

AN INSIGHT INTO THE CONSTITUTIONAL VALIDITY OF THE SECTION-124A

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We have inherited many laws from the colonial regime and as it is said every coin has two side. When see the flip side or the problematic side of inheritance of this law than there are many laws which need the constitutional scrutiny and one such law is the **Section 124A**¹ of Indian Penal Code that is **SEDITION**. As stated in **KENNY**- the Law of Sedition relates to the uttering of the seditious words, the publication of seditious libels, and conspiracies to do an act for the furtherance of a seditious intention. Sedition, whether by words spoken or written, or by conduct, is a misdemeanour at common law punishable by fine and imprisonment. It in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the state². The offence is closely allied to treason - an offence against the state. **HALSBURY** lays down that the essence of the offence of treason lies in the violation of the allegiance owed to the sovereign. This law was first introduced in the colonial period to curb down the rising voice of people against the government. Earlier this law was not a part of IPC which was drafted by **Thomas Babington Macaulay**³ in **1837**. Sedition was originally enumerated under Section 113 of Macaulay's Draft Penal Code of 1837-39, but it was only in 1870 that the provision for sedition was inserted by the IPC (Amendment) Act. After the enactment of IPC in 1860, it was then a decade later

¹ Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

² Ratanlal & Dhirajlal by LexisNexis, The Indian Penal Code 262.

³ An analysis of the modern offence of sedition by Nivedita Saksena & Siddhartha Srivastava, <http://nujlawreview.org/wp-content/uploads/2015/10/Nivedita-Saxena.pdf>

due to the mutinous activities the colonial rule realized the importance of this law and it was on **November 25, 1870**, this law was incorporated in IPC.

This law was used by the British Government from time and again to suppress the raging revolt by the Indians against them. This law acted as many old-fangled laws enacted to smother the rising voice of distress and dispute against the colonial rule. In history there have been conflicts on the judicial interpretations of this law. In pre-Independence era there were many land mark cases decided by the both the Federal court and the Privy Council. There was distance of opinion in two landmark cases by the Federal Court and the Privy Council. In *Niharendu Dutt Majumdar v. King Emperor*⁴, the Federal Court was of the opinion that “public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence”. The judges were even of the view point that if there is no incitement to violence, there is no sedition.

Then came the judgement of Privy Council in a different case which contra dictated the very basic principle of the judgement of Federal Court. The Privy Council was of the view that acts like incitement to violence and insurrection are immaterial while deciding the culpability of a person charged with sedition and since the IPC defines the offence of sedition, unlike the English Law, one needs to go by that definition only. *Queen Empress v. Bal Gangadhar Tilak*⁵ was the first case wherein the law on sedition under Section 124A in the IPC was taken by the literally meaning of its definition. After which in 1947 the Privy Council, in the case of *King Emperor v. Sadashiv Narayan Bhalerao*⁶ recapitulated the law on sedition enunciated in Bal Gangadhar Tilak case, but also held the Federal Court's statement of law in the Niharendu Dutt Majumdar case was wrong and unsustainable. In the pre-Independence movement, the British Government has used this law to penalize many national leaders of freedom movement like **Bal Gangadhar Tilak, Mahatma Gandhi, Annie Besant** and many more. Mahatma Gandhi even remarked this law by stating that "Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen"⁷

⁴ Niharendu Dutt Majumdar v. King Emperor, AIR 1942 FC 22

⁵ Queen Empress v. Bal Gangadhar Tilak, ILR (1898) 22 Bom 1

⁶ King Emperor v. Sadashiv Narayan Bhalerao, [1947] L.R. 74 I.A. 8

⁷ Sedition and the government in The HINDU by Suhrith Parthasarathy, <http://www.thehindu.com/opinion/lead/sedition-and-the-government/article8241312.ece>

