



“Law of Sedition in India: a Critical Analysis”

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Abstract: The recent historical development by the Hon,ble Supreme Court in reference to section 124A of the Indian Penal Code and the invocation of sedition charges against Jawahar Lal Nehru University students has sparked controversy about the legality of sedition legislation. India, in the twenty-first century, is on the verge of a being a developed nation, having experienced significant changes since colonization. The Indian legislative has achieved significant progress in a variety of areas. Law is not the tool for the growth of a nation; nonetheless, a good law is the tool for progress. Almost all of India's laws now are either from the colonial period or have roots in that period. Many of these laws were enacted solely for the purpose of oppressing Indians, but they have unhappily made their way into the post-independence period as well, and have become a source of tremendous debate, much like the sedition laws. In this research paper researcher has analyzed the law relating to sedition in India.

Key words: Section 124A, Sedition, Constitution and Sedition

Introduction:

Originally, The Indian Penal Code ("I.P.C.") did not contain the offence of sedition. However, lord Macaulay who drafted the Indian penal code included section 113 in it as offence of sedition. In 1870 with the efforts of Sir James Stephen sedition was added as an offence under section 124-A in the Indian Penal Code.¹ The most renowned justification given by historians for this omission is that of Sir James Fitzjames Stephen, who is widely known as the father of the Indian Evidence Act and who was also the legal secretary of India at that time. He described it as a simple error. Other justifications have also been given. The legislation was only put into the Code in 1870, and the main cause for this is linked to wahabi activities and growing mutiny actions against the British administration.

¹ V.Kaushik"Law of Sedition is a Violation of Freedom of Speech and Expression"3593 *International Journal of Health Sciences* (2022).

Ancient Concept of Sedition:

Law of Sedition was a provision prohibiting "stimulating disaffection" at the ancient time. Following its implementation, it has proceeded to silence critics of the administration, even if they were legitimately expressing just and fair criticism or addressing popular demands. The offence is cognizable, non-bailable, and non-compoundable, and the punishment is harsh if found guilty. The penalty may be up to seven years in prison, and gaining bail might be difficult. Because there is no one-size-fits-all formula for determining the offence, the court must determine on a case-by-case basis. India wields enormous authority, which has resulted in the abuse of individual rights.²

In 1891, *Queen Empress vs. Jogendra Chunder Bose*³ was filed, in which the publisher of a journal called *Bangobasi* was accused with sedition. However, due to the jury's inability to make a unanimous verdict, he was freed on bond and the accusations against him were dismissed. *Queen Empress vs. Bal Gangadhar Tilak*⁴ was the lawsuit that resulted to the amendment in 1898. Tilak's remarks about Shivaji's assassination of Afzal Khan allegedly provoked the murder of two British officers in Pune, according to the authorities. Tilak received a jail sentence and was only freed a year later. "Feelings of disaffection" were construed to include hatred, animosity, dislike, antagonism, contempt, and every other kind of ill will toward the government, resulting in the government's legislation becoming an unbridled bull. This case was linked to the 'Strachey Law,' as the native press called it.

The judgments of India's Federal Courts and England's Privy Council were at variance. The Federal Court concluded in *Niharendu Dutt Majumdar vs. King Emperor*⁵ that violent words alone did not render a speech or written document seditious, and that "the conduct or words accused of must either incite to disturbance or be such as to convince reasonable individuals that is their goal or tendency." However, in *King Emperor vs. Sadashiv Narayan*⁶, the Privy Council overturned that decision and reaffirmed Tilak's view that "the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small." As a result, the Privy Council determined that inciting to violence was not an essential component of the sedition offence.

After independence, it was challenged three times for its constitutionality. Two additional courts ruled that *Romesh Thappar vs. State of Madras*⁷, in which the Madras government declared the Communist Party illegal and banned the publication 'Crossroads,' was unconstitutional. "Section 124A is 'objectionable and disagreeable,' and therefore does not deserve to be included in the I.P.C.," Jawaharlal Nehru continued. He made this remark in 1951, and here we are in 2022, still under the same rules.

