A CRITICAL ANALYSIS OF THE LAWS OF SEDITION IN INDIA

MAYA BHARATH

ABSTRACT

Sedition refers to an act that incites hatred or contempt towards the established government. Any endeavour to destabilize the government established by law would jeopardise the very existence of the State.The sedition law when introduced in India, was heavily drawn from the provision of the UK's Sedition Act, 1661. Post-independence, this law is modified to incorporate effective safeguards that withstands constitutional scrutiny. Nevertheless, it proves to act as an effective means to restrict free speech as public order poses as a limitation.

Moreover, the judiciary of India has had diverse opinions in relation to the constitutional validity of §124A as it stands in contravention of Article 19(1)(a) i.e., freedom of speech and expression which is the highest magnitude and living essence of a democracy. It is observable that §124A is merely an embodiment of the principle in Article 19(2). However, this is comfortably ignored. §124A proves only to be a protector of the sovereignty and integrity of the nation.

Further, the learnings of repealing the law of sedition in the UK cannot be a similar ground to conclude that the law of sedition in India can also be repealed. Repealing §124A would decriminalize anti-nationalist and anti-government activities not only by the citizens but also by aliens.

Hence, political strategies must not be permitted to be premised merely on the fact that the Indian Penal Code is obsolete and is in need of an overhaul. In view of the dynamic nature of the society, well-regulated debated across the nations should be conducted so that peaceful solutions may be attained.

INTRODUCTION

Sedition, as seen broadly, refers to an act that induces or incites hatred or disrespect for the State's constituted government. The terms treason and sedition are inextricably linked.

Black's Law Dictionary defines sedition as: "... communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamation of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any documents which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this State by violence or unlawful means."[1]

Clause 113 of the Draft Indian Penal Code (Draft Penal Code), drafted by Thomas Babington Macaulay in 1837, was the first legislation in colonial India to address the offence of

[1] Black's Law Dictionary, 11th ed, St. Paul, Minn West Publishing Co.

sedition.[2]However, the said section pertaining to sedition was mysteriously omitted when the Indian Penal Code was finally enacted after a 20-year delay in 1860. The omission was attributed to as an 'unaccountable mistake'[3] by Sir James Fitzjames Stephen, the architect of the Indian Evidence Act of 1872 and by the Law Secretary to the Government of India at the time and subsequently, numerous other reasons for the omission have been offered.

Some suggest that the British government wished to support a more systematic and powerful anti-press policy, such as the establishment of a deposit forfeiture scheme as well as more preventive and regulatory controls.[4]Others said that the omission was due to the presence of §§121 and 121A of the IPC, 1860.[5]Under the scope of these sections, it was expected that all seditious proceedings must be subjected to official scrutiny.

The urgent need of amending the statute, in order to enable the government to deal more efficiently with seditious activities was first recognised by the British in light of the increased Wahabi activities in the period leading up to 1870. With the rise of mutinous actions against the British, the need to make sedition a substantive crime was generally recognised, and the addition of a portion dealing directly with seditious rebellion was deemed necessary.

The bill containing the law of sedition was eventually enacted as a result of the acceptance of this growing surge of nationalism at the end of the twentieth century. On 25th November, 1870, the offence of sedition was added to IPC under § 124A, and it remained unchanged until 18th February, 1898. (The Indian Penal Code, 1898, §124A read as follows: "Whosoever, by words, either spoken or intended to be read or by signs or by visible representations or otherwise excite or attempts to excite feelings of disaffection to the Government established by Law in British India, shall be punishable with transportation of life … to three years to which fine may be added.")

Insofar as it borrowed extensively from the Treason Felony Act, the common law in relation to seditious libels, and the law relating to seditious terms, the revised legislation of 1870 was roughly organised around the law existing in England. The Treason Felony Act,[6]widely considered as one of the founding Acts of English law relating to treason, made those who harboured feelings of disloyalty against the Queen liable. Every thought implying disloyalty

[2] Arvind Ganachari, Evolution of the Law of "Sedition" in the Context of the Indian Freedom Struggle in Nationalism and Social Reform in A Colonial Situation 54 (2005)
[3] Walter Russel Donogh, A treatise on the law of sedition and cognate offences in British India
[4] R. Dhavan, Only the Good News: On the Law of the Press in India 285-87 (1987)
[5] These sections dealt with "waging war against the government" and "abetting to wage a war" respectively
[6] §3, The Treason-Felony Act, 1848.

or treachery to the Crown, together with the existence of an overt act, i.e., an act by which an evident criminal motive could be derived, was punishable under this law.

