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Current State of Sedition Law in India

MUDITA¹

ABSTRACT

After long years, and unending debates, the term 'sedition' is again at the epicentre of legal discussions all over the country and yes, there's a reason behind that. It was way back in the year 1972, when the issue of sedition had garnered the headlines of top newspapers, for the first time. Whether it's constitutional or not, was to be decided later, but this discourse has an unending history. Kedarnath, the case where sedition found its first big test, the constitutional validity test. After those long unending continuous debates and discussions, its again the hot topic. Why after around half a century of Kedarnath, this controversial provision of Indian criminal manual is again under switch light. In this Article, the decisions of Indian courts (various High Courts and the Supreme Court) that have governed the said state of affairs in relation to the sedition law in India since the 20th century are being discussed.

I. INTRODUCTION

On February 3, 2021, a Supreme Court dismissed a plea calling for the former Jammu and Kashmir Chief Minister (CM) Farooq Abdullah to be held accountable for his remarks regarding the repeal of Article 370 and the division of J&K into two union territories. It is not seditious, according to the supreme court, to have opinions contrary to those of the ruling party. As a result, "Sedition Law in India" is highlighted.

But apex court of India is reconsidering its judgement in Kedarnath, wherein it upheld the constitutional validity of one of the most controversial provisions deep rooted in British era. What was most interesting was that while the government had come out all guns blazing against this reconsideration in earlier hearings, it suddenly went to the background, quickly changing its stance, and agreed to reconsider this disputed provision. The Central Government has however asked to court to not reconsider the Sedition law². Apex Court understanding the complexity of the situation, did sense that this provision has been misused in the recent past,

¹ Author is a LLM student at Galgotias University, Greater Noida, India.

² Hannah M Varghese, Kedar Nath Good Precedent, No Need to Reconsider Sedition Law On The Ground Of Individual Instances Of Misuse: Centre To Supreme Court, LIVELAW (May 15, 2022, 9:00), <https://www.livelaw.in/top-stories/sedition-ke-dar-nath-good-prec-edent-no-need-to-reconsider-it-on-the-ground-of-individual-instances-of-misuse-centre-to-supreme-court-198550>

Section 124A, a section which glorified the criminal cases during the freedom struggle with the likes of Mahatma Gandhi, Jawahar Lal Nehru and Bhagat Singh charged under this section.

Top Court was quick to put the provision under hold in a very cautious manner, while directing that this controversial section must not be used in FIRs anymore. The Apex court is hoping that from now the court will look into the cases of Sedition in view of the guidelines given by them on May 11, 2022, in the order passed by a three-judge bench³.

The law of sedition is from the times when Britishers arrived in India, and with the inception of this provision in IPC, the intention of British regime was very clear. ‘Silence the critics and hang the dissenters,’ was the sole purpose behind the introduction of this provision and let it be clear, it’s not the Britishers itself, even governments in independent India have used this provision more frequently to put the critics behind the bars. Since then a number of FIRs have been launched under this law and in most of the cases, the accused are those who try to raise their voices against the government. This is not the case with any one government or one party. Even the Government today are using the same tactics which the Britishers used 100 years ago.

II. WHAT IS SEDITION?

Initially the IPC, 1860 did not had the word sedition in it. The word sedition is also nowhere present in the code as well as the section itself. Section 124A⁴ IPC says “*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*”. It also provides three explanations. If we break out the words given in the section, it can be said that the prosecution has to show that how the charged person has done or showed any sign or word by which hatred or contempt has been brought in the society and the action of the accused shows that it is against the government. In *Manubhai Tribhowandas Patel v. State of Gujarat*⁵ held that sedition may be constituted by words, deeds or writings.

³ Keep The Sedition Law In Abeyance: Supreme Court Rules In A Historic Order, Live Law (May 11, 2022, 9:30) <https://www.livelaw.in/top-stories/breaking-supreme-court-urges-centre-states-to-refrain-from-registering-firs-invoking-section-124a-ipc-198810>

⁴ The Indian Penal Code, 1860, No. 45 of 1860.

⁵ 1972 CriLJ 388.

The “Black’s law dictionary” defines⁶ “sedition” as “*An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state.*”

The Apex Court in *Nazir Khan v. State of Delhi*⁷ defined "Sedition" as "*Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. 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 tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country...*"

In simple terms, “sedition” can be understood as an act committed by a person to bring enmity to society or to disturb peace. The act may include any action by way of words, signs, or any visible means and has the potential to create a disturbance. The intention is also an important criterion in deciding whether the act is seditious or not. Sir James Stephen on intention said that seditious intention is one which is done with the intent of bringing hatred by way of words or action against the government. In *Niharendu Dutt Majumdar v. King Emperor*⁸, held that if something is termed as seditious then it must have the tendency to disturb the public order. It is also visible from the legal explanation of sedition that it is very wide and thus this is the loophole to throttle the essence of democracy⁹.

