

SEDITION IN INDIA: SPEECH VERSUS INCITEMENT

Meet A. Shah* & Harpalsinh R. Parmar**

Abstract

Human is considered as highly intellectual species in the world and recognized as social animal. The most important element that distinguishes it from other species is the ability to speak and to make conversation with others. From the ancient time existed dictatorship i.e. autocratic society where the kings have ruled. These monarch are the sole authority in decision making and no subject of the state was permitted to raise against such powerful entities even their interests (right) were clobbered. The human evolution is at significant stage, all the countries in the world is reforming and fostering towards civilized society. In the present era, several countries are claiming themselves as democratic due to which their citizens are entitled to certain rights, one of which is Right to freedom of speech. It varies from country to country relating to its scope and restriction. The government's role is mandatory to ensure protection of these constitutional rights, but what if these power itself are violating the rights? That is causing harassment to its people as an indication to remain silent or to ready for the charges of sedition but that is not what this draconian law of sedition entails. In India during recent times many human rights activist, editors of the newspaper, press reporter, authors of the book, politician, cartoonist etc. are charged for sedition. Section 124A of Indian Penal Code has remained much the same as at its inception, with minor amendments. These action against the common man demands to make amendments in the present law in order to serve the purpose of the democratic country based on the principles of the democracy.

This paper examines the rights of the citizen to express freely and expressing towards criticizing the government.

Keywords: Sedition, public disorder, incitement, Freedom of speech and expression

* Student-B.Com.LL.B. (H) @ R.N. Patel Ipcowala School of Law and Justice, Anand; Email: meet59@live.com; Contact: +91-9998617750

** Student-B.Com.LL.B. (H) @ R.N. Patel Ipcowala School of Law and Justice, Anand; Email: harpalparmar95@gmail.com; Contact: +91-8141226003

“It is far more ignominious to die by justice than by at unjust Sediton”

- Blaise Pascal

INTRODUCTION

Sedition is defined under section 124A of the Indian Penal code. It was originally drafted by the Lord Macaulay which was not inserted in the original draft of the Indian Penal code, 1860 but was later on added in the year 1870 as a means to defy anti-colonial protestors against the colonial government. The offence is Cognizable, Non-bailable, Non-compoundable and trial by a Court of Sessions¹.

According to John Cohan, “A delicate line can be crossed, whereby lawful criticism of government may become seditious speech, where associating with others in robust criticism of Government may become subversive activities punishable by law”².

According to Former Prime Minister of India Shri Jawaharlal Nehru sedition was fundamentally unconstitutional. In his words, he considered sedition as “Now so far as I am concerned (Sec.124A) is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass, the sooner we get rid of it the better” he said in Parliament.

In the uprising events relating to the acts of sedition in the country, it has become controversial element in the recent times. The appreciation goes to media as it plays supportive role in highlighting the incidents at a large scale and the opposition parties waiting for an opportunity to disgrace the government in power every time.

Any seditious act is liable for punishment under the law. But in present era the charge of sedition generally curtails political criticism and serves as a tool for the Government to suppress the class of people who try to advocate the truth, not always in the sense of rebellion, but a protest for the well-being and to highlight the grievances of the common man or towards the governments lethargic approach in the public welfare of the country and has no place in the democratic country of 21st century.

¹ Criminal Procedure code, 1973, Under First schedule

² Cohan, John Alan (2003), Seditious Conspiracy, the Smith Act, and Prosecution for Religious Speech Advocating the Violent Overthrow of Government 17, St. John's J. Legal Comment, p. 199

The first amendment in the constitution of India was made regarding imposing of reasonable restriction under article 19(2) of the constitution of India “in the interest of public order” to overwhelm the voice of public spirited people against the government, that is all kind of suppression was an effect of such criticism.