OBJECTIVES OF STUDY

The objective of this study with regard to a critical examination on the law of sedition is to analyse the judicial application of the law of sedition in India since the provincial period to highlight their vagueness and the non-uniform manner by which it has been applied.

Further the findings of the Court in the landmark case of *Kedar Nath v. State of Bihar* which upheld the constitutional validity of §124A will be studied that subsequently shows that the law of sedition has advanced significantly from that point forward.

Further, an investigation into two essential parts of the offense of sedition i.e., the nature of the 'government established by law' and the impact of the shift to a democratic form of governance post India's independence.

Subsequently an attempt to examinethe timeline of cases under the ambit of sedition presented before the variousHigh Courts and the Supreme Courtwill be taken up. Finally, an analysis of whether sedition is an obsolete law and whether it poses as an unreasonable restriction on the right of freedom of speech and expression guaranteed under the Constitution will be drawn.

RESEARCH PROBLEM

"A Critical Analysis of the Laws of Sedition inIndia"

RESEARCH QUESTIONS

1. Whether the law of sedition is constitutional valid?
2. Whether the law of sedition can be concluded as obsolete based on the repealed provisions of the law of sedition of England?
3. Whether it imposes unreasonable restrictions on the right of freedom of speech and expression as contained under Article 19(1)(a)?

RESEARCH METHODOLOGY

The methodology adopted for the work is a doctrinal method. This research would be consisting of the legislation "Indian Penal Code 1860", the amendments and the judicial

pronouncements rendered therein. It also consists of an over view of various articles that are in existence on the topic.

LITERATURE REVIEW

The review of literature demonstrates the research carried out by several other researchers in the past. The major part of literature for the topic derives its form from various judicial decisions and Articles in journals.

The following will give a critical analysis of the Laws of Sedition in India:

1. "An Analysis of the Modern Offence of Sedition", Nivedita Saksena & Siddhartha Srivastava - An argument for repealing the law of sedition is rendered in this article. A review of how the legislation has been understood and enforced by the Courts since *Kedar Nath v. Union of India* was read down is examined. The cases of sedition before the High Courts and the Supreme Court are also examined in this regard for interpreting the modern definition of the law of sedition.
2. "Revisiting the Law of Sedition in India - a critical study in the light of JNU Fiasco", Ankit Singh - The paper deals with the similarities and differences between the law of sedition and treason. Next, it understands the position of the law of sedition in India. Subsequently, the case against the law of sedition in regard to the JNU incident is appreciated.Further, the judicial trends relating to the law of sedition and sedition under §124A vis-à-vis Article 19(1)(a) and its misconceivednotions are discussed.
3. "Sedition Law: A comparative view in India with other countries", Tanu Kapoor - There are two parts that the research addresses: the first one describing, the origin and aim of Sedition Law in India along with 'whether the Sedition law acts genuinely', and the second part describing, a comparative study of Sedition Law being practiced in India and other countries.
4. "Sedition Law in India", Suvir Raghuvansh - The paper primarily deals with what sedition is andits Constitutionality in India. It goes further to explain thedifference between Treason and Sedition Law. Further, while discussing thehistory of Sedition, certainshort-term measures are suggested.Subsequently, the relevance of Sedition laws in India andon what groundsit can be questioned is discussed. Further,

theConstitutional history of Sedition law and the debate between the aspect ofLaw of Sedition v.the right of freedom of speech and expression is dealt with.

5. "The Crime of Sedition in India: An Archaic Colonial Repression - Is stringency enslaving the right to free speech?" Aditi Richa Tiwary - The work revisits the debates in the Constituent Assembly that concerns the right of freedom of speech and expression, that have been continued by judicial trends about the balance between freedom of speech and reasonable restrictions, ultimately narrowing the reach of sedition.

