

Analysis of Judicial Trends of Sedition Laws in India

Anuja

Assistant Professor, DES Shri Navalmal Firodia Law College

ABSTRACT

The law of Sedition forbids speech or actions meant to stir up dissatisfaction or insurrection against the government. Since the colonial era, there has been a struggle between freedom of speech and sedition laws. This law was enacted by the British in order to silence leaders or freedom fighters and minimize the threat against them. The Author has analysed sedition law in India in light of Freedom of speech and expression and reviewed the judicial trends thereof.

KEYWORDS: Sedition, History of Sedition, Impact of Sedition Law, Judicial trends of Sedition, Challenges and Suggestions.

INTRODUCTION

The Constitution of India grants the right to freedom of speech and expression under Article 19(1) (a). The right to free speech permits the expression of one's thoughts and beliefs. Its expression is crucial for allowing people to realize their desire to achieve a sense of self-fulfilment. A liberal democracy is defined by allowing oneself to market its altering opinions across every spectrum and by allowing self-governance (in India through choice-based representation). Tensions between the ideologies of the State and the individual are inevitable in such a society. The idea of freedom of speech arises from the liberal idea that there should be a space where the individual is free from social coercion. However this freedom is not an absolute freedom and hence there are certain restrictions onto it. The British before independence to suppress the Indian National Movement used section 124A of the Indian Penal Code (IPC) extensively.

HISTORY OF LAW ON SEDITION

The origin of the law on sedition can efficiently be traced back to the history of English Law. In feudal England, 'Sedition' comprised those libels and slanders that would alienate the rulers from their subjects¹. The offences which would now be classified as 'sedition' were prosecuted under 'treason' or under *scandalum magnatum* or even under martial law². In 1606, the Court of Star Chamber in *de Libellis Famosis*³, outlined the essential elements of seditious libel, thus laying down the foundation of the offence of 'Seditious libel' in the United Kingdom.⁴

¹ Roger B. Manning, "The Origins of the Doctrine of Sedition" 12 *Albion: A Quarterly Journal Concerned with British Studies* 100 (1980).

² Australian Law Reform Commission, "Report on Fighting Words: A Review of Sedition Laws in Australia" 51 (July 2006) (hereinafter "Report on Fighting Words").

³ 77 Eng Rep 250 (KB 1606)

⁴ William T. Mayon, "Seditious Libel and the Lost Guarantee of a Freedom of Speech" 84 *Columbia Law Review* 10s (1984).

India's history with regard to the law of Sedition is highly ambiguous. Macaulay's Draft Penal Code (1837-1839) provided for a Clause, which incorporated the offence of sedition as follows:

"Section 113: Whoever by words either spoken or intended to be read, or by signs or by visible representations, attempts to excite feelings of disaffection to the Government established by law in the territories of the East India Company among any class of people who live under that Government, shall be punished with banishment for life or for any term, from the territories of the East India Company, to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added or with fine.

*Explanation. Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist that authority is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation is not an offence within this clause. "*⁵

Nevertheless, this part was left out when the Macaulay draft was given its final form in 1860 with the introduction of the Indian Penal Code (henceforth referred to as the "IPC"). Many people were a bit shocked by this and it was assumed that it must have been left out as a mistake⁶ and thus Mr. James Stephen began his task of correcting this error. As a result, the Special Act XVII of 1870 made Sedition a crime penalized by Section 124A of the IPC.

CONSTITUENT ASSEMBLY DEBATES ON SEDITION

Even though the rights to be included in the Constitution were considered fundamental and enforceable by the courts, the Constituent Assembly members very well realized that these rights could not be absolute⁷. Sardar Vallabh Bhai Patel, the Chairman of the Advisory Committee, presented the 'Interim Report of the Advisory Committee on Fundamental Rights to the Constituent Assembly of India' on 29th April 1947 in which Clause 8(a) of this Interim Report provided for the freedom of speech and expression and the proviso to this clause contained "publication or utterance of seditious matter", as a ground to restrict the freedom of speech and expression⁸.

During Introduction of Draft Constitution Dr B.R Ambedkar had also supported the idea of reasonable restrictions to be imposed on Fundamental Rights⁹. However, these restrictions were also criticised by many members who apprehended that these restrictions might result into transforming Fundamental Right into an ordinary right. In light of all these criticisms, Shri K.M. Munshi sought to omit the word 'sedition' and substitute it with 'which undermines the security of, or tends to overthrow, the State'. As a result, the word 'sedition' was deleted from draft Constitution though it brought no concrete change in the reasonable restrictions sought to be imposed on the freedom of speech and expression. The substituting phraseology used in Constitution had wider connotations.

⁵ A Penal Code prepared by the Indian Law Commissioners and published by the command of the Governor General of India in Council (Bengal Military Orphan Press, Calcutta, 1837) available at: <https://play.google.com/books/reader?id=QjBAAAAYAAJ&pg=GBS.RA I -PA l2&hl=en> (last visited on Feb. 16,2023)

⁶ Arvind Ganachari, Nationalism and Social Reform in a Colonial Situation 55 (Kalpaz, Delhi, 2005).

⁷ Granville Austin, The Indian Constitution: Cornerstone of a Nation 68 (Clarendon Press, Oxford, 1966).

⁸ Interim report of the Advisory Committee on Fundamental Rights to the Constituent Assembly of India, 1947; See III Constituent Assembly Debates, 399.

