
RIGHT OF FREEDOM OF SPEECH AND EXPRESSION WITH REFERENCE TO SEDITION LAW IN INDIA

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ABSTRACT

In modern era with people being more educative, the participation in the administration of the government is increasing. This has been possible with right of freedom and expression, especially in a democratic setup like India freedom of speech and expression is an important fundamental right. But with the laws like sedition, it generally gives a tool in the hand of the government to suppress the voice of people. It is ironical that the colonial power which introduced this law has itself abolished it. In India there is continuous growing debate on sedition law, and whether it is high time that it is scrapped from the Indian Penal Code. This paper tries to elaborate the relation between sedition law freedom of speech and expression and how the sedition law is being used to suppress this right.

INTRODUCTION

India is celebrating Amrit Mahotsav as it has completed 75 years of independence. With being the largest democracy of the world it is high time that we come out of the shadows of colonial outdated laws made under the British rule. Sedition is one of such provisions of law which the Britishers made to suppress the Indian revolutionaries. India is no more a colony but the world's largest democracies with people embracing the fundamental rights, in which right to freedom and expression holds a very high position.

Freedom of speech and expression forms an integral part of the constitution. Freedom of speech and expression is an important fundamental right provided by the constitution of India. Freedom of speech and expression is an essential element of any successful democratic setup. Like George Washington in his famous quote said **"If the freedom speech is taken away then the dumb and silent we may be led, like sheep to the slaughter"**. But this right is not unlimited and there are some restrictions which are always there to restrict this right. But the biggest problem in present times is not being able to strike a difference between the freedom of speech and expression and sedition. It is being used as a tool to suppress the dissent of the minority towards the government. Justice Gupta showing concern over this misuse of the Sedition law stated that "The law of sedition is more often abused and misused. The people who criticize those in power are arrested by police officials on the asking of those in power and even if a person may get bail the next day from court, he has suffered the ignominy of being sent to jail. The manner in which the provisions of Section 124A are being misused, begs the question as to whether we should have a relook at it."¹

FREEDOM OF SPEECH AND EXPRESSION AS A FUNDAMENTAL RIGHT:

Article 19 along with article 21 and 14 is regarded as the golden triangle of the constitution. It is one of the most important fundamental right, that is available to the citizens of India.

The constitution of India under article 19 1 (a) provides for the fundamental right of freedom of speech and expression. The article reads as: "all citizens shall have the right to freedom of speech and expression".² Although the right is not absolute and there are certain restriction

¹ The text of justice Deepak guptas speech on sedition law being abused and misused <https://theprint.in> visited on 16-8-2022

² Constitution of India, 1950, Ar. 19 1 A

which can be imposed, which includes the restriction on the basis of the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

The right of freedom of speech and expression is not absolute as the Article 19 (2) lays some restrictions on it such as:

Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Freedom of speech is guaranteed not only by the constitution but also by various international conventions like Universal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights. These declarations expressly talk about protection of freedom of speech and expression.

In *Maneka Gandhi v. Union of India*³, it was observed that: “Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.

In *Maqbool Fida Husain v. Rajkumar Pandey*⁴, It was observed that:

The right to dissent is the hallmark of a democracy. In real democracy the dissenter must feel at home and ought not to be nervously looking over his shoulder fearing captivity or bodily harm or economic and social sanctions for his unconventional or critical views. There should be freedom for the thought we hate. Freedom of speech has no meaning if there is no freedom

³ AIR 1978 SC 597

⁴ SCC Del 562

after speech. The reality of democracy is to be measured by the extent of freedom and accommodation it extends

THE LAW OF SEDITION IN INDIA

The section relating to sedition was initially there as Section 113, when Thomas Macaulay drafted the Penal Code in 1837. However, it was omitted from the actual Code. It was finally added in 1870 on the suggestion of James Fitzjames Stephen, at the time handling legal issues in the colonial Government of India.⁵

The section 124 A was added to the Indian penal code. In the words of Mahatma Gandhi “Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.”⁶

