
ADDRESSING THE INCONSISTENCY: SEDITION AND FREEDOM OF SPEECH AND EXPRESSION

Devika Garg, Jindal Global Law School, O.P. Jindal Global University

I. INTRODUCTION

British bequeathed numerous laws for Independent India. A lot of them are accepted, a few of them repealed and a few of them controversial. The law of sedition, given in Section 124A of the Indian Penal Code falls in the latter category. The law of sedition has become a weapon at the hands of politicians. Voices of dissent or criticism turn into shouts of hate and anti-nationalist notions. Further, this law continually gives a chance to the government to mimic the colonizing masters. The circumstances during which it was felt that there was a need for such a law do not prevail in the present. It reminds us of the era when Fundamental Rights did not exist in our country. It is observed that there is a constant need for the law to be modified and updated as with changing social and economic changes felt in the society. The anachronistic law of sedition also requires going through the test of relevance in the current times. Today, several attempts have been made by journalists, human rights activists, and even comedians to bring attention to the misuse of such a law and challenge its constitutionality and legitimacy of the same. This paper elaborates on the criticism and problems of the law of sedition in light of various judgments, what has been its impact on the society keeping in mind the changing interpretation of Freedom of Speech and Expression under Article 19(1)(a), status of sedition in England, and an analysis as to do we really require the law of sedition.

II. THE RIGHT AND THE OFFENSE

The law of sedition has been criticized in the era of modern democracies all over the world. Section 124A of the Indian Penal Code (IPC) contains the offense of sedition. R.K. Misra in his paper 'Freedom of Speech and Sedition In India' questions the very need for this law to exist in independent India¹. Sedition was criminalized by the British after the 1857 revolt in India in order to curb protest, riots, and the spread of awareness². The mere fact that this law

¹ Misra, R., 1966. FREEDOM OF SPEECH AND THE LAW OF SEDITION IN INDIA. Journal of the Indian Law Institute, 8(1), pp.117-131.

² *ibid.*

still exists in liberal India is not only horrific but begs the question 'why?'. India is a democratic liberal country and the adoption and implementation of a law used against its own citizens during colonialism is an indicator of how regressive and counterproductive it truly is. Not only this, but it has also been argued that it infringes upon our Fundamental Right to Freedom of speech and expression under Article 19(1)(a). Before delving into sedition, it is important to understand the relevance and prominence of this Right through various judgments.

Its importance is given in *Ramlila Maidan Incident Case*³. The court held that freedom of speech is the bulwark of a democratic government, and that this freedom is essential for the proper functioning of the democratic process.⁴ They also observed that freedom of speech and expression is regarded as the first condition of liberty. It plays a crucial role in the formation of public opinion on social, political, and economic matters.

In *Sahara India Real Estate Corporation v. SEBI*, the court observed that such right is not limited to thoughts and ideas which are accepted and acceptable but also to those which offend or may shock any section of the population.⁵

The Court in *Union of India v. Motion Picture Association*, explaining a free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing viewpoints, debating, and forming one's own views and expressing them, are the basic indicia of a free society⁶. Such Right in the Constitution involves various aspects of human liberty to speak and communicate ideas whether they may be popular or not⁷. In *Subramanian Swamy v. Union of India*⁸, the court observed that any voice of dissent or disagreement, or criticism does not go against the constitution's objective.

This Right is enshrined in our constitution. It further accentuates the resolve made in our preamble to secure all its citizens' liberty of thought and expression. In *S. Rangarajan V. Jagjivan Ram*⁹, open criticism of the government and its processes does not require any restrictions and that intolerance is as dangerous to democracy as to the person himself. In *Romesh Thapar v. Union of India*¹⁰, this Right lays at the very foundation of democracy, in the

³ *Ramlila Maidan Incident DT.4/5.06.2011 v. Home Secretary, Union of India & Ors.* (2012) 5 SCC 1.

⁴ *ibid.*

⁵ *Sahara India Real Estate Corporation Ltd. v. Securities & Exchange Board of India* (2013) 1 SCC 1.

⁶ *Union of India and Ors. v. Motion Picture Association and Ors* 1995 4 AD (DELHI) 55.

⁷ *Ibid.*

⁸ *Subramanian Swamy v. Union of India* (2016) 7 SCC 221.

⁹ *S. Rangarajan V. Jagjivan Ram* (1989) 2 SCC 574.

¹⁰ *Romesh Thapar v. Union of India* AIR 1950 SC 124.

absence of which free political discussions and political education would not be possible thereby hindering the proper and ideal functioning of a government. This serves itself as evidence as to how high this right has been treated and considered by the courts in India.

