
REVIEWING THE PROVISION OF SEDITION IN INDIAN PENAL CODE, 1860

Ashutosh Kumar, Assistant Professor, Amity University, Patna, Bihar

ABSTRACT

Even after independence Indian criminal justice is operating with colonial penal code with slight amendments. As even today we are interpreting the law of sedition with colonial interpretation. We all are witnessing how right to speech and expression often becomes tool of sedition by police which ends in filing of FIR and registering case of sedition. Post independence has rationalized the concept of fundamental right to freedom of speech and expression sacrosanct idea which is often being misinterpreted as Sedition.. Apex Court of India has number of time clarified the interpretation of sedition as an offence to be applied with due care and caution. Even after that there is surge in cases of sedition which is required to be magnified with proper interpretation and identification. Thus balancing the interest of republic democracy requires freedom of fair criticism where state can accept the loophole and work for mandate of welfare governance from idea of social contract theory. Recently increase in charge of sedition against Journalists and common citizens has raised a question on application of colonial provisions attached with offence of sedition which require a sensitive review the law on sedition by state, such that no innocent citizen or journalist can become victim of confusion with respect to interpretation of offence of sedition. At the time of colonial operation the charge of sedition was intentionally applied against Indians, India never witnessed a charge of sedition slapped on British officers or citizen in India is glaring example of intentional application, but today in the time of liberal freedom of speech in independent India this law demands different outlook, different from colonial interpretation. This paper attempt to decode and review the sec 124-A OF IPC which must be interpreted from the idea welfare governance of state defining line of fair criticism rather than applying seditious charge quickly which can victimize a fair criticism resulting miscarriage of Justice.

Keyword: *fair criticism. Colonial penal code, FIR, Freedom of speech and expression, Sedition*

Introduction

Law must change according to change in society and needs. This is the reason why today there is burning debate to omit the the provision relating to sedition which is often being confused with freedom of speech and expression resulting sharp increase in the criminal case relating to sedition against students and journalist. As sedition is often being termed as colonial law of oppression which British government used as a tool to suppress Indian freedom of speech and expression. Now it is time to revisit law on Sedition with lens of human rights perspective. As India is no more colonial state. India as a state has experienced paradigm shift of technology in Society and Law which has caused change in circumstances where individual and state in democracy should move with balancing of interest. Every state has right to protect its existence, dignity and sovereignty. Same is true and sine qua non for its citizen relying on social contract doctrine that state should take care of citizens. Recent arrest of Journalists in charge of sedition over government criticism has embarked the conflict of state and citizen's right to exercise freedom of speech and expression. As prolonged conflict between state and its citizen is not good for health of democracy. Thus a an ardent need to balance the interest of state and citizens requires proper understanding and interpretation of sedition law in India in order to make it not violative of fundamental right. As law of sedition is clear in light of Supreme Court Verdict but requires proper understanding in order to prevent miscarriage of Justice due to confusion in applying.

Meaning of Sedition

In general term the sedition is explained as an act against state which causes or excite hatred against state, bringing disloyalty disturbing peace and order with sense of disaffection. The legal provision relating to sedition was inserted in IPC¹.

Sec 124-A provides in details following:--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, 2*** the Government established by law in 3[India], 4*** shall be punished with 5[imprisonment for life], to which

¹ SEC 124-A added in 1870 in IPC.

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

History and development of offence of sedition

Offence of sedition is directly related to power of state to maintain its order and rule in consonance. Thus in order to prevent rebellion, hatred and enmity against state in order to keep the rule peaceful this offence as mark of deterrence, this offence came in to existence in Britain. As British empire was dominated by king's divine power. The word sedition was made part of westminster 1275². The British jurisprudence of sedition interpreted sedition proof require not only speech but intention also and often termed as " seditious libel" not only as sedition as mentioned in sec 124 A of Indian Penal Code. As the offence of seditious libel in Britain was serious offence established in the De -Libellis Famosis Case³. Further in case of R vs. Sullivan⁴, Mr Fitzgerland defined sedition as " comprehensive term and it embrace all those practices whether by words deed or writing which are calculated to disturb the tranquility of state and lead ignorant person to endeavor to subvert the government and laws of empire. This statement of Fitzgerland, encompasses colonial, unilateral authoritative definition without inclusion of fair criticism. Thus the offence of sedition initially never considered the fair criticism or strong criticism as exclusion of sedition.

Even in Britain later on United Kingdom Law Commission examined the "seditious libel " as they termed in modern era in 1977. UK adopted liberal interpretation made by Canadian

² See. English Pen -A Briefing on abolition of seditious libel and criminal libel.

