International Journal for Multidisciplinary Research
International Conference on Multidisciplinary Research & Studies 2023
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com
ICMRS'23

Law of Sedition in India: Is it Necessary After 75 Years of Independence?

Dr. Vijesh B. Munot

Abstract:

The offence, which is generally known as the offence of Sedition, occurs in Chapter VI of the Indian Penal Code, headed 'Of offences against the State'. This species of offence against the State was not an invention of the British Government in India, but has been known in England for centuries. Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardize the safety and stability of the State, or disseminate such feeling of disloyalty as have the tendency to lead to the disruption of the State or to public disorder

The decisive ingredient for establishing the offence of sedition under Section 124-A IPC is the doing of certain acts, which would bring to the Government established by law in India hatred, infidelity or contempt etc. that would incite violence or create public disorder.

We are living in democratic country. The Constitution of India guarantees Right to Freedom of Speech and Expression. However, this right is not absolute and having reasonable restriction mentioned in Constitution itself. The interpretation of Section 124-A has over the years gone through various vicissitudes and changes. There is immense necessity of having striking balance between freedom of speech and public order, security etc. of the State.

In the modern democratic era and after 75 years of the Independence, it is necessary to re-think and re-consider the necessity of such criminal provision and its extent in Indian Penal Code.

Keywords: Sedition, Hatred, Disaffection, Indian Penal Code

Statement of Problem:

The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. However, we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

Dynamic interpretation of law on sedition is needed in view of democratic values enshrine in Constitution of India. It is also necessary for the State actors to bring out of the colonial mind set after 75 years of the Independence.

Objectives of Study:

1. To study the meaning and concept of sedition and sedition law and its scope in India.
2. To study the law of sedition under the purview of human rights and constitutional perspectives.
3. To study and examine the recent developments in law of Sedition in India.
4. To make out the relevance of provision of sedition in Indian Penal Code even after 75 years of the Independence.

Introduction:

The Indian Penal Code, 1860 came into effect in 1962 i.e., 5 years after the Mutiny of 1857. Originally, provision for Sedition under Section 124-A was not part of it. It was inserted by the amendment of 1870, which was further amended in 1898.

Sedition is a crime against society nearly allied to that of treason. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquility of the State. It leads ignorant persons to endeavor to subvert the Government and laws of the country.

The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

Sedition has been described as disloyalty in action. The law considers as sedition all those practices, which have 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.

The Section 124-A was amended by the Indian Penal Code Amendment Act (IV of 1898). Because of the amendment, the single explanation to the Section was replaced by three separate explanations as they stand now. The Section, as it now stands in its present form, is the result of the several A.O.s of 1937, 1948 and 1950, because of the constitutional changes, by the Government of India Act, 1935, by the Independent Act of 1947 and by the Indian Constitution of 1950. Section 124A, as it has emerged after successive amendments by way of adaptations as previously mentioned, reads as follows:

“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 or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation1: 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.”

Hence, any acts within the meaning of Section 124-A which have the effect of subverting the Government of bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute. This is because the felling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term “revolution”, have been made penal by the Section 124-A.

However, the Section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the Section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feeling which generate the inclination to cause public disorder by acts of violence, would not be penal.

In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

International Journal for Multidisciplinary Research
International Conference on Multidisciplinary Research & Studies 2023
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com
ICMRS'23

The British, colonial masters, felt it necessary to rein in this provision to suppress the freedom movement. However, when we are celebrating "*Azadika Amrut Mahotsav*", it is high time to re-think and re-consider on the necessity of retaining this provision.

Even the framers of Indian Constitution debated whether the sedition law had a place in Independent India. It is the fundamental right of every citizen to have his own political theories and ideas and to propagate them and work for their establishment so long as he does not seek to do so by force and violence or contravene any provision of law.

The offence of sedition is the resultant of the balancing of two contending forces, firstly individual freedom and secondly security of Nation. Freedom and security in their pure form are antagonistic poles. One pole represents the interest of the individual in being afforded the maximum right of self-assertion free from Governmental and other interference while the other represents the interest of the politically organized society in its self-preservation. It is impossible to extend to either of them absolute protection for as observed by Mr. Justice Frankfurter, "absolute rules would inevitably lead to absolute exceptions and such exceptions would eventually corrode (destroy) the rules".