From the Constituent Assembly Debates it is understood that there had been serious opposition for inclusion of sedition as a restriction on freedom of speech and expression under the then Article 13 of the draft Indian Constitution. Such a provision was termed as a shadow of colonial times that should not see light of the day in free India. The Constituent Assembly was unanimous in having the word “sedition” deleted from Article 13 of the draft Constitution. During the discussions Shri M. Ananthasayanam Ayyangar said:

“ If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on

⁵ <https://en.wikipedia.org>

⁶ Panel Discussion on Free Speech and Sedition in a Democracy, available at: <https://www.thehindu.com>

the government itself ought not to be made an offence under the law. We have gained that freedom and we have

ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.”⁷

Shri K M Munshi while speaking on his motion to delete the word sedition from Article 13, quoted, “This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency.”⁸

The law of sedition in India is covered under section 124 A of Indian Penal Code. It states that 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.

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.⁹

In 1898, in the case of *Queen Empress v. Bal Gangadhar Tilak*, sedition was defined as:

⁷ Constituent Assembly of India, 1st and 2nd December 1948; Constituent Assembly Debates Official Report, Vol.VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014

⁸ Ibid.

⁹ Indian Penal Code, 1860

“The offence consists in exciting or attempting to excite in others certain bad feelings towards the government. It is not the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial.”¹⁰

Section 124A IPC was amended in 1898 by the Indian Penal Code (Amendment) Act 1898 (Act V of 1898) providing for punishment of transportation for life or any shorter term. While the former section defined sedition as exciting or attempting to excite feelings of disaffection to the Government established by law, the amended section also made bringing or attempting to bring in hatred or contempt towards the Government established by law, punishable.¹¹

So it is important to interpret this definition in such a manner that mere criticizing of government does not come within its ambit. If criticism of government is allowed to be covered under this then it is not good for the democracy as criticism of government is an essential right which the people must have to keep a check on the government

Like Justice Sanjay Kishan Kaul and Justice Hemant Gupta observed that “Expression of views which are different from the opinion of the government cannot be termed as seditious. It cannot become sedition only because one has a different view.”¹²

India’s sedition law has an interesting past — it was introduced by the British in 1870, decided to be dropped from the Constitution in 1948 after discussions of the Constituent Assembly. The word “sedition” disappeared from the Constitution when it was adopted on November 26, 1949 and Article 19(1)(a) gave absolute freedom of speech and expression. However, section 124A stayed in the Indian Penal Code. In 1951, Jawaharlal Nehru brought in the first amendment of the Constitution to limit the freedom under Article 19(1)(a) and enacted Article 19(2) to empower the State put curbs in the form of “reasonable restrictions” on right to free speech.

In 1962, in *Kedar Nath Singh Vs State of Bihar*¹³, a constitution bench of the top court upheld the validity of the sedition law under the IPC and also defined the scope of sedition. It held that

¹⁰ ILR 1898 22 Bombay 112

¹¹ Consultation Paper on Sedition 30 August 2018, available at: <https://lawcommissionofindia.nic.in>

¹² Utkarsh Anand, Disagreeing with govt. is not sedition, available at: <https://www.hindustantimes.com/> visited on 18-8-2022

¹³ AIR 1962 SC 955

Section 124A only penalized words that reveal an intent or tendency to disturb law and order or that seem to incite violence. This definition has been taken as precedent for all matters pertaining to Section 124A since

MISUSE OF THE SEDITION LAW

On February 23, a Delhi court, while granting bail to climate activist Disha Ravi raised serious questions about the Delhi Police's invocation of the sedition charge.

According to the data from the National Crime Records Bureau (NCRB), uploaded on its website, cases of sedition and under the stringent UAPA for terror cases showed a rise in 2019, but only 3% of the sedition cases resulted in conviction.

