THE APPLICABILITY AND ENFORCEMENT OF SEDITION LAWS IN INDIA VIS-À-VIS THE RIGHT TO FREE SPEECH AND EXPRESSION

Written by **Kruthika Venkatesh**

3rd Year, BBALLB Student, School of law, Christ

1. Introduction

Over the past half a century, India has witnessed tremendous growth in fulfilling its economic and political ambitions. It has also strived to achieve social and cultural justice. Although this may be viewed as great achievements of moving towards a progressive society, the actions by the Government, has nevertheless invoked hatred and anger in situations where the laws are moulded to suit the interests of the Government, thereby enlarging the scope for the occurrence of public outrage and outbreaks, which ultimately create chaos in society. This paper essentially focuses on sedition laws in India, with a specific focus on Section 124A of the Indian Penal Code, 1860 and Section 95 of Code of Criminal Procedure, 1973. It also throws light on the history, concept and the applicability of sedition laws in India, the understanding of which is furthered by supporting it with the plethora of judicial pronouncements and the various incidents that have occurred in the recent past which are the result of the arbitrary usage of sedition laws by the government. The question that is sought to be addressed is whether a balance can be achieved between the usage and enforcement of such laws by the government without infringing the fundamental right of speech and expression of the citizens.

1.1 The History of Sedition Laws

The law defining sedition in India (Section 124A) at present was originally *Section 113* of Macaulay's Draft Penal Code of 1837-39, but the section was omitted from the IPC as it was enacted in 1860. James Fitzjames Stephens, the architect of the *Indian Evidence Act 1872*, has been quoted as saying that this omission was the result of a mistake[1]. Another explanation for this omission is that the British government wished to adopt more wide-ranging strategies against the press including a deposit-forfeiture system and general powers of preventive

[1] *W.R. Donogh , A Treatise on the Law of Sedition and Cognate Offences in British India, 1 (Calcutta: Thakker, Spink and Co., 1911).*

action[2]. This particular section was being introduced by the British colonial government in 1870 when it felt the need for a specific section to deal with the offence. It was one of the many draconian laws enacted to stifle any voices of dissent at that time. Prominent persons charged with sedition under this law include Bal Gangadhar Tilak (here, Section 124A was amended in the year 1898 to incorporate the interpretation given by Justice James Strachey wherein he interpreted that the term "feelings of disaffection" to mean hatred, enmity, dislike, hostility, contempt, and every form of ill will towards the government, which was continuously used as a tool to target nationalists by the colonial government) and Mohandas Gandhi (who was brought to court for his articles in *Young India* magazine). Mahatma Gandhi was a pioneer in recognising the fundamental threat it provided to democracy when he called it the 'prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen'[3].

The framework of this section was imported from various sources- the *Treason Felony Act* (operating in Britain), the common law of seditious libel and the English law relating to seditious words. The common law of seditious libel governed both actions and words that pertained to citizens and the government, as well as between communities of persons[4]. In the constituent assembly, K.M. Munshi, a lawyer and an active participant in the Indian independence movement, expressed concerns over the applicability of the word 'sedition' that formed part of the exceptions to right to freedom of speech and expression [Article 19(2)]. It was regarded to be a convenient medium to stifle any form of or expression or dissent or criticism and therefore, with continuous deliberation, it was removed from Article 19(2)[5]. The word 'sedition' did indeed disappear from the constitution when it was adopted on 26 November 1949, but section 124A stayed in the Indian Penal Code[6]. It was only in the year 1950 that the government introduced the first amendment which took place after the Supreme Court gave its verdict in two important cases[7].

---

[2] *R. Dhavan., Only the Good News: On the Law of the Press in India, 287-285 (New Delhi: Manohar Publications, 1987).*

[3] *A.G., Noorani, Indian Political Trials: 1775-1947, New Delhi: OUP, 2009, p. 235.*

[4] *Supra note 1 at p. 4*

[5] *Constituent Assembly of India Part I Vol. VII, 1-2 December 1948, available at-* http://parliamentofindia.nic.in/ls/debates/vol7p16b.htm accessed on 3 February 2011.