   Furthermore, statistics illustrating the disparity between arrests and sentences have been shown, and the impact on the right to freedom of speech and expression has been debated. The evolution of such rules in the United Kingdom, from their inception to abolition, has also been dealt with in detailed. The overall goal of the work is to determine if the sedition law can be retained or repealed.

ANALYSIS

DEFINING 'DISAFFECTION' UNDER THE COLONIAL REGIME

While being partially derived from the terms of the Treason Felony Act, the law of sedition that was enacted in India was less severe and yet more detailed. Sir James Stephen defended the amendment's incorporation in the Act by claiming that it was "free from a great deal of ambiguity and vagueness with which the Law of England was hindered."[7]However, when it came around for the Indian Courts to understand this provision, there was a lot of confusion about what the word "disaffection" meant. On a number of occasions, this was attempted to be overcome.

Queen Empress v. Jogendra Chunder Bose[8] is the first known State trial for sedition. The Court described the terms "disaffection" and "disapprobation" in its much-discussed decision. The use of spoken or written words to establish a tendency in the minds of those to whom the words were addressed, not to follow or defy the government's lawful authority, was described as disaffection.[9]

[7] Walter Russel Donogh, A treatise on the law of sedition and cognate offences in British India.
[8] ILR (1892) 19 Cal 35
[9] Ganachari, supra note 2; See also Siddharth Narrain, "Disaffection" and the Law: The Chilling Effect of Sedition Laws in India, XLVI (8) EPW 34 (2011)

The Court also said that "it is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will towards the Government, and to hold it up to the people's hatred and contempt, and that they were used with an aim to generate such feeling".

Another critical case that had an immediate bearing on the 1898 amendment was that of *Queen Empress v. Bal Gangadhar Tilak*[10]. In maybe perhaps the most far-reaching pieces of the law in colonial India, the Court deciphered §124A basically as exciting 'feelings of disaffection' towards the public authority, which covered inside its ambit assumptions like hatred, animosity, dislike, aggression, hostility, and all types of ill-will. It extended the extent of the offense by holding that it was not the gravity of the activity or the force of alienation, but however it was the presence of sentiments that was principal and simple endeavour to excite such emotions that was adequate to establish an offense.[11]

The Court further clarified the meaning of the terms 'disaffection' and 'disapprobation' in the case of *Queen Empress v. Ramchandra Narayan*[12]. In this, the Courtdisagreed with the thought that 'disaffection' was fundamentally something contrary to affection, yet it supported that an endeavour to excite disaffection among the majority was to be understood as an endeavour to"excite political discontent and alienation from their allegiance to a foreign sovereign."[13] In the case of *Queen Empress v. Amba Prasad*,[14]the Court, notwithstanding, held that even in instances of 'disapprobation' of the measures of the public authority, it can be concluded that a "fair and impartial consideration of what was spoken or written", that the aim of the accused was to excite emotions for disaffection towards the established government and accordingly it very well may be viewed as a subversive demonstration i.e., it constitutes sedition.[15] Thus,'disaffection' would include the "absence" or "negation" of affection as well as a "positive feeling of aversion" towards the government.[16]

DEVELOPMENTS IN THE LAW POST INDEPENDENCE

Succeeding India'sattainment of independence in the year 1947, the offence of sedition continued to be operativeas under §124A of IPC. Despite the fact that sedition was explicitly precluded by the Constituent Assembly as a ground for the restraint on the right of freedom

[10] ILR (1898) 22 Bom 112
[11] Janaki Bakhle, Savarkar (1983-1966), Sedition and Surveillance: the rule of law in a colonial situation.
[12] ILR (1898) 22 Bom 152
[13] supra note 1
[14] ILR (1898) 20 All 55
[15]Id.
[16]Id.

of speech and expression, this right was all the while being controlled under the aspect of this provision for sedition under IPC. On three critical events, the constitutional validity of this provision was challenged in the Courts of law. These instances then shaped the succeeding discourse in the law of sedition.

