

## LAW RELATING TO SEDITION IN INDIA VIS-A- VIS FREEDOM OF SPEECH AND EXPRESSION: ISSUES AND CHALLENGES

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*“Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence”.*<sup>2</sup>

### Introduction

India being a democratic country runs by representatives elected by the people. Every citizen has a right to put forth his opinions, ideas, and grievances relating to governance of the Country. Therefore, among the several fundamental rights, the most powerful one is the right to free speech and expression. However, this right has been curbed by the sedition laws of the country. The recent increase in instances of invoking sedition laws against human rights activists, journalists and public intellectuals in the country have raised important questions on the undemocratic nature of these laws, which were introduced by the British colonial government. Arrest of various persons under Section 124A IPC have leads to widespread public criticism and has raised serious questions about the validity of this provision in a modern constitutional democracy.

Sedition is an offence incorporated into the Indian Penal Code which government have found handy to silence or discipline critics. This nineteenth century law has been retained by the democratic government in free India. Not only that, it has perhaps been used more often after 1947 than the colonial government did during the 77 years of its presence in the Penal Code. Sedition was not a part of the original Indian Penal Code enacted in 1860 and was introduced in 1870.

This research paper dealt with the law relating to sedition in the country, its origin, pre-independence and post-independence scenario, recent cases of use of this provisions under section 124-A of IPC which is inherently contrary to the fundamental right under Article 19(1)(a) of Constitution.

### What is Sedition ?

Section 124-A of the Indian Penal Code defines the offence of ‘Sedition’ and provides 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 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.”<sup>3</sup>

Explanation 1 – The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2 – Comments expressing disapprobation of the measures of the 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.<sup>4</sup>

### Sedition laws in India

Altogether, Sedition laws are found in the following laws in India:

The Indian Penal Code, 1860 (Section 124 (A))

The Code of Criminal Procedure, 1973 (Section 95)

The Seditious Meetings Act, 1911 and

The Unlawful Activities (Prevention) Act (Section 2 (o) (iii)).<sup>5</sup>

### **Sedition Law and Independence Movement**

Sedition laws were used to curb dissent in England, but it was in the colonies that they assumed their most draconian form, helping to sustain imperial power in the face of rising nationalism in the colonies including India. British used the sedition law to suppress the Indian freedom struggle and to retain imperial power.

The first known use of Sedition law was against Jogendra Chandra Bose,<sup>6</sup> editor of "Bangobasi", who was charged in 1891 for his criticism of the "Age of Consent Bill" whereby he said that the bill was disastrous to religion and was being forcefully imposed on Indians.<sup>7</sup> During freedom struggle, targets of this law included Mahatma Gandhi, Bal Gangadhar Tilak and Annie Besant. Bal Gangadhar Tilak was tried under sedition law,<sup>8</sup> who criticized the killing by Chapekar brothers but also blamed the British government for bringing the situation in the country to a brink, thus instigating the revolutionaries. Tilak was convicted and sentenced to six years imprisonment to Mandalay jail.

Later Mahatma Gandhi was tried in 1922 for his articles published in the magazine 'Youth India'.<sup>9</sup> Mahatma Gandhi said that,

*"Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen".<sup>10</sup>*

Although sedition law is part of a larger framework of colonial laws it is liberally used by both the central and state governments to curb free speech, the specificity of these laws lie in the language of 'disaffection' and severity of the punishment associated with them. It is ironic that these laws have survived the demise of colonial rule and continue to haunt media personnel, human rights activists, political dissenters and public intellectuals across the country.<sup>11</sup>

### **Post Independence Scenario**

The Constitution did not contain provision of sedition under the restrictions to the right under Article 19(1)(a). Jawaharlal Nehru was aware of the problems posed by the sedition laws to independent India. In the debates surrounding the First Amendment to the Indian Constitution, Nehru came under severe criticism from opposition leaders for compromising the right to free speech and opinion. The word 'Public order' was added under Article 19 (2) by the (First Amendment) Act, 1951, in order meet the situation aroused from Supreme Court decision in *Romesh Thapper's Case*<sup>12</sup>. In this case it was held that ordinary or local breaches of public order were not ground for imposing restriction on the freedom of speech and expression guaranteed by the Constitution.