² K.D. Gaur, *Indian Penal Code* (Universal Law Publishing Co. Pvt. Ltd, Delhi, 6th edn., 2018 Reprint).

³ ILR 1892(19) Cal 35.

⁴ ILR (1898)22 Bom 112.

⁵ AIR 1942 PC 22.

⁶ 1947 L.R. 74 I.A. 89.

⁷ AIR 1950 SC 1924.

Provisions of Sedition in Indian Penal Code:

The term "sedition" isn't defined under the Indian Constitution or any other law. The word "sedition" has been used as a marginal note under Section 124A of the I.P.C. This clause makes it illegal to incite or attempt to incite hatred or contempt for the Indian government as formed by law, as well as to stimulate or seek to inspire disaffection against it.⁸

The constitutionality of Section 124A was challenged again in front of the Supreme Court, which gave it the current interpretation. The court interpreted it in the same way as *Niharendu Dutt Majumdar vs. King Emperor*⁹ did, holding that incitement to violence is an essential factor for an act to be considered seditious. As a result, sedition was relegated to the status of a crime against public order rather than a felony against the state's very existence.

The court believes that "state security" is one of the six bases in Article 19(2), which protects Section 124 A's legality. The Supreme Court used the rule that if a law provision may be interpreted in more than one way, the interpretation that makes the statute constitutional must be maintained. Any reading of the term that makes it unconstitutional must be rejected. As a result, the court decided that, notwithstanding the fact that the Article does not expressly provide that every seditious conduct must be followed by an attempt to incite violence and disorder, any seditious act must be accompanied by an attempt to incite violence and disorder.

For the interest of protecting the state's public peace and security, the Court favoured the application of sedition acts.

The crown possessed ultimate power and all authority when the legislation was initially passed, and the 'subjects' were compelled to vow personal fealty to the crown. However, after independence, things have altered. The constitution currently acts as a source of authority. Here, the law-enforced government is different from elected officials, and sedition is considered a felony that jeopardizes or threatens the state's survival.

Finally, the courts have repeatedly highlighted that the words and actions that imperil society vary from time to time. "The effect of the remarks must be measured from the criteria of sensible, strong-minded, resolute and courageous persons, and not those of weak and vacillating minds, or of those who sniff danger in every antagonistic point of view,"¹⁰

Recently, in the case of *S.G. Vombatkere vs Union of India*¹¹ the Supreme Court Section 124A is not in tune with the current social milieu and intended for a time when this country was under the colonial regime. Therefore, court ordered that the 152 years old Sedition law under section 124A should be kept in

⁸ The Indian Penal Code, 1860 (Act 45 of 1860) s,124 A.

⁹ AIR 1942 PC 22.

¹⁰ *S. Rangarajan vs. P. Jagjivan Ram* 1989(2) SCC 574.

¹¹ Writ Petition(C) No. 682 of 2021.

abeyance till the union government reconsiders the provision.

As a result, it reflects the viewpoint that the audience is a crucial aspect in determining whether or not an act is seditious. People's mindsets change as society evolves and emerges at a quick pace; as a result, it should be based on their mentality rather than just their words and a superficial study of the fundamental legislation on the provision.

Modern application of Law of Sedition:

The approach taken by the court in applying the legislation has been inconsistent. Despite the fact that no explicit guidelines for enforcing the legislation have yet been developed, the cases have been varied. Some of the recent cases in which people have been charged with sedition and often sentenced to imprisonment include liking a Facebook page, criticising a popular yoga expert in the country, supporting the Pakistani cricket team in a match, asking a question about the militants in Jammu in an examination, and so on.¹²

Sedition became a major problem in the case of Bengal cartoonist Asim Trivedi, who was charged with sedition after publishing several amusing cartoons in the newspaper that made fun of the state's then-chief minister.¹³ This raised serious doubts about how the law would be implemented. Another issue regarding sedition came when Dr. Binayak Sen of Chhattisgarh was charged with sedition and evidence in the form of Maoist-supporting books was discovered at his apartment.

