



SEDITION UNDER IPC AND ITS CONSTITUTIONAL VALIDITY

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INTRODUCTION

It was in 1275, while the King was still thought to have Divine power, that the Statute of Westminster was passed, making sedition an illegal act. Both the content and the speaker's intention were taken into account as elements of proof in cases of alleged sedition. First and foremost, the crime of sedition was established to silence voices hostile to the requisite level of respect for authority. One of the first examples in which seditious libel, whether true or false, was deemed punished was the *De Libellis Famosis* case. In the United Kingdom, seditious libel was definitively established by this case.¹

Sedition, also known as "disaffection for the Government constituted by law," was made a crime in India by British politician and barrister James Fitzjames Stephen² in 1870, when he amended the Indian Penal Code with Section 124. The Special Act XVII of 1890 included section 124A IPC, making sedition a crime in India. Since its inception, the legislation has been mired in controversy due

to its usage to silence critics and put political prisoners behind bars. Some of the most prominent figures in the freedom struggle were arrested, including Mahatma Gandhi, Jawaharlal Nehru, and Bal Gangadhar Tilak.³

The term "sedition" is meant to be all-encompassing, including not only overt acts of violence, but also words, deeds, and written materials that are intended to incite uninformed citizens to attempt to overthrow the government and break the law. To incite discontent and revolt, to incite hostility to the Government, and to throw the administration of law into contempt are essential aims of sedition, which has as its core character the inspiration of the people to insurrection and rebellion.

"ELEMENTS FOR OFFENSE OF SEDITION UNDER SEC 124A

The following are the elements for the offense of "sedition:-

1. The words should be uttered out or written down or acted out or shown via signs first and foremost
2. It should make people dislike or perhaps actively hate their government as a result of reading it.
3. Persons who commit acts of violence or urge others to commit acts of violence are central to seditious activities. Sedition is

¹ Government of India, Consultation Paper on Sedition, Law Commission of India (2018), <https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf> (last visited Oct 1, 2022).

² Malavika Parthasarathy, Sedition Law in India: A Timeline Supreme Court Observer (2022), <https://www.scobserver.in/journal/sedition-in-india-a-timeline/> (last visited Oct 1, 2022).

³ Vivek Mishra, What is sedition law? All you need to know about section 124A dailyO (2022), <https://www.dailyo.in/politics/sedition-law-supreme-court-india-cji-35888> (last visited Oct 1, 2022).



the act of inciting or inciting others to incite public unrest or violent demonstrations in opposition to or contempt for the government.⁴

“TRIALS UNDER SECTION 124A DURING BRITISH REGIME”

In the case of *Queen Empress v. Jogendra Chunder Bose* (1891) I.L.R. 19 Cal. 35, the Calcutta High Court heard India's first case on sedition. For publishing an article critical of the British government's increasing of the age of consent for sexual intercourse, the publisher, editor, manager, and printer of the Bengali magazine *Bangobasi* were all convicted for sedition. The trial took place, but the charges were withdrawn when the defendants apologized.

Queen Empress v. Bal Gangadhar Tilak (1917) 19 BOMLR 211 was another important case on sedition before independence. Freedom fighter Bal Gangadhar Tilak was twice found guilty of inciting violence and subversion. The Bombay High Court found Tilak guilty in 1897 for inciting violence at Shivaji celebration, when two British officers were killed. The judge interpreted Section 124A of the Indian Penal Code to include 'disloyalty' to the government as an element of guilt. This time for his works in *Kesari*, the Marathi journal he started in 1881, Tilak was found guilty of sedition by the same Court in 1908.⁵

The colonial authorities often used a broad reading of Section 124A to silence any sort of political protest, but especially to stem the emergence of Indian Nationalist sentiments.

"Public disturbance or the reasonable prospect or possibility of public disorder is the essence of the charge," the Federal Court said in *Niharendu Dutta Majumdar vs. King Emperor* AIR 1939 Cal 703. The court held that sedition entails unlawfulness or opposition.