[6] Atul Dev, '*A History of the Infamous Section 124A'*, The Caravan- A Journal for Politics and Culture, pub. 25th February 2016, available at- http://www.caravanmagazine.in/vantage/section-124a-sedition-jnu-protests

[7] Supreme Court favoured and upheld contentions given on behalf of the government in two cases- first case concerning objectionable material in a magazine run by the RSS called 'Organiser' and second case wherein a magazine called 'Cross Roads' published articles for criticizing the government.

The initial cases that invoked the sedition law included numerous prosecutions against the editors of nationalist newspapers. The first among them was the trial of Jogendra Chandra Bose in 1891. Bose, the editor of the newspaper, *Bangobasi*, wrote an article criticising the Age of Consent Bill for posing a threat to religion and for its coercive relationship with Indians. His article also commented on the negative economic impact of British colonialism. Bose was prosecuted and accused of exceeding the limits of legitimate criticism, and inciting religious feelings. Herein, the jury could not reach a unanimous verdict and the judge, in that case, refused to accept any verdict that was not unanimous. The editor was released on bail and it was only after he issued an apology that charges against him were dropped[8].

1.2 The concept of Sedition

The law of sedition has assumed controversial importance now-a-days in view of the various changes that have taken place after independence of the country in 1947. The word 'sedition', in common language parlance, means stirring up rebellion against the government. It is used to designate those activities which, either by words, deeds or writings are calculated to disturb the tranquillity (peace) of the State and lead people to subvert the government established by law. The provisions of *Section 124A* (offence relating to sedition against the state) and *Section 505* (offences against public mischief) apply only to speeches and writing having intention to incite others to create public disorder or violence[9]. Mere criticism to the government would not necessary imply an intention or tendency to incite others to public disorder, unless they are those actions which fall within the ambit of Article 19(2). But more often than not, the actions of the government have proved to infringe on the right to freedom of speech and expression, thereby implying the increased scope of misuse of this provision by the authorities. Before this conflict is addressed, it is pertinent to address the various laws concerning sedition as are elaborated below.

2. Overview of the Laws dealing with Sedition in India

The Indian legislature has provided for a gamut of laws that deal with the concept of sedition, along with Section 124A of the Indian Penal Code 1860, which are either related to this

[8] *Aravind Ganachari, "Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response" in Engaging Terror: A Critical and Interdisciplinary Approach, (eds.) M. Vandalos, G.K. Lotts, H.M. Teixera, A. Karzai.*

[9] K.D Gaur, *Leading Cases on Criminal Law*, Universal Law Publishing Co., Pg. 186

particular provision or a seek to criminalise 'disaffection' shown against the state. This section primarily outlines those provisions of law, present in the statute book that deals with the concept of sedition and its subsequent punishment.

- *Indian Penal Code* (IPC), *1960*

Section 124A forms the main section that deals with sedition in the Indian Penal Code. This section carries with it a maximum sentence of imprisonment for life.

- *Criminal Procedure Code* (CrPC), *1973*

The CrPC contains *Section 95* which gives the government the power and the right to declare certain publications forfeited and thereby forfeit such material punishable under Section 124A but which may be done only if the conditions for validity of an order of forfeiture is fulfilled[10]- (i) that the Government has formed an opinion that the concerning document or material contains any matter and the publication of which is punishable under the mentioned sections and (ii) that the Government has stated in the order the grounds which has led to the formation of the opinion[11]. In addition to this power, the government has the right to issue search warrant for the purposes concerning the forfeiture of such publications.

- *Unlawful Activities (Prevention) Act* (UAPA), *1967*

Supporting claims of secession, questioning or disrupting territorial integrity and causing or intending to cause disaffection against India fall within the ambit of 'unlawful activity' which is provided for and highlighted under *Section 2(o)*. In addition, *Section 13* provides for the punishment of unlawful activities and prescribes imprisonment extending to seven years including a fine.