It is now a generally accepted postulate that freedom of speech and expression which includes within its fold freedom of propagation of ideas lies at the foundation of all democratic organizations, for without free political discussion, no public education so essential for the proper functioning of the processes of popular Government is possible.

The security of the State and organized Government are the very foundation of freedom of speech and expression which maintains the opportunity for free political discussion to the end that Government may be responsive to the will of the people and it is, therefore, essential that the end should not be lost sight of in an overemphasis of the means. The protection of freedom of speech and expression should not be carried to an extent where it may be permitted to disturb law and order or create public disorder with a view to subverting Government established by law.

It is, therefore, necessary to strike a proper balance between the competing claims of freedom of speech and expression on the one hand and public order and security of the State on the other. This balance has been found by the Legislature in the enactment of Section 124-A which defines the offence of sedition.

Judicial Approach:

Over the years, the interpretation of Section 124-A has gone through various vicissitudes and changes. Since its first reported case in 1981 of *Bangobasi*[1], a very wide sweep was given to Section 124-A and it was made a formidable Section.

In *Bangobasi case* which was tried by a jury before Sir Comer Petheram, C.J. While charging the jury, the learned Chief Justice explained the law to the jury in these terms:

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him…….. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

It was obviously an interpretation calculated to reserve power in the British Government to prosecute their political opponents and stifle opposition to the British rule. It reflected the anxiety of the British to retain their stranglehold on this country and continue their exploitation by crushing all forms of opposition

by making it penal even to excite feelings of ill will against the Government, as if by punishing words or deeds calculated to produce ill will, they could command goodwill from a subject people.

The next case is the celebrated case of *Queen-Empress v. Balgangadhar Tilak*[2], which came before the Bombay High Court. The learned Judge explained the law as-

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are 'feelings of disaffection'? It means hatred, enmity, dislike, hostility, contempt and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government.

This broad and sweeping interpretation of Section 124-A held the field until 1942, when in the leading case of *Niharendu Dutt Majumdar And Ors. v. Emperor*[3], Sir Maurice Gwyer. C.J., an eminent British Judge who presided over the Federal Court of India in its early years, reviewed the position and attempted to restrict the scope of the Section by interpreting it according to the "external standard" applied by Judges in England. He recognized the great change that had taken place in the concept of Government since the days of enactment of the Section and since its interpretation in *Bal Gangadhar Tilak's case*[4] *in 1898***.**Thereafter, in 1962, the Supreme Court was called upon to consider law of sedition in *Kedar Nath Singh* cited *supra*. In this case, the Court upheld the validity of Section 124-A, but defined the limits of sedition by mandating that it could only be used when there was an actual incitement to violence or disruption of public order, and that mere criticism of the government did not amount to sedition.

The Supreme Court in *Kedar Nath Singh v. State of Bihar*[5], observed that the Government established by law is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. The continued existence of the Government established by law is an essential condition of the stability of the State. That is why sedition, as the offence in Section 124-A, has been characterized, comes to Chapter VI of Indian Penal Code relating to Offences against the State.

In 1970, the then Congress Government headed by Smt. Indira Gandhi made sedition a cognizable offence i.e. one could be arrested without a warrant. However, in its catena of cases Hon'ble Courts have emphasized the need to avoid abuse of power and of the law. Any law, which is enacted in the interest of public order, may be saved from the vice of constitutional invalidity.

The words as well as the acts, which tend to endanger society, differ from time to time. In the present day, meetings or processions are held lawful which a hundred and fifty years ago would have been deemed seditious. This is not because the law has weaker or has changed, but because, the times having changed, society is stronger than before. In the changing circumstances of the country, only bad feeling or ill will towards the Government could not be regarded as the basis of sedition.

The democracy is a Government by the people via open discussion. The democratic form of Government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational process of democracy, which distinguishes it from all other forms of Government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value[6].