III. HISTORICAL BACKGROUND

Sedition is a gift of the colonial era and its history can be traced back to the time when IPC was drafted¹⁰. The task to draft the IPC was given to Thomas Macaulay who then in the year 1837 came up with a draft code¹¹. Then, the IPC came into force in the year 1860 which surprisingly didn't contain any section dealing with sedition. However, it is said that Macaulay made a mistake by not including the sedition under the code which was Later, in the year 1870, corrected by the Britishers and a new section 124A was introduced in IPC. The first person to be charged under this controversial law was Bal Gangadhar Tilak.

⁶ M.A. HENRY CAMPBELL, *BLACK LAW DICTIONARY* (1523 St. Paul, Minn. West Publishing Co. 1968).

⁷ (2003) 8 SCC 461

⁸ AIR 1939 Cal 703.

⁹ Meher Manga, Sedition law: A threat to Indian democracy? OBSERVER RESEARCH FOUNDATION (17 May, 2022 08:00) <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/>

¹⁰ S.Kumar, “Is Indian sedition law colonial? J. F. Stephen and the jurisprudence on free speech” 58 *The Indian Economic & Social History Review*. 477-504. (2021)

¹¹ Apurva Vishwanath, What is the sedition law, and why Supreme Court’s fresh directive is important, *The Indian Express* (May 12, 2022) <https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/>

Before Independence, the same law was used by the Britishers to create a sense of fear among the Indians who were actively taking part in the freedom movement. This law was commonly used at that time to lodge political leaders and activists in jail under the pretext of seditious speeches. Post-independence, Constitution framers and other leaders decided to drop sedition from the Constitution. K.M. Munshi who was a noted activist and a politician has argued that the law of sedition disturbs the structure of democracy¹². He then put efforts along with leader Bhupinder Singh Mann and it is the result of their efforts that the Constitution at that time does not have the word sedition in it. Sedition remained in IPC but was dropped from the Constitution in 1949. The government in the year 1951, through the “Constitution First (Amendment) Act, 1951” again inserted the sedition in the Constitution under the fundamental right of “freedom of speech and expression”. In 1974, various other changes have been made in the law to make it more stringent.

IV. JUDICIAL HISTORY OF SEDITION LAW

Sedition has always remained in controversy for being a law which is still present since the times of Britishers. The first time when the court in India woke up to decide on a controversial law is in the case of *Tara Singh Gopi Chand v The state*¹³, in this case, the High Court of Punjab ruled that Section 124A puts restrictions on individuals¹⁴ by limiting their right to “freedom of speech and expression” as provided under the “Article 19¹⁵.” Then in the year 1954 the High Court of Patna in *Debi Soren & Ors v The State*¹⁶ took a different view and upheld the law as valid. The court also noted that the law does not violate the “freedom of speech and expression.” After this Allahabad High Court in *Ram Nandan v State*¹⁷, held that the law of sedition is void. The court also held that “criticism is an essential part of democracy” and the government must be ready to face it.

Later, in the year 1962, the Apex Court Kedar Nath¹⁸ gave a ruling which is still the last opinion of the largest Constitution Bench decision. It was held that the law of sedition as valid and held that it should remain there in IPC. The constitutional bench also noted that the objective of this law is to safeguard the government as well the society from being undermined and hence the restriction is reasonable.

¹² Deepak Gupta, “Law of Sedition in India and Freedom of Expression” 4 SCC J-14, J-21.

¹³ 1951 CriLJ 449.

¹⁴ R.K. Misra, *Freedom of Speech and The Law of Sedition in India*, 8 JILI 177, 122.

¹⁵ INDIA CONST. Art 19.

¹⁶ 1954 CriLJ 758.

¹⁷ 1951 CriLJ 1.

¹⁸ 1962 AIR 955.