- *Prevention Of Seditious Meetings Act*, 1911

The Seditious Meetings Act, which was enacted by the British a century ago to control dissent by criminalizing seditious meetings, continues to be on our statute books. *Section 5* of the Act empowers a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his/ her opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

[10] Lalai Singh v. State of U.P, 1971 Cr LJ 1519 (All)
[11] Sadhu Singh Hamdrad Trust v. State of Punjab, 1992 Cr LJ 1002 (Punj & Har)

3. Conflict between the applicability of Sedition law & Article 19(1) (a)

This section of the paper focuses on whether the sedition laws are an anathema to the fundamental right of free speech and expression. This arises on account of the demands made by several public activists, who are in favour of re-examining the law on sedition in India.

Article 19 provides for Protection of certain rights regarding freedom of speech etc, wherein sub-clause (a) of Clause (1) mandates that all citizens have the right to freedom of speech and expression. However, Clause (2) provides for reasonable restrictions on the exercise of this right and which may be done in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence[12]. Freedom of speech is the bulwark of a democratic government. It is regarded as the first condition on liberty and the mother of all liberties[13]. In a democracy, freedom of speech and expression opens up channels of free discussion of issues. It plays a crucial role in the formation of public opinion on social, economic and political matters[14]. Therefore, it has been declared that overbroad restrictions on freedom of speech and expression are invalid[15]. On the other hand, Sedition, in the context of S.124A, in itself is a comprehensive term and it embraces all those, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to endeavour to subvert the Government and laws of the country[16]. But what is to be noted is that only the words which have the pernicious tendency or intention of creating public disorder or disturbance of law and order will the law step in[17].

The constitutional history and judicial precedence, as it stands today, mandates Section 124A to be constitutional and which is to be read in a manner as to ensure conformity with the Fundamental Rights. This was highlighted in the case of *Indra Das v. State of Assam*[18]. Earlier, in 1950, Section 124A was struck down as unconstitutional being contrary to Freedom of Speech and Expression guaranteed under Article 19(1) in the case of *Tara Singh v. State of*

[12] Indian Constitution, Art.19(2)
[13] Report of the Second Press Commission, Vol. I, 34-35
[14] MP Jain, Indian Constitutional Law, 7th Edition, Pg 1019
[15] *Amnesty International v. Sudan* (2000) AHRLR 297 (ACHPR 1999)
[16] Ratanlal & Dhirajlal, The Indian Penal Code, 34th Edition, Pg 262
[17] Kedar Nath, AIR 1962 SC 955 : 1962 (2) Cr LJ 103
[18] Indra Das v. State of Assam, (2011) 3 SCC 380

Punjab[19]. It was eventually in the case of *Kedar Nath v. State of Bihar*[20], where the Supreme Court overruled the 1958 judgment and held that the Sedition law was constitutional but at the same time observed that it must be narrowly interpreted and if given wider interpretation, it would not survive the test of constitutionality. Furthermore, although its constitutionality remained intact, it limited its connotation and restrained its application to acts linking intention or propensity to create chaos or disturbance of law and order or provocation to violence. The Supreme Court clearly distinguished between unfaithfulness to the government and remarking upon the actions of the government without inciting public disorder by act of violence. Moreover, the Supreme Court highlighted in the case of *Arup Bhuyan v. State of Assam*[21] , that speech and words that amount to "incitement to imminent action" can only be criminalized and that mere using of words that are distasteful do not constitute sedition and hence, cannot be punished.