Preceding the judgement rendered in the case of Niharendu Majumdar[17], §124A was struck down as unconstitutional in the case of *Romesh Thappar v. State of Madras*[18], *Ram Nandan v. State*[19], and *Tara Singh v. State*[20]. In Tara Singh's case, the Punjab High Court relied on the principle that "a restriction on a fundamental right shall fail in toto if the language restricting such a right is wide enough to cover instances falling both within and outside the limits of constitutionally permissible legislative action affecting such a right."[21]

Throughout the debates surrounding the first amendment to the Constitution of India, the then Prime Minister, Jawaharlal Nehru was subjected to severe criticism by the opposition party members for the rampant curbs that were being placed on the freedom of speech and expression[22]. Along withthe decisions of the Courts in the previously mentioned judgments that held §124A to be unconstitutional, the criticisms compelled Nehru to suggest an amendment to the Constitution[23].

Therefore, through the first amendment to the Constitution, the additional grounds of 'public order' and 'relations with friendly States' were added to the list of Article 19(2) under thereasonable restrictions on the right of freedom of speech and expression as guaranteed under Article 19(1)(a). Moreover, the word 'reasonable' was added before 'restrictions' to impose a limitation onits possible misuse by the elected government. In the parliamentary debates, Nehru expressed that the goal behind the amendment was not the validation of laws like sedition. He further described it as 'objectionable and obnoxious' and propoundedthat it did not have merit in the scheme of IPC.

KEDAR NATH AND THE MODERN DEFINITION OF SEDITION

[17] Niharendu Dutt Majumdar & Ors. v. Emperor, AIR 1939 Cal 703
[18] AIR 1950 SC 124
[19] AIR 1959 All 101
[20] AIR 1951 SC 441
[21] Id
[22] Supra note 9
[23] Id

The decision of the Supreme Court in the case of *Kedar Nath v. State of Bihar*[24]laid down the interpretation of the sedition law as it is understood today. In this, five appeals to the Court were clubbed to decide the issue of the constitutional validity of §124A in light of Article 19(1)(a) of the Constitution. In the Court's interpretation the incitement to violence was considered an essential ingredient of the offence of sedition[25]. The Courthere, followed the interpretation of the Federal Court in Niharendu Majumdar's case. Therefore,sedition was established as a crime against public tranquillity[26] as opposed to a political crime affecting the very existence of the government.

Further, the pre-legislative history along with the opposition debates in the Constituent Assembly about Article 19 of the Constitution was looked into by the Court. Here, the Court observed that sedition had specifically been excluded as a valid ground on therestrictions to the right of freedom of speech and expression though it was incorporated in the draft Constitution[27]. This was demonstrative of a legislative aim that sedition is not be viewed as a valid exception to this freedom.

As a result, sedition could possibly fall within the domain of constitutional validity on the condition that it could be read into any of the grounds laid down in Article 19(2) of the Constitution. Of the grounds referenced under it, the Court considered 'security of the State' as a potential ground to support the constitutional validity of §124A. The Court employed the principle that when more than one translation may be attributable to a provision of law, it must uphold that particular interpretation that renders the provision constitutionally valid[28].

Furthermore, any understanding that makes an arrangement ultra vires to the Constitution should be dismissed. Accordingly, despite the fact that a plain reading of the provision doesn't recommend such a necessity, it was held to be obligatory that any seditious act should be accompanied by an endeavour to induce violence and disorder.

However, the Court ignored the aspect of "undermining the public order or the authority of the State"which had been rejected by the members of the Constituent Assembly. This was despite making a reference to this fact earlier in the judgment. The Court reasoned that since

[24] AIR 1962 SC 955
[25] See PSA Pillai, Criminal Law 1131 (K.I. Vibhute eds., 2009)
[26] See Rex v. Aldred, (1909) 22 Cox CC 1
[27] See also Romesh Thappar v. Madras, AIR 1950 SC 124 (per Sastri, J.: "Deletion of the word 'sedition' from draft Article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security or tend to overthrow the State."
[28] R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628

sedition laws would be used to preserve public order, and maintaining public order would be in the interests of the State's welfare, these laws could be justified in the latter's interests.

