

Law of Sedition in Contrary to Freedom of Speech and Expression

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“Section 124a under which I am happily charged is perhaps the prince among the political sections of the Indian penal code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.”

~ Mahatma Gandhi

Abstract: All the laws we have are for the welfare of the society, some are inherited from colonial rule during the British period and some are from Indian regime. Now those laws which have been inherited from colonial rule are still in existence today and among them the most debatable provision is section 124-A of Indian penal code which talks about sedition law in India. The true spirit of the legislation is unclear behind the interpretation of this provision. This section is being used as an arbitrary tool by the government against those who intend to ask reasonable questions or those who attempt to show their disaffection towards the government infringing their fundamental right of freedom of speech and expression. In this article we are going to critically analyse the law of sedition and the judicial pronouncement regarding it, which is mostly infringing the freedom of speech and expression. Through this article we will try to reach a favourable outcome or solution which will discard the vagueness of this section enhancing the true spirit of legislation. It is of utmost importance that this provision needs to be examined by superior and competent courts because it's clearly evident that this provision is not being properly executed these days and is in constant contrary to article 19(1) of our constitution. My notion about this provision is very clear, the law of sedition was taken from the British law and in the year 2009 they declared the law of sedition as null and void, so it is essential for us to determine the need for such derogative provision in our legal system. It should also be made clear that what sort of disaffection or expression against the government will amount to sedition.

1. Introduction

The law relating to the offence of sedition was first introduced in colonial India through Clause 113 of the Draft Indian Penal Code ('Draft Penal Code'), proposed by Thomas Babington Macaulay in 1837.¹ However, when the Indian Penal Code ('IPC') was finally enacted after a period of 20 years in 1860, the said section pertaining to sedition had inexplicably been omitted. Although Sir James Fitzjames Stephen, architect of the Indian Evidence Act, 1872, and the Law Secretary to the Government of India at the time, attributed the omission to an 'unaccountable mistake' [1] various other explanations for the omission have been given. Some believe that the British government wanted to endorse more comprehensive and powerful strategies against the press such as the institution of a deposit forfeiture system along with more preventive and regulatory measures. [2] Others proffered that the omission was to be primarily attributed to the existence of §§121 and 121A of the IPC, 1860.⁴ It was assumed that seditious proceedings of all kinds were to be subject to official scrutiny within the ambit of these sections.

The word "Sedition" does not occur in Section 124-A of the Indian Penal Code or in the Defence of India Rule. It is only found as a marginal note to Section 124-A, and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known. The word Sedition has been a word of varying import in English Law, 150 years ago when holding a meeting or taking out a procession was considered Sedition. The term of Sedition is derived from the Latin word Sedition which in Roman times meant an Insurrectionary Separation (Political or Military) Dissension, civil Discord, Insurrection, Mutiny. It needs to be adverted that the word 'Sedition' does not turn

up anywhere in the Indian constitution and if an offence against the state as enumerated in the Indian Penal Code, in which Article 19 of the constitution holds great relevance. The contemporary discernment of Sedition in India encompasses all those practices, whether by words, deed, or writing that is reckoned to disturb the tranquillity of the State and lead ignorant person to debase the Government. Section 124-A of the Indian Penal Code defines as follows that '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 excite or attempt 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. [3]

Today the law of Sedition in India has assumed controversial importance largely on account of change in the body politic and also because of the constitutional provision of freedom of Speech guaranteed as a fundamental right. The law of Sedition as continued in Section 124-A I.P.C was also embodied in some other statutes⁴ however the general statement of Law was similar in all the provisions and could be gathered from Section 124-A I.P.C. The legislative History of this section of the Indian Penal Code dealing with Section of Interest. The draft prepared by the Indian law commissioners in 1837 contained a provision on the topic and it was proposed to include it in the Indian Penal Code.

