VOLUME 2 | ISSUE 2

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

WHY SEDITION LAW IS IMPORTANT?[1]

ABSTRACT

Indiscriminate use of sedition law (IPC Section 124-A) has led to widespread criticism of the law, with many demanding for its outright abolition. While the constitutionality of the law has been subjected to various touchstones by the Supreme court in various judgements since the *Kedarnath vs Union of India*, the one on which many are adamant is the freedom of speech and expression under Article 19 of the Indian Constitution. In this article, we argue the multidimensional perspectives of the law, starting from its history, and why the law per se shouldn't be abolished, though its misuse must be checked.

INTRODUCTION

"Our concern is the misuse of the law and no accountability of the executive. If you go see the history of charging of this question, there is minimal conviction and conviction rate is low."

~CJI

Dissent lies at the very heart of democracy. Gandhiji while defending his case against Sedition charges before Justice Broomfield famously stated that no government can claim 'right to affection'[2]. Healthy dissention only strengthens democracy and ensures the responsibility of the government. At the same time, abstractions like government, citizenship, rights, etc only become lifelike due to the existence of the State. State's existence then becomes paramount, therefore anti-state elements must be checked. Gandhi viewed the state as a necessary evil, Sedition must also be understood in a similar backdrop. While the sedition law was introduced by British rulers to check disaffection and disapprobation against the British government, in independent India, the law has been interpreted by the Indian judiciary from time to time and

[1] Deepti Dwivedi, Allahabad University
Himanshi Shukla, Lucknow University

[2]TRIAL OF MAHATMA GANDHI- 1922, BombayHighCourt (2018), https://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL_OF__MAHATMA_GANDHI-1922.html (last visited Oct 19, 2021).

has effectively been indigenised to suit Indian needs. Its indiscriminate use remains a major challenge.

SECTION-124A INDIAN PENAL CODE[3]

Sedition. -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.

Explanation 1.- The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or 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.

HISTORY

It makes immense sense to delve into the history of the Sedition law in order to trace its roots. Section 124A was not included in IPC when came into force in 1860, as an offence under section 124A IPC through special Act XVII of 1870[4]. Section 124-A was not inserted in the original Indian penal code drafted by Sir Macaulay in 1860. It was Sir James FitzJames Stephen who subsequently got it inserted in 1870 in response to the *Wahabi movement* that had asked Muslims to initiate jihad against the colonial regime. While introducing the Bill, he was of the view that Wahabis are waging war against British rule for that they're asking and preaching to Muslims that it is their sacred religious duty to wage war. Stephen himself was interested in having provisions similar to the *UK Treason Felony Act 1848* because of his strong agreement with the Lockean contractual notion of allegiance to the king and deference to the state[5].

The first case in which an Indian was tried for sedition was against Jogendra Chunder Bose (the

[3] Indian penal code,1860 No. 45 of 1860, s.124A.

[4]Law Commission of India, *Consultation Paper on "SEDITION"*, available at https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf (Last visited on Oct.9, 2021).

[5]Faizan Mustafa, *Why the draconian sedition law must go*, INDIAN EXPRESS, June 4, 2021.

editor of Bangobasi Newspaper)[6] and his associates in 1891. This was a time when the vernacular press was becoming more and more assertive and the Vernacular Press Act[7], passed by ***Lytton*** in 1878, aimed at curbing anti-British ideas was being met with great opposition by the Indic writers. On the other hand, the 'Social Reforms' being effected by the British were being perceived as antithetical to the norms of the Dharmic Civilization.The Age of Consent Act was enacted by the British government on March 19,1891. The following Act amended section 375 and the age of consent for sexual intercourse was raised from ten to twelve years, this made sexual intercourse an offence amounting to rape, if done with any girl below the age of twelve, whether with or without her consent. On 26 March 1891 the Bengali newspaper *BANGOBASI* publishedanarticles on the Age of Consent Act, attacking theAct as being opposed to Hindu traditions and morality[8](*Queen-Empress vs Jogendra Chunder Bose*[9]). The trial was never completed as the jury was deeply divided over many issues and Bose apologized before a retrial.Other famous cases include Bal Gangadhar Tilak (1897, 1906 and 1909), M Gandhi (1922) and Vinayak Damodar Savarkar.

