



SEDITION IN INDIA: A DRACONIAN LAW?

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Abstract

The laws pertaining to sedition in India was established by the colonial regime in its attempt to nullify and prevent the freedom movement and liberation by curbing their rights to the freedoms of free speech and expression. The Sedition law mandated under the auspices of Section 124-A Indian Penal Code over one hundred and forty years ago continues to exist and are often times misused and over-imposed on individuals violating several constitutionally guaranteed and protected fundamental rights. This paper aims to explore and identify the execution, Implementation and implications of laws governing sedition in parlance to the contemporary Indian democratic society.

Keywords

Fundamental Rights, Free Speech & Expression, Sedition, Section 124-A, Indian Penal Code, 1860.

I. Introduction

The term Sedition is defined by oxford dictionary as “Conduct or speech inciting people to rebel against the authority of a state or monarch”. Sedition is further legally defined under section 124-A of the Indian Penal Code 1860 as “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”. This research paper aims to explore and identify the execution, Implementation and implications of laws governing sedition in the contemporary Indian democratic society. ^[1]

II. Origins

The origin of laws pertaining to sedition in India can be traced to the Victorian English law of the late 1800's where sedition is a misdemeanor at common law, which consists of acts done or words spoken with a seditious intention. A seditious intention, according to English law, means "an intention to bring into hatred or contempt, or to excite disaffection against, the king or the Government, Constitution of the United Kingdom any subjects of the majesty or to promote feelings of ill-will and hostility between different classes of His Majesty's subjects." The irony however is that section 124-A of Indian Penal Code protects only the king and the government established by law. During the same period Calcutta high court in *Dhirendra Nath Sen v. The King-Emperor* (1938) and *Emperor v Hemendra Prasad Ghosh* (1939) was of the view that provincial ministers are not subordinate to the governors and henceforth they do not validly constitute to be part of the executive government of the province and any attack on a provincial minister would not constitute as sedition but the same in England would result in the case of sedition as the minister is within the dictum of ‘government’. The irony of the colonial rulers is clearly evident from the stark contrast in the implementation of law in England and India as sedition was never a



hazard to freedom of opinion in England. The laws pertaining to sedition was historically formulated to prevent any disaffection towards the colonial government and the very purpose of the law was to restrict or completely curb any criticism directed towards the British government or any of their draconian policies. The interpretation of section 124-A from the colonial period can be contemplated from the Calcutta weekly notes as "the general leaning has been towards a literal construction, even to the extent of in interpreting disaffection as want of affection". The colonial government interpreted the law in the literal sense without any progressive interpretation of the statutes and the colonial government refused to consider "any glosses or interpolations derived from any expositions of the law pertaining to sedition from England or Scotland. The main reason behind the addition of section 124-A can be attributed to the Wahabi movement of 1860's who were mainly associated with the rebel of 1857 and the trial of Bal Gangadhar Tilak for sedition.^[2]

III. Colonial Legal Regime- A continued existence?

Regressive colonial laws like the sedition law continues to exist 140 years since its inception and Section 124-A of Indian Penal Code still remains intact without any major amendments to the section. There however seems to exist certain advantages in India today irrespective of its inheritance from the draconian colonial legacy. The sedition laws are under the ambit of chapter vi of the IPC which cover section 121-130 which mainly include offences such as waging war against the state or government of India and it is imperative to note that offences under the ambit of this section are considered very

grave and serious. The laws under chapter vi and mainly section 124-A of IPC are vital to protect the state against militants and those individuals or groups which threaten the national security and interest of the country. The sedition laws need to continue to exist and hence repealing the entire section as whole would not be a rational solution as these laws are the very foundation to deal with individuals against the state and considering the ever-increasing threat from the Maoist and other militants and anti-national actors who constantly threaten the national security and public order by engaging in an armed rebellion against the state and its missionaries. Section 124-A of IPC is therefore used as an instrument to deal with these individuals and it would be rational to press charges against these individuals under the ambit of this section or chapter vi of IPC as a whole. The seditious offence committed by an individual is far protracted and that is why the offences under this section have been categorised as offenses against the state". Further the supreme court has repeatedly made constructive arguments that a mere possibility of misuse of the provision does not effectively invalidate the entire legislation. Thus, sedition laws need to be rightly administered and executed to those charged with the offence of sedition and hence repealing section 124-A would not be desirable as the prevalence of the section would protect the state against anti-national activities and uphold the national security and public order of our country.