After Independence, the situation of this law did not change much and during the drafting of the Constitution, much discussion occurred over whether the term “sedition” should be included as a restriction upon the right to free speech and even K.M Munshi, a lawyer and activist argued that it should not be included but the law was briefly discussed in drafting committee and ultimately it resulted in maintaining this law in the same position as it was earlier in IPC. Until 1961 mostly all the cases of sedition were considered as a violation of the fundamental right covered under Article 19⁸ of the Constitution of India and so till then this law of sedition was considered to be Unconstitutional. But in *Kedar Nath Singh v. State of Bihar*⁹, the constitutional validity of Sec. 124A (i.e. sedition) was challenged and Supreme Court had an opportunity to clarify the scope of public order and after examining, the Court observed that since sedition was not included in Art. 19(2) and it is implied that a more liberal understanding was needed in the context of a democracy. The Court even made a distinction between strong criticism of the Government from those words which excite or incite to cause public disorder and violence. The Apex Court stated that out of six grounds listed in Article 19(2)¹⁰, the 'security of the state' should be taken as a possible ground to support the constitutionality of the Section 124A of the IPC and in this way the Supreme Court of India narrowed the scope of sedition by stating that 'incitement of violence or public disorder' should be there to apply sedition. The court also viewed this section constitutional by supporting the view of the Federal court in the case of *Niharendu Dutt Majumdar Vs. King Emperor*¹¹. In the recent case *Shreya Singhal v. Union of India*¹², the Supreme Court clarified the difference between 'advocacy and incitement'. The court has applied the concept of modern American test of a 'clear and present danger'.

Time and again after Independence this law is used by the Government established by law according to their whims and fancy and the punishment for it is also rigorous in nature, so it becomes one of the most vulnerable laws in IPC. India still follows a 156 year old, colonial era law which is similarly advocated in the countries across the globe like Saudi Arabia, Malaysia,

⁸ Article 19:- Protection of certain rights regarding freedom of speech etc.

⁹ *Kedar Nath v. Union of India*, AIR 1962 SC 955.

¹⁰ Protection of certain rights regarding freedom of speech etc (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause 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

¹¹ *Niharendu Dutt Majumdar v. King Emperor*, AIR 1942 FC 22

¹² *Shreya Singhal v. Union of India*, (2013) 12 SCC 73.

Iran and Turkey. The government has used this law to curb the raising revolt, be it of a social worker or a cartoonist.

In the recent times, agitating against the Gujarat Government for the rights of Patel community, **Hardik Patel**¹³ was charged and the other arrest by the Delhi Police, at the behest of the Home Ministry, of **Kanhaiya Kumar**, president of the Jawaharlal Nehru University (JNU) Students Union¹⁴. There was an event held by the students of Jawaharlal Nehru University (JNU) against the capital punishment to the 2001 Indian Parliament attack convict [Afzal Guru](#) and for 'the struggle of Kashmiri people for their democratic right to self-determination'. The Permission for event was withdrawn by the Vice-Chancellor of JNU a few hours before the event but students considering it their 'freedom of speech', didn't stop and went ahead with it. There was even an protest march kept after the event against the judicial killing of Afzal Guru and Maqbool Bhatt and in that march anti-national slogans were chanted like "*Kashmir ki azadi tak jung chalegi, Bharat ki barbaadi tak jung chalegi*" (War will continue till Kashmir's freedom, war will continue till India's demolition), "*Bharat ki barbaadi tak, jung rahegi, jung rahegi*" (war will continue till India's demolition), "*Har ghar se Afzal niklega*" (Afzal will come out from every house) and many more. The JNU Student Union president, Kanhaiya Kumar was arrested under the charges of IPC Sections 124A (sedition), 120B (criminal conspiracy) and 34 (acts done by several persons with a common intention) for chanting this slogans but later on he was released on bail as no footage found him chanting anti-national slogans. The Rajnath Singh, India's home minister speaking on this matter said that, "*If anyone raises anti-India slogans, tries to raise questions on country's unity and integrity, they will not be spared*"

The most recent incident is that of a actor-politician and former MP of Congress party Divya Spandana also referred as 'Ramya', against whom the sedition complaint has been filed in a magistrate's court in Karnataka's Kodagu district. She had been to the SAARC Young Parliamentarians Conference, Pakistan and after coming back she gave a statement that "*Pakistan is not hell, people there are like us*" and due to this statement a complaint was filed against her. The example of other people who are booked under this section are Manoj Shinde-Editor, Kahturam Sunani-Journalist, Gautam Mehta-Photographer, Aseem Trivedi-Cartoonist,