CONSTITUENT ASSEMBLY DEBATES

"Shri K.M. Munshi presented his draft Article V which later on became Article 19 of the Indian Constitution. He submitted his draft to the sub-committee on fundamental rights in March 1947, the said Article V was read as under

Article V-(1) There shall be liberty for the exercise of the following rights, subject to public order and morality:

(a) The right of the citizens to freedom of speech and expression."

Mere publication or utterance of seditious, slanderous, libelous, or defamatory matter shall be actionable or punishable in accordance with the law[10].

That, the constituent assembly and founding fathers were well aware of the limitations imposed by the British interpretation of the law. Shri K.M. Munshi in Draft Article 13 of the constitution, replaced the term 'Sedition' which later on becomes Article 19 and 19(2)exception

[6]*Queen Empress vs Jogendra Chunder Bose &Ors.* (1892) ILR 19 Cal 35.
[7] Vernacular Press Act,1878,*(*British India).
[8]Chitranshul Sinha*, India's first sedition case: A newspaper opposed the government's decision to stop child marriage,* SCROLL.IN, Aug.29, 2019.
[9] Supra note 5.
[10]J. Sai Deepak, *Constitutional validity of Section 124A*, THE DAILY GUARDIAN, May 22, 2021.

to fundamental rights, sedition there replaced with words "*which undermines the security of, or tends to overthrow, the State"*. Shri Munshi stated that the only reason for the replacement of the term 'Sedition' was to ensure against misuse and not to give a free pass to acts against the State (which was distinguished from the government).Shri K.M. Munshi stated "now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State"[11].

Abhinav Chandrachud, in his bookconcludes, "In the end, Article 19(1)(a) of the Constitution, gave all the citizens of India the right to free speech and Article 19(2) enabled the state to make laws relating to 'libel, slander, defamation, contempt of court,' 'any matter which offends against decency or morality, and laws restricting any speech which either undermined the security of the state, or had the tendency to overthrow the state. In other words, the right to the freedom of speech and expression was subjected to four broad exceptions: defamation, contempt of court, obscenity and speech which threatened the existence of the state …Munshi won both battles he fought for free speech; sedition was removed from the enumerated exceptions and cast in a narrower form, and hate speech was removed altogether from the enumerated exceptions"[12] (Chandrachud, 2017).

POST-INDEPENDENCE DEVELOPMENTS: CASES

1. ***Kedar Nath Singh vs State of Bihar*[13]**- The Supreme Court upheld the constitutionality of the law but at the same time, introduced certain safeguards. The court held that only those matters that had the intent or tendency to *incite public disorder or violence* would be made penal in this section of the Indian Penal Code.
2. ***Balwant Singh vs State of Punjab(1995)*[14]**- The Supreme Court held that casual raising of slogans by one or two individuals cannot amount to disaffection or violence against the state. In other words, Sedition was accepted as an overt act.
3. ***Arup Bhuyan vs State of Assam*[15]**- The Supreme Court held that only speech that amounts to incitement against imminent lawless action can be criticized.

[11]Supra note 8.
[12]Abhinav Chandrachud, *REPUBLIC OF RHETORIC: FREE SPEECH AND THE CONSTITUTION OF INDIA*, Sep.15, 2017.
[13] Kedar Nath Singh vs State of Bihar, 1962, AIR 955, SCR supp. (2) 769.
[14]Balwant Singh vs State of Punjab, 1995, Appeal (crl.) 266 of 1985.

4. ***Shreya Singhal vs Union of India***[16]- The apex court held a clear distinction between advocacy and incitement, stating that only the latter would be punished. It is in this case that the Supreme court struck down section 66A of the IT act and upheld the right to freedom of expression as fundamental in nature.