There has been a lot of outcry regarding Hardik Patel, a Gujrat community leader, being charged with sedition arbitrarily while the entire community was out on the streets seeking reservation for the patidar community.¹⁴

The provision was immediately removed after the case of Kanhaiya Kumar, in which a JNU student community leader was charged with sedition for screaming anti-Afzal Guru slogans on campus. The media and the general population both slammed it. A person charged with sedition loses their passport, is barred from working for the government, and must appear in court on a regular basis while also paying a legal fee. The charges are rarely proven in most cases, but the procedure itself becomes the punishment.¹⁵

Justifications for Changing the Current Legislation:

The charge of sedition has grown vague in India. An examination of the I.P.C. demonstrates that the offence that sedition is intended to cover may be covered by other statutes as well, making S. 124A obsolete.

In contemporaneous England, the notion of sedition was significantly larger than it is today in India. It was repealed on the advice of the law commission because just a few persons had been charged with it during

¹² M. Patel "Analyzing the Law of Sedition in India" 656 *International Journal of Law Management and Humanities* 4(2021).

¹³ *Ibid.*

¹⁴ *Hardik Bharatbhai Patel vs State of Gujrat* 2016 SC OnLine Guj 824.

¹⁵ N. Pandey "Sedition vis-vis Right to Speech" 66 *International Journal of Law* 11 (2018).

the century.

The commission's report was based on the basic premise that the law's intended offences were adequately addressed by the multiple statutes adopted under various statutory sections.¹⁶

The British parliamentary reasons for abolishing the statute focused on the discrepancy of similar laws in colonial India's political independence, citing Tilak as an example. The government rarely utilised the heavy hand of the criminal law against prominent critics of the administration because sedition statutes had become obsolete in the United Kingdom. The felony of seditious libel was eliminated in 2009 with the passage of the Coroners and Justice Act.¹⁷

When we look at the sections of the I.P.C. that deal with public tranquilly offences, we can see that they include offences that disrupt public order, society's peace, and other comparable offences that are harmful to sustaining public order and harmony. As a result, the different provisions of the I.P.C. substantially cover the contemporary concept of sedition, which primarily consists of two elements: inciting to violence and disrupting public order. Furthermore, state governments have taken steps to ensure public order in the current situation.

As a result, it appears that a federal law covering a crime that has no universal application is unnecessary in light of different state legislation as well as the I.P.C. Other regulations are less onerous and, since they can be applied consistently, they perform the same function more efficiently. The most significant benefit would be that those accused of the crime would not be labelled "traitors" until their guilt was established, and that if their sentence was completed or they were acquitted, they would be free to live regular lives as "other inmates."

As a result, the current law of sedition resembles a punitive legal philosophy rather than a distributive justice system.

Conclusion:

Recently Honable Supreme Court held it as not in tune with the current social milieu and intended for a time when this country was under the colonial regime. Ever since from the time the law of sedition originated in England, there have always been discrepancies in its application with the application being uncertain and non uniform in all the cases. There have been anomalies in the implementation of the law of sedition in England since its inception, with its applicability vague and non-uniform in all circumstances. Its applicability was kept unclear and unknown at first because it was used to oppress the public as and when it suited their interests and damaged their power. It was used to attain political objectives by silencing speeches that posed a danger to the state's authority.

¹⁶ M. Patel "Analyzing the Law of Sedition in India" 658 *International Journal of Law Management and Humanities* 4(2021).

¹⁷ *Ibid.*

Furthermore, the courts have failed to offer a clear and unmistakable definition of the offence. In recent years, the implementation of the sedition rule has become so arbitrary that it has provoked widespread discussion. Sedition is now utilized to address local issues and concerns that can be broadly defined as defamation of the elected representative; therefore the pretext that it is intended to maintain public order is no longer valid.

As a democratic country, India must go beyond its narrow stance of not tolerating constructive criticism, and it is past time for the legislature and judiciary to propose newer reforms that either repeal or alter sedition laws so that they are no longer arbitrary and can be applied uniformly. This colonial regulation should no longer be used to curtail citizens' rights in its current form.

