
DOES SECTION 144 OF CRPC IMPEDE FREEDOM OF SPEECH AND EXPRESSION?

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ABSTRACT

Democracy thrives on the premise that the elected representatives and the electorate must cohesively support one another and collaborate to bring policies, ideas and plans to fruition. In an idealistic world, democratic nations function like this. But in this world, the notion of constructive criticism, in the form of dissent, more so often than not has lost its essence and has been labelled as seditious. The question then arises as to whether or not suppression of dissent implies the existence of an autocratic regime? There are several ways to curb dissent; arresting dissenters, placing bans on the media, shaping the discourse amongst the general public by curating the news given to them, using the law of the land as a tool to suppress voices of angst. The last one has been a bone of contention amongst the knowledgeable. Section 144 of the Code of Criminal Procedure, 1973 has often been the go-to legislative provision used by regimes at times of crisis, emergencies and untoward situations where the law and order needs immediate attention. In a nutshell, the provision grants power to issue orders in cases of nuisance and/or apprehended danger. Over the years, governments have resorted to using this provision to prevent mass gatherings such as protests, strikes and more as they claim it is a legal method of temporarily curbing freedom of speech and expression. A certain section of the people has accused this approach, terming it to be a vehement violation and a deliberate misuse of the law to curb dissent.

Introduction

In the realm of democracy, freedom of speech and expression is a tremendous, crucial, vital, and highly contentious premise. It really is an intrinsic and necessary component of comprehending the position of a free and democratic society. Individuals with freedom of speech and expression are able to satiate and perform self-contained and independent tasks. It makes it easier to support the practice of making free decisions, which is related to campaigning for independence and self. It serves as a foundation for striking a balance between a society's long-term viability and durability. The fact of the matter is that in a democracy, the elected representatives are always accountable towards the electorate that voted them to power in the first place. The elected representatives here act on behalf of the State and, hence, the electorate and general public have every right to actively voice out their grievances, dissent and interests.

In concordance with the Universal Declaration of Human Rights, 1948, the Preamble and Article 19 (1) 2 and (2) of the Indian Constitution proclaim that freedom of speech and expression is a fundamental and primary right of an individual in a society. With the rationale of maintaining public order in the country, the autonomy afforded under the right to free expression has been subjugated to some legitimate constraints. There has been an increasing rise in the number of misinformed interpretations of dissent to be sedition. The frenzy is to condemn anyone who expresses dissent, angst or concerns against a governmental regime when all that person is doing is exercising his or her freedom of speech and expression, as provided for by the Constitution of India, 1950. They have every right to question those who have been elected by the general public at large and are equally accountable and responsible to be transparent about their intentions, work and progress. Voicing out dissent does not and will not amount to sedition. Sedition is a crime committed when one commits an action that is against the interests and security of the country itself. Sedition is synonymous with treason. Although it is an indisputable fact that dissent or hidden angst forms the very crux of the intention and motivation to commit an act that is reflective of seditious motives or treason. However, in light of the same, it is pertinent to state that both are different entities and should be perceived as such. Patriotism and Nationalism undoubtedly are what unites a nation and chalks out the path for collective good and progress. Yet, it is detrimental and deplorable when this conceived notion of patriotism enables one section of the society to condemn and shut-down another section of the society when the latter is unhappy with the way the government is carrying out their prerogatives and duties. This scenario paves way for factionalism and anarchy. This

scenario suppresses dissent and allows jingoism and blind-folded support. This article will strive to understand the difference between the two as well as the misguided interface. In furtherance, a deliberate attempt will be made to understand whether or not Section 144 of the Code of Criminal Procedure, 1973, is used as mechanism to curb freedom of expression or at least intended to?