5. ***Vinod Dua vs Union of India***[17]- The Supreme Court bench of Judges Vineet Saran and U. U. Lalit stated that every journalist will be entitled to protection under the judgment. "It must however be clarified that every Journalist will be entitled to protection in terms of Kedar Nath Singh, as every prosecution under Sections 124A (sedition) and 505 (publishing or circulating rumours) of the IPC must be in strict conformity with the scope and ambit of said Sections as explained in, and completely in tune with the law laid down in Kedar Nath Singh," the court said[18].

Thus, the so-called 'colonial' law has been revised and its ambits have been defined from time to time by the Supreme Court. In these interpretations, the court has effectively indigenized the law, taking away, for all intents and purposes, the coloniality hangover.

POST-INDEPENDENCE: THE PUBLIC DISCOURSE

The effective position of governments, across the political spectrum, has been its indiscriminate use (or misuse) to muzzle dissenting points of view. Right from the Jawahar Lal Nehru government, that slapped Sedition charges against the Begu Sarai candidate of the Communist Party- to the entire Kudankulam Village for their protest against the Nuclear Power plant. The government headed by the first Prime Minister Jawaharlal Nehruwhich passed the very controversial First Amendment reimposed this law. While introducing the first amendment to the Constitution in 1951, Nehru had stated that "Now so far as I am concerned that particular Section (124A IPC) 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." However, through the first amendment in 1951,his government not only reimposed the sedition law but also strengthened it by adding two expressions — 'friendly

[15]Arup Bhuyan vs State of Assam,2011, Criminal Appeal No's. 889 of 2007.
[16]Shreya Singhal vs Union of India,2015,WritPetiton (Criminal) No.167 OF 2012.

[17]Vinod Dua vs Union of India, 2021, Writ Petition (Criminal) No.154 of 2020.
[18]Bhadra Sinha, *Everyjournalist entitled to protection': SC quashes sedition case against Vinod Dua,* THE PRINT, Jun. 3,2021.

relations with a foreign state' and 'public order'— as grounds for imposing 'reasonable restrictions' on free speech[19].

The most oft-criticized cases of our present times that come to mind are against Arundhati Roy, Arun Jaitley, Kanhaiya Kumar, Stan Swamy, Vinod Dua and Disha Ravi.

But thankfully, the Supreme court has acted as a torchbearer to prevent the fundamental rights of the citizens. The law, that exists in its current form is the judicial innovation of the Supreme Court of India. The court, as the guardian of our fundamental rights has the duty cast upon it to strike down laws that unduly restricts the freedom of speech and expression and ensure citizens enjoys their fundamental rights, which is the topic of concern here in this case.However, the freedom must be protected again becoming a license for vilification and condemnation of the Government set up by law, in words that affect viciousness or tend to make public issue.Every citizen enjoys the right to express their thoughts about the governments in both ways whether he likes it or by way of criticism, so long that comment does not have malafide intentions of inciting violence against government established by the law or public disorder.The Supreme Court must, as the guardian of Citizens' fundamental rights, must chalk out the right balance between the right to freedom of speech and expression (Article 19(1)(a)) and the power of the government to impose 'reasonable restrictions' on the same pretext of guaranteeing the security of State. The tasks, therefore is to chalk out the legality of the sections 124A and 505 of the Indian Penal Code, so that they do not impinge individual freedom and autonomy[20].

That the law is being misused by successive governments, is generally agreed upon, in the entire political milieu. Still, there exist substantial arguments both for and against retaining the law.

