



SEDITION LAWS IN INDIA - THE CONTEMPORARY ISSUES

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Abstract

The legal background of Article 124A can be traced back to its origins in English Law, where M.K. Gandhi referred to it as a critical provision in the Indian Penal Code (IPC) designed to suppress citizens' independence. Over time, this law evolved under colonial rule in India and underwent reforms in the post-independence era. However, the Hon'ble Supreme Court suspended its implementation on May 11, 2022. This article narrates the history of this legislation from its beginnings in 13th-century England to its present status. The author sheds light on the major theories that guided the sedition legislation, how it was used to suit the circumstances over the ages, the court declarations that determined its implementation, and how it has been utilised as a political instrument to suppress dissent in independent India.

Keywords: Sedition, Freedom of Speech and Expression, S.124-A, Sedition Laws, Constitutionality.

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Sedition in India

There is no mention of sedition being one of the grounds for restricting the freedom of expression and speech. About a century and a half ago, having a gathering or leading a parade was deemed Sedition under English law, a word with ambiguous significance. The Latin term "sedition" signified "insurrectionary division" (political or military), "civic dissension," "insurrection," or "mutiny" in Roman times, as well as the English word "sedition" derives from this root. Sedition is not defined in the Indian Constitution, and Article 19 has a significant impact on the offences against the state defined in the IPC.

The current definition of sedition in India comprises all actions, whether verbal, physical, or written, that are deemed to disturb the peace of the state and cause the uneducated to defame the government.

S.124-A of the I.P.C. states, "Whoever, by sayings, written or spoken, or by indications, or by a system of symbols, tends or seeks to induce into contempt or energises dissent, or excite as well as strives to excite disaffection, towards a constitutional government in India will be punished with death, imprisonment for a period up to three years, fine and/or flogging."¹ Today, the statute of Sedition in India is taken on a problematic significance, primarily as a result of changes in the political climate and also due to the constitutional protection of free speech as a basic right. The law of Sedition, as established in S.124-A of the Criminal Code, was also codified in a number of additional acts,² S.124-A I.P.C., the legislative chronology of this provision of the I.P.C. dealing with Section of Interest, provided the basic description of law applicable to all sections. It was suggested to add a section on the subject in the Indian Penal Code that was included in the 1837 draught presented by the Indian law commissioners.

It is essential for the functioning of the democratic system, self-development, and the establishment of a homogeneous equitable society. Due to the presence of free speech and expression, democracy is praised. This right includes the liberty to criticise government policy, government legislation, and government administration.

T. I. Emerson opines *"In reversing or ameliorating the natural process of bureaucratic rot, resistance fulfils a crucial societal purpose,"* It's proven that criticism is essential in a democratic society. If democracy is freedom, then a well-informed populace is essential to its continued existence. A well-informed voter is the bedrock of a democratic society. Even if it is adverse of the state's policies or ineptitude, the state has no right to stifle free speech and debate.

Article 19 does not permit restrictions on freedom of expression and speech based only on the arousal of "disaffection or negative sentiments toward the government" (2). It is

¹ Section 124-A of the Indian Penal Code.

² E.G. Press Emergency Powers act, 1931, Defence of India Rules, 34.

essential for the continuation of a democracy that it be critiqued in order to prevent it from being crippled. One should not mindlessly adhere to old sayings. We live in a free country where people may say and do anything they want. If we voted for the government, we can say what we think about it. This is fundamental to our democratic system. If citizens did not have the freedom to criticise their own representation, there would be no distinction in between democracy and a monarch.

Idealistically, there should be no rule restricting the freedom of thought and expression, but because there cannot be such a thing as full or unrestricted liberty because that would result to anarchy or chaos, we have constraints on liberties, but these restrictions must be acceptable.