Over the past decade several cases pertaining to sedition have been registered but the irony is that those individuals accused of seditious activities are not anti-state actors or militants or Maoists but rather a pool of prominent figures that include social activists, NGO's, journalists, lawyers, human rights activists



and even include student leaders and academic scholars. This is the present state that our country has reached where section 124-A and other laws under chapter vi of IPC has been grossly misused and violated by the state. The very foundation for a democracy is dissent and by restricting the subjects of the state from expressing dissent to the government policies and schemes would be against the democratic foundation of our country as this would curtail the fundamental right to freedom of speech or the right to show dissent which are vital for upholding the very spirit of a democracy. The first main constitutional challenge to sedition arose in 1958 when the constitutional validity of section 124-A was put to test in the Allahabad High Court when Ram Nandan gave an inflammatory speech in 1954 criticising the then congress regime for the extreme poverty in the state and further called the labours to form a joint struggle and attempt to overthrow the government if the situation demands the same and further criticised Nehru for being a traitor and dividing the country. The court allowed the appeal and set aside the conviction and eventually declared section 124-A constitutionally invalid. The judgement held that the most important check on the government's action is the organized parliamentary opposition but the greater check is the fear of public opinion and the opinion of individuals in a public place is deemed to be of utmost important as the right to freedom of speech is a fundamental right vested by the constitution. However, the judgement was overruled by the supreme court in 1962 in the case of Kedar Nath and held that sedition is constitutionally valid. however, this was appealed and finally the constitutional bench took the matter. The supreme court distinguished between disloyalty to the government and criticising

or commenting about the policies and programmes of the state without inciting public disorder by engaging in violent activities. The constitutional bench held that section 124-A of IPC was constitutionally valid but the court curtailed the meaning and interpretation and limited the application to acts involving intention to create public disorder or disturbance to law and order or incitement to violence and further held that section 124-A of IPC is not violative of the fundamental right to freedom of speech and expression under article 19(1)(a). The court was of the view that if sedition was to be given wider interpretation it would eventually fail the test of constitutional validity.^[3]

IV. Applicability & Practical Implications

To trace the considerable increase in the number of cases registered under the sedition laws in the past decade, there has been number of sensational cases foisted in various states against people from different walks of life. Hence, few of the instances is elucidated here under the facts and events as examples, in the year 2001 political cartoonist and activist Aseem Trivedi was charged under section 124-A on allegations that his cartoons mocked the constitution and national emblem, but however the charges had to be dropped eventually due to massive public criticism and protest. Similarly, in 2012 an entire village of Kudankulam in Tamil Nadu was charged for sedition and “waging war against the state” for merely protesting against the building of nuclear power plant around the region. In March 2014 a group of 60 Kashmiri students were charged for sedition for a heinous crime of supporting Pakistan in a cricket match in Uttar Pradesh and subsequently the charges



were dropped. There have been incidents where a group of seven young students in Kerala were charged under section 124-A for their protest to stand up for national anthem in a cinema hall in 2014. Another appalling incident took place in 2016 in the state of Tamil Nadu where a folk singer and social activist S Kovan was arrested for sedition solely for writing two songs criticising the state against profiting from state-run liquor shops at the expense of the poor and this clearly shows the arbitrary action of the state by preventing its subjects from expressing dissent and curtailing freedom of speech and expression. In 2016 Kanhaiya Kumar a student of JNU, Delhi who was the student council president then was accused of sedition for purportedly shouting anti-India slogans.^{[4],[6]}

V. Sedition Vs Fundamental Right to Free Speech & Expression-Violation or Reasonable Restriction?

The various instances of cases under sedition as mentioned above gives a clear idea that section 124-A has come under scrutiny for gross misuse and frequent violation of fundamental right to freedom of speech guaranteed under article 19(1)(a). Over the past decade sedition laws across several countries has gained extensive attention from media, public and jurists due to the questionable characteristics of this Victorian law and several countries have taken measures to protect the citizens personal liberty, freedom of opinion and the right to express 'dissent' in a democracy. In United Kingdom after several decades of parliamentary discussions the sedition law has been abolished under Coroners and Justice Act, 2009 and they further stated that these laws are from a bygone era when

freedom of expression wasn't seen as the fundamental right it is today. In United States sedition laws prevail to exist but however the citizens freedom of speech is protected under the first amendment, hence prosecution is rare.

VI. Conclusion

Therefore it has become the need of the hour in light of the recent incidents to further narrow down the application and interpretation of section 124-A to prevent the indiscriminate and arbitrary use of this section by the state against the citizens eventually hampering the exercise of fundamental right to freedom of speech and the right to express 'dissent' against the government which is the foundation of a contemporary democracy.^[7]

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