

SECTION 124 - INDIAN PENAL CODE: A REMNANT OF THE COLONIAL ERA

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INTRODUCTION

Section 124-A i.e. Sedition under the Indian Penal Code is an act that is likely to incite public disorder or disaffection or discontent towards the government established by law.¹The section was inserted by the Imperial Legislative Council Act of 1870, which was further amended in 1898 to add the term *disaffection*. Section 124-A was introduced with an intent to quell the dissent against the colonial rule by giving it an interpretation as wide as possible so as to give the government enormous scope for manipulation.²

The ambiguous elements of the section and the extent of punishment that it seeks to impose, are used arbitrarily by the government even today to curb free speech and control the ‘nonconformists’ for expressing dissent against the government. The recent cases of sedition against Arundhati Roy, Azeem Trivedi, Dr. Binayak Sen and many others are examples of blatant abuse of the law. Thus, highlighting the inherent lacunae in the undemocratic nature of the law which should devoid it of any legitimacy.³

This paper aims to make a case for ***Abolition of Section 124-A i.e. Sedition under the Indian Penal Code as it is against Article 19(1)(a) of the Indian constitution.*** The first chapter elucidates the legal interpretation of the section. The second, deals with how sedition is being used in contemporary India through Dr. Binayak Sen’s case. The third chapter outlines comparative legal developments. And the last chapter concludes the paper.

THE ILLIBERAL LAW

The colonial offence of Sedition, contained in Section 124-A under Chapter VI of the Indian Penal Code is defined as an offence against the state. It states that whoever by words either spoken or written, or by visible representation, brings or attempts to bring hatred or contempt or incites

¹ Oxford Dictionary of Law, pg. 498-499, (Jonathan Law, 7th edition, 2009).

²The Law of Sedition in India, pg. 14-16, (1964).

³ Saptrishi Dutta, Sedition in India: A Quick History, (September 4, 2012), The Wall Street Journal India Blog, available at <http://blogs.wsj.com/indiarealtime/2012/09/14/trivedi-case-sets-off-sedition-debate/>, (Last visited on August 3, 2016).

disaffection towards the *government established by law* shall be punished with imprisonment which may extend from three years up to life to which fine may be added.⁴

The primary elements of the rule like “disaffection” has been defined under the provision to include disloyalty and all feelings of enmity but it is largely left unclear as to what actually certifies to be disloyal or enmity leading to public disorder.⁵The expression “Government established by law” is defined as the visible symbol of State and for the charge of sedition the act must be against the institution of government comprising the basic structure and not against the ones engaged in administration for the current time being.⁶ But these elements over the years have been widely misinterpreted.

Sedition is a vague law which fails to explicitly define exactly what conduct is prohibited and relies heavily on interpretation which is broadly very subjective. It is due to this inherent elusiveness that it has been widely misused to suit the state’s case. Section 124-A is also flawed because it does not take into account the *mens rea* of an individual and rather gives primacy to the act alone. Further the provision is against the fundamental right of *freedom of speech and expression* as guaranteed under article 19(1)(a) of the Indian constitution which in no manner is an absolute right, because Article 19(2) of the Indian constitution enables the legislature to restrict the exercise of the right but subject to reasonability. Therefore, Article 19(2) limits free speech in the interest of state’s security or to maintain public order but, not for criticizing the government within legitimate limits. But Sedition tends to criminalize even a genuine criticism against the activities or measures of the government by convoluting it as an attempt to subvert the constitutional authority.

Taking advantage of the inherent ambiguity in the offence its application is also misconstrued. It is evident according to present trends that Sedition has become more of a political crime. Decision to prosecute is often taken by the government which is driven by political considerations. Moreover, since the offence is against the state represented by the government established by law in India, the content matter and parameters of seditious act or material varies on the impulses of the government for the time being.⁷

In the present era where freedom of speech is considered sacred this section is disrespectful of individual sovereignty because it not only unreasonably limits the right to express but also assumes the person legally responsible for an overt act is not guilty, rather the person who influences others to break the law is responsible.