Now coming back to sedition, it was used as a tool to silence the few educated free-thinking liberals of the time and by continuing to criminalize it all it aims at doing the same thing, the only difference being that every single individual has opinions, access to information, and a need to make their country better. In the recent case of *Vinod Dua v. Union of India*¹¹ charges of sedition were imposed upon a journalist for criticizing the government in a video posted online. Similarly, in the past people have been booked under Sedition for liking a Facebook page¹², delivering a speech highlighting the atrocities committed by armed forces at a conference¹³, drawing cartoons that incite violence allegedly¹⁴, cheering for the Pakistani team during a cricket match against India¹⁵, raising a question whether the stone-pelters in J&K were real heroes in an exam¹⁶, and criticizing a yoga expert¹⁷. This surely isn't the 'freedom' the drafters of the constitution envisaged for the citizens to enjoy. During the years 2014-2019, a total of 326 cases of sedition were filed in India with a conviction rate of less than 5 percent¹⁸.

The validity of S124 has been questioned for time immemorial. One of the landmark cases that questioned the constitutionality of S124A back in 1962 was *Kedar Nath Singh vs State of Bihar*¹⁹. The Supreme Court judged the constitutionality of S124A following its immense misuse and addressed the ambiguity surrounding it since the wording of the provision left a lot

¹¹ *Vinod Dua v. Union of India* 2021 SCC OnLine SC 414.

¹² Times News Network, *Facebook "like" case: No evidence of sedition, govt tells HC*, January 30, 2013, available at <http://articles.timesofindia.indiatimes.com/2013-01-30/kochi/36635179_1_national-flag-facebook-post-sedition> accessed on 15th April 2022.

¹³ Press Trust of India, *Sedition case registered against Arundhati Roy, Geelani*, November 29, 2010, <<http://www.ndtv.com/article/india/sedition-case-registered-against-arundhati-roy-geelani-69431>> accessed on 15th April 2022.

¹⁴ India Today, *Anti-corruption cartoonist Aseem Trivedi arrested on sedition charges*, September 9, 2012, <<http://indiatoday.intoday.in/story/anti-corruption-cartoonist-aseem-trivedi-arrested-on-sedition-charges/1/216643.html>> accessed on 15th April 2022.

¹⁵ NDTV, *Outrage over Sedition Charges against Students who cheered Pakistan*, March 6, 2014, <<http://www.ndtv.com/article/india/outrage-over-sedition-charges-against-students-who-cheered-pakistan-492250>> accessed on 15th April 2022.

¹⁶ India Today, *Kashmir University lecturer released*, January 2, 2011, <<http://indiatoday.intoday.in/story/kashmir-university-lecturer-released/1/125303.html>> accessed on 15th April 2022.

¹⁷ The Indian Express, *Sedition charge against Digvijay over remark against Ramdev*, June 6, 2011, <<http://www.indianexpress.com/news/sedition-charge-against-digvijay-over-remark-against-ramdev/799912>> accessed on 15th April 2022.

¹⁸ National Crime Records Bureau, *All publications of Crime in India (1953-2018)*, February 2019, available at <<https://ncrb.gov.in/en/crime-in-india>> accessed on 14th April 2022.

¹⁹ *Kedar Nath v. Union of India* AIR 1962 SC 955.

of room for interpretation and could bring into its ambit any actions. The court laid down certain principles specifying when the section can apply. One important ingredient identified and reiterated was “so long as a person does not incite people to violence against the Government established by law or with the intention of creating public disorder, they should not be held guilty of sedition”. This was a landmark judgment because it not only made the law univocal but narrowed its scope.

Unfortunately, this interpretation is not understood by many. Political leaders have built the implementation of S124 cleverly over the years so as to not spare any disaffection from the public. By doing so it has given the government unsurmountable power which violates not only the freedom of speech and expression but also the right to life and personal liberty. Even if the court acquits the people charged with sedition, it does not make up for the social stigma one suffers by being labeled as an “accused” in a criminal matter and personal hardships that one doesn’t deserve (mostly) to endure.

Sedition is a law that prevented and punished hate speech and disaffection against the government however our current government is exploiting section 124 to the fullest. Currently, under the Modi era, the word ‘state’ has become synonymous with Religion. They claim to hold their religion so highly and expect the same from the entire nation highlighting the most fundamental expressions of anti-constitutionalism, yet their belief is so fragile that a joke *almost* made by a comedian, or an *opinion* written by a journalist threatens their religion and belief to their very core to the point where such individuals are charged with sedition, beaten or even killed. Comedians, artists, and journalists have elevated their positions from entertaining to spreading awareness, which is necessary for today’s India, and slapping them with sedition simply because of disapproval can ruin their entire livelihood and more than that the democracy we hold so dear. Since when did profess one’s, religion become a seditious act. Moreover, since when did ‘State’ start having a religion.