The year 2019 saw a 25% increase in the number of sedition cases and a 41% increase in arrests over the previous year. A total of 93 cases of sedition were reported in 2019, with 96 arrests and charge sheets filed in 76 cases, as against 70 cases, 56 arrests and 27 charge sheets the previous year.¹⁴

The misuse of the sedition law has destroyed many lives. This is clearly reflected in the rate of conviction against those prosecuted. In 2019, 9% of the sedition cases pending from previous years and filed in 2019 resulted in closure because the accused were untraceable. Charge sheets were filed in only 17% of the cases. The conviction rate in such cases in 2019 was only 3.3%. That our government since 2014 has been misusing this law is evident from the fact that 96% of sedition cases against 405 persons for criticizing politicians and governments were registered after 2014.¹⁵

NEED FOR BALANCE BETWEEN FREEDOM OF SPEECH AND EXPRESSION AND SEDITION LAW

It is very important to maintain the balance between freedom of speech and expression and use of law of sedition. The law of sedition cannot be used to curtail the right to freedom of speech and expression. The court in Kedarnath singh case¹⁶ also observed that the security of the state

¹⁴ Utkarsh Anand, Disagreeing with govt. is not sedition, available at: <https://www.hindustantimes.com> visited on 18-8-2022

¹⁵ Kapil sible, Indiscriminate application of sedition law, <https://newsindiaexpress.com> visited on 18-8-2022

¹⁶ AIR 1962 SC 955

which depends upon the maintenance of the law and order is the very basic consideration upon which legislation with view to punishing offence against the state is undertaken. Such legislation on the other hand fully to protect the guarantee of freedom and expression which is in the sine quo non of democratic government that our constitution has established. A citizen has a right to say whatever he likes about the government, and it measures by way of criticism and comment so long as he does not incite violence against government established by law. In the most recent development the SC on May 11, stayed the use of the sedition law and directed the Centre and states to not register any fresh FIRs invoking sedition charges until the law is reviewed. In the pending sedition cases, the Supreme Court said those languishing in jail under sedition charges can approach the courts and seek bail. The court observed that "We expect that till re-examination of this law is complete it will not be used, those already booked under Section 124A IPC and are in jail could approach competent courts for appropriate relief and bail." This view of SC came after Additional Home Secretary, Mritunjay Kumar Narayan, before the court, submitted:

"The Government of India, being fully cognizant of various views being expressed on the subject of sedition and also having considered the concerns of civil liberties and human rights, while committed to maintain and protect the sovereignty and integrity of this great nation, has decided to re-examine and re-consider the provisions of Section 124A of the Indian Penal Code which can only be done before the competent forum."¹⁷

The Supreme Court said, "It is clear that the Centre agrees that the rigorous of Section 124A is not in tune with the current situation and it was intended for the time when the country was under colonial law. Thus, the Centre may reconsider it."¹⁸

Courts in several former British colonies have already ruled that colonial-era sedition laws violate the right to freedom of expression. In 2010, the Constitutional Court in Uganda struck down the law as unconstitutional. In 2018, the Community Court of Justice of the Economic Community of West African States held that the offense of sedition in Gambia violated the

¹⁷ Saptarishi Bhattacharya, The Law of Sedition and India: An Evolutionary Overview, available at: <https://www.thehinducentre.com>

¹⁸ SC puts sedition law on hold till review complete, says no new cases to be filed for now, available at: <https://www.indiatoday.in/law/story/sedition-law>

right to freedom of expression under African regional and international law.¹⁹

The British who passed this law in India have themselves scrapped this law to maintain the upheld the mandate of freedom of speech and expression. Even if it is not totally scrapped, it must be amended in such manner so there is a balance, and people are still able to express their dissatisfaction against the government.

CONCLUSION

It is clear that how there has been clear misuse of the law of sedition in recent years. The law which was used by the colonial powers to suppress the voice of the people cannot be used in same way in the present democratic setup. Courts have shown here concerns over its misuse and it is important that government looks into use of this law in a cautious manner. The law cannot be used to curtail the right of freedom and expression. Criticizing the government is a right that is availed by the government by virtue of Article 19 and it cannot be taken away by threat of sedition charge. It is important to strike a right balance between sedition law and the right to freedom and expression. The most suitable thing is to scrap such a law as it is not needed on present democratic setup. Even if the government does not want to scrap this law, it is important that the limitations must be set on use of it so that not every person who makes any dissatisfactory remarks against the government is threatened by use of this law. It is imperative that government take a positive law on this law for the better functioning of democratic setup in India.

¹⁹Linda Laikhdhir, Sedition law: Why India should break from Britain's abusive legacy, available at: <https://www.hrw.org/news>