The Federal Court's ruling in *King Emperor vs. Sadashiv Narayan Bhalerao* (1944) 46 BOMLR 459 was reversed by the Privy Council, which held that it is sufficient for one to be guilty under Section 124A of the IPC if they are excited by emotions of hatred to the government. The Privy Council held an in-depth hearing to explore whether or not the Federal Court's verdict in *Niharendu Majumdar* was legally sound. *Niharendu Majumdar* was determined based on an erroneous interpretation of 124A, according to the Privy Council's Judicial Committee. It recognized Strachey, J.'s literal interpretation model employed in the *Tilak* case and said that the view favoring application of the charge of sedition only based on instigating insurrection or physical disobedience to the government was not appropriate.

⁴ Diganth Raj Sehgal, *Sedition under Section 124A of the Indian Penal Code and its constitutional validity* iPLEaders (2021), <https://blog.iplayers.in/sedition-under-section-124a-of-the-indian-penal-code-and-its-constitutional-validity/> (last visited Oct 1, 2022).

⁵ Garvit Saraswat, *Sedition law & its constitutional validity in India* Libertatem Magazine (2021), <https://libertatem.in/blog/sedition-law-its-constitutional-validity-in-india/> (last visited Oct 1, 2022).



“POST INDEPENDENCE CHANGES IN SEDITION LAW”

Sedition is a crime against the state, hence it is important to think about how the State has evolved through time. India was not a sovereign nation when sedition was included in the Indian Penal Code (IPC) since it was a colony of the United Kingdom and its kings and queens were subject to British rule. Since the monarchs' authority originated from the Crown and the subjects owed personal fealty to the king, any attempt at a coup was strictly outlawed. After India's independence, the country's legal framework, the Constitution of India, rather than a nebulous "governing state," is the ultimate source of power. As a result of widespread participation in free elections, the "State" is now made up of representatives duly chosen by the people. The felony of attempting to overthrow the government becomes meaningless in this context. Governments may change hands without jeopardizing the State's constitutional framework.

In the case of *Tara Singh vs. State of Punjab*, AIR 1951 SC 441, the Supreme Court ruled that Section 124A was in violation of the Constitution because it exceeded the scope of the legislative power granted to it by Article 19(1)(a). In the former, a government may take power and be removed from office without damaging the country's institutional framework. With the advent of this new political structure, it is no longer essential to have a law against sedition. Article 19 (1) of the Indian Constitution protects the freedom of expression (A). According to the Hon'ble Punjab High Court, Section 124A is unconstitutional since it contradicts this clause.

Last but not least, it has been highlighted that while deciding what kind of speech would be enough to encourage people to try to overthrow the government via violence, the courts must take into account the increasing consciousness and maturity of its citizens. As a society's stability fluctuates, so do the words and deeds that pose a threat to it. Consequently, events and gatherings that would have been judged seditious 150 years ago are no longer regarded as such now. This is true because modern civilization has evolved and become more robust.

In *S. Rangarajan v. P. Jagjivan Ram (1989)* 2 SCC 571. ('Rangarajan'), the Court held that **“the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.”** Explaining that the offending video did not call for the overthrow of the government by illegal or unconstitutional methods, secession, or steps to harm the integrity of the nation, this article provides insight into the nature of seditious activity. Moreover, the Court ruled that the potential threat could not be speculative or very distant. The connection to the phrase should be close and straightforward. Thought expression needs to be inherently risky to the common good. As an analogy, the term should be as tightly bound to the intended action as a spark to a powder keg.

DIFFERENCE BETWEEN HATE SPEECH AND SEDITION

The 267th Report of the Commission on — Hate Speech (2017), made a clear distinction between "sedition" and "hate speech," with the former defined as "a crime against the State," the latter as "an offense against the



public peace and serenity." According to the Report, in order to be considered an act of sedition, the words in question must be intended to undermine the independence, unity, and security of India.