On one hand, quite a few people have vehemently opposed the law, chiefly on the ground that it violates 'free speech' and can be effectively used by the government to curb voices of dissent. The second argument advanced by some scholars is that the law is itself a colonial import and since the United Kingdom, which notoriously introduced the law in India, abolished it in 2009, so should India. Right from Tilak, who refused to budge from his position when slapped with sedition, to Mahatma Gandhi, who famously stated before Judge Broomfield, "affection cannot

[19]Meher Manga, *Sedition law: A threat to Indian Democracy,* OBSERVER RESEARCH FOUNDATION, Jul. 26,2021.
[20]Supra Note 8.

be manufactured or regulated by law[21]. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection so long as it does not contemplate, promote or incite to violence"[22]. As Upendra Baxi states, "Is the situation then of (in Frantz Fanon's terms) 'black skins, white masks' or of colonial origins, and postcolonial misuse? What Gandhiji said — the law may not be used to 'manufacture affection' under pain of a penal sanction — was as true then as it remains now"[23]. Ashutosh Varshney states, "Democracies do not charge peaceful protestors with sedition," taking a cue from the book 'How Democracies Die' which is centered upon the idea: "Since the end of the Cold War, most democratic breakdowns have been caused not by generals and soldiers but by elected governments themselves"[24].

While on the other hand, another section of scholars believe that the law is required in a country like India, lest the government shall have to deal with an iron fist. Soli Sorabjee, former Attorney General of India, says, "I don't think we can really repeal the sedition law. We require it in certain cases.Thus, we do require the law to meet certain situations, but the mere misuse of the law is no grounds to repeal it. The remedy is to check the misuse of the law."[25]Subhash C Raina states, "Well any group of people or any person who tries to create disaffection towards the government, causing incitement to violence is seditious. However, calling for removing the law from the statute book needs to be debated further. Even the Indian Penal Code (IPC) is a legacy of the British. It does not mean that we should erase the complete IPC. We have amended the IPC at times in different areas, for example, we have amended the rape laws, we amended Section 377 of the IPC. Thus, there doesn't seem to be an immediate need to amend Section 124-A of the Indian Penal Code. This is because we have a strong and independent judiciary. Thus, there is a procedure of trial and the trial is under a due process of law. This due process of law is not violated. The report of the Law Commission as well in August 2018, also said that there need to be certain restrictions placed on the sedition law and those restrictions may perhaps make sure that the law is not violated." Others also point out the low conviction rate. As per the data by National Crime Records Bureau, the cases of sedition rose from 47 in

[21]Supra Note 1.
[22]Supra Note 4.
[23]Upendra Baxi, *Why India at 75 is ready for a sedition-less future*, INDIAN EXPRESS, July 31, 2021.
[24]Ashutosh Varshney,*India's democratic exceptionalism is now withering away. The impact is also external*,INDIAN EXPRESS Feb. 23, 2021.

[25]Satya Prakash, *Soli Sorabjee defends sedition law, says it is needed,*THE TRIBUNE INDIA, Oct. 15, 2017.

2014 to 93 in 2019, there is a massive 163 percent jump. However, the conviction rate from these cases is a mere 3 percent.

CONCLUSION

As J Sai Deepak states in his book, "if one wants to have a discussion on free speech, it has to be comprehensive and across the board. Thus, Section 153-A of the Indian Penal Code, 295-A (blasphemy)of the Indian Penal Code, and also by way of expression, by way of books, what amounts to obscenity (obscene publications), all these questions need to be answered Thus, if we are for free speech absolutism, there has to be some sort of uniformity across the country. We cannot use free speech as a convenient tool to evade certain discussions"[26](Deepak, 2021). Thus, there should be an honest discussion over the misuse of the law by the executive, which in the words of CJI NV Ramanna, "The use of sedition is like giving a saw to the carpenter to cut a piece of wood and he uses it to cut the entire forest itself."

WAY FORWARD

1. The burden of proof may be shifted to Plaintiff in order to ensure its usage in specific circumstances only.
2. Provisions may be made stringent if accusations are found to be incorrect.

[26]J SAI DEEPAK, INDIA THAT IS BHARAT: COLONIALITY, CIVILIZATION, CONSTITUTION, (Bloomsbury, 2021).