

LAW OF SEDITION IN INDIA

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Abstract: Presently, the law relating to Sedition under Section 124A of Indian Penal Code, 1860 has created a new controversy in the Indian constitutional jurisprudence. As the law was inserted by the British Government to uphold the imperialism and to punish the freedom fighters, the utility of the Section 124A in independent India is in question. Since 1950 constitutional regime has been established in India and under Article 19 (1) (a) freedom of speech and Expression has been guaranteed as a fundamental right and it creates a new conflict with Section 124A of the Indian Penal Code, 1860. Now, the constitutionality of the sedition law has been challenged and various interesting judicial pronouncements have been delivered by the Indian judiciary. More interestingly several governments have moved for constitutional amendment to protect that obsolete colonial legacy. However, the paradigm has been shifted now; recently, the government has prescribed an amendment to curtail down the intensity of the sedition law. This paper deals with the historical background and the present status of the sedition in India and discusses its utility in twenty first century.

Key words: Sedition, human rights, disaffection, freedom of speech, constitution, hatred, contempt.

Free speech is one of the most significant principles of democracy. The purpose of this freedom is to allow an individual to attain self-fulfillment, assist in discovery of truth, strengthen the capacity of a person to take decisions and facilitate a balance between stability and social change. The freedom of speech and expression is the first and foremost human right, the first condition of liberty, mother of all liberties, as it makes the life meaningful. This freedom is termed as an essence of free society. The Universal Declaration of Human Rights, 1948, in its Preamble and Article 19 declared freedom of speech as a basic fundamental right. The freedom of speech often poses difficult questions, like the extent to which State can regulate individual conduct.³ Since, individual's autonomy is the foundation of this freedom; any restriction on it is subject to great scrutiny.¹ However, reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens. According to Article 19(3) of the International Covenant on Civil and Political Rights 1966 (ICCPR), this freedom may be subjected to restriction⁶. Constitution and Sedition Laws The effect of these laws threatens to undermine, and gradually destroy, the legitimate and constitutionally protected right to protest, dissent or criticize the government . As a result after the Constitution of India came into operation the Constitutional validity of Section 124-A of the Code was challenged as being violative of the fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India Article 19(1) (a) provides guarantee to every citizen freedom of speech and expression. That means every citizen of India can express their opinion freely. This right to freedom of speech and expression secures protection for severely censuring existing government structures, policies, actions and administrative schemes, coupled with protection for suggesting and recommending the required development of other systems.² Freedom given under Article 19(1) (a) is not absolute one. Article 19(2) deals with the grounds of reasonable restrictions with regard to Article 19 (1) (a). Sedition has not been mentioned therein as one of the grounds justifying reasonable restrictions. Now the question comes whether Section 124-A of Indian Penal Code imposes reasonable restrictions on the freedom of speech and expression guaranteed under Article 19(1) (a). However, this conflict between sedition and freedom of speech is not recent origin. The framers of the Constitution also have apprehended with the dilemma as to whether the word

“sedition” should be used in Article 19(2) but finally they omitted it. It was witnessed that if they have the intention to insert it within Article 19 (2) they would have inserted it. Although, they decided not to use the word “sedition” in clause (2) but used the more general words which cover sedition and everything else also. In *Romesh Thappar v. State of Madras* . within 4 months of the Constitution of India coming into force, the newly established Supreme Court of India ruled on the issue of sedition. The petitioner was printer, editor, and publisher of a weekly journal in English called “Cross Road”. The Government of Madras, in exercise of their power under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949 issued an order prohibiting the circulation of the journal in the state.³ The Court held that restriction on freedom of speech and expression can only be imposed on grounds mentioned in Article 19(2) of the Constitution. A law which authorizes imposition of restriction on grounds of ‘public safety’ or ‘the maintenance of public order’ falls outside the scope of authorized restrictions and therefore, a Constitution Bench of the Apex Court held by a majority of 4:1 that Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 violated the freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution. In *Brij Bhushan v. State of Delhi* [21] , the validity of censorship previous to the publication of an English Weekly of Delhi was questioned. The Court struck down the Section 7 of the East Punjab Safety Act, 1949, on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression. Further, in *Tara Singh v. State of Punjab* [22], Section 124-A, of Indian Penal Code was struck down as unconstitutional being contrary to freedom of speech and Expression guaranteed under Article 19(1) (a). The Court further held that India is now a sovereign democratic State. Government may go and caused to go without the foundation of the State being impaired