¹³ Render sedition unconstitutional in THE HINDU by P .D.T. Achary,
<http://www.thehindu.com/opinion/lead/sedition-legislation-meant-to-suppress-the-voice-of-indian-people/article7758013.ece>

¹⁴ Sedition and the government in The HINDU by Suhrith Parthasarathy,
<http://www.thehindu.com/opinion/lead/sedition-and-the-government/article8241312.ece>

Piyush Sethia-Environmentalist and Organic Farmer¹⁵ and many more. After 70 year of independence, the Government is still using this law merely to tacit the critics and the 19th century law which was used then to tight-lipped the Indian people by Colonial Rule, has now been more often used after independence by the Indian Government than the British government.

Chapter 6¹⁶ of IPC clearly deals with the offence against the State and it is important to understand that after 69 years of independence a law which was used by the colonial rule to curb the disaffection against them is still been professed. The 1st Prime Minister of Independent India, **Mr. Jawaharlal Nehru** categorically pronounced that the offence of sedition was fundamentally unconstitutional and quoted that, *“Now so far as I am concerned [Section 124A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass,”*¹⁷.

Looking around the globe, many countries like United Kingdom, Scotland, South Korea and Indonesia have abolished this law from there statutes and even there are many countries like U.S.A and others who have given more importance to the freedom of speech than to curb the freedom. The sections of chapter 6 and 8¹⁸ of IPC are relevant to this law and can be used as an alternative to this law of sedition. The Hon’ble Supreme Court has also stated specific guidelines and has said that for such a serious crime, a proper care should be taken before charging someone under this law. The unity and integrity of India and the legitimacy of the Indian state are not as weak as it was in the case of the Colonial regime to be threatened and shattered by the speeches or the writings of a section of a specific class and India of the 21st century does not require a law used by the Colonial Government to suppress it's democratic voice. According to Chairman of 21st Law commission, Justice **Balbir Singh Chauhan** speaking on Sedition said that, *“Actually sedition law requires reconsideration. We do not know what is the problem, what are the difficulties. We will hear all the stakeholders, consult criminal lawyers.”* From the recent incidents of using this law so loosely and the manner in

¹⁵ A sample study of major Bottlenecks in Sedition laws affecting the Fundamental Right of Freedom of Expression by Anviti Mishra,
<http://ijesls.com/A%20Sample%20Study%20of%20Major%20Bottlenecks%20in%20Sedition%20Laws%20affecting%20the%20Fundamental%20Right%20of%20Freedom%20of%20Expression-Anviti.pdf>

¹⁶ Chapter 6 IPC:- Offences Against The State

¹⁷ Sedition and the government in The HINDU by Suhrith Parthasarathy,
<http://www.thehindu.com/opinion/lead/sedition-and-the-government/article8241312.ece>

¹⁸ Chapter 8 IPC:- Offences Against the Public Tranquillity.

which this law has been utilized by the government has been very careless and inappropriate. The largest democracy in the world with more than 65% of its population in the age group of less than 35 and where there is free flow of ideas, words, criticism and innovation, such country does not require a law which curbs your voice the movement you say something against or criticize the government established by law. It is time that we make a deeper introspection and it is needed to either curb it or narrow down the perspective of this law, because if it is not done right now than in the coming years, this law may be used more often and more badly to curb the youth by the government established by law.

In the end, this law is both, first the violation of Article 19(1)¹⁹ and secondly it is an 'anti-national' law and Legislative reforms are much needed to undergo for this law. The Parliament should either amend or abolish this law and even the Supreme court, the protector of fundamental rights of the citizen should struck down this law as it is constitutionally not viable for modern India. It was Aptly stated by the **Thomas Jefferson**, 3rd US President and one of the founding father of America that,

"When the people fear the government, there is tyranny. When the government fears the people, there is liberty."

¹⁹ Protection of certain rights regarding freedom of speech etc.