
DESIRABILITY OF SECTION 124-A: THE PRESENT TIMES IN INDIA

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Time to Reform Sedition Law? An Analysis

ABSTRACT

This article talks about the much controversial Article 124A of the Indian constitution. This article talks about the draconian sedition law in Indian. While many still feel that the sedition law was a tool of the British government to curb the revolutions of India to get freedom. This article analyses whether after more than 75 years of Independence, such a law is desired in the Indian constitution. It observes various judgements of Hon'ble courts in respect to the law and its constitutional validity to deduce such desirability.

1. INTRODUCTION

Have you ever seen a fruit basket? It never has only one kind of fruit. It may have 2-3 bananas, some oranges, maybe grapes as well as some apples, a big watermelon and might still have space for some berries.

India is just like this fruit basket, having a diverse group of ethnicities, linguistic groups, cultures as well as religions living together forming a single state. While there are Hindus in majority, there are also Islamists as well as Christians, Jews, Sikhs etc. While their faiths might not be intertwined, their love for the country is the only binding force that have sewed them together like pearls in a garland.

However, the maintenance of such peace and stability in the country calls for extreme measures sometimes like the section 124A of the Indian Penal Code (IPC).

While government policies aim at providing the best for the people of the country, no policy can ever satisfy every person. There would always be a sect of people who would feel ignored or wronged by some or the other policy of the government. Sections like 124A try to maintain tranquillity amidst such discontentment of some people of the country for government policies, by talking about seditious speech.

But it is correctly said that every action has an equal and opposite reaction, there is always an endless possibility of misusing laws for the advantage of some. 124A is one such law. A law which was introduced for the smooth functioning of the country, has attracted controversy in present times for being in conflict with basic fundamental right of free speech of the citizens. It was amended only to become more stringent and harsher on the people so much so that any criticism of the government could be labelled to fall under its ambit.

We analyse 124A and go on to deduce if 124A i.e., sedition law, still a required part of IPC with the same harshness or if it can be reformed or even scrapped off.

1.1 WHAT 124A SAYS?

Section 124A of the Indian Penal Code, falls under chapter VI of the said code. This chapter comprises of sections 121-130, which deal with offences against the state.

Section 124A of the IPC states:

*“[124A. Sedition.—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,¹⁰² [***] the Government established by law in¹⁰³ [India], [***] shall be punished with¹⁰⁴ [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. Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity. Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]”¹*

1.2 HISTORY OF 124A

The law of sedition was introduced in India by the British government. Having an interesting back story, many believe that even the British were sceptical of imposing the law.

This is so because the law had been drafted in 1837 by Thomas Macaulay to be incorporated in the Indian Penal Code. However, when the IPC was enacted in India in 1860, the provisions of sedition were inexplicable found to be missing. But, in 1870 by an amendment, section 124A was inserted by Sir James Stephen. Such a step was taken to suppress the Indian voices of freedom, calling it the need of the hour by the British government. It was this amendment that helped the British government to bring Bal Gangadhar Tilak and Gandhi to trials.

In 1922, Mahatma Gandhi was brought to trial under sedition when the freedom movement was spreading like wildfire. He had published articles in “Young India” along with Shankerlal Banker.

He said that “to preach disaffection towards the existing system of government has become almost a passion with me”.²

¹ Indian Penal Code, 1860, Act no. 45, Acts of Parliament, 1860 (India).

² Ashish Kotadiya, *The Sedition Story: Intricate History of Section 124A*, TIMES OF INDIA (Jul. 21, 2021, 3:41 PM) <https://timesofindia.indiatimes.com/readersblog/mybrooding/the-sedition-story-intricate-history-of-section-124a-35456/>.

In *Niharendu Dutt Majumdar Vs King Emperor*, 1942, the Federal Court held that “public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence.” But this proposition was overturned by the Privy Council in *King Emperor Vs Sadashiv Narayan Bhalerao*, 1947.³ The privy council in London was the highest court of appeal at the time.

When the framers of the Indian constitution were arguing about whether to include 124A or not, it dropped out of the constitution. The restrictions to freedom of speech only included, libel, contempt of court, morality and the security of the state. In 1951 however, Prime Minister Nehru’s government through 1st constitutional amendment Bill added “public order” as another restriction to 19(1)(a)- freedom of speech. This was when a way was paved for sedition- section 124A.

2. EXAMINING KEDARNATH JUDGEMENT

On 20 January 1962, the Hon’ble Supreme Court had passed the landmark judgement of *Kedarnath Singh v. State of Bihar*. This is often called as the “kedarnath ruling”, being a landmark judgement towards sedition law.

The said judgement had upheld the constitutional validity of the sedition law. Section 124A was thereafter named the balancing force between one’s fundamental right and associated responsibility with it. It was this judgement that redefined the sedition law, clearly stating that only that speech was to be called seditious which had capabilities to incite violence.

While, this step was taken to reduce the loopholes for the misuse of sedition law, in an ever-advancing society till what level can you limit someone’s creativity towards selfish goals.