2. Meaning of Section 124-A

Sedition is an offence which is against the state as enumerated in the Indian Penal Code. The expression 'disaffection' includes disloyalty and all feelings of enmity.

Volume 8 Issue 4, April 2019

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To constitute an offence under Section 124-A of the Indian Penal Code it is not necessary that one should excite or attempt to excite mutiny or rebellion or any kind of actual disturbance, it would be sufficient that one tries to excite feelings of Hatred or Contempt towards the government. The essence of the offence of Sedition is incitement to violence mere abusive words are not enough and that 'Public disorder or the reasonable anticipation or likelihood of Public disorder is the gist of the offence' [4]. In *Kedar Nath v. State of Bihar* [5] the Supreme Court upheld the validity constitutional validity of the Section 124-A of the Indian Penal Code. It was held that only acts which constitute incitement to violence or disorder would be punishable under this section and acts not aving such tendency are not punishable. Therefore Section 124-A of the Indian Penal Code does not violate Article 19(1) (a) of the constitution of India. Both successful and unsuccessful attempts to excite disaffection were placed on the same footing. So even if person had only tried to excite the feelings he could be convicted. Whether any disturbance or outbreak was actually caused by such attempt was absolutely immaterial.

Role of Intention in Sedition

"Intention is an essential part to the offence under Section 124-A of the Indian Penal Code. The essences of the crime of Sedition consist in the intention with which the language is used. The intention must be judged according to the language itself. When a man is charged in respect of anything he has written or said, the meaning of what his language would be understood to mean by the people to whom it was addressed. In determining the question we must look at the speech as a whole and not to pay undue regard to any particular sentence or phrase, and looking at the speech as a whole we have together from the language used what the intention of the speaker was. It was not open to the speaker to say that he did not intend his language to bear the meaning which it naturally does bear. In Sedition it is not necessary for the prosecution to prove the intention directly by evidence which in most cases would be impracticable. According to law the language and conduct of the accused shows that whether the intention is good or bad. It will be then for prosecution to show that his words were harmless and his motives innocent. When certain speech forms part of a series of speeches or lectures on one topic delivered within a short period of time, any of such speeches or lectures is admissible under Section 14. As evidence of the intention of the speaker in respect of the speech which forms part of the prosecution in present case and a period of six months cannot be described as long for this purpose. An accused prosecuted for an offence under Section 124-A of the Indian Penal Code can be convicted on the basis of the short abstracts taken down from his speech, if the portion taken down is seditious character".

By Signs or Visible Representation

According to Section 124-A of the Indian Penal Code [6] the manner in which seditious activities can be carried out is by words, either spoken or written or by signs or by visible representation or otherwise term words either spoken or written or by sign present no difficulty in understanding . "Writing may be in the form of drama, story, and novel essay. The offence under this Section may be committed by means of writing or print or pictures. The exhibition of flags

is a mode of using signs or visible representation. According to law commissioners as per Article 5 Section 3 of the chapter 2nd of the digest of the English criminal law commissioners, public speaking is specified together with the exhibiting of flags, inscription etc. Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind" [7]

Constitutionality of Provision of Sedition

An Allahabad case having held that section 124-A imposed restriction on freedom of speech not in the interest of general public declared section 124-A as ultra vires the constitution. But overruling this decision Supreme Court held section 124-A intra vires. [8] To the realization that freedom of speech and of the press lay at the foundation of all democratic organizations for without free political discussion no public education, so essential for the proper invoke risks of abuse. Therefore, unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, such law cannot fall within the reservation under clause (2) of Art. 19, although the restrictions which it seeks to impose may have been conceived generally in the interest of public order. It follows that section 9(1-A) of Madras Maintenance of Public order Act, 1949 (XXIII of 1949) which authorized imposition of restrictions for the wider purpose of securing public safety or maintenance of public order falls outside the scope of authorized restrictions under clause (2), and is therefore void and unconstitutional." [9]

