

Are You an Anti-National: A Critique on Law of Sedition in Free India

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Abstract: Sedition is a topic that has been in the news for quite some time now, be it in relation to the arrest of the JNUSU leader Kanhaiya Kumar for raising slogans in the JNU campus or the Kanpur based cartoonist Aseem Trivedi for mocking Constitution, law of sedition is being sought against human rights activists, journalists and public intellectuals for any “speech” that does not seem to appease the authorities and in most scenarios the masses. The exact number of cases filed with sedition charges in India are not known, however there have been more than 300 cases in High Court and close to 20 that reached the Supreme Court.¹ With figures like these it becomes imperative to understand as to what in fact is sedition.

Keywords: Law of Sedition, India.

1. Introduction

If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter.

- George Washington

The father of our nation Mohan Das Karamchand Gandhi had once described the law of sedition as “prince among the political sections of the Indian Penal Code designed to suppress liberty of the citizen.”¹ Law of sedition is prescribed in Section 124A of Indian penal Code 1860 and in laypersons terms refers to a provision by which any person who causes disaffection among people against the government by his words or actions can be brought to justice i.e. punished. The law of sedition as we shall find out ahead criminalizes speech that causes disaffection towards the government but at the same time it does not go into the nuances that make up that speech or explain as to what shall be the nature of this speech which in turn results in widening of the scope of this “speech” to an extent that there no line can be drawn to differentiate it from any other speech that is not culpable, leading to a clash of law of sedition with the freedom of speech and expression guaranteed to all citizens. Amongst all fundamental rights, freedom of speech and expression has been kept at a pedestal, it is one of the most important rights that the citizens of a democratic country can avail, so what would be the consequences if freedom of speech and expression is curtailed by the law of sedition? Is there a way by which they both can co-exist in harmony?

2. What is sedition?

Chapter VI IPC deals with offences against the State.

Section 124A IPC defines sedition as:

124A. 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

Sedition is any form of speech, action, writing that incites hatred against the established order and harms the systematic peace of the country. Seditious words written against the ruling government and authority is called 'seditious libel'.³

Technically speaking the word sedition has not been defined under IPC and it is only present as a peripheral note to the section whilst the section prescribes the punishment for the acts enlisted under it. Coming to the section at hand, it provides certain acts that when done are liable for punishment. The section prescribes that the act or attempt by any person by means of speech,

² Section 124A Indian Penal Code 1870

³ Hetal Chavda, *Autonomy Is As Autonomy Does- Law of Sedition in India*, 2 IJIR 30 (2016)

either spoken or written or through signs or visible representation for the purpose / motive of bringing into hatred or creating or exciting disaffection against the government of India is punishable by a term of 3 years and fine and that can be extended to imprisonment for life and fine. But what is really fascinating is that the term "disaffection" has not been defined in the act and it is merely provided as being inclusive of disloyalty and all feelings of enmity. This lacuna in explaining the meaning of the aforementioned terms leaves a lot of room for doubt and in such a situation courts have time and again explained as to what disaffection means, for instance, Mr. Justice Strachey in his direction to the Jury in *Queen-Empress v. Bal Gangadhar Tilak*⁴, in explaining [Section 124A](#) explained disaffection as "It means hatred, enmity, dislike, hostility, contempt, and every form of ill will to the government. Disloyalty is perhaps the best general term, comprehending every possible form of bad feeling to the government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the government."⁵

But the section has taken care to indicate clearly that strong words under lawful means used to express disapprobation of the measures of the Government with the view to their improvement or alteration would not come within the section. Similarly, comments, however, strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.⁶ These exemptions that are provided in the explanations are appended so that honest comments, critique etc. are not punishable under the section. But the practical situation is far from ideal, in absence of clear definitions of words like disaffection, disloyal and enmity the application of the statute becomes very tricky and if the speech that would be punishable is not construed in a narrow manner the scope of the section widens a great deal so as to take in its coverage pretty much any speech that seems to offend some people but was in no way seditious or with the intent of causing disaffection against the government and this especially applicable to persons of media or any common person who becomes the victim of such law merely by reason of expressing their views or making a genuine critique. In this situation it becomes very chaotic as there is no definite criteria as to how can it be decided as to which speech is just a comment and not insightful of an offence and which speech is seditious and hence liable to be punished, leading to another conundrum i.e. who is to decide what is seditious speech?