Sedition negates the purpose of the democracy by unnecessarily applying such charges where the constitution itself guarantees the freedom of speech. The main point to focus here is that if there is no case of incitement to favors the violence in the speech or writing or an intention to create disorder³, that is the ‘tendency or the intention to create public disorder’ the charge for the sedition remains null because the judges observed that if the sedition law were to be given a wider interpretation, it would not survive the test of constitutionality. A peaceful protest not aimed at violence, mere demonstration towards the demand by the group of people, a speech not hatred or inciting does not come under the ambit of the term sedition.

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 immaterial⁴.

In a democratic country every citizen is unrestricted to make its expression in relation to the guaranteed fundamental right (though not absolute in nature) or against overpowering of the government in an unlawful manner as guaranteed under article 19 of the constitution of India. The liability for the offense of sedition can be different in case of speech also in as in terms of action. The concept of sedition will always contradict constitutional right now it is upon the court to analyze the offense based on creation of the circumstances, technicality of the offense, mens rea, involvement in the offense, actus rea.

The provision for sedition encompasses i) publication of seditious libel ii) utterance of seditious words and iii) conspiracy to do an act in furtherance of seditious intention⁵. In the definition of the sedition, it does not clearly distinguishes between the protest (*vidhroh*) and treason (*deshdroh*). Further it tends to include any form of criticism in the form of speech or

³ *Kedarnath v. State of Bihar* (1962) 1962 AIR 955

⁴ *Queen Empress v. Bal Gangadhar Tilak* (1897) the first case to deal with law on sedition under Section 124A in the IPC was explained. Strachey J. (ILR1898(22)BOM112)

⁵ SEDITION LAWS & THE DEATH OF FREE SPEECH IN INDIA, Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore. https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf

in writing unless it turns into violence and causes public disorder, which will call for the State in the interest of the public welfare and security of the state to take necessary steps to turn down such act and prosecute the offenders.

Section 124A- Sedition under IPC has been defined 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], 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.

HISTORY

Initially the provision of sedition was enacted by Macaulay in his draft penal code 1837-39. The framer of Indian Penal code had not inserted the said clause in 1860. The provision of sedition was introduced by British government in 1870 by inserting section 124A. On the Conviction of Mahatma Gandhi under section 124A of IPC he described this undemocratic law as 'prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen'.⁶

According to common law for seditious libel includes words as well as action and it should be between the government and the citizens as well as between the communities of person⁷. During the end of the 18th century immediately after the enactment of the Indian penal code, 1860 and addition of the sedition as one of the offense, the colonial government started

⁶ A.G., Noorani Indian Political Trials: 1775-1947, New Delhi: OUP, 2009, p. 235.

⁷ Op. cit. W.R. Donogh at p. 4

prosecuting the editors of the newspaper in which severe criticism of the government rules were mentioned. One of such case is of Jogendra Chandra Bose in 1891⁸, where he wrote an article against the policies of the government and later on he was acquitted on the apology in the proceedings before the judge as there was no mention of rebellion.

During the draft of the constitution sedition was proposed as means of restriction under article 19 of constitution of India but was deliberately removed by the drafters of the Constitution in consideration with the liberty of the citizens to enjoy as a fundamental right of freedom of speech from the draconian provision of law but later on two judgments by the supreme court in *Romesh Thappar v. The State Of Madras*⁹ a weekly journal in English, *Cross Roads* published by Romesh Thappar was banned for publishing critical views on Nehruvian policy as it is its threat to public safety or public order was not supported by the constitutional scheme since the exceptions to 19(1)(a) were much more specific and had to entail a danger to the security of the state.

JUDICIAL PRONOUNCEMENT ON SEDITION

The jurists have interpreted section 124A of IPC from time to time. This part of paper is divided into three categories in order to understand and analyze those pronouncements in detail. Those are:

- A. Pre-Independence
- B. Post-Independence
- C. Recent Pronouncement

A. *Pre-Independence Pronouncement:*

Bal Ganngadhar Tilak (1898)

Once the charges were framed *Queen Empress vs. BalGanngadhar Tilak and Keshav mahadevbal*¹⁰, the British government asked Justice James Strachey, who was known for his anti-native bias. He held

1. That the term ‘feelings of disaffection’ meant simply absence of affection,

⁸ *Queen Empress v. Jogendra Chandra Bose* (1892) ILR 19 Cal 35.