2.1 FACTS OF THE CASE

In 1953 Bihar, Kedarnath Singh was a member of forward communist party. The ruling party was the Congress, i.e., the government at that time. During one rally, Kedarnath gave a speech in which he accused the Congress party of “sucking the blood of kisan and mazdoor” by imposing taxes and by “banking upon American dollars”.

³ Utkarsh Anand, *The Sedition Story: Complicated History of Sec 124A*, HINDUSTAN TIMES (Jul. 19, 2021, 6:58 AM) <https://www.hindustantimes.com/india-news/the-sedition-story-complicated-history-of-sec-124a-101626370928612.html>.

“Today the dogs of the C I D are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it.”⁴

These official dogs will also be liquidated along with these Congress goondas.”⁵

We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a government of the poor and the downtrodden people of India.”⁶

These are some parts of his speech.

This speech of his got him booked under section 124A and 505(b) of the Indian Penal Code. He moved to Patna High Court challenging his conviction as well as the constitutional validity of section 124A. Such a validity was challenged on the basis of it clashing with the fundamental rights promised by the Indian constitution to its citizen. He had contended that such a law was in contradiction with article 19(1) which granted free speech to him.

2.2 JUDGEMENT

The apex court went on to find Kedarnath Singh guilty under article 124A- sedition.

They dismissed his petition and held that section 124A was constitutionally valid. According to the court, such a section was necessary to maintain a balance in the society. It was necessary in order to frame out the relationship between fundamental rights and a person’s attached duty that comes with that right towards the society.

The court said *“Criticism of public measures or comment on government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of*

⁴ Kedarnath Singh v. State of Bihar, (1962) AIR 955 (India).

⁵ *Id.*

⁶ *Id.*

public order".⁷

Therefore, Kedarnath served his full sentence and remained in jail.

The court also specified in this judgement that only such speech which could incite violence or is intended to or has the tendency to create public disorder would be penalised under this section.

2.3 ANALYSIS OF JUDGEMENT

While it is absolutely necessary that a citizen understands the attached responsibility that comes with his fundamental rights, section 124A leaves more for malafide deeds than good. The judgement tried its best to limit such deeds.

However, even while specifying the fact that only speech capable of inciting violence or dismantling peace in society, the judgement failed to demarcate WHAT would fall in the ambit of such incitement. Any and every criticism of the government has the potential of turning the public peace upside down. In a society like India where there are many divergent opinions try to coexist, what might start a riot is very uncertain.

Looking at present times, many activists as well as union leaders have visited jail being booked for sedition. There is a thin line between what is a personal comment and what actually attacks the government having in it a potential to jeopardize nations tranquillity. This line is nowhere specified. Such ambiguity leads to even innocent people being charged and convicted.

The preamble to the constitution brings out the essence of democracy that India is by the verses "of the people, by the people, for the people". Where the opinions of the people of the country matter so much, a law which sends the same people to prison who say those opinion a loud, only adds to the chaos.

WHY CONTROVERSY NOW?

An important question which arises is that if the constitutional validity of section 124A was proven in 1962 itself, why is there controversy around it now? Why are activists rigorously demanding to scrap off the sedition law with heavy protests?

⁷ *Id.*

The answer to this question lays in some of the recent events like the farmer's protest as well that anti-CAA protests. During these protests we saw many outspoken activists and protestors being booked and going to jail for violation of sedition law. We saw major riots and violent protests in many parts of the country including the capital territory, however how do we hold one person liable for such fury by the public at large.

The era we live in now is such that technology has the better of us. In such times where every shred of information travels from one point to another in seconds of it happening, sedition law seems a little outdated.

An important question being asked looking at events such as farmer's protest is, "whether sedition is that which is anti-national or whether it constitutes that which is anti-government?"

Asking such a question is important in a society like ours as we are the largest democracy in the world. Many believe that such a law is a threat to Indian democracy and term it as a draconian law.

The data provided by National Crime Records Bureau indicates that sedition cases have risen from 47 in 2014 to 93 in 2019, a massive 163 percent jump. However, the conversion rate from cases to conviction is a mere 3 percent. This shows that the police and related state authorities are using the sedition laws indiscriminately to create fear amongst the citizens and silence any criticisms or dissent against the regime.⁸

In the case of *Disha A. Ravi v. State (NCT of Delhi) & Ors.* The Delhi High Court clearly ruled that the government cannot put citizens "behind bars simply because they chose to disagree with the state policies" and "the offence of sedition cannot be invoked to minister to the wounded vanity of the governments."⁹

With amendment in the law, it became more stringent for the citizens. It becomes extremely difficult for those charged with section 124A to get bail. They are continuously harassed and their trials stretched longer than usual. This instils fear among other citizens to speak up against the government. The *Hubli Sedition case* is a perfect example of this. In this case, 3 Kashmiri

⁸ Rahul Tripathi, *Arrests under sedition charges rise but conviction falls to 3%*, THE ECONOMIC TIMES (Feb. 17, 2021, 7:51 AM) <https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr>.