⁴ (1898) ILR 20 All 55

⁵ *Queen-Empress vs Amba Prasad* (1898) ILR 20 All 55

⁶ *Supra* note 4 at 31

3. Freedom of speech and expression:

Freedom of speech is the bulwark of democratic government.⁷ Freedom of expression constitutes one of the essential foundations of a democratic society, a basic condition for its progress. Traditionally, the freedom of expression was deemed to guarantee effective political and social debate essential for the proper operation of any democratic system.⁸ In the case of *Odyssey Communications Pvt. Ltd v. Lokvidayan Sanghatana*,⁹ Supreme Court made an observation that amply reflects on the standing of freedom of speech in a democracy and stated that, "Freedom of expression is a preferred right which is always very zealously guarded by this Court."¹⁰ Article 19 (1)(a) of the Constitution of India entails the freedom of speech of expression. It provides as –

"19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;"¹¹

Essentially freedom of speech and expression refers to the freedom that is accorded to every citizen of India by virtue of which he can express his views, opinions, comments etc and it also includes the freedom of press. This freedom of speech is not as basic as it seems, especially in a country like ours wherein we have a democracy it is of utmost importance that the citizens speak up and participate in the functioning of the state, and any curtailment of this fundamental right can render the whole idea of freedom frustrated which our forefathers had fought very hard to achieve.

Like every fundamental right the freedom of speech and expression is not absolute and there are qualifications on this freedom in the form of "reasonable restrictions"¹² as provided under Article 19(2) of the Constitution of India.

"19. (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

⁷ PROF. M P JAIN, *INDIAN CONSTITUTIONAL LAW* 1078 (Lexis Nexis Butterworths Wadhwa Nagpur 6th Ed., 2012)

⁸ Joydip Ghosal, *An Essay on the Expanding Trends and New Challenges to Freedom of Expression in India* 3 *IJHSSI* 27, 27 (2014)

⁹ 1988 AIR 1642

¹⁰ *Ibid*

¹¹ Article 19 (1)(a) Constitution of India 1949

¹² Article 19(2) Constitution of India 1949

order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”¹³

The freedom of speech is one of the tenets on which the foundations of a democracy are based, if there is no freedom of speech we might as well have a totalitarian government, wherein the views of the minority are not taken into consideration. The reasonable restrictions that curtail this freedom in accordance with the statute remarkably enough does not prescribe sedition as one of the grounds for imposing reasonable restrictions on the freedom of speech that goes on to show that it was never the intention of the legislators to allow the law of sedition to override the freedom of speech and expression.

It is famously said by Voltaire that “I Disapprove of What You Say, But I Will Defend to the Death Your Right to Say It”¹⁴ and this statement says more than enough about the necessity of speech and expression in a democracy.

4. interface of law of sedition and freedom of speech and expression:

A cursory glance at the aforementioned subjects might give rise to a conclusion that they are both distinct from each other and hence there would be no confusion in their application as it's only the seditious speech that is punishable under law of sedition. Unfortunately the opposite is true, more often than not any speech that was not even meant to incite or excite disaffection against the government is alleged to be seditious as a result of which people suffer from frivolous prosecutions only on the account of having availed their freedom of speech. There have been numerous cases wherein innocent people have been charged with sedition, only for the courts to decide later on that they were not in fact cases of sedition. The earliest cases of sedition in our country that shape up the law of sedition to this day had freedom fighters put on the stand by the ruling government i.e. British and they all had one thing in common that the speech (which was held to be seditious) was not in the best interests of the government.