V. STATICS ON SEDITION IN INDIA

The statics of the “National Crime Records Bureau” (NCRB) shows that India has witnessed a rise of 25% in the cases of sedition in the year 2019 however the surprising point to note is that the conviction rate in some cases is only 3 %. This shows the intention of the government that there is also a rise in arrests by 41%. In 2019, 93 cases of sedition were reported out of which 96 arrest was made and in 76 cases charge sheet was filed. The 2018 data shows that a total of 70 cases were reported in which 56 arrest was made and a charge sheet was filed in 27 cases. In the year 2019 the year that followed the nationwide CAA-NRC protest, a large number of cases were registered under sedition. This was done to stop the opposition as well as the activist from taking part in the protest and to prevent the enmity between different groups. It is imperative to note that after 2014 more FIRs were registered under this and among 10938 people booked since 2010, 65% of people were booked after 2014. In total there is a rise of around 28% from 2014 to 2020¹⁹.

VI. JUDICIAL RULINGS

At some instances the Courts have shown their conscience by protecting the rights of the individuals however in some cases the courts have not acted the way they are supposed to act. Like in *Ram Nandan v State of U.P*²⁰, held that “Section 124A” is “ultra vires” because it puts limitation on the fundamental “right to speech and expression.” However, the stand of the Apex Court on the same issue got reversed and they observed that the imposed restriction is reasonable and is intra vires.

In *Balwant Singh v State of Punjab*²¹, the Apex Court in the year 1995 has held that mere raising the slogan “*Khalistan Zindabad...Hindustan Muradabad*” is not going to create public disorder and does not constitute sedition. In *P.J. Manuel v State of Kerala*²², during assembly elections, the accused put some posters in public areas which say “*No vote for the masters who have become swollen exploiting the people, irrespective of the difference in parties*” due to which he was slapped with section 124A and held, seditious content should not be read in isolation; it always has to be read with reference to the letter.

¹⁹ Abhishek Hari, “How the Sedition Law Has Been Used in the Modi Era, The Wire (May 11, 2022), <https://thewire.in/law/explainer-how-the-sedition-law-has-been-used-in-the-modi-era>.”

²⁰ 1951 CriLJ 1.

²¹ 1995 (1) SCR 411.

²² 2012 (4) KLT 708.

In *MohdYaqub v State of West Bengal*²³, the charged person who was a undercover agent of Pakistan's ISI charged under Section 124A for carrying out activities that are anti-national. The High court in this case has taken a different view and held that the accused cannot be made liable for sedition because the prosecution has not shown any link between the association of the accused and the effect of inciting people. In *Indra Das v State of Assam*²⁴, sedition charges was put on the accused and allegation were made that he is a member of a banned organisation and has murdered some people. The Court provided relief to the accused by not holding him liable for sedition.

In *Asit Kumar Sen Gupta v State of Chhattisgarh*²⁵, in this case, the allegations on the accused were that he incited people to join a banned organization. Some literature was also found in his possession. It was alleged that the accused was trying to overthrow the government through armed rebellion. The court, in this case, has cited the judgement of *Raghu Bir Singh v State of Bihar*²⁶ it was held that if a person is carrying someone else's material which is seditious in nature then he is also liable for the same.

VII. CRITICAL ANALYSIS OF KEDARNATH JUDGEMENT

The Apex Court's judgement in *Kedarnath Singh v State of Bihar* is the authoritative ruling on the question of the validity of Sedition in India. In this case, the accused Kedar Nath was a member Communist Party who due to his different political inclination used some words that are wrong as well as seditious for the then congress ruled government. He used words like "dogs of the CID", "goondas to the gaddi" and some other words of similar nature. He was then charged with sedition along with Section 505, for these words and strong criticism of the ruling government at that time and for being a member of the Communist Party.

The courts in this case have framed two issues;

- i) "Whether Section 124A and 505 of the IPC are ultra vires of A.19(1)(a) read with A.19(2) of the Constitution?"
- ii) "Whether the intention of the accused is to create disorder, disaffection, incitement to violence in order to be guilty of the offence of sedition law?"

The Apex Court has formed seven principles or guidelines for sedition in India. The court also provided conditions as to when the case of sedition cannot be made against the accused.

²³ 2004 (4) CHN 406.

²⁴ [2011] 4 S.C.R. 289.

²⁵ Cri App No. 86 of 2011 [Chh].

²⁶ 1987 AIR 149.