⁹ Prabhaskar K. Dutta, *Anti-national or anti-government, what is sedition?*, INDIA TODAY (Mar. 4, 2021, 7:14 PM), <https://www.indiatoday.in/news-analysis/story/anti-national-or-anti-government-what-is-sedition-1775513-2021-03-04>.

students were booked under sedition for allegedly posting a pro-Pakistan video online. They were kept in custody for over 100 days before being allowed to walk freely.

If we look in the long run, the consequence of this might actually be the disruption of democracy in India and a dictatorship of the ruling government.

CONSTITUTIONAL VALIDITY

The constitutional validity of sedition law has been challenged throughout time. It was a law introduced by the British government to maintain control over the Indian population. Thus, many question that even after 75 years of independence are we really free?

However, there is also a belief that such a power (penalising those booked under sedition) is a necessary power for the state to maintain control.

The judicial system in India have in various cases throughout its history has tried to answer the question of constitutional validity of 124A.

The case of *Ram Nandan v. State of Uttar Pradesh* was the first to challenge the validity of 124A. Here the Allahabad High Court went on to rule against sedition law. It held the law to be ultra-vires of section 19(1) (a), i.e., freedom of speech.

However, just after this the case of *Kedarnath Singh v. state of Bihar* was heard by the Supreme Court. The apex court here had a totally opposing view from the Allahabad High Court. Supreme Court reiterated the constitutionality of the section and even remarked it as a “balancing force”. It said that the sedition law was needed in the society to maintain stability and peace in the country. The judgement however added that it was not wrong to criticise the government, but any words either spoken or written which could incite the public against the government or had the potential to do so would fall under the ambit of sedition and could be penalised. This can be seen as a significant progress in the sedition law, but it still did not hold the law unconstitutional.

Following this in the case of *Balwant Singh v. State of Punjab*, the Supreme Court, acquitted the defendant. In this case, the defendant had raised slogans of “Khalistan Zindabad” following the assassination of then Prime Minister- Indira Gandhi. The court held that the slogans raised here by the defendant had not incited anyone against the government or disrupted law and order in the country. Therefore, he was not liable under section 124A. This judgement brought to

light the fact that casual raising of slogans would not be a ground for sedition.

The constitution keeps evolving with the country and with the times. This is the main reason that provision of amendments is included in our judicial system. Section 124A, the law of sedition can also be taken to evolve with time. The constitution from case to case opened up new avenues and discovered new possibilities to what could and could not fall under sedition. In one case, *Romesh Thappar v. State of Madras*, it was held that restrictions to freedom of speech or 124A can only be imposed in case there exists a threat to public security.

Even with so much debate around the law, it is till date constitutionally valid and functional. Even though the number of sedition cases have risen in past some years with most being falsely accused, the section is very well constitutional. The Hon'ble Supreme Court in many recent judgements have hinted on the fact that this is one section in need of immediate reform, no such steps have been taken as yet.

TIME FOR REFORM OR NOT?

The colonial law of sedition has called to be a blot on Indian constitution by many. There is no doubt that some power to the state has to be given in order to maintain a tranquil state, however the extent of this power is yet to be deciphered. The presently applied sedition law has a chilling effect on freedom of speech and expression of the citizens which is a fundamentally promised right by the constitution. The colonial nature of the law has to be definitely changed to bring citizens and the government on the same side. Therefore, there is a definite need to go beyond *Kedarnath* to redefine the boundaries of sedition law, and several aspects of the law require reconsideration. There is a need to examine and reinterpret the provision so as to allow for it to be categorised as a “reasonable restriction” on speech and expression in terms of Article 19(2).¹⁰

As pointed out earlier, the law in force currently lacks to specify the bounds of what is to fall under sedition. It fails to incorporate the factor of *mens rea* under it. If a person had no intent of speaking against the government or unstable the law and order in the country, how should he be liable for the same. When we consider *mens rea* in a heinous crime such as murder, it

¹⁰ G. S. Bajpai & Ankit Kaushik, *Time to reform Sedition law*, INDIAN EXPRESS (July 2, 2021, 8:35 AM), <https://indianexpress.com/article/opinion/columns/sedition-law-supreme-court-vinod-dua-kedarnath-covid-19-7384890/>.

should definitely be a key ground for a charge such as sedition. The same was proposed by 42nd Law Commission Report. Another issue pointed out by this commission was the extreme punishment scheme which ranges from a mere fine of any amount, even a single Rupee, to imprisonment for life. Such a wide range of punishment scheme is absurd as the gravity or threat to national security remains the same. Comparing it to section 304, culpable homicide; it imposes a mere fine on the defendant in case no intention is proved. If in such a heinous crime such a provision exists, its high time that such additions are done to section 124A.

In 2009, The United Kingdom removed the seditious libel through Coroners and Justice Act. The British who introduced such a law to India, got rid of the same for themselves. But India still accepts and continues to keep this law in force.

Australia went on to reform the word sedition to “urging violence offences” following recommendations of the Australian Law Reform Commission (ALRC).

Through these examples it is clear that internationally as well either countries are getting rid of this draconian law or evolving it to be more inclusive of people. Therefore, it is time India also reforms if not scrap off this law.