⁹ 1950 SCR 594

¹⁰ *Empress v. Bal Ganngadhar Tilak & Keshav Mahadevbal*, Bombay series XXII, P.146, [ILR 1898 (22) BOM 112]

2. That it meant 'hatred', 'enmity', 'dislike', 'hostility', 'contempt' and every form of ill will to the government.
3. That disloyalty perhaps the best general term and that it comprehended every possible form of bad feeling to the government.
4. That a man must not make or try to make other feel enmity of any kind of against the government.
5. That the word government meant British rule or its representative or administrator.

Justice Strachey interpreted the term disaffection in the said case as it meant 'hatred', 'enmity', 'dislike', 'hostility', 'contempt' and every form of ill will to the government and disaffection to disloyalty, and held that the 'explanation' that followed the main section which made allowance for acts of disapprobation, would not apply to "any writing which consists not merely of comments upon government measures, but of attacks upon the government itself, its existence, its essential characteristics, its motives, or its feelings towards people." It is known as "The Strachey Law". In 1898, section 124A was amended to reflect Strachey's interpretation. The British included the terms 'hatred' and 'contempt' along with disaffection.

Annie Besant (1918)

In case of *Annie Besant v Advocate General of Madras*¹¹, was tried for the publication of the newspaper New India of material that had a tendency to provoke hatred against His majesty's Government. Besant, an English feminists and activist, was a staunch proponent of Indian home rule. In 1916 she published a number of articles critical of the Government. Justice Strachey ordered that the deposit of her printing press be confiscated under S 4 (1) of the Indian Press Act 1910.

Mohandas Gandhi (1922)

In the year of 1922, Mohandas Gandhi was held guilty under Section 124A, along with Shankerlal Banker and was sentenced for six years of imprisonment for writing and publishing of three articles namely "Tampering with Loyalty", "The Puzzle and its Solution" and "Shaking the Manes", which were published in the newspaper, Young India¹².

¹¹ AIR 1918 Mad 2010

¹² Op. cit. A.G. Noorani at 235

The clause of Sedition has been defined under various Statutes in various forms.

- A. Section 124A of Indian Penal Code, 1860 it extends to the hatred speech against government.
- B. Section 95 of Criminal Procedure Code, 1973 it empowers Government to declare any Publication or Newspaper or Book or any other Document which amounts to seditious material¹³ to forfeit and issue search warrant against such said documents.¹⁴
- C. Section 2(o) of Unlawful Activities (Prevention) Act, 1967 states that any individual or association who intends to bring cession or secession in the territory of India¹⁵.
- D. Section 05 of Prevention of Seditious Meeting Act, 1911 says that any meeting which might cause sedition or public disorder can be punished¹⁶.

B. Post-Independence Pronouncement

Tara Singh Gopichand (1951)

In the another land mark case of *Tara Singh Gopichand v The State*¹⁷, Chief Justice Eric Weston explained the irrelevance of 124A, in the contemporary political setting. Where he says,

¹³ Subject to Section 124 A of Indian Penal Code, 1860

¹⁴ Power to declare certain publications forfeited and to issue search warrants for the same- Where-(a) any newspaper, or book, or (b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub- inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

¹⁵ unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),- (I) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India;

¹⁶ Power to prohibit public meetings - The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquility.

“India is now a sovereign democratic state. Governments may go and be caused to go without the foundations of the state being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change, which has come about”.