In its recent judgment of *S.G. Vombatkere Vs. Union of India*[7] and *Editors Guild of India and Anr. Vs. Union of India and Ors.*[8], Hon'ble Supreme Court emphasized on the need for dynamic interpretation of the Section appropriate to the modern concept of Government and ordered that the 152-year old sedition law under Section 124-A of the Indian Penal Code should be effectively kept in abeyance till the Union Government reconsiders the provision. In an interim order, the Court urged the Centre and the State Governments to refrain from registering any FIRs under the said provision while it was under re-consideration.

While issuing notice on the petitions in July 2021, the CJI had orally made critical remarks against the provision-

“Is it still necessary to retain this colonial law which the British used to suppress Gandhi, Tilak etc., even after 75 years of independence?”

"If we go see the history of charging of this Section, the enormous power of this section can be compared to a carpenter being given a saw to make an item, using it to cut the entire forest instead of a tree. That’s the effect of this provision".

In the historic order which, effectively put a freeze on pending and future cases for sedition under Section 124-A of the Indian Penal Code, the Supreme Court made a significant observation that the Union Government also agrees that it is a provision which is not in tune with the current social milieu and that it was intended for the colonial rule.

In all, it is necessary to bear in mind those fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution because of the basic fact that they are members of the human race. They are considered heart and soul of the Constitution. Fundamental rights occupy a unique place in the lives of civilized societies and have been described in all judgments as "transcendental", "inalienable", and primordial".

Bibliography:

Books:

Agrawal, Dr. H. O. : Human Rights, 3rd Edition, Universal Law Pub.

Basu, D. D. : Introduction to the Constitution of India, Part II, Lexis Nexis, Butterworths, Wadhw Nagpur.

Bhandarkar, P. L., : Methodology and Techniques of Social Research, 16th Wilkinson, T. S. Edition 2000 (2003), Himalaya Publishing House.

Bhattacharya, S. N. : Administration of Law and Criminal justice in India Burdwan Publication1982, Burdwan University.

Gaur, K. D. : Criminal Law: Cases and Materials, 3rd Edition 1999.

Glanville, Williams : Textbook of Criminal Law, 2nd Revised Edition, Stevens & Sons Ltd;(Nov. 1983)

Gour, Hari Singh : Penal Law of India, Vol. 1, 11th Edition

Hall, Jermone : General Principles of Criminal Law, 2nd, Edition 1960, Indianapolis: The Bobbs Merrill Company, Reprint January, 2005 by the Lawbook Exchange, Ltd.

Indian Law Institute : Essays on the Indian Penal Code, N. M. Tripathi, 1962.

Mitter V. : Commentaries on Police Daires- Statements, Reports, Investigations, Vol. I and II, 11th Edition, 2005, Law Publishers (India) Pvt. Ltd.

Pandey, J. N. : Constitutional Law of India, 42nd Edition 2005-2010,Central Law Agency, Allahabad.

Pillai, P S A : Criminal Law, 9th Edition, Lexis Nexis, Butterworths, Wadhwa, Nagpur.

Ratanlal & Dhirajlal : The Indian Penal Code, Law of Crimes, Bharat Law House.V. Suresh & D.

---

[1] Queen Empress v. Jogendra Chunder Bose, (1892) I.L.R. 19 Cal. 35)

[2] (1898) I.L.R. 22 Bom. 112

[3] AIR 1939 (Calcutta) 703, (Calcutta)(DB) : Law Finder Doc Id # 411564 in 1942

[4] Gandadhar Tilak v. Queen Empress. : Law Finder Doc Id # 650126, 1897 (25) L.R.-I.A. 1, (1898) I.L.R. 22 Bom. 112

[5] AIR 1962 SC 955,Criminal Appeal No. 169 of 1957 and Criminal Appeals Nos. 124 to 126 of 1958. D/d. 24.1.1962

[6] S. Rangarajan v. P. Jagjivan Ram & Ors., 1989 (2) SCC 574

[7] 2022(3) SCC (Cri) 154

[8] 2022 Live Law (SC) 470