Instances of exploiting s124A are prevalent in history. In *Bilal Kaloo vs State*²⁰, the accused was charged with several offenses including section 124A for being linked with the possession and distribution of arms amongst Muslims in Kashmir. Sedition was added loosely and the same was reiterated by the Supreme Court. They held that the convictions under this section were done in a casual manner given the brevity of the crime.

²⁰ *Bilal Ahmed Kaloo vs State Of Andhra Pradesh* 1997 (2) SCC 431

Two recent challenges made by Kishorechandra Wangkhemcha and Kanhaiya Shukla against the sedition law strengthen the position to repeal this barbaric law²¹. Sedition charges were brought against him and 10 others for ‘treasonous sloganeering’ in favor of Afzal Guru, who was hanged. The political war between opposing parties has only been unfavorable for the accused as it prolongs his legal proceedings.

Curbing freedom of speech comes with curbing free-thinking, the spread of awareness, and the democratic right for the public to criticize the government. This was recognized by Justice Deepak Gupta in his speech too²². He said that it is the voices of dissent that pave way for development and explorations and if we were to shut their mouths then horizons of mind will not expand. A diverse country where people are bound to have different views cannot justify the existence of such a law.

III. THE CASE OF THE UNITED KINGDOM

It is known that sedition originated in the UK to avoid criticism of the King mainly and to subdue the freedom of the printing media²³. The Sedition Act of 1661 was enacted to punish anyone who expressed anything which might malign the reputation of the King²⁴. Slowly this Act evolved to include libel and slander against the creditability of the Government and its officials²⁵. It was observed that the language of the Sedition law was extremely broad in the sense that any action could be seditious. Moreover, the punishment for this offense was rather stringent as well- Life imprisonment and/or a fine. The sedition law was seen as an arcane part of the legal system which did no good but put an unnecessary proviso to the freedom of thought and expression, which is protected in the UK under the Human Rights Act, 1988²⁶. In 1977, before the Human Rights Act was enacted, the Law Commission in the UK published a working paper suggesting repealing such Act, “a law based on politics rather than the policy

²¹ *Kishorechandra Wangkhemcha and Anr. v. Union of India* (2021) MANU/SCOR/19386/2021

²² Deepak Gupta, ‘Law of Sedition Needs to be Toned Down if Not Abolished’ (*The Wire*, 8 September 2019) <<https://thewire.in/law/justice-deepak-gupta-supreme-court-sedition>> accessed on 16th April 2022.

²³ Gauri Kashyap, ‘Sedition in the Common Law Jurisdictions: UK, USA and India’ (Supreme Court Observer, 20 May 2021) <<https://www.scobserver.in/journal/sedition-in-the-common-law-jurisdictions-uk-usa-and-india/>> accessed on 15th April 2022.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Human Rights House, ‘UK Government Abolishes Seditious Libel and Criminal Defamation’ (Human Rights House Foundation, 13 July 2009) <<https://humanrightshouse.org/articles/uk-government-abolishes-seditious-libel-and-criminal-defamation/>> accessed on 15th April 2022.

was unnecessary”²⁷. Meanwhile, the UK had developed a robust constitutional and criminal law which made the existence of sedition law arbitrary and obsolete and more than likely in contravention of Human Rights. Consequently, section 73 of the Coroners and Justice Act, 2009 abrogated the offense of sedition from the common law²⁸. Interestingly, one of the motives behind such action was to send out a message to the countries still retaining and using it. Claire Ward, State Secretary at the Ministry of Justice, said

*“Sedition and seditious and defamatory libel are arcane offenses – from a bygone era when freedom of expression wasn’t seen as the right, it is today... The existence of these obsolete offenses in this country has been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom... Abolishing these offenses will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech”*²⁹

The country which gave the world the draconian sedition law got rid of it themselves. The law on sedition seems nothing but a colonial-era hangover.

IV. OPINION

With growing resentment and disagreements among the youth and citizens of the country regarding governmental policies or laws passed by the government, any refusal to accept or simply voicing one’s discontentment is regarded as sedition. The citizens of India are given Right to Freedom of Speech and Expression.³⁰ The dichotomy here is that while the Constitution gives the citizens of the country the right to freely express and voice their opinions on matters including State policy and laws passed by the Government, this very same right is snatched away from the public by Section 124A of the IPC.³¹

Quite often, this section has been used as a tool to persecute political dissent which included the arrest of 14 students from Aligarh Muslim University for raising “anti-national” slogans, the arrest of a Manipur student activist for a social media post on the Citizenship Amendment

²⁷Clare Feikert-Ahalt, ‘Sedition in England: The Abolition of a Law from a Bygone Era’ *October 2, 2012*, available at <<http://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/>> accessed on 12th April 2022.