SUPREME COURT’S INTERPRETATION

⁴ Indian Penal Code, Section 124-A.

⁵*Id.*

⁶ Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (Supreme Court of India).

⁷ Criminal Procedure Code, Section 196.

In *Kedar Nath Singh v. State of Bihar*⁸, the Supreme Court although upheld the constitutionality of Section 124-A, but curtailed its scope and ambit within the terms of Article 19(2), by limiting its application to only those cases where freedom of speech has been misused to instigate violence or public disorder realizing that a wider interpretation to the section would be *ultra vires* of Article 19(1)(a).⁹

However, if that is the position of law where the section is interpreted in a manner consistent with Article 19(1)(a) of the Indian Constitution and is not judged independently but in light of Article 19(2), then it certainly does not serve any distinct purpose of its own and therefore has no reason to exist.

A more recent case that would further advocate the need to abolish the section is *Dr. Binayak Sen v. State of Chhattisgarh, 2007*.¹⁰

DR. BINAYAK SEN'S TRYST WITH SEDITION

Dr. Binayak Sen, a pediatrician and a human rights activist, consistently raised his voice against the use of violence during anti-Naxalite movement *Salva Judum* and carried various investigations in the state of Chhattisgarh which earned him the ire of the government as is proved by how the state has attacked him for questioning it.¹¹ Dr. Binayak Sen was arrested and later convicted by the Raipur session court under the Unlawful Activities (Prevention) Act 1967, Section 124-A (Sedition) and 120-B (Conspiracy) of the Indian Penal Code and also under Chhattisgarh Special Public Security Act 2005, for his alleged involvement with the banned organization CPI(ML) and Naxalite activities.

According to Supreme Court's interpretation of Section 124-A in *Kedar Nath v. State of Bihar*, Sedition would be deemed to be committed only when the disaffection leads to direct incitement of violence or public disorder.¹² However, in the present case of Dr. Binayak Sen nothing of that sort could be established concretely as to whether the letters and books found in his possession, can be taken as evidence against him for it does not prove that he was either actively participating or

⁸Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (Supreme Court of India).

⁹ What is Sedition?- I: The Kedar Nath Singh Case, (August 12, 2012), Indian Constitutional Law and Philosophy, available at <https://indconlawphil.wordpress.com/2013/08/12/what-is-sedition-i-the-ke-dar-nath-singh-case/>, (Last visited on August 3, 2015)

¹⁰ Dr. Binayak Sen v. State of Chhattisgarh, (Second Additional Sessions Judge, Raipur), Session serial no.:182/2007, December 24, 2010, (Justice B.P. Verma).

¹¹Das SM., Verdict politically motivated, The Times of India 2011, available at <http://timesofindia.indiatimes.com/india/Verdict-politically-motivated/articleshow/7244875.cms#ixzzlAptnHLCS> (Last visited July 30, 2015)

¹² Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (Supreme Court of India).

aiding Naxalite activities which led to violence.¹³The other evidence produced against him is co-accused Pijush Guha's custodial confession regarding Dr. Binayak Sen's involvement in Naxalite activities which itself is against Section 25 of Indian Evidence Act.¹⁴Further the fact that Binayak Sen's meetings with Narayan Sanyal (co-accused) in Raipur Jail were with prior permission of prison authorities for medical purposes was overlooked by the court and rather unsubstantial police testimonies were given precedence and therefore without material evidence of violence against the constituted authority Dr. Binayak Sen was held guilty, and sentenced with life imprisonment.¹⁵

The decision certainly calls for legal scrutiny, for the facts of the above case clearly establish the political motivation.¹⁶For here, Dr. Binayak Sen was not held guilty for what he said or wrote as the section states, but for what he allegedly did according to the State i.e. conspiracy. It highlights the arbitrary nature and application of the section which is exploited by the state. The application of the section is inconsistent with its explanation which explicitly states that criticizing government measures without exciting or attempting to excite hatred, contempt or disaffection do not constitute the offence of Sedition. But evidently it is being used against even a legitimate dissent, else what Dr. Binayak Sen did was far from inciting violence or of seditious nature.

