

## SEDITION AND ITS CRIMINALIZATION

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### INTRODUCTION

One of the integral parts of democracy is dissent. But today if one exercises this constitutional right, he is pigeonholed as an anti-national or is labelled as a criminal. Section 124-A which defines sedition, was incorporated into the Indian Penal Code in 1870. Since then, it has been preserved and has become popular within the past few years. This law has been made to punish those people whose actions threaten the security of the government. Tracing down the history, Mahatma Gandhi was charged with sedition i.e. for spreading and inciting disaffection against the British Government. Back then, it was intended to suppress and repress all those who pointed out the exploitative and illegitimate colonial administration of the government. In February 2016, students of JNU were taken into custody when it was alleged that they raised anti-national slogans in the JNU campus. Also, Hardik Patel was charged with sedition for demanding reservation for Patidars in Gujarat. The scenario is still alike today. This law has always been used to shut people up who come up with the reality. The fact that the state was of British then and of Indians now, does not matter. What matters is whether the laws are implemented in the right way or not.

### SEDITION AND ITS NATURE

As envisaged in Section 124-A of IPC, whoever by words, either spoken or written, or by signs or otherwise, brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government shall be punished with imprisonment up to three years or for life. The expression 'disaffection' includes disloyalty and feelings of enmity. It is also stated that the comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means and of the administrative or other actions of the

Government, without exciting hatred, contempt or disaffection, do not constitute an offence.<sup>1</sup> The understanding of this law has been different for lower judiciary and the Supreme Court. The Allahabad High Court in *Ram Nandan v. State*<sup>2</sup> held Section 124-A unconstitutional and violative of Article 19. But the Supreme Court in *Kedarnath Singh's case*<sup>3</sup> upheld the validity of this section. This states that the apex court has adopted a strict approach while dealing with sedition cases but the government has been insensitive towards it. Sedition has been classified as an offence against the state since the colonial era as it was the state which ruled India. In those times, any action taken against the state could be punished as sedition, as the ruler could not be overthrown by any kind of disaffection but now the situation has changed and we have a constitution which is supreme than the ruling state.<sup>4</sup> In a democracy every citizen has a right to exhibit its disaffection for the ruling state as it will come and go without affecting the fundamental basics of the state. Therefore, the executive and the judiciary both have different outlook regarding sedition and act accordingly which has led to the present debate of scrapping this act or not.

## TRACING THE JUDICIAL TREND

In the case of *Kedar Nath Singh v. State of Bihar* (1962), Supreme Court held that the “comments, however strongly worded expressing, disapprobation of the actions of the government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.” The court also enlightened that it has a duty to protect its citizens from a law which restricts free speech, but not when the speech criticizes the government or create public disorder. In *Indra Das v. State of Assam*<sup>5</sup>, the Supreme Court unambiguously stated that only speech that amounts to “incitement to imminent lawless action” can be criminalized. In *Shreya Singhal v. Union of India*<sup>6</sup>, the famous 66A judgment, the Supreme Court drew a clear distinction between “advocacy” and “incitement”, stating that only the latter could be punished. Coming back to the present era, last month 15 Muslim men were

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<sup>1</sup> S. 124-A, Indian Penal Code, 1860

<sup>2</sup> *Ram Nandan v. State*, AIR 1959 All 101; 1959 CriLJ

<sup>3</sup> *Kedarnath Singh v. State of Bihar*, 1962 AIR 955; 1962 SCR Supl.(2) 769

<sup>4</sup> Available at <https://legalvoiceblog.wordpress.com/2016/12/02/misconception-of-sedition-in-india-a-comprehensive-legal-approach/> (July 10, 2017, 2:43 PM)

<sup>5</sup> *Indra Das v. State of Assam*, (2011) 3 SCC 380

<sup>6</sup> *Shreya Singhal v. Union of India*, (2013) 12 SCC 73

arrested in Burhanpur, Madhya Pradesh, as they were alleged to have been cheering for Pakistan when its team won the Champions Trophy by defeating India. The police registered a case against them under Section 124-A<sup>7</sup>. However, the police dropped the charges few days later as the as false witness was given. Recently, a No Hindi Day was observed in Karnataka opposing the imposition of Hindi in the state<sup>8</sup>. These two instances cannot be considered as a seditious act as nothing was enraged against the authority of the state. Every citizen has a right to express discontent individually or collectively either through words or actions as a fundamental right. The state cannot charge them with sedition each time it sees it an act which could dismantle their authority over its people.

## CONCLUSION

Law is dynamic in nature. But it does not seem so now-a-days. The state has been following most of the laws since its inception and has made a negligible change to improve or repeal them. One of them is the law of sedition which is being followed as it is since 1870. It has been used and misused many a times, some of which is stated above. The questions which should be answered are why this law has been stagnant? Do we not need to change it with changing times? Or no one has the right to question it or share one's opinion? Because according to this law, if one says what is contrary from what is to be heard, that person has committed a crime of sedition if it induces or provokes others to stand with him against the government. Therefore, the word 'sedition' should be used with caution before accusing someone for doing it. The approach of the implication of this law has to be revised as the times have change and so has been the importance of law in our day to day lives. India is a democracy and each citizen possesses fundamental rights of his own which can be exercised anytime. Article 19(1) (a) of the Constitution of India guarantees freedom of speech and expression which includes freedom to express discontent. Why each and every act which portrays disaffection towards government should be punished so severely. Only those acts should be punished which have a detrimental effect on the state or which could jeopardize the functioning of the state at a huge level.

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<sup>7</sup> Available at <http://www.ndtv.com/india-news/15-arrested-for-celebrating-pakistans-win-charged-with-sedition-in-madhya-pradesh-1714706> (JULY 2, 2017, 3:21 PM)

<sup>8</sup> *Should the sedition law be scrapped?* T.S.R. Subramanian, The Hindu, Friday, June 30, 2017