s, provided they are prescribed by law and are necessary for ‘respecting the rights or reputation of others’ or for the protection of national security, public order, public health or morals.⁴ 1.3 Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression to all citizens. However, this freedom is subjected to certain restrictions namely, interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence⁴. 1.4 The offence of sedition is provided under section 124A of the Indian Penal Code, 1860 (hereinafter IPC). The relevance of this section in an independent and democratic nation is the subject of continuous debate. Those opposing it see this provision as a relic of colonial legacy and thereby unsuited in a democracy. There is an apprehension that this provision might be misused by the government to suppress dissent. During a Conference on Freedom of Speech and Expression on 5-6 November 2016, organised by the Law Commission in association with the Commonwealth Legal Education Association and Lloyd Law College, Greater Noida, Justice A P Shah and Dr. Subramaniam Swamy suggested that even without section 124A IPC, there are sufficient constitutional and statutory safeguards. On the other hand, it is also argued that amidst growing concerns of national security, this section provides a reasonable restriction on utterances that are inimical to the security and integrity of the nation. 1.5 According to the National Crime Records Bureau 35 cases of sedition (all over India) were reported in 2016. 5 The courts have stressed on the importance of contextualising the restrictions while ascertaining the permissibility of expression. Balancing freedom of expression with collective national interest is one of the key ingredients of this law. Though it is argued that this law is a colonial vestige, the Indian courts have upheld its constitutionality.

A. History of Sedition law in India.

Macaulay’s Draft Penal Code 1837 consisted of section 113 that corresponded to section 124A IPC. The punishment proposed was life imprisonment. Sir John Romilly, Chairman of Second Pre-Independence Law Commission commented upon the quantum of the punishment proposed for

sedition, on the ground that in England the maximum punishment had been three years and he suggested that in India it should not be more than five years.³⁵ However, this section was not included in the IPC when it was enacted in 1860. This was surprising for many. Mr. James Stephens when asked about this omission referred to the letter written by Sir Barnes Peacock to Mr. Maine, where he had remarked that: —I have looked into my notes and I think the omission of a section in lieu of section 113 of the original Penal Code must have been through mistake [...] I feel however that it was an oversight on the part of the committee not to substitute for section 113. ³⁶ 4.2 Mr. James Stephen thereafter set out to rectify this omission. Consequently, sedition was included as an offence under section 124A IPC through special Act XVII of 1870.³⁷ This section was in line with the Treason introducing this section was that in the absence of such provision, this offence would be penalised under the more severe common law of England.⁴⁰ Therefore, the adoption of this section was projected as an obvious choice for protecting freedom of expression from the stricter common law. According to Mr. Stephen, the adopted clause was ‘much more compressed, much more distinctly expressed, and freed from great amount of obscurity and vagueness with which the law of England was hampered’. ⁵ The intent of the section was to punish an act of exciting feelings of disaffection towards the government, but this disaffection was to be distinguished from disapprobation. Thus, people were free to voice their feelings against the government as long as they projected a will to obey its lawful authority.⁴² 4.3 Section 124A IPC was amended in 1898 by the Indian Penal Code (Amendment) Act 1898 (Act V of 1898) providing for punishment of transportation for life or any shorter term. While the former section defined sedition as exciting or attempting to excite feelings of disaffection to the Government established by law, the amended section also made bringing or attempting to bring in hatred or contempt towards the Government established by law, punishable. ⁶ The provision was amended by Act No.26 of 1955, substituting the punishment as ‘imprisonment for life and/or with fine or imprisonment for 3 years and / or with fine. 4.4 The West Minister Parliament enacted the Prevention of Seditious Meetings Act, 1907, in order to prevent public meetings, likely to lead the offence of sedition or to cause disturbance as in many parts of India, meetings were held against the British rule, with the main objective of overthrowing the Government. 4.5 The Prevention of Seditious Meetings Act, 1911, repealed the Act 1907. Section 5 thereof enabled the statutory authorities to prohibit a public meeting in case such meeting was likely to provoke sedition or disaffection or to cause Felony Act 1848³⁸ that penalised seditious expressions.³⁹ One of the reasons cited by Mr. Stephen for disturbance of public tranquillity. Violation of the provisions of the Act was made punishable with imprisonment for a term, which could extend to six months or fine or both. The said Act 1911 stood repealed vide Repealing and Amending (Second) Act (Act No. IV of 2018).

Sedition is overt conduct, such as **speech** and **organization**, that tends toward **insurrection** against the established order. Sedition often includes **subversion** of a **constitution** and **incitement** of discontent towards, or **resistance** against established authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are **seditious libel**. A **seditionist** is one who engages in or promotes the interest of sedition.⁷

Typically, sedition is considered a subversive act, and the **overt acts** that may be prosecutable under sedition laws vary from one legal code to another. Where the history of these legal codes has been traced, there is also a record of the change in the definition of the elements constituting sedition at certain points in history. This

overview has served to develop a **sociological** definition of sedition as well, within the study of state **persecution**.⁸

Law of Sedition

The term ‘Sedition’ means “conduct or speech which results in mutiny against the authority of the state”. Law of Sedition deals with section 124A of IPC, 1860, is considered as a reasonable restriction on freedom of speech. It was drafted by Thomas Macaulay and introduced in 1870.

The following points describe the origin of sedition law:

- Origin of Sedition law in India is connected to the Wahabis Movement of the 19th century.
- This was an Islamic revivalist movement and was led by Syed Ahmed Bareilvi.
- Since 1830, the movement was active but in the wake of 1857 revolt, it turned into armed resistance, a Jihad against the British.
- The British termed Wahabis as rebels and carried out military operations against Wahabis.