Kedarnath Singh v State of Bihar (1962)

In the landmark case of *Kedarnath Singh v State of Bihar*¹⁸, The Supreme Court ruled out regarding the interpretation of Section 124 A of Indian Penal Code, 1860 and established two principles that are:

- A) A distinction was drawn between the “the Government established at law” and “persons for the time being engaged in carrying on the administration”
- B) In aforesaid case, the Judges moved towards understanding sedition in terms of its tendency to create disorder or incitement to violence. The article in this case was finally read in respect of its effect rather than of the feelings incited or intended.

Balwant Singh v. State of Punjab (1995)

In landmark case of *Balwant Singh v. State of Punjab*¹⁹, the Supreme Court overturned the convictions for (124A, IPC) and promoting enmity between different groups on grounds of religion, race and acquitted persons who had shouted - “*Khalistan zindabaad, Raj Karega Khalsa,*” and, “*Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da*”, i.e. a few hours after Indira Gandhi’s assassination – outside a cinema in a market frequented by Hindus and Sikhs in Chandigarh. The Supreme Court acquitted Balawant Singh on the ground that mere words and phrases by themselves, no matter how distasteful, do not amount to a criminal offence unless it is being used for creating public disorder and to incite public.

Recent Pronouncement:

In *Indra Das v. State of Assam*²⁰ and *Arup Bhuyan v. State of Assam*²¹, the Supreme Court reiterated the same fact relying upon *State of Maharashtra & Ors. v. Bhaurao Punjabrao*

¹⁷ 1951 CriLJ 449

¹⁸ Supra note 3

¹⁹ 1995 (1) SCR 411

²⁰ (2011) 3 SCC 380

*Gawande*²², the honorable court observed that “Personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a Constitution whereby a government was established, their second object, equally important, was to protect the people against the government.”, thus in the former mentioned case it was held that only speech that amounts to “incitement to imminent lawless action” can be prosecuted and thus punished.

The Supreme Court held that only “incitement” and not the “advocacy” can be punished in case of section 66 A²³ of Information Technology Act, 2000. In the said case *Shreya Singhal v. Union of India*²⁴, the apex court has struck down the Section 66A of IT Act, 2000; being unconstitutional as restricting right to freedom of speech. There are some other cases where the Supreme Court has taken aforesaid principle into consideration i.e. JNU Case, Arundhati Roy Case, Aseem Trivedi Case.

There are some countries where the law of Sedition is prevail such as Australia, United Kingdom, United states of America, New Zealand, Nigeria and Malaysia²⁵.

CONCLUSION

The laws relating of sedition has the same effect as it was 146 years ago. In today’s era muting the citizens is completely inappropriate, if such laws are not turned down or made necessary amendments the supremacy of the governments will prevail but at the cost of death of free speech in India which is not acceptable in the modern times. It is still an unfortunate moment for the free Indian citizens that the law enacted by the British rulers more than a

²¹ (2011) 3 SCC 377

²² (2008) 3 SCC 613 para 23

²³ 66A Punishment for sending offensive messages through communication service, etc. -Any person who sends, by means of a computer resource or a communication device,- (a) any information that is grossly offensive or has menacing character; or (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine. Explanation -For the purpose of this section, terms “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

²⁴ AIR 2015 SC 1523

²⁵ Sedition Module; Available at: http://jmi.ac.in/upload/menuupload/12_ccmg_Sedition.pdf (Accessed on 28/7/2016 at 16:26)

century ago for the purpose muting the Indian protestors against the colonial powers still exists in the Independent India. In the recent years there is frequent invocation of sedition to deal with free speech and expression. The judiciary in its several pronouncements has interpreted this impugned section, on the other hand the executive government failed to comply with it. The following are the suggestion in dealing with the present law of sedition which is as follows:

1. Amend section 124A of the IPC to include term *Public disorder* and to be prosecuted only in case of public disorder or attempt to cause public disorder.
2. Amend Section 95 of the Code of Criminal Procedure, 1973, and remove references to section 124A
3. Amend Section 2(o) (iii) of the Unlawful Activities (Prevention) Act, 1967 to remove references to 'disaffection'.
4. Repeal Prevention of Seditious Meeting Act, 1911