²⁸ Press Gazette, *Criminal libel and sedition offences abolished*, January 13, 2010, available at <http://www.pressgazette.co.uk/node/44884> accessed on 15th April 2022.

²⁹ *ibid* (n 22).

³⁰ Hari A, 'Explainer: How The Sedition Law Has Been Used In The Modi Era' (*The Wire*, 2022) <<https://thewire.in/law/explainer-how-the-sedition-law-has-been-used-in-the-modi-era>> accessed 23 January 2022

³¹ The Indian Penal Code 1860, No. 124A, Acts of Parliament, 1860.

Act, 2019³² and the charge of sedition on four Kashmiri students in Rajasthan over social media posts about a recent terror attack in Jammu and Kashmir.³³ The term 'disaffection' in this section is vague and lacks a clear, definite meaning even after various judgments, which allows the Government to interpret it as per their own discretion, often misusing the section to persecute individuals for merely expressing their discontent. Dissent and criticism of the Government are essential elements of the proper functioning of a Nation as they foster robust public debate and allow citizens to express their opinions on political matters. This should not be construed as sedition but rather promoted as the right to question, the right to criticize, and the right to choose their leaders are fundamental to the concept of democracy.

While it is pertinent to have measures that keep social order intact for the smooth functioning of a Nation, the bare reading of Section 124A is extremely vague in its wordings. And given the public shame and dishonor the offense carries around it, it is important for it to be used with extreme precision which, unfortunately, the state lacks as shown in various instances.

It can be said that the law on sedition can be easily replaced too. The *National Security Act, 1980*³⁴ is one such provision that provides preventive detention in certain cases wherein the Government deems the person to be a threat to national security or to prevent him/her from disrupting public order. Preventive detention falls within the ambit of reasonable restriction under Article 22(3)(b) and therefore needs to be implemented only in accordance with the laws made by the Parliament. Another better alternative to sedition is the Offenses against Public Tranquility prescribed in Chapter VIII of the IPC. Offenses covered under this Schedule include unlawful assembly, rioting, affray, and enmity amongst different classes. Moreover, it is not necessary that the actual offense is committed, but rather even if there is a possibility that such an offense could be committed that could disturb the tranquility and create public disorder, then it is a punishable offense. It punishes only those offenses that could actually cause disequilibrium in the State and be a threat to public order, rather than those acts that merely involve the expression of one's resentment against the establishment.

V. CONCLUSION

India is a democratic liberal country where terms such as 'secularism' form the very foundation

³² The Citizenship (Amendment) Act, 2019 [India], 12 December 2019

³³ Madhukeshwar Kugore I, 'Decriminalizing Sedition- Required Legislative Changes' (*Lexlife India*, 2021) <<https://lexlife.in/2021/06/05/decriminalizing-sedition-required-legislative-changes/>> accessed 5 June 2021

³⁴ National Security Act 1980, Parliament of India, 1980.

of the Country. Yet we still see instances of people being arrested, publicly humiliated, beaten, or even killed for simply practicing a different religion or having individualistic opinions. As per the *Kedarnath judgment*, the sedition law is only supposed to be used in rare circumstances where the action was to incite or incited violence. However, several recent incidents have shown that this law is often used as a political weapon against any kind of opposition, political rivals to suppress dissent and free speech. It is evident that authorities are misusing the vague interpretation of the sedition law to their own advantage, in order to create fear amongst the citizens or anyone that expresses resentment towards the Government. The sedition law is popularly used as a weapon to ensure the compliance of its citizens. The arrest of NDTV journalist Vinod Dua for criticizing the Government's response to tackling COVID-19, the 22-year-old climate change activist Disha Ravi for her involvement with an online toolkit and for tweeting in solidarity with the farmers' protests raises several questions regarding the sanctity of our constitutional right to freedom of speech and expression.³⁵ These instances are clear indications that the sedition is very often misused and interpreted by authorities in ways that suit their own personal political interests which ultimately defeats the purpose of the law. A law that ultimately curbs freedom of speech and expression is clearly violative of one's constitutional right and therefore has no place in a country like India.

³⁵ Manga M, 'Sedition Law: A Threat To Indian Democracy?' (*Observer Research Foundation*, 2021) <<https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/>> accessed 26 July 2021