³ 77 Eng Rep 250 K.B 1606

⁴ (1868) 11 Cox c.c 44 p.45

Supreme Court in case of *R vs. Boucher*⁵ which asked for human right tilted approach rather than state authoritative rule causing trouble for human right relating to freedom of speech and expression. This resulted in domination of human rights liberal view to activate an effort to remove the word seditious libel from the statute of England on the ground of completely violating the rights mentioned in European Convention of Human Rights, 1950. As a result of legislative negotiation, the word “seditious libel “ was removed and deleted by virtue of Section 73 of Coroners and Justice Act, 2009. But In India the offence of Sedition, is still operating and causing more trouble as it did in British India.

STATUS OF SEDITION IN INDIA

From 2016 and 2019, FIR relating to sedition Section 124-A (sedition) of the Indian Penal Code increased by 160% whereas the conviction rate has sharply fallen to 3.3% in 2019 from 33.3% in 2016 as per NCRB(NATIONAL CRIME RECORD BUREAU)⁶.

Offence of Sedition is continuously operating in India since 1870 in Sec 124 A Indian Penal CODE,1860. The offence of sedition was used by British Government as a tool to suppress the dissent and freedom of speech and expression of Indians to make them loyal and rule without any opposition by creating deterrence. Trial and prosecution of BalGangadhar Tilak Case⁷ is best example that how sedition was used as tool to prevent publication and writings in restriction, this case was widely criticized as bad precedent in the name of freedom of speech and expression. Draconian application and strict interpretation of word sedition made it as anti-indian colonial law which resulted in to mass prosecution of Indian freedom Fighters in false cases by Britisher Imperial Government. In BalGangadhar Tilak Case (supra), the trial by jury interpreted word disaffection as hatred, enmity and ill-will against government, which resulted in conviction of Balgangadhar Tilak. Further in another case Queen Vs. Amba Prasad⁸ Case ruling widened the scope of sedition and to certain extent liberalized the strict interpretation. Of disapprobation. Later on in case of Kamal Krishna Sircar Vs. Emperor, widened the meaning of sedition adding flexibility in use that all trade union cannot be held illegal mere on the ground of criticism. But even after this verdict sedition as an offence was interpreted

⁵ (1951)2 DLR 369

⁶ <https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to->

⁷ ILR (1898) 22 Bom 112

⁸ (ILR 1897)20 ALL 55

with strict literal approach causing trouble. Further in case of Jogendra Chandra Bose⁹ the charge of sedition was invoked for criticizing the the Consent Bill, but Jogendra Chandra Bose tendered apology, which resulted into withdrawal of case. As we can also see that none of the British-National in India was charged with sedition during British India rule which shows the application of the offence as oppressive tool to suppress Indian Independence movement.

Sedition in Post-Independent India

Post-Independence phase provided Indian Citizen with many liberal rights including fundamental rights. But ingredients and constituents of offence of sedition had always been bone of discord for the Indian courts. As post-Independent India saw no change in interpretation word sedition prior to Kedarnath singh vs. State of Bihar¹⁰, the apex laid threshold guideline to test the offence of the sedition charge. This verdict established that fair criticism and fair remark cannot amount to sedition. Thus the litmus test to determine the offence of sedition must take into account:

The motive, intention along with impact relating to hatred, disaffection or level of incitement causing violence against the government or not. If the act is merely a statement not impacting the or causing others to incite or excite hatred against the government or disaffection than such act shall not amount to sedition. This verdict to certain extent removed the colonial mindset or colonial interpretation. Thus the final jurisprudence relating to sedition that kedarnath verdict (supra) developed:

A. Mere Criticism Not Amount To Sedition

B. Mere Protest Or Peaceful Protest Not Amount To Sedition

.

C. Disaffection Triggering Violence And Hate Speech Amounts Sedition When Done With Intention Causing Potential Damage And threat To Public Order And Peace Due To Incitement And Excitement Amounts To Sedition.

⁹ 1892 ILR Cal 35

¹⁰ AIR 1962 SC

Post-independence phase has always viewed sedition as challenge to fundamental right of freedom of speech and expression. But state in order ascertain its respect, integrity and self esteem kept the offence of sedition in penal book with view to curb offences against state and in order to maintain peace and order in diversity of its population.