Review of Literature

The literature review was conducted using a wide variety of sources and information on the subject matter at hand. Several articles were referenced and decoded in order to gather a more nuanced understanding of the topic at hand. One such article was “*Law of sedition and in India and freedom of expression*”¹ by Deepak Gupta, delved into the nexus between the two aspects especially in the contemporary backdrop of the 21st century India. Another article titled “*Nationalism: A curb to freedom of speech and expression*”² authored by Rahul Kumar was invoked while elucidating on the topic as the core of the article primarily dealt with the impact of nationalism and patriotism in targeting dissenters. It spoke in detail the effect of a nationalistic wave on the general outlook people have towards critics and resisters. Further, an article by the title “*Revisiting the law of sedition of India: A critical study in the light of the JNU fiasco*”³ written by Ankit Singh was visited and looked into for better clarity. The article pre-dominantly, as the title suggests, dwelled on the infamous 2016 incident in JNU that triggered widespread outrage and sparked debate on the concerned topic. Research conducted by K.N Chandrasekhjaran Pillai in “*General Principles of Criminal law, 2003*”⁴ was referred to, to understand criminal law better from a historical perspective. Several cases and accordant judgements were widely invoked and cited during the course of this authorship.

Research methodology

This Research Paper is completely original and does not in any way or by any means intend to plagiarize any material from the Internet and does not intend to violate any individuals copyright. The approach used for the study analysis is of a primarily empirical and concise nature. This chapter has dealt with the theoretical framework and doctrinal methodology is

¹ Deepak Gupta, “Law of sedition and in India and freedom of expression”, (2020) 4 SCC J-14.

² Rahul Kumar, “Nationalism: A curb to freedom of speech and expression”, CNLU LJ (9) [2020] 204.

³ Ankit Singh, “Revisiting the law of sedition of India: A critical study in the light of the JNU fiasco”, 7 RMLNLJ (2015) 112.

⁴ K.N. Chandrasekhjaran Pillai, General Principles of Criminal Law. Pp.199.

adopted in the study. It outlines the various aspects of the study and the methodology adopted to gather data and pertaining relevant information. This work is carried out with the framework of the exploratory analysis. The study was focused on and incorporated the utilization of empirical research based on secondary information collected from thesis, newspapers, books, magazines, and newspapers. All the data obtained from tools such as journals, academic papers, blogs, and other websites were also a valuable and rich tool.

Research Questions

1. What are the statutory provisions explaining dissent and sedition in the Indian legal landscape? What is the difference between dissent and sedition with respect to freedom of speech and expression?
2. Does dissent amount to sedition and have the contemporary law-makers misguided the meaning and usage of dissent vis-à-vis sedition?
3. Does Section 144 of the Code of Criminal Procedure, 1973, curb freedom of speech and expression?

Dissent v. Sedition – Has dissent been unnecessarily criminalized and equated to sedition?

Some believe that there lies a fine line between dissent and sedition, while others believe in a clear distinction between the two emphasizing that dissent is only a facet or attribute in cases of sedition. Because sedition is a crime against the state, a greater level of proof is required to condemn someone under the provision. Reasonable and fair critiques and dissident ideas must be protected against unjustified state censorship, and people must be able to use their right to freedom of speech and expression to the greatest potential practicable. Section 124-A⁵ of the Indian Penal Code, 1860, must be read in accordance with Article 19(2)⁶ of the Constitution. There have been several cases where persons have been prosecuted with sedition for making assertions that do not jeopardize the nation's security. This precedent is both unhealthy and detrimental to the ethos and spirit of a democratic nation. In the case of *Romesh Thappar v. State of Madras*,⁷ the Court stated that the disposal of the term "sedition" from the draught Article 13 (2)⁸ of the Constitution of India, 1950, demonstrated that skepticism directed towards a governmental regime inciting discontentment cannot be deemed as a rational justification for restricting freedom of expression and the media unless the predisposition is

⁵ Indian Penal Code, 1860, §124-A.

⁶ INDIA CONST. ART. 19. cl. 2.

⁷ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

⁸ INDIA CONST. ART. 13. cl. 2.

perhaps to subvert the safety of or seem to topple the government. The legality of Section 124-A of the Indian Penal Code, 1860, was squarely in issue in *Tara Singh Gopichand v. State*.⁹ The provision was found unconstitutional by the East Punjab High Court because it restricted the freedom of speech and expression conferred by Article 19 (1)(a)¹⁰ of the Constitution of India, 1950. Because the objective wherein the sedition law was introduced no longer holds, it was determined to be ineffective and utterly irrelevant. Establishing harmony and unanimity was a requirement of the colonial regime, but the representative democracy doesn't really necessitate its fulfilment.