Sedition's uneven journey in Free India

As independent India met to draft its own Constitution on April 29, 1947, the basic rights subcommittee, led by Sardar Patel, presented the Constituent Assembly with a Provisional Independent Report on Fundamental Rights for its consideration.³ Article 8 (a) of the annexure to this report on Justiciable Fundamental Rights lists seditious speech as an example of the limitations on freedom of speech, stating that "Laws can be written to make it illegal to publish or say things that are treasonous, outrageous, blasphemous, slanderous, libelous, or insulting."⁴ In December, the Constituent Assembly discussed about the Article on Freedom of Speech and Expression^{5 6}. Several rights and constraints, including "press freedom" and "beggary" prohibition, were discussed. Particularly in relation to "sedition", a revised Clause 2, Art.13 before the Legislature peruse: "Nothing about clause (1)(a) shall impact the application of any current legislation, or prohibit the State from creating any laws pertaining to defamation of character, defame, vilification, infractions against civility or moral standards or high treason or other aspects which diminish the State's safety. Munshi wished for this to be amended further to read:

³ Lok Sabha Secretariat. 2014. Constituent Assembly Debates, Official Report. Vol. III, 28-4-1947 to 2- 5- 1947. Sixth Reprint, New Delhi

⁴ Ibid. p 441.

⁵ Lok Sabha. 1948. Constituent Assembly Debates (Proceedings)- Volume VII, December 1

⁶ Lok Sabha. 1948. Constituent Assembly Debates (Proceedings)-Volume VII, December 2

"Nothing in (1)(a), impacts the effectiveness of any law currently in effect or prevents the State from implementing any laws specifically in context of defamation of character, vilification, or essentially anything that goes against social norms, is immoral, threatens public safety, or collapse the government." The amendment's importance lies in its intention to eliminate the use of the term "sedition" and replace it with a more appropriate phrase, namely, "which threatens the security of the State or endeavours to topple it." The aim is to substitute language presently considered to embody the core of a violation against the government with the nebulous and open-ended term "sedition."

I was making the point that there is a great deal of ambiguity around the definition of "sedition" since it has been given varying meanings not just by members of this House but also by different courts. Its interpretation has been quite straightforward since 1868. The definition of "sedition" includes any action, spoken or written, that aims to disturb the peaceful functioning of the government and incite uneducated individuals to overthrow it. However, the term "sedition" has had an unusual history and application in reality. In Britain, holding a gathering or participating in a parade was deemed sedition 150 years ago. Even having a viewpoint against the government that will foster ill will was sometimes deemed sedition. I remember a case where a District Magistrate's criticism was deemed to be controlled by S.124-A of the Penal Code, which is an extremely broad interpretation of that section. But public opinion has shifted considerably since then, and as soon as we have a democratic government, it is important to distinguish among criticism of the government, which is to be urged, and provocation that endangers the security or command upon which humane life depends, or that seeks to overthrow the government. As a result, the concept of "sedition" has been abandoned. Actually, Government Criticism is the Bedrock of a Democratic Society. The party system, which necessitates advocating for the substitution of one government with another, is a democracy's sole bastion; advocating for a new form of governance should be encouraged since it gives a democracy its energy. The purpose of this change is consequently to differentiate between the two perspectives." The sedition act, as formulated by Chief Justice Gwyer in 1942 and referenced by Munshi, was "not to cater

to the hurt pride of Governments," as Munshi put it." On 2 December 1948, the modification proposed by Munshi was accepted.

Contemporary Developments related to Sedition Laws

In recent years, Sec. 124-A of the Indian Penal Code has been invoked in several FIRs targeting reporters, activists, academics, mental health workers, notable thinkers, and even a folk singer, bringing the law of sedition into the public arena. According to Anushka Singh, the legislation has also been utilised against protesters.

"Protesters against the Kudankulam nuclear power plant in Tamil Nadu (2011-2016), reservation protest leaders (Jats in Haryana, Patidars in Gujarat in 2015 and 2016), pathalgadi protesters in Khunti, Jharkhand (2019), and opponents of the Citizenship (Amendment) Act in Delhi, Assam, and elsewhere in India have all been charged with sedition. "⁷

Crime in India, 2019, by The N.C.R.B. said that 93 charges were registered under the sedition statute in 2019, a 165% rise from the 33 cases filed in 2016.⁸ Additionally, the conviction rate decreased to 3.3% in 2019 from 33.3% in 2016.⁹ The Statute Commission of India published its consultation paper on the history of the country's sedition legislation on August 30, 2018, comparing it to similar statutes in the UK, the USA, and Australia. The article suggested a number of issues for further discussion, including the prudence of maintaining the statute as a serious offence. It was highlighted that in a democratic, reading from the same songbook isn't a measure of patriotism.¹⁰ Multiple applications contesting the legality of the sedition legislation were filed in 2021. These include a petition filed by two reporters, K. Wangkhemcha (Manipur) and K. L. Shukla (Chhattisgarh), contesting the legality of the sedition legislation before the Supreme Court. The Editors' Guild of India petitioned that S.124A & 505 of the I.P.C. be declared

