52-year-old folk singer was arrested at his home in Tiruchirappalli district on October 30, 2015, for 2 songs that criticize the state government for allegedly profiting from state-run liquor shops at the expense of the poor. The arrest itself was filled with procedural fallacies as he was beaten up and forced into the police vehicle forcefully at 2:30 in the morning and moreover, he was not given a reason for his dramatic arrest. The police even tried to arrest the website owner on whose website the songs were uploaded after which they went viral on social media but he was not home. The arrest was criticised as a misguided attempt to shield the chief minister from criticism regarding the state's liquor policy. The Supreme Court dismissed the Tamil Nadu government's petition against a high court order that scrapped police custody of the singer saying it was erroneous.

The Jawaharlal Nehru University (JNU; 2016)

On February 9, 2016, an event was organised in JNU against the hanging of the Parliament attack convict Afzal Guru. During the event, anti-Indian slogans were said to have been raised based on which the president of student union Kanhaiya Kumar along with Umar Khalid and Anirban Bhattacharya were arrested on sedition charges. They were jailed and were bailed out after a fortnight. A year after the Delhi Police charged the JNU students, they are yet to file a charge sheet against them. Kanhaiya spoke to India Today and said that "I was sure that the truth will come out...and conspiracy against JNU will also be revealed." He has always maintained that he has been wrongly implicated in the case. Anti-India slogans did resonate through JNU that day but the forensic have founded Kanhaiya's voice to be tested negative on the audio clips being used as evidence. The investigators

further said that Kanhaiya had reached the scene after a clash broke out between JNU students and Akhil Bharatiya Vidhyarthi Parishad (ABVP) Activists. Kanhaiya further went on to question if those who attacked him when he was brought to court would be booked and also asked if the BJP leaders who spoke against him would apologise.

Divya Spandana (2016)

“I respectfully disagree; Pakistan is not hell. People there are just like us. They treat us very well.” These were the words said by the Actor- Politician for which she was slammed with sedition charges. These words were said in reply to the Defence Minister Manohar Parrikar’s comment of equating Pakistan to hell and she still stands by her statements. The question to be asked is whether praising a neighbouring country amounts to sedition? A local court in Madikeri answered the same in negative and quashed the sedition case filed against her.

The Law of Sedition was introduced during the colonial rule in order to suppress or subdue the voices of rebellion that echoed through the country. The colonial rule is still in use in the modern independent country of India. The main objective of Law of sedition is to counter any power that rises to overthrow the government, but as illustrated by the above instances they have become a way of curbing the freedom of speech and expression of young students, artists, authors, activists among the general population. The law of sedition has also been used to instil fear among individuals to suppress their dissent against the government. The archaic section of the Indian Penal Code seems to be a weapon that is drawn whenever the government is criticised. Is it democratic for the state to yield such power that risks the future and life of the individuals?

CONCLUSION

India inherited the law of sedition from the British. This law was originally introduced by the British in order to silence and suppress any form of dissent against the government. It was oppressively enforced in order to ensure that the monarchy sustained. Since there were perpetual rebellions and revolutions against their despotic reign, a law such as this was due and had become a necessity. After more than a century, today, in a democratic country where the government is chosen by the citizens of the country through the process of electing their representatives into such positions of power, it seems unnecessary to have laws which continue to oppress free speech and expression. Sedition law in India is theoretically a sound one and it commands strict interpretation to ensure its not misused. This was observed in the Federal Court judgment of Niharendu Dutt Majumdar v. King Emperor, wherein the court emphasized that incitement to create public disorder is an essential ingredient of sedition. Similar reasoning was carried forward after independence by the Supreme Court in the landmark judgement of Kedarnath Singh v. State of Bihar, upholding the constitutional validity of Section 124A, it laid down the basic guidelines for interpretation of the section in order to ensure that this offence does not curtail the citizen’s right to free speech and expression. These principles were further emphasized upon and elaborated by the Supreme Court in various following judgements. But this law becomes

an issue when such guidelines are not followed by the lower courts and the investigating agencies, thereby leading to the conflict between free speech and sedition. There are procedural guidelines laid down in these judgements and the CrPC to ensure that the gravity of this offence is understood but in the acts of misuse by the lower courts and the police, these safeguards are totally disregarded. A result of this blatant ignorance is the hardships the accused, rather the victims of this wrongful prosecution have to face in these situations. Not only do they have to confront the painful and scaring experience of going to jail while the trial continues but they also have to incur various legal costs and take expensive measures to prove their innocence in these lower courts. Such arbitrariness and power that the police and lower courts exercise, which may even at times be backed by political agendas, creates fear among the citizens to raise their voice against the acts or policies of the government. This is where this archaic law becomes excessive in its application and leads to curtailment of free speech and expression. In 2014, a report by the National Crimes Record Bureau stated that there have been 47 cases of Sedition reported and 58 persons were arrested, with maximum from the state of Bihar and Jharkhand, but the number of convictions were only one. When looked at the Supreme Court's pronouncements in light of the various instances that we have observed of the misuse of sedition law, such as the JNU case or the Aseem Trivedi case or Actor Ramya's case, the common observation is that the practical application of this law needs a re-look. It is due to these various instances that the 21st Law Commission of India has set out in its agenda to revisit the Sedition law, which is to be headed by retired Justice Balbir Singh Chauhan. Justice Chauhan stated that "We should give it (Sedition law) a fresh look. The Indian Penal Code was drafted almost 150 years ago and the British rulers had a different purpose behind the law. It's time for us to examine whether the law holds good today or not." This shows that there is a need for us to reassess the archaic law which ironically has been abolished by the very country that introduced it to India. The United Kingdom abolished the crimes of sedition in the year 2010 with the reasoning that the language of the offence was archaic and did not reflect the values of present day constitutional democracies. Given that there is enough evidence that the law of sedition is being misused, what is required at this given hour is not the complete repeal of the law but the modification of the law of sedition in a manner that misuse of such a law against the citizens of the country cannot take place. The vague terms in the definition which give scope for misuse needs to be amended along with some form of regulatory and penal mechanism to be imposed on those who try to misuse the law to their benefit. In the largest democracy in the world, living in the 21st century where everything is accessible in the fastest manner possible with the exponential growth in technology, the right to freely express one's opinions against the government is a basic fundamental right that needs to be ensured by the state. This is where it becomes crucial for India to grow as a country by allowing its citizens to freely express their ideas, thoughts and opinions without the looming fear of prosecution based on their expression. The Supreme Court judgements and their guidelines need to be reflected in the law of sedition and enforced with provisions to punish the ones misusing it, more strictly to ensure that the law of sedition is applied for its actual purpose and not to instil fear among the citizens and used as an oppressive tool by the 'democratic' state.