Meaning of Sedition under Section 124A of IPC, 1860

“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 shall be punishable with Life Imprisonment”.[1]

Explanation I to the Section defines the scope of disaffection and in Explanation II and III indicate what under the English Law is not considered seditious intention.

What are the activities that are Seditious in nature?

In India, what constitutes as ‘Sedition’ is highly debated. As per the Indian Penal Code, for an act to be called “seditious”, it should have the following components:

1. Any words, which can be either written or spoken, or signs which include placards/posters (visible representation)
2. Must bring hatred/contempt/disaffection against the Indian Government
3. Must result in ‘imminent violence’ or public disorder.[2]

As per the interpretation of the Court on Section 124-A of the Indian Penal Code, 1860 the following acts have been considered as “seditious”

- Raising of slogans against the government – example – “Khalistan Zindabad” by groups. Raising of slogans by individuals casually once or twice was held not to be seditious. [3]
- A speech made by a person must incite violence / public disorder for it to be considered as seditious [4]. Subsequent cases have gone to further interpret it to include “incitement of imminent violence”.
- Any written work which incites violence and public disorder.

Sedition found in other Laws

The following are some laws which cover Sedition law:

- Indian Penal Code, 1860 (Section 124A)
- The Code of Criminal Procedure, 1973 (Section 95)
- The Seditious Meetings Act, 1911 &
- The Unlawful Activities (Prevention) Act (Section 2(o) (iii)).

Sedition and Article 19(1)(a) of the Indian Constitution

The Concept of Free Speech has attained global importance and all have supported it as a basic fundamental right of a human being. In India, such rights are provided under Part-III and Article 19 of the Indian Constitution. The said right has no geographical indication because it is the right of the citizen to gather information with others and to exchange thoughts and views within or outside India.

Courts have been given the power to act as guarantors and protectors of the rights of the citizen. Article 19(1)(a) secures the ‘freedom of speech and expression’ but it has been bound by the limitation which has been given under Article 19(2) which states the permissible legislative abridgement of the right of free speech and expression.⁹

In *Niharendu Dutt’s* case [6], for sedition, the Federal Court had taken chance to interpret the Section 124A of the IPC in alignment with British Law. It had ruled that tendency to disturb public order was an essential element under Section 124A. The Privy Council held that the incitement to violence or a tendency to disturb public order was not necessary under section 124A.

In *Tara Singh v. State*[7], the validity of Section 124A of the IPC was directly in issue. In this case, it curtailed the freedom of speech and expression, so the East Punjab High Court declared this section void.

By the Constitution (First Amendment) Act, 1951, two changes were introduced relating to freedom of speech and expression, are:

1. It considerably widened the latitude for restrictions on free speech by adding further grounds;
2. The restriction imposed on Article 19(1)(a) must be reasonable.

Therefore, the question now arises of whether Section 124A of IPC is in conflict with Article 19(1)(a) or not. It has been reflected by the following points:

1. Section 124A of the IPC is *ultra vires* the constitution in as much as it infringes the fundamental right of freedom of speech in Article 19(1)(a) and is not saved by the expression “in the interest of public order”.¹⁰
2. As the expression “in the interests of public order” has a wider connotation and should not be confined to only one aspect of public order, then the Section 124A is not void.
3. Section 124A IPC is partly void and partly valid. In *Indramani Singh v. State of Manipur* [9], it was held that Section 124A which seeks to impose restrictions on exciting mere disaffection is *ultra vires*, but the restriction imposed on freedom of speech and expression covered under Article 19(2) can be held *intra vires*.¹¹

In 1959, Allahabad High Court declared that Section 124A was *ultra vires* to Article 19(1)(a) of the Constitution.

Indian Freedom Fighters who were charged with Sedition during the Freedom Struggle

Mahatma Gandhi was charged with sedition

Gandhiji had written three ‘politically sensitive’ articles in his weekly journal *Young India*, which was published from 1919 to 1932 so that he was jailed on the charges of sedition. He was sentenced to a six-year jail term.

Three charges were imposed on him:

1. Tampering with loyalty;

2. Shaking the manes and
3. Attempt to excite disaffection towards the British Government.

He wrote the first part of his autobiography during his imprisonment- *The Story of my Experiments with Truth*- and about the Satyagraha movement in South Africa. He was released after two years as he was suffering from appendicitis.

Bal Gangadhar Tilak was convicted under this

Bal Gangadhar Tilak was charged with sedition on two occasions, are:

1. Firstly, his speeches that allegedly incited violence and resulted in the killings of two British Officers for which he was charged with Sedition in 1897. He was convicted but got bail in 1898.
2. Secondly, he was defending the Indian revolutionaries and called for immediate Swaraj or self-rule in his newspaper 'Kesari' for which he was convicted under sedition and sent to Mandalay, Burma from 1908 to 1914

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