Balancing of Societal Interest and Interest of State

After independence the offence of sedition has always been at the centre-stage for heated debate and often being termed as tool to suppress dissent which is clear cut violation of constitutional mandate under Art 19. In *Nazir Khan and others Vs. State of Delhi*¹¹ Supreme Court Clarified the principle that sedition is an act of disloyalty, excite discontent against government, contempt of sovereign and causing public disorder by action or speech crossing the threshold amounts to sedition. The same approach was adopted in case of *Common Cause vs UOI*¹² clarifying the position Supreme Court cited precedent of *Kedarnath case* (supra) that threshold limit of freedom of speech or action should not be crossed beyond the reasonable restriction as well provided in Constitution of India¹³. It should be exercised with due care and caution such that, bonafide fair remark may not become scapegoat of sedition charge. Thus Roscoe Pound social engineering must be applied in order to ascertain the act of sedition. As balancing of interest is must for smooth running of state and society in harmony.

Case of *Kanhaiya kumar vs NCT*, the Delhi High Court granted bail to Kanhaiya kumar, on account lack of charge and Delhi police delay in filing charge sheet. As the matter was sensitive relating to anti-india sloganeering in JNU campus amounts to sedition or not.. This debate on dissent and pro government and anti government is not a pre-conditions of sedition.

As the matter on the same issue was settled in case of *Balwant Singh vs. State of Punjab*¹⁴, where apex court applied *Kedarnath case* (supra) jurisprudence which resulted in refusal to prosecute for mere sloganeering against state by two persons in lonesome environment. The court ruled that mere sloganeering against government by two person cannot to excite or raise threat to government or raise hatred or excite against government or cause threat to public order and peace. Hence the two person were not prosecuted for sedition. Further in case *In Re Hari sing case* Supreme court, was of the view that healthy debate and discussions

¹¹ AIR 2003 SC 4427

¹² (2016) 15 scc 269

¹³ Part-III Indian Constitution art 19.

¹⁴ AIR 1995 SC 1785

by active participation and putting opinion on burning issues must be taken on positive note in the democracy. In case of *Javed Habib vs state of Delhi*¹⁵ the court held that mere criticizing prime Minister or Government on the part of its policies and work cannot be termed as sedition. As right to fair criticism is part of fundamental right guaranteed under the constitution.

STRONG CRITICISM AND DISLOYALTY AMOUNTS TO SEDITION OR NOT

In case of *Sankar Marathe Vs. State of Maharashtra*¹⁶ apex Court laid down the distinction between strong criticism and disloyalty. As in above case a cartoonist was charged with sedition for making defamatory cartoon against state and some famous political personalities attracting the offence of sedition on the ground of defaming and dishonoring the state. As the court clarified the difference between strong criticism and disloyalty is entirely different approach where strong criticism is not sedition but disloyalty may amount to sedition.

Can Criticizing Court Judgment Amounts To Sedition?

No, criticizing judgment of the court in fair and constructive way never amounts to sedition. Further, it cannot be taken as contempt also. In case of *Arun Jaitley vs State Of UP*¹⁷ it was held that criticizing the judgment of the court cannot be called as an act of sedition.

*Shreya singhal vs Union of India*¹⁸ case, laid down the perfect precedent making sec 66-A of IT ACT, 2000 ultravires laying down the perfect balance to protect freedom of speech and expression on cyber space, which will not amount to offence if done with fair and reasonable intent. This case rationalized the role of state and freedom of speech and expression. As before this case number of people were arrested under the act of sedition for merely using remark on internet.

Effort to rationalize State Approach towards Sedition Or Omit provision of Sedition.

¹⁵ (2007)96 DRJ

¹⁶ 2015 CriLJ 3561

¹⁷ 2016(1)ADJ 76

¹⁸ AIR 2015 SC 1523

In year 2011 a bill was introduced in Rajya Sabha by D.RAJA to omit Sec 124A on the ground of gross misuse by police to unnecessary arrest the individual while exercising the freedom of speech as it suppress the role of dissent also. But the never succeeded. No doubt the application of Sec 124 A IPC has caused wide range of trouble for journalists¹⁹ and civil societies. There has been huge human rights violations by police against peaceful protestors being dragged in charge of sedition is which clear case of misinterpretation in understanding the charge of sedition and hate speech ²⁰. Although there is an ardent need to balance the interest of dissent as well state for smooth running of democracy. State cannot unilaterally use law of sedition in despotic manner. Freedom of speech and expression has be respected in light of already established precedent of Kedarnath Singh Case(supra). Supreme Court In Vinod Dua Case strongly recommended the adoption of guideline to be followed by police while ascertaining the case of sedition as false cases of sedition is on surge which is not good sign for democracy. In twenty first century state cannot be oppressor but should act in welfare manner understanding the emotions and sentiments of its people. Hence Kedarnath verdict must be applied by all functionaries of administration and criminal justice system such that rule of law can prevail by removing all ambiguities relating to sedition.

¹⁹ Vinod Dua case 2021

²⁰ Law Commission of India Consultation Report On Sedition and Hate speech.