- The Court in the first principle has provided a distinction in the expression “*the Government established by law*”. The Apex Court held that “*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. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State.*”
- An act that can cause hatred against the government or may incite violence or disturb the public order comes under the purview of this section.
- Any act which may be strong but does not incite any violence or disturb the public order is not within the ambit of the section.
- Fair criticism is allowed²⁷ as a right however it should not create any sense of feeling against the government or disturb the public order.
- The objective of this section is only to put a restriction on those activities that can cause public disorder; it can be easily understood from the bare reading of the provision.
- The restriction is only for those words or actions that are against public disorder. The restriction applies to cases in which the interest of the general public is at stake.
- The provision covers those “*activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace*”

VIII. COMPARATIVE ANALYSIS OF SEDITION IN UK, USA AND IN INDIA

The Britishers introduced this controversial law in India because they wanted to suppress the voice of freedom fighters. This is the reason that Mahatma Gandhi with respect to this law has said “*the prince among the political sections of the Indian Penal Code (IPC) designed to suppress the liberty of the citizens*”. In the US, it was introduced in 1798²⁸ to criminalise the statements made against the government. The act was designed in such a way that it was supposed to expire in the year 1801. After world war, I section 3 was drafted in the Sedition Act, of 1981 to punish the person making statements that are false in nature and have to potential to interfere with the actions of the government. However, in 1921, the Sedition Act in the US was repealed. In the UK the government has repealed it in 2009²⁹. Various other

²⁷ Ytharth Kumar and Sreyoshi Guha, Sedition: Crucifixion of Free Speech and Expression? 2 LSJ 109-120 (2017)

²⁸ Times of India, <https://timesofindia.indiatimes.com/india/sedition-why-does-india-follow-a-law-that-the-world-has-junked/articleshow/> (last visited on May 20, 2022)

²⁹ India Today, <https://www.indiatoday.in/law/story/how-countries-junked-sedition-law-supreme-court-section-124a-1948152-2022-05-11> (last visited on May 20, 2022)

countries like New Zealand, Australia, Indonesia, etc, reviewed their sedition law and dropped it from being a penal offence.

IX. FUTURE OF SEDITION LAW IN INDIA?

The Apex Court on April 30, 2021, has admitted a writ petition in which the question of the validity of Section 124A was again challenged before the Apex Court. The petitioners, in this case, are two journalists named Kishore chandraWang khemcha and Kanhiya Law Shukla who are charged with the controversial law for a social media post. The petitioner, in this case, has asked the Court to reconsider the judgment in Kedar Nath Singh in which the Court held that Section 124A falls under the category of reasonable restriction. The petitioner in the present petition has also mentioned the cases where fake cases were lodged against those who took strong criticism of the government and their policies³⁰. In digital times people have the habit of posting things on the internet to get a reach and express their opinions however labelling every post against the government as sedition is not only wrong but also a violation of the “right to freedom of speech and expression.” Various FIRs under Section 124A has also been lodged against those journalists who express their opinions on the policies of the government. One such case is journalist Vinod Dua who in one of his shows discussed the poor health management in the country during covid times and the lack of medical facilities as well³¹. He was then slapped with sedition and various other sections like 268, 501, and 505 of the IPC. However, the court has protected the “right to freedom of speech and expression” by quashing the FIR against Vinod Dua. The ball is now in the court of the judiciary, the hearing is going on in the Supreme Court and the Centre has also submitted that they are reviewing the law of sedition. If the government does not change its stand on the law, Supreme Court should reconsider the decision in Kedar Nath in view of the recent false cases lodged against those who only took strong criticism of the government.

X. CONCLUSION

It has been now 152 years that we are still living with colonial laws enacted by the Britishers to suppress the voice of the Indians who spoke against them. Many freedom fighters were lodged inside the jails for their words and action³². It is clear that sedition law was only introduced to curb these voices. However, the irony is that the governments over the years

³⁰ Nivedita Saksena and Siddhartha Srivastava, “An Analysis of the Modern Offence of Sedition” 7 NUJS L Rev 122, 123 (2014).

³¹ THE WIRE, “<https://thewire.in/law/supreme-court-quash-vinod-dua-sedition-case>” (Last visited May 15, 2022).

³² Aishwarya Narayanan, “A Theoretical Analysis of the Law on Sedition in India” 4 Christ University Law Journal 87, 90

instead of repealing the controversial colonial law are misusing it over time. It cannot be blamed on a single government as in the history or even present times irrespective of the political ideology and inclination state as well as central government slap sedition charges on those who try to go against them and their policies. It is very unfortunate that we are not only carrying what Britishers gave to us but also using it to the full extent.

The role of courts is also equally important in ending the colonial legacy. In the past 152 years, the judicial response on this matter is not impressive. Some judges took the courage of quashing FIRs that were lodged falsely and thought to decide on the issue of the validity of Section 124A. India is still waiting for the time when the law sedition will be declared unconstitutional and the courts will end the colonial legacy. It is now on the court as well as the government to decide on whether they wanted to scrap the law or continue to use the old age law to suppress the voice of dissent.