REASONABLE RESTRICTIONS

This Hon'ble Court, in the case of State of Madras v. V.G. Row AIR 1952 SC 196, established the criteria for reasonableness of a limitation on a fundamental right by outlining the considerations to be examined by courts in making this determination. The factors are –

- a) “the nature of the right alleged to have been
- b) the underlying purpose of the restrictions
- c) the extent and urgency of the evil sought to be remedied thereby
- d) the disproportion of the imposition
- e) the prevailing conditions at the time

CONSTITUENT ASSEMBLY DEBATES ON SEDITION”

In 1947, India won its freedom. In 1948, the Constituent Assembly was presented with a draft of India's constitution. “Article 13(1)(a) [an earlier version of Article 19(1)(a)] safeguarded the right to free expression, which was one of the basic rights outlined in Chapter III of the proposed Constitution. Article 13(2) [the precursor of Article 19(2)] safeguarded the freedom of speech and expression, provided that it did not clash with any existing laws or prevented the State from adopting any law pertaining to, among other things, Sedition.” The word "Sedition" was maintained by the committee that drafted the 1948 Constitution.

The ensuing debates in the Constituent Assembly proved that not a single framer supported sedition as a threat to the First Amendment's protection of free speech. The intentions of the people responsible for removing the word "Sedition" from the Indian Constitution are an intriguing mystery.

Nehru argued in the parliamentary discussions that ratifying laws like sedition was not the goal of the amendment. He called Article 124A of the IPC "objectionable and unpleasant" and said it had no business being included in the IPC's overall structure.

The Indian Supreme Court referred to a comment made by Pt. Jawaharlal Nehru on sedition in 1951, when he proposed the first Constitution of India (Amendment) Bill: “Now so far as I am concerned that section 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. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it.” According to Justice Gurtu, "the mischief of Section 124-A of the Penal Code" might catch even those who peacefully and properly criticize the Government. Due to this, he said, it should be disregarded.

KM Munshi was of the opinion that the amendment's removal of the term "Sedition" in favor of the more accurate "which threatens the security of, or tends to overthrow the State" was significant. The goal is to replace the nebulous and subjective term "Sedition" with terms that more



accurately capture the essence of what is today understood to be a crime against the state.

“MAINTENANCE OF PUBLIC ORDER AS A LIMIT OF FREE SPEECH”

To avoid any possible confusion, the word "sedition" was left out of the final version of the Constitution because of the several ways it may be interpreted. For this reason, they opted to adopt the phrase "security of the state," which was intended to include major offenses like sedition, without leaving any room for interpretational wiggle room. The Kedar Nath Court agreed with this line of thinking, saying that the sedition provision was a fair limitation for protecting "public order" and "security of the state." "Further, the addition of the phrase 'in the interest of public order' in Article 19(2) through the first constitutional amendment with retrospective application was seen as an attempt to validate the interpretation given by Fazl Ali, J. in *Brij Bhushan v. State of Delhi* ('Brij Bhushan') whereby 'public order' was allied to 'security of the state'. The insertion of the words 'in the interest of' before public order in Article 19(2) was seen as providing a wide amplitude of powers to the State for the curtailment of free speech. Consequently, the amendment was seen as a validation of the law of sedition."

To paraphrase, "the word sedition was missing from Article 19(2) because the writers of the Constitution had incorporated phrases with broader meaning that cover the action of sedition together with other acts which are damaging to the security of the State as sedition." However, since then, the courts have differentiated between "public order" and "security of the state." A matter of degree characterizes the distinction. Although neither public order nor public

safety have been fully defined, it is acceptable to say that they are equivalent and that public order has only a local importance. Instead, a national upheaval like a revolution, civil unrest, or war would be necessary for state security. A crime against "law and order," "public order," or "security of the state" might be used to justify legal restraining measures against those who disrupt public order. In the landmark case *Ram Manohar v. State of Bihar* 23 (commonly referred to as "Ram Manohar Lohia"), the Supreme Court suggested that these three concepts could be visualized as a set of concentric rings, with "law and order" at the center and "public order" and "state security" at the outer and innermost peripheries, respectively. They contain a ranking of potential dangers to peace, with state security needing the strongest proof. Therefore, a higher threshold than that employed in situations of "public order" would need to be applied if "security of the state" is to be used as justification for a limitation.