Before discussing the decided cases it would be interesting to note that the history of law of sedition is as ambiguous as its application, it is said that Sedition was supposed to be a part of Macaulay's Draft Penal Code of 1837 as Section 113 but due to some unforeseen reason it was eliminated at the last moment and act was introduced without it, the reasons for doing so remain a mystery still. Nonetheless after almost 10 years Section 124 A was introduced in 1870 and it is said that it was introduced as a reaction to the revolt of 1857 to punish

and deter the nationalist leaders as well as the general masses that were raising the cause of independence.¹⁵ The offence as it was introduced in 1870 was slightly different than its counterpart today was referred to as the offence of “exciting disaffection”¹⁶.

It is significant to note that Clause 8 of the Interim Report on Fundamental Rights contained an independent head of public order 'for framing legislation in regard to the fundamental right of freedom of speech (Vide Constituent Assembly Debates of Wednesday 30-4-1947, Vol. III, No. 3 at p. 445 where Clause 8 referred to above is reproduced). Further, in the Draft Constitution of India [Article 13](#) included an independent head of 'sedition' for framing legislation with regard to the fundamental right of freedom of speech and expression (Vide Clause 13 given at p. 7 of the Draft Constitution of India prepared by the Drafting Committee).

In the Constitution of India, however, as finally passed, both the independent heads of 'public order' as well as of 'sedition' were eliminated from the relevant article. The law appeared in the present Constitution under [Article 19](#). [Article 19\(2\)](#) enumerated seven heads in respect of which legislation relating to this fundamental right could be enacted. They were as follows;

1. Libel

¹⁵ See also the Statement of Objects and Reasons attached with the Indian Penal Code Amendment Bill No.73 of 2014 wherein it provides that - This section (Section 124A IPC) penalizes sedition and was first introduced by the then British colonial regime in the year 1870 to deal with people spreading disaffection against the Government. Mahatma Gandhi described it as the "prince among the political sections of the IPC designed to suppress the liberty of the citizen".

¹⁶ Section 124A IPC (Amendment) ACT 1870 reads as Exciting Disaffection - "Whoever, by words either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which a fine, may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine."

Explanation.--Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government, against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation is not an offence within this clause.

¹³ Ibid

¹⁴ S. G. TALLENTYRE, *THE FRIENDS OF VOLTAIRE* (G P Putnam & Sons, 1st Ed, 1907)

2. Slander
3. Defamation
4. Contempt of Court
5. Decency
6. Morality

7. Security of the State The word 'sedition' is a term used in the marginal heading of [Section 124-A](#), I. P. C., to describe the special offence committed thereunder. It seems to have attained the status of a term of art. Its absence from the above list of items is, therefore, significant.¹⁷

Thus it was clearly not the intention of the drafters of the constitution to include sedition as a ground in "reasonable restrictions" for keeping in check the right to freedom of speech and expression. But this position is the post – independence law , first we shall consider a few pre-independence cases of sedition that make it obvious that it was meant for the suppression of the people of India , who were merely subjects to the British rulers and who wished to nip even the idea of a rebellion in the bud.

The very first trial elated to sedition is the case of Queen-Empress vs Jogendra Chunder Bose and Ors.¹⁸ wherein the defendant i.e. Jogendra Chandra Bose was charged with sedition due to the fact that he had criticized the actions of the government in the newspaper Bangobasi newspaper. While explaining the scope of the section K W. Petheram J. rejected the contention that the words "disaffection" and "disapprobation" were synonymous words, and had one and the same meaning. If that reasoning were sound, it would be impossible for any person to be convicted under the section, as every class of writing would be within the explanation.¹⁹ Even though later on he goes to mention that "It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."²⁰ But he stills clarified the misconception that disaffection and disapprobation is the same thing and helped in narrowing the scope of the law.

¹⁷ See para 83 Ram Desai J. in Ram Nandan v. State AIR 1959 All 101. The evolution of freedom of speech and expression with reference to Law of sedition is traced out alongwith the intent of the drafters of the constitution.