⁹ VII Constituent Assembly Debates, 40

JUDICIAL TRENDS OF SEDITION LAWS IN INDIA

Judicial Trends of Sedition Laws in India can be analysed twofold: Before Independence and after Independence. Before Independence, this criminal provision was useful in silencing nationalist protests and calls for liberation. The lengthy list of Indian national heroes who have been implicated in sedition cases includes Jawaharlal Nehru, Bal Gangadhar Tilak, Mahatma Gandhi, and Bhagat Singh.

It was anticipated that India would not have a sedition law following its independence. However, Reasonable Restrictions imposed on Freedom of Speech and Expression in the Constitution under Article 19(2) validated the Sedition Law. For the first time in India's history, Section 124A became a punishable offence under the Government of Indira Gandhi. Sedition was made a cognizable offence in the new Code of Criminal Procedure, 1973, which went into effect in 1974 and repealed the colonial-era 1898 Code of Criminal Procedure, allowing police to make arrests without a warrant.

Taking into consideration this complicated history of sedition law in India it might be insightful to analyse the conundrum arising out of various views of High Courts and Supreme Court in light of Fundamental Right of Freedom of Speech and Expression secured to Indian Citizens through Constitution of India. While focusing on Judgements delivered in post-independence India, let us examine the case-by-case development.

After independence, although certain observations were made by the Court in *Brij Bhushan v. State of Delhi*¹⁰ and *Romesh Thapar v. State of Madras*¹¹, the question of constitutionality of Section 124 A, did not directly arise before the Supreme Court until 1962. Allahabad High Court in *Ram Nandan v. State of UP*¹² dealt with the constitutionality of Section 124A. The Hon'ble High Court held that section 124-A imposed restrictions on free speech that were not in the best interests of the general public and thus declared section 124-A to be ultra vires. While declaring Section 124 A unconstitutional, the Court held that Section 124 A addresses not only the most severe form of disaffection, but also the mildest form of hatred, contempt, or disaffection. Similarly the Supreme Court in case of *Ramji Lal Modi v. State of Uttar Pradesh*¹³ had also introduced two tests: 'aggravated form', which defines the criteria for what counts as an insult, and the 'calculated tendency' of the insult to disrupt the public order¹⁴. In *Kedar Nath Singh v. State of Bihar*, the Supreme Court came across a direct challenge to the constitutionality of Section 124A for the first time¹⁵. After reviewing the history of Section 124A, the Court explicitly recognized that the State requires protection from forces that seek to jeopardize the safety and stability of the State. The Hon'ble Supreme Court observed that:

“ Every State, whatever its form of government has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder¹⁶.” As a result, the Court struck a balance between the right to free speech and expression and the legislative power to limit such rights.

¹⁰ AIR 1950 SC 129.

¹¹ AIR 1950 SC 124.

¹² AIR 1959 All 101.

¹³ 1957 SCR 860.

¹⁴ Lawrence Liang, "Free Speech and Expression", in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian* 827 (Oxford University Press, 2016).

¹⁵ 1962 Supp (2) SCR 769; AIR 1962 SC 955.

¹⁶ Ibid

In *Kedar Nath Singh*, the Supreme Court cited its earlier decision in *Ramji Lal Modi*, noting that the latter decision sheds a lot of light on the scope of the legislature's power to impose reasonable restrictions on the exercise of the fundamental right to freedom of speech and expression¹⁷. Following the Supreme Court's decision in the case of *Kedar Nath Singh*, courts have deemed public disorder to be a necessary component of Section 124A of the IPC. In the case of *Raghubir Singh v. State of Bihar*¹⁸, the Supreme Court held that it is not necessary for the accused to author the seditious material or to have actually attempted hatred, contempt, or disaffection in order to constitute an offence of conspiracy and sedition. The court revisited this principle in *Nazir Khan v. State of Delhi*¹⁹, stating: "Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder."

In *Vinod Dua v. Union of India*²⁰, the Court upheld the law established in *Kedar Nath Singh*, holding that a citizen has the right to criticize or comment on the measures undertaken by the Government and its functionaries so long as he does not incite people to violence against the Government established by law or with the intention of causing public disorder; and that it is only when the words or expressions have a pernicious tendency or intention of causing public disorder that they are illegal.

CONCLUSION

The Supreme Court's test in *Kedar Nath Singh* is a well-established legal principle. Unless the words or actions in question tend to incite violence, cause public disorder, or disturb public peace, the act does not fall under the purview of Section 124A of the IPC. However, in the absence of such an express indication, a plain reading of Section 124A may appear vague and confusing, leading to its misinterpretation and misapplication by the competent authorities.

Author is of opinion that that the *Kedar Nath Singh* ratio should be incorporated into the phraseology of Section 124 to provide greater clarity in the interpretation, understanding, and application of the provision. Furthermore, to prevent any alleged misuse of Section 124A of the IPC, procedural safeguards are required. This needs to be accomplished by establishing certain procedural safeguards that can be imposed by the Central Government by issuing model guidelines in this regard.

¹⁷ Manoj Kumar Sinha & Anurag Deep, *Law of sedition in India and Freedom of Expression* 248 (The Indian Law Institute, New Delhi, 2018).

¹⁸ AIR 1987 sc 149

¹⁹ AIR 2003 sc 4427.

²⁰ 2021 SCC Online 414