SUGGESTIONS MADE BY THE LAW COMMISSION IN 42ND REPORT (1971)

Further, in its 42nd Report (1971) titled — The Commission on the Indian Penal Code recommended three substantial changes to Section 124A of the IPC. They were:

1. Incorporation of mens rea in the section,"
2. "Include the Constitution of India, legislatures, and the administration of justice (the Judiciary) as targets of the section's repression of dissatisfaction, in addition to the executive branch of government; and
3. In order to bridge the unusual gap between 'imprisonment for life' and imprisonment which may extend to three



years', or fine, the maximum punishment for sedition has been set at seven years of 'rigorous imprisonment' and 'fine'."

GROWING MISUSE OF SECTION 124A OF IPC

Those who are falsely accused of sedition may spend years in prison before a judge rules on whether or not their actions were in fact "seditious," during which time they may lose their lives. This seriously restricts freedom and infringes the right to life and liberty of law-abiding persons. Although the end judgment may result in an acquittal, the trial process itself is a penalty for those who engage in free expression. "Regarding the case of Shreya Singhal vs the Association of India. Article 66A of the Data Innovation Demonstration Act of 2000 was found to violate Articles 19(1)(a) and 21 of the Indian Constitution by the country's highest court. According to data compiled by the National Crime Records Bureau (NCRB) for the year 2014, 47 acts of rebellion were reported across nine states in India." Unless there has been a real assault or support for sedition, it is unusual for rebellious charges to be filed. NCRB data shows that 58 people were detained in connection with these instances, but just one has been successfully prosecuted.

Experts have been increasingly turning to the Rebellion Act as of late. The number of cases documented under Section 124-A of the Indian Penal Code increased by 160% between 2016 and 2019, according to data from the Public Wrongdoing Records Department (NCRB), as reported by the Monetary Times in an article titled "Captures

under Rebellion charges rise yet conviction tumbles to 3%." However, the rate of conviction decreased to 3.3% in 2019 from 33.3% in 2016, suggesting that the number of cases is being underreported. Article 14 found that rebellion instances have increased in recent years. According to the study, between 2014 and 2020, the annual rate of rebellion increased by 28%. Many of these instances stemmed from incidents like the attack of a Dalit lady in Hathras, Uttar Pradesh, or a brawl between members of the CAA, the NPR, and the NRC. There has been a false interpretation of the rebellion law.

CONCLUSION

The idea of sedition is undoubtedly divisive, and it must be carefully weighed against the right to free speech guaranteed by the First Amendment. Even though it is crucial that no one sows discord among the people or incites hatred and violence against the government (especially in a nation founded on the principles of nonviolence), it is also crucial that every citizen be able to voice their opinions about the government without fear of retaliation. Since the viewpoint presented in Indian courts and the application of the law may not always coincide, the legal system in India has been labeled as "draconian" by some. Right now could be the best time to consider amending this legislation, as more people than ever before are aware of their rights and individual freedoms and have a strong sense of responsibility and duty in our democratic system. The Act may contain the following suggested changes⁶:

⁶ Basu Chandola & Yash Bhatnagar, The sedition law: The past, present, and future Observer Research Foundation (2022), <https://www.orfonline.org/expert-speak/the->

sedition-law-the-past-present-and-future/ (last visited Oct 1, 2022).



1. An elaboration stating that protesting government policies or actions via peaceful means does not constitute sedition is included.
2. It should be made clear that inciting violence and the conduct of a punishable offense are necessary elements for sedition to apply.
3. An expansion of the definition of "disaffection" is being added for the purposes of this section.
4. Including a caveat about lawful demonstrations.
5. Including new checks and balances in the form of Policy Guidelines or an amendment to Section 124A of the Code of Criminal Procedure.