⁷ Singh, A. 2022. Sedition and Its Political Functions - The Law of the Executive, Economic & Political Weekly, Vol. 57, Issue No. 26-27, June 25

⁸ Supreme Court of India. 2021. Editors Guild of India & Ors. v. Union of India & Ors. Writ Petition. Source: Supreme Court Observer

⁹ Supreme Court of India. 2021. S.G. Vombatkere v. Union of India. [op.cit.] Source: Supreme Court Observer

¹⁰ Law Commission of India. 2018.

illegal for violating the Constitution's fundamental liberties. A former army general, S.G. Vombatkere, filed a PIL with the Supreme Court contesting the constitutionality of IPC S.124A. The Journalists Association of Assam, Arun Shourie, Ex-Min. and Ex-Editor of the TOI and also the Indian Express, The People's Union for Civil Liberties, M. Moitra, M.P., P. Mukhim, Editor Shillong Times, and A. Chamadia, Chairman - Media Studies Group, also filed petitions.¹¹ Attorney General Tushar Mehta argued in writing at a proceeding on May 7, 2022, concerning the Vombatkere v UoI along with the other cases, that the ruling in *K. N. Singh v State of Bihar* actually provided good justification, and that the plaintiffs had not provided any proof that K. N. Singh was manifestly unapproved and required reassessment.¹² On May 9, 2022, the Additional Home Secretary M. K. Narayan filed an affidavit with the court stating: "The Government of India (GoI) is committed to protecting and preserving the integrity and sovereignty of the nation, but it has decided to re-examine and re-consider the idea of sedition in light of all the conflicting opinions on the matter."¹³

In response to the argument presented on May 9, the court issued an interim injunction on May 11 prohibiting the state and federal governments from filing FIRs under the clause. The judge stated:

"...it is evident that UoI agrees with the circumstantial evidence conclusion stated by this Court that the intent of Section 124A dates back to the country's colonial era, making it completely irrelevant to modern society. In light of this, the UoI may rethink the aforementioned legal provision. While this provision of the I.P.C. is being reviewed, we would appreciate it if neither the Central nor any State Governments filed any FIRs, continued any investigations, or took any coercive steps using S.124A."¹⁴

W. Hubbard, who is the editor of the *Journal of Legal Studies* and the author of "The Supreme Court of India: An Empirical Overview," has praised the Indian Supreme Court

¹¹ Supreme Court Observer. 2021. Constitutionality of Sedition: SG Vombatkere v Union of India, Supreme Court of India

¹² Solicitor General of India. 2021. Written Submissions on S.G. Vombatkere v. Union of India and other Connected Matters

¹³ . Union of India. 2021. Affidavit on S.G. Vombatkere v. Union of India and other Connected Matters

¹⁴ Supreme Court of India. 2021. Order on S.G. Vombatkere v. Union of India and others Writ Petitions

as one of the most efficient courts globally. Recently, the court has suspended a 152-year-old law, originating from monarchical England in the 13th century. In an interview with The Economic Times, he goes into further detail, noting, "We are not the first to make this case, but the SCI has a unique position owing to different variables." It is the highest court in the world's biggest common-law court system. The Indian Constitution affords the Supreme Court extensive jurisdiction to begin actions and ultimate appellate authority over all the other courts in the country. The fundamental structure theory grants the Supreme Court the authority to evaluate constitutional changes. These characteristics separate it from other prominent Supreme Courts, such as the United States Supreme Court (SCOTUS). And the SCI continues to be a highly regarded institution among the people of India (and abroad), lending credibility to its expansive powers."

CONCLUSION

The Indian Supreme Court, which is considered one of the most potent courts globally, has put in motion the long process, involving parliament, legal system, constitution, executive, and politics, for rethink on this "princely" provision of Sedition in the IPC. It's not uncommon for the three branches of the government to have conflicting interpretations of the law. The law, however throughout its long history, has typically been used to stifle free expression, especially dissenting voices voiced against governments, by the colonial masters in past, and later after independence, by the elected political representatives.

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