The liberal misuse of the rule by government has certainly raised questions about the validity of the section which was introduced by the colonial government in a modern constitutional democracy.

NEED FOR REASSESSMENT

The rampant misuse of the section in a liberal democratic setup calls for a serious reassessment of the offence. There are various examples where Sedition has been used as a powerful tool in the hands of people in power to silence peaceful and non-violent opposition which brings to the forefront the growing authoritative nature of the government and low tolerance levels. It undermines the fact that criticism of the government is a right of the people which is completely different from being against the country which the section conveys.

¹³Dr. Binayak Sen v. State of Chhattisgarh, (Second Additional Sessions Judge, Raipur), Session serial no.:182/2007, December 24, 2010, (Justice B.P. Verma).

¹⁴Dr. Binayak Sen v. State of Chhattisgarh, (Second Additional Sessions Judge, Raipur), Session serial no.:182/2007, December 24, 2010, (Justice B.P. Verma).

¹⁵Dr. Binayak Sen v. State of Chhattisgarh, (Second Additional Sessions Judge, Raipur), Session serial no.:182/2007, December 24, 2010, (Justice B.P. Verma).

¹⁶ Anand Teltumbde, How the State treats Friends and Foes of the Oppressed, 44(25), Economic and Political Weekly, pg. 8-10, (2009) available at <http://www.jstor.org/stable/40279228>, (Last visited on August 3, 2016).

The Britishers who introduced the law in India themselves repealed it in the 21st century citing it to be an *arcane* offence.¹⁷ United Kingdom, which created the offence of Sedition that India inherited, stopped prosecution under the offence long ago and formally abolished it as per the guidelines of the Law Commission of 1977 in 2009 by considering the fundamental problem with the nature of the law itself.¹⁸ The primary reason for its abolishment in United Kingdom and many other countries was that the offence was not in consonance with present day constitutional democracies and that there are sufficient other offences which cover the conduct amounting to sedition and it is better to rely on them than to on an offence which has the implication that the act or conduct in question is “political”.¹⁹

Taking cue from them and being aware of the perils of speech suppression India should also repeal Section 124-A.

CONCLUSION

The Indian legal system from being an artifice of its colonial masters has moved towards a social justice paradigm, securing constitutional rights for every citizen. Therefore, a colonial legacy like Sedition, which prevents citizens from expressing their opinion, contempt, criticism or hatred towards the duly established government, does not reflect the true spirit of modern democratic India. It must be repealed:

First, Sedition is a colonial remnant, repressive in nature which was used by colonial masters but today, it's a different situation altogether where the government is duly elected by people, and people are sovereign. Thus ending its utilitarian function. *Secondly*, freedom of speech and expression must be protected and fair comment or opinion cannot not be seen as disaffection towards the government, for criticism is the essence of democracy. *Thirdly*, Sedition is not required as an offence since the acts that it seeks to punish are already mentioned in various penal sections and therefore there is no need for such a politically motivated law. *Finally*, the retribution for sedition under section 124-A of the Indian Penal Code is highly disproportional to the nature of the offence which extends to life imprisonment.

Therefore, keeping in mind the reasons for the introduction of Section 124-A, its history, and the manner in which it curbs free speech for political persecution time has come that it must go now.

¹⁷ UK government abolishes seditious libel and criminal defamation, HRHN United Kingdom, (July 13, 2009) available at <http://humanrightshouse.org/Articles/11311.html>, (Last visited on August 3, 2016).

¹⁸ 18th The Law Commission report of UK, Treason, Sedition and Allied Offences, 48, (1977).

¹⁹ *Id.*