¹⁸ (1892) ILR 19 Cal 35

¹⁹ Ibid

²⁰ ibid

The next case is the trial of Balgangadhar Tilak²¹ wherein he was roped for charges on sedition based on the allegation that undermined the British government in India, here as well Bal Gangadhar Tilak was found guilty and liable for sedition. Strachey. J. of the Bombay High *Court while delivering the judgment of the court observed that the amount or intensity of the disaffection is absolutely material. If a man excites or attempts to excite feelings of disaffection great or small, he is guilty under this section.²² Then came the case of Lala Lajpat Rai in 1907 and he was charged for the offence of "open sedition"²³. There are many examples of incidents wherein national leaders, journalists, writers, artists were charged of the offence of sedition, namely Aurobindo Ghose taken under arrest for "habitually publishing seditious matter" in Bande Matram newspaper. It was in 1922 that Mahatma Gandhi²⁴ was charged for sedition for writings in the paper Young India and he happily plead guilty for all the offences and in his written statement he said that "I am here, therefore to invite and submit cheerfully to the highest

penalty that can be inflicted upon me for what in law is deliberate crime, and what appears to me to be the highest duty of a citizen."²⁵

Even though Supreme Court upheld the constitutional validity of the statute of sedition in the case of Kedar Nath Singh Vs State Of Bihar²⁶ but at the same time made an observation with regard to freedom of speech and expression as follows, "But the freedom has to be guarded again becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the

²¹ Queen Empress v. Bal Gangadhar Tilak (1898) ILR 22 Bom 112

²² K D GAUR, COMMENTARY ON THE INDIAN PENAL CODE, 404 (Universal Law Publishing Co. 2nd Ed., 2012)

²³ Lajpat Rai was arrested from his home in Lahore and deported to Mandalay on May 9, 1907, under the Bengal Regulation III of 1818 without a hearing and without a trial before a lawfully constituted tribunal of justice

<http://www.unp.me/f15/lala-lajpat-rai-saga-of-suffering-and-national-resurgence-84945/#ixzz4Nccfbtgy> accessed on 20.10.2016 04:29 pm

²⁴ Emperor v. Mohandas Karamchand Gandhi and Shankarlal Ghelabhai Sankar Session Case No. 45/1922 Ahmedabad

²⁵ Supra Note 22 at 408

²⁶ 1962 AIR 955

Government established by law or with the intention of creating public disorder."²⁷

It was actually in the case of *Tara Singh v. State of Punjab*²⁸ that Section 124A was struck down as unconstitutional being contrary to freedom of speech and expression guaranteed under Article 19(1)(a).²⁹

Thus it can be said that there has been a long going battle between the law of sedition and freedom of speech and expression, in the recent cases like the case of Aseem Trivedi the cartoonist who was forced to shut down his website that had cartoons having political satires and criticism on account of receiving complaints that the same was objectionable and a case³⁰ was filed against him wherein The Bombay high Court held that any of charge of sedition against Mr Trivedi could not be proved and the cartoons and caricatures in question were in fact critical of the actions of the government but they were in no way meant to incite violence or offence or disaffection against the government, drawing those cartoons to voice his opinion is a right vested with him in the form of speech and expression.

Similarly the case of Arundhati Roy, esteemed author, when commented that "Kashmir has never been an integral part of India"³¹ it was alleged that it was sedition. Later on the author issued a statement that giving clarifications that her comment was in no way seditious, and she in fact loves her country very much.

The case of Hardik Patel³² who became who the face of Patel communities' movement for reservation was booked under sedition on the ground that he had sent messages containing offensive languages against the Prime Minister, Chief Minister of Gujarat and Mr Amit Shah the President of BJP. The case is still being heard.