MAINTENANCE OF PUBLIC ORDER AS A LIMIT ON FREE SPEECH

The omission of the word "sedition" from the enacted Constitution was due to a disagreement about how the term could be interpreted[29]. To prevent any misunderstanding in its meaning, they used the expression "security of the State," which was intended to cover serious crimes such as sedition[30]. The Court in Kedar Nath agreed with this reasoning, stating that the sedition section was a reasonable restriction on the grounds of "public order" and "security of the State".

Furthermore, the addition of the term "in the interest of public order" to Article 19(2) through the first constitutional amendment with retrospective implementation was interpreted as an effort to affirm Fazl Ali, J.'s interpretation in *Brij Bhushan v. State of Delhi*[31]in which "public order" was linked to "State security"[32]. The addition of the words "in the interest of" before "public order" in Article 19(2) was interpreted as giving the government broad powers to restrict free speech[33]. As a result, the provision was seen as a validation of the law of sedition.

Courts have drawn a strong distinction between the words "public order" and "security of the State" since then[34].As previously mentioned, sedition is a crime against the State that punishes acts designed to overthrow the legal government. Provided that the word "in the interests of public order" is used in a very localised sense, even a simple disruption of public order may result in a charge of a crime against the State.

For example, punishing loud and raucous noise created by noise-amplifying devices in public spaces or excluding utterances likely to cause a riot are all possibilities. As a result of the strong distinction drawn between "public order" and "security of the State" in Ram Manohar Lohia, the Courts have placed a disturbance of public order condition for the crime to be proven in subsequent sedition rulings.[35]

AN OFFENCE AGAINST THE 'STATE'?

[29] Siddharth Narrain, "Disaffection" and the Law: The Chilling Effect of Sedition Laws in India, XLVI (8) EPW 34 (2011)
[30] Judicial Committee had stated that the intention or tendency to incite disorder was not an essential element of the crime of sedition as defined in the IPC
[31] AIR 1950 SC 129: (1950) 51 Cri LJ 1525
[32] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955
[33] The Court cited the decision in Debi Soren v. State, AIR 1954 Pat 254 to support this contention
[34] V.N. Shukla, Constitution of India 135 (M.P. Singh, 2008)
[35] Balwant Singh v. State of Punjab, (1995) 3 SCC 214: AIR 1995 SC 1785

While specifying the parameters of the crime of sedition, the Court in Kedar Nath also tried to differentiate between 'the Government constituted by statute,' as specified in §124A of the IPC, and people temporarily employed in the administration. The latter was said to be reflected by the State's visible emblem[36].

Any effort to undermine the law-enforced government and would jeopardise the State's very survival. However, any genuine criticism of government officials aimed at improving the government's working would not be considered unconstitutional under this provision. This exemption was created to defend journalists who criticise governmental actions.[37]

REPEAL OF THE LAW OF SEDITION IN ENGLAND

The act of sedition, as it came to be understood in modern England, had a far broader meaning than it did in India[38]. In addition, the penalty for committing the offence was overly harsh. The crime was punishable by life imprisonment or a large fine[39].

However, as criminal and civil law in England evolved, the act of sedition became almost obsolete. Just a few people have been charged with the offence in the past century. The provision was thus incompatible with the United Kingdom's universal human rights obligations.[40]As a result of the enactment of the Coroners and Justice Act, 2009, repealed the offence of seditious libel[41].

CAN SIMILAR JUSTIFICATIONS BE ATTRIBUTABLE TOTHE REPEAL OF THE LAW OF SEDITION IN INDIA?

The crime of sedition is becoming less and less important. The crux of the crimes of sedition, violence, and public disorder, can be contained by applying the aforementioned provisions of the IPC. The problem of maintaining public order is often addressed in separate laws of each jurisdiction[42]. As a result, a statutory provision for the prosecution of actions against the State or the government will be unnecessary.