Although it is a well known fact that criminal sanctions are the most severe sanctions that society can impose on a person[22] , it imposes the responsibility on the authorities to ensure that they understand the situation completely before imposing punishments that are restrictive to his freedoms or damaging to his reputation. But in the recent past, this particular provision has been misused to serve the interests of the Government as in the JNU incident (February 2016) where Kanhaiya Kumar, a student at JNU University, was arrested for voicing anti- national slogans but in actuality, they were organising a march to celebrate the death anniversary of Afzal Guru[23]. Other such recent cases include the arrest of Aseem Trivedi for drawing cartoons that made a mockery of Indian Constitution and the National Emblem and Hardik Patel who spearheaded the protest with the demand of reservation or quota for the Patels in Ahemdabad.

The arbitrary misuse of the offence relating to sedition does not end with IPC 1860 alone. In fact, the architecture of censorship is so skewed in its entirety, especially due to the operation of *Section 95* of the CrPC 1973 which authorises State governments to forfeit copies of any newspaper, book, or document that "appears" to violate certain provisions of the Indian Penal

[19] Tara Singh v. State of Punjab, AIR 1950 SC 124
[20] Kedarnath Singh v. State of Bihar, AIR 1962 SC 955
[21] Arup Bhuyan v. State of Assam, (2011) 3 SCC 377
[22] Ariel L. Bendor; Prior Restraint, Incommensurability, and the Constitutionalism of Means, 68 Fordham L. Rev. 289 (1999)
[23] The Hindu, 'JNU Row: What is the outrage all about?', Available at- http://www.thehindu.com/specials/in-depth/JNU-row-What-is-the-outrage-all-about/article14479799.ece

Code, such as Section 124A (sedition), Sections 153A or B (communal or class disharmony), Section 292 (obscenity), or Section 295A (insulting religious beliefs). Under *Section 96* of the CrPC, any person aggrieved by the government's order has the right to challenge it before the high court of that State. The key element of Section 95 is that it allows governments to ban publications without having to prove, before a court of law, that any law has been violated. All that Section 95 requires is that it "appears" to the government that some law has been violated. Once the publication has been banned, it is then up to the writer or publisher to rush to court and try and get the ban lifted. Therefore, this provides the government absolute authority and power to ban publications by way of a simple notification. Two such incidents have emerged on this account[24]- the first was the Jharkhand government's decision to ban the Sahitya Akademi awardee Hansda Sowvendra Shekhar's 2015 book, *The Adivasi Will Not Dance*, for portraying the Santhal community "in bad light" and the second was an order of a civil judge at Delhi's Karkardooma Court, restraining the sale of Priyanka Pathak-Narain's new book on Baba Ramdev, titled *Godman to Tycoon*, wherein the order was granted without hearing the writer or the publisher (Juggernaut Books). The order was on the ground that false facts were mentioned and it therefore damaged the reputation of Baba Ramdev. These incidents are a living testimony to the fact that Criminal law is structured in a manner that may prove to be detrimental to the interests of the public, if overregulation is permitted to be exercised by the government.

4. In Conclusion

In light of all the case laws cited aforementioned, including the various instances wherein overregulation and uncalled- for arbitrary usage of sedition laws have been utilised by the Government to suit their interests, it is pertinent to be note that there is an urgent need to narrow down the interpretation of the Section 124A of IPC in order to prevent its indiscriminate use in the frivolous and arbitrary manner. If this kind of regulation is undertaken wherein the law is moulded by the government to work in their favour then Section 124A will continue to have a "*chilling effect*" on freedom of speech and expression. The problem of legal reform is experienced when changes are initiated in the realm of the legislations. With regard to the applicability of Section 95 of CrPC, the solution put forth is to repeal Sections 95 and 96, take

[24] Gautam Bhatia, 'The architecture of censorship', Available at- http://www.thehindu.com/opinion/lead/the-architecture-of-censorship/article19504501.ece

the power of banning books out of the hands of the government, and stipulate that if indeed the government wants to ban a book, it must approach a court and demonstrate, with clear and cogent evidence, what laws have been broken that warrant a ban. The other problem that arises is a problem of legal culture, and therefore, a problem of our public culture. It can only be addressed through continuing and unapologetic affirmation of free speech as a core, foundational, and non-negotiable value of our Republic and our Constitution.