In *Ram Nandan's case*<sup>13</sup> the constitutional validity of section 124A of the IPC was challenged in an Allahabad High Court that involved a challenge to a conviction and punishment of three years imprisonment of one Ram Nandan, for an inflammatory speech given in 1954. The court overturned Ram Nandan's conviction and declared section 124A to be unconstitutional.

However, this decision was overruled in 1962 by the Supreme Court in *Kedar Nath Singh v. State of Bihar*,<sup>14</sup> which held that section 124A is constitutional, but added a caution that this section should be construed as to limit their application to acts involving intention or tendency to create disorder or disturbance of law and order, or incitement to violence. If used arbitrarily, the sedition law would

violate freedom of speech and expression guaranteed by the Constitution under Article 19.

The Court, while upholding the constitutionality of the said law distinguished between “the Government established by law” and “persons for the time being engaged in carrying on the administration”. The Court distinguished clearly between disloyalty to the Government and commenting upon the measures of the government without inciting public disorder by acts of violence: The Court observed that:

“This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded again becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

Therefore it was held that, the duty cast upon the Court to draw a clear line of demarcation between the ambits of a citizen’s fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order.

Even after the above decision by the Supreme Court, the section 124-A continues to be used irrespective of whether the alleged seditious act or words constitute a tendency to cause public disorder or incitement to violence. India is one of the few countries where we have an archaic sedition law. United Kingdom repealed its sedition law in 2010.<sup>15</sup> Various sections of the society are demanding that the section 124A of sedition must be dropped from the Indian Penal Code (IPC).

In the *Maneka Gandhi* case<sup>16</sup>, the Supreme Court had held that freedom of speech and expression is not confined to geographical limitations and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad too. Thus, criticism against the government policies and decisions within a reasonable limit that does not incite people to rebel is consistent with freedom of speech and expression.

### **Recent Cases of Use of Sedition Law - Current Issues**

Sedition law that provision of Section 124-A has been used against many people in the recent past such as:

In *Sanskar Marathe vs. State of Maharashtra and others*,<sup>17</sup> cartoonist Aseem Trivedi was arrested with sedition charges because his banners and cartoons mocked constitution, parliament and India’s national flag. A Division Bench of the Bombay High Court laid down the guidelines for the police while invoking the sedition law against any person.

In 2010, Noor Mohammad Bhat, a lecturer from Gandhi Memorial College was arrested for setting an anti-India question paper.<sup>18</sup>

In 2010, writer Arundhati Roy and hurriyat leader SAS Gilani were arrested for making anti-Indian speech in New Delhi In 2009.<sup>19</sup>

V. Gopalaswamy (Vaiko) was slapped with sedition charges for his statements against India’s sovereignty in speech on Sri Lanka’s war with LTTE In 2007.

Binayak sen was arrested for sedition charges due to his help to carry messages to Maoists in Chhattisgarh.

In one case, Meerut University suspended 60 students for cheering in favour of Pakistan in a cricket match between India and Pakistan. These students were also charged under sedition but later the charges were dropped.

In *Shreya Singhal vs Union of India*,<sup>20</sup> offers a very clear exposition of the difference between advocacy and incitement. The court held that three concepts are fundamental to understanding the scope of free speech. The Court said, 'The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in'

In August 2014, the Maharashtra Government had come out with a circular that defined the conditions under which the police can arrest a person on sedition charges. This circular was immediately criticized by the people as an attempt by the government to suppress the democratic rights of the people to freedom of speech and expression. The circular was immediately challenged before Bombay High Court and the court ordered the government to withdraw it.