[36]Supra note 24
[37] Durga Das Basu, Commentary on Constitution of India 2547 (Justice Y.V Chandrachud et al, 8th ed., 2008).
[38]Ibid
[39]Id.
[40] See Handyside v. United Kingdom, (1976) 1 EHRR 737 (Article 10 of the European Convention on Human Rights, 1950 guarantees the freedom of expression
[41] Press Gazzette, Criminal libel and sedition offences abolished
[42] See, e.g., the West Bengal Maintenance of Public Order Act, 1972; the Assam Maintenance of Public Order Act, 1947; the Goa Maintenance of Public Order and Safety Act, 1972.

Other, more precisely specified and less restrictive provisions can be used instead. An obvious benefit of prosecuting suspects with the regular criminal legislation rather than sedition laws being that offenders are not labelled and legitimised as "political offenders" rather than ordinary criminals, which is counterproductive.[43]

In addition, the Supreme Court has recognised citizens' right to information.[44]Given that most of the offences protected by sedition may be resolved by other penal code laws, it could be impossible to justify keeping seditious crimes on the books in light of their obsolescence. It just helps to undermine the public's interest in hearing alternative political viewpoints[45]. Such access cannot be withheld only on the basis that it can lead to people adopting or behaving on acting on convictions.[46]

Nonetheless, §124A is merely a manifestation of the idea enshrined in Article 19(2). §124A may be interpreted as a guardian or defender of India's sovereignty and dignity.

So, a natural concern is if, in repealing §124A, the fair limitations provided under Articles 19(2) to (6) of the Constitution can also be repealed, and whether the framers of our Constitution intended for people to have unbridled and unfettered rights without regard for the nation's interests.

Furthermore, repealing §124A would make anti-nationalist and anti-government acts legal not only for citizens but also for aliens. Defenders of freedom of speech and expression should be aware that the basic freedoms guaranteed by Article 19(1) apply only to people, while §124A punishes all citizens and non-citizens for seditious activities. As a result, though advocating for the abolition of §124A as a derogator of Article 19(1), these defenders are allowing non-citizens to engage in anti-nationalist activities.

CONCLUSION

Since the origin of the concept of sedition in the Courts of England, it has been defined by uncertainty and non-uniformity in its application. By keeping its scope purposely unclear, generations of individuals from the ruling of the political class have guaranteed that they have an apparatus to censor any speech that is in conflict with their interests.

[43] Ben Saul, Speaking of Terror: Criminalising Incitement to Violence, 28 UNSW LJ 874 (2005)
[44] Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161; AIR 1995 SC 1236.
[45] Eric Barendt, Interests in Freedom of Speech: Theory and Practice in Legal Explorations: Essays in Honour of Professor Michael Chesterman
[46] Eric Barendt, Freedom of Speech

The Courts have additionally been unable to provide distinct guidance to the law. While the final position on the law of sedition in India was set down as early as 1960, it is portrayed by its incorrect application and use as a device for provocation. Accordingly, it proves to be some of the purposes behind which individuals have been charged under the provision and often incarcerated for sedition.

Further, an analysis of the Honourable Supreme Court in its judgment in Kedar Nath's case demonstrates certain deficiencies in how the law is currently understood. There has been a shift in the way we comprehend 'security of the State' as a ground for restricting the right to freedom of speech and expression. Furthermore, a change in the public authority and the susceptibility of the commoners to be incited to violence by an inflammatory speech has likewise diminished significantly. Indeed, even the maintenance of 'public order' cannot be utilized as a valid ground to legitimize these laws as it is expected to address the local law and order issues as opposed to activities influencing the actual premise of the State itself.

On one hand, it may be argued that, as a result of the repeal of the law of sedition in England, the law of sedition is now obsolete. Certain laws regulate the upkeep of public order which can be used to guarantee public safety and tranquillity. However, the rule of sedition, as defined by §124A, is very straightforward in its meaning and purpose, and a prudent individual would not see it as a barrier to free speech and expression, but rather as a legitimate tool to hold anti-State actions in check.

Further, judicial pronouncements in this regard have distinctly set out the rule that anybody can reasonably reprimand the governmental policies and activities and demand reformations as long as they do not instigate or endeavour to prompt violence, rebellion, hatred, or contempt against the set-up government of the State.