Freedom of Speech and Sedition In India

Inter-related to the a problems of meaning and scope of S. 124-A of IPC is the question of *vires* which arises because of the guarantee of freedom of speech in the Constitution of India and the power of the courts under the Constitution to act as the guarantors and protectors of liberties. Clause (1) of Art. 19 secures "freedom of speech and expression" and clause (2)

Contains a limitation on the right of freedom of speech guaranteed by clause (1). The limits set out on the freedom of speech and expression by article 19(2) as originally enacted came to be considered by the Supreme Court in a few cases. [10] referring to the limits set out by Art. 19(2) to permissible legislative abridgement of the right of free speech and expression, the court held that they were very narrow and stringent. [11]

In *Tara Singh v. State* [12] the validity of S. 124-A of the Indian Penal Code was directly in issue. The East Punjab High Court declared the section void as it curtailed the freedom of speech and expression in a manner not permitted by the Constitution. The court was of the opinion that S. 124-A had no place in the new democratic set up. [13] By the Constitution (First Amendment) Act, 1951, two changes as consequence were introduced in the provisions relating to freedom of speech and expression.

Firstly, it considerably widened the latitude for legislative restrictions on free speech by adding further grounds therefore;

Secondly, it provided that the restriction imposed on the freedom of speech must be reasonable.

3. Conclusion

The Sedition Act seeks to limit and control freedom of expression far beyond what is permissible under International Law. The Sedition Act must be given a narrow interpretation having regard to the particular Rights at issue, namely freedom of speech and expression and liberty of the persons, and the purpose of the restriction. The purpose of restricting speech under the Sedition Act is protection of National Security. However according to International Human Right Law, as freedom of expression is fundamental to a functioning democracy, it can be restricted only with regard to serious threats to National Security. The exercise of the Right to freedom of expression cannot be punished on the basis that a statement might possibly jeopardize National Security.

Although on its face the Sedition Act is a Law of general application the Government has been applying the Law in an arbitrary manner, in bad faith and for an improper purpose to prevent political opposition. It cannot be said that the Sedition Act is prescribed by Law or that persons charged with Sedition are being deprived of their liberty of the person in accordance with Law. The effect of restriction- the stifling of all political speech- is disproportionate to the aim of protection of the National Security. The power of words can never be underestimated. Indeed words and language may be the only thing that separates man from beast. It is the importance of words in the continuing development of Civilization and Humanity and for the spread of ideas and knowledge that causes more states around the world to protect words. This is done through various means, the most important of which is the guarantee of the Right to free speech. However words can be double edged sword. They can be used to determine the authority of the very state that protects them. They can used to incite violence and disorder against the state and citizens

References

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- [2] R. Dhavan, *Only The Good News: On the Law Of the Press in India* 285-87 (1987).
- [3] Indian Penal Code 1860
- [4] *Niharendu v. Emperor (1942) F.C.R.38*
- [5] A.I.R 1962 S C 955.
- [6] *Section 124-A, Indian Penal Code 1860*
- [7] Ratanlal & Dhirajlal by LexisNexis, *The Indian Penal Code*
- [8] *Kedar Nath Das v. state of Bihar*, AIR 1962 SC 955
- [9] *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124.
- [10] *Romesh Thappar v. State*, [1950] S.C.R. 594; *Brij Bhushan v. State*, AIR 1950 S.C. 129; *Dharam Dutt v. Union of India*, AIR 2004 SC 1295. See also *Surjan Singh v. State of Rajasthan*, AIR 1965SC 845; *Supdt. Central Prison v. Dr. Lohia*, AIR 1960 SC 633; *Madhu Limaye v. S.D.M. Monghyar*, 1970 (3) SCC

[11] *Romesh Thappar's case*, p. 602.

[12] *Tara Singh Gopichand v. State*, AIR 1951 E.

[13] "*India is now a sovereign democratic state. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about.*" Per Weston, CJ. *id* at 29.