In *Aurn Jaitely vs. State of U. P.*<sup>21</sup> A single judge bench of Allahabad High Court threw out a charge against the Finance Minister Mr. Aurn Jaitely The case was filed taking a suo motu cognizance of an article by Aurn Jaitely on National Judicial Commission Act Case.

In today's world the sedition law seems to be outdated which expects that citizens should not show enmity, contempt or hatred towards the government established by law. However, applying sedition charges merely on words spoken or written should needs to be avoided. Thus, in its current form, there is a grey area which lies between actual law and its implementation. In many cases, it has been randomly used. Thus, the law needs amendments to minimize those grey areas. However, one view in support of these laws is that such laws are necessary evils in a country like India where so many disruptive forces are acting. The need for such law is only to deter the activities that promote 'violence' and 'public disorder'.

### **Conclusion**

Criticism against the government policies and decisions within a reasonable limit that does not incite people to rebel is consistent with freedom of speech and expression. Currently the section 124A is slapped against everyone, without any fairness. It is this grey area, which needs to be corrected. Only when it amounts to an incitement to violence, such sections should be brought in.

It is very essential that the governments and its agencies should strictly go with the text of Section 124A. The existence of sedition laws in India's statute books and the resulting criminalization of 'disaffection' towards the state and government is unacceptable in a democratic society. These laws are clearly colonial remnants with their origin in extremely repressive measures used by the colonial government against nationalists fighting for Indian independence. Therefore, it is felt that sedition law is directly violates the fundamental right guaranteed under article 19(1) (a) of Indian Constitution and should be repealed. The Supreme Court, being the protector of the fundamental rights of the citizens should step in now to declare Section 124A unconstitutional as India of the 21st century does not require a law used by the colonial government to suppress India's voice.

**(End notes)**

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- 2 Statement of Mahatma Gandhi his in defence, during the 1922 sedition trial, he was one of the greatest opponents of the sedition law. Available at: <http://www.gktoday.in/indias-sedition-laws-and-current-issues/> (last visited on 27/11/2016 ).
- 3 K. D. Gaur, *Indian Penal Code*, 219 (5<sup>th</sup> ed., 2014).
- 4 Ibid.
- 5 Available at: <http://indianlawcases.com/Act-Indian.Penal.Code,1860-1557> (last visited on 27/11/2016 ).
- 6 Queen-Empress v. Jogendra Chunder Bose And Ors, (1892) *ILR 19 Cal 35*
- 7 Available at: <https://indiankanoon.org/doc/334102/>(last visited on 28/11/2016 )
- 8 Emperor v. Bal Gangadhar Tilak, (1908) *10 BOMLR 848*
- 9 Re: Mohandas Karamchand Gandhi v. Unknown, (1920) *22 BOMLR 368, 58 Ind Cas 91.5*
- 10 Available at: <http://www.gktoday.in/indias-sedition-laws-and-current-issues/> (last visited on 27/11/2016 )
- 11 Alternative Law Forum, National Law School of India University, Bangalore, *Sedition Laws and the Death of Free Speech in India*, 2011. Available at: [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf) (last seen on 25/11/2016).
- 12 Romesh Thapper v. State of Madras, AIR 1050 SC 124.
- 13 Ram Nandan v. State, AIR 1959 All 101
- 14 AIR1962 SC 55.
- 15 Available at: <https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/> (last visited on 26/11/2016 )
- 16 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
- 17 Criminal Public Interest Litigation No. 3 of 2015, Bombay High Court.
- 18 Available at: <http://www.gktoday.in/indias-sedition-laws-and-current-issues/>(last visited on 26/11/2016)
- 19 Available at: <https://revolutionaryfrontlines.wordpress.com/2010/11/29/delhi-india-sedition-case-against-arundhati-oy-will-nehru-be-charged-also/> (last visited on 26/11/2016)
- 20 (2013) 12 SCC 73.
- 21 Application /S 482 No.-32703 of 2015, Allahabad High Court.