And lastly the most recent of them all, this year country witnessed a kind of intolerance that it had never before, when JNUSU leader Kanhaiya Kumar, leaders Umar Khalid and Aniraban Bhattacharya were arrested on charges of sedition for raising slogans in JNU campus. This case led to a lot of uproar with two clear groups emerging, one that is of the opinion that the situation was blown out of proportion and it is not a scenario where sedition is attracted and the other who attests to the view that the acts in question (the occurrence of which is still under dispute) are in fact seditious and

deserve punishment. The great irony is that Jawaharlal Nehru, whose name adorns the university, would have probably disapproved of the sedition charges against Kumar. He had considered the sedition law "objectionable and obnoxious".³³

In all of this chaos there is one trend that is emerging that anything or any speech that does not go well with the government at the time or the view of the majority even if the same is not right or archaic can lend a person trouble and attract prosecution under the law of sedition. This state of affairs is really worrisome as this attitude can be a death knell to an individual's freedom of expressing himself.

Thus freedom of speech is a right that should in any circumstance be taken away from an individual and while charging someone with sedition it should be seen whether the speech is just an observation/critique that any informed individual would make in a democracy who takes interest on the functioning of the state or if it actually is to create disaffection towards the government. It should not be forgotten at any cost that we are a free country and our forefathers gave their lives to give us this valuable gift of freedom and it is not in our best interests to apply the statutes made by the so called rulers to suppress the nation as a tool to administer the country.

5. Conclusion:

To sum up, it cannot be said that the law of sedition is completely unconstitutional or is not required, it definitely has its importance, but at the same time it should not be used as a tool to crush the voice of the minority. It has been rightly observed that to say that a thing is constitutional is not to say that it is desirable. Therefore to say that restraints on the freedom of speech and expression are permissible under our constitution is not to say that any particular restraint is desirable or ought to be imposed.³⁴ There has to be a balance between the law of sedition and freedom of speech, and the use of sedition to throttle free speech and take away the freedom of press is unacceptable in a democracy, as press has always been a watchdog. Dissent is a right that has to be present in a democracy.

In the wake of recent happenings many questions have risen on the validity of law of sedition; and consequently attempts like the one where Peoples Union of Civil Liberties (PUCL) has launched a

²⁷ Ibid

²⁸ AIR 1951 Punj 27

²⁹ Supra note 22 at 414

³⁰ *Sanskar Marathe v. The State of Maharashtra & Ors* Crl. PIL No. 3 of 2015

³¹ <http://www.ndtv.com/india-news/arundhati-roys-statement-on-possible-sedition-case-437396> accessed on 20.10.2016 10:15 pm

³² <http://indianexpress.com/article/india/india-news-india/hardik-patel-booked-for-sedition-over-comments-on-gujarat-police/> accessed on 20.10.2016 10:25 pm

³³ Shashi Tharoor, *Nehru Wouldn't Have Pressed Sedition Charges against JNUSU President*, <https://www.thequint.com/opinion/2016/02/15/nehru-wouldnt-have-pressed-sedition-charges-on-jnusu-president> last accessed on 19.10.2016 at 4:00 pm.

³⁴ H M SEERVAI, *CONSTITUTIONAL LAW OF INDIA* 711 (Universal Law Publishing Co., 4th ed., 2013)

nationwide signature campaign against the Sedition Act have grown, even renowned legal scholar N.R. Madhava Menon made an observation on law of sedition that "But its continuance in free India is incongruous."³⁵ The future of this law is unknown, but in my opinion the law is not monstrous itself but its application definitely is, each time it is used to suppress the honest views of an individual just because it is not in line with the views of the ruling government, all the values that we and our the framers of the constitution stood by and proudly presented as the preamble of the constitution are defeated.

<https://www.thequint.com/india/2016/02/18/1934-to-2016-how-courts-in-india-looked-at-charges-of-sedition>
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ⁱ Parul Agrawal, *1934 to 2016: How Courts in India Looked at Charges of Sedition*

³⁵ Damayanti Dutta, *Who Is An Indian*, <http://readersdigest.co.in/story/who-is-unindian/1/123400.html> last accessed on 19.10.2016 at 4:00 pm.