In the matter of *Ram Nandan v State*,¹¹ the constitutionality of Section 124A of the Indian Penal Code was contested in an Allahabad High Court case involving a protest to one Ram Nandan's prosecution and 3-year sentence for making an inflammatory rhetoric speech in the year 1954. Ram Nandan's sentence was reversed, and Section 124A was declared unconstitutional. The Hon'ble Supreme Court of India, however, disagreed in the instance of *Kedar Nath Singh v State of Bihar*.¹² The apex body ruled asserted that every State, but whatever form of Government, has to be imbued with the authority to stop all who, by their actions, endanger the stability and safety of the Nation, or propagate such sentiments of insubordination as have the potential to encourage to the perturbation of the State or to disorderly behavior, the apex Court said after having gone over the historical record of treason law in India. Section 124A was interpreted as a law passed "in the interests of" civil order, making it lawfully legitimate. The courts have time and again shed light on the content of the utterance, determining that whether written words or spoken, qua terms, have the propensity (or been expressed or expressed with the intention) to cause civil disturbance. Sedition is always construed as a violation of social stability and democratic ideals. All actions that may jeopardize 'public calm' are included in the broad meaning of the term. The appellant in the case of *Arup Bhuyan v. State of Assam*¹³ was accused of being a participant of the ULFA. The Supreme Court of India concluded that mere membership in a prohibited organization does not automatically make a person a felon unless the person encourages violence or incites others to crime. In India, the employment of third-degree tactics to get admissions from suspected perpetrators is a prevalent and widespread practice. There have been cases where the state has utilized this legislation to

⁹ *Tara Singh Gopichand v. State*, AIR 1951 E.P. 27.

¹⁰ INDIA CONST. ART. 19. cl. 1. cl. a.

¹¹ *Ram Nandan v State*, AIR 1959 All 101.

¹² *Kedar Nath Singh v State of Bihar*, 1962 SCR Supp. (2) 769.

¹³ *Arup Bhuyan v. State of Assam*, (2011) 3 SCC 377.

suppress critique and resistance, such as *Dr. Binayak Sen v. State of Chhattisgarh*¹⁴ as well as the case of *Sanskar Marathe v. State of Maharashtra*.¹⁵ In a democratic set up such as India's, the presence and relevance of this portion always has been a topic of discussion. Critics contend that it is a draconian rule that should be abolished in our modern democracy. According to some, the government might employ it to crush any opposition or criticism of the regime.

Section 144 of Code of Criminal Procedure, 1973: Does this provision curb dissent and freedom of speech?

The dissemination of false information and propaganda has in the recent past been unparalleled, particularly during the COVID-19 pandemic. Authorities have been urged to take steps to stop the spread of the virus in order to calm the people. Mumbai Police took one such move by issuing a prohibitory order under Section 144 of India's Code of Criminal Procedure, 1973. In extreme situations of disturbance or anticipated peril, the Magistrate has the jurisdiction to execute an order under Section 144 of the Code of Criminal Procedure, 1973 in order to safeguard public calm. An admonition can be given to a person or the public at large in a specific location or area to refrain from doing something or to follow a specified procedure with respect to assets in his ownership or under his stewardship. Only when the Magistrate believes there is adequate reason to intervene under this provision and that urgent deterrence or prompt guidance is sufficient to stop:

1. Disturbance, discomfort, or harm to anybody who is lawfully hired
2. Humanity, health, or security are in jeopardy
3. A disruption of civil order, such as a riot or perversion of the course of justice

Section 144 of the Criminal Procedure Code is one among many measures that allows the state to ensure continued public order. Because it is issued by an appropriate authority in accordance with Article 13(3) of the Constitution of India, 1950, an action issued under Section 144 restricting freedom of speech and expression is legal. The order's main legitimacy can be called into doubt when it comes to its rationality, and the government must satisfactorily justify it.

The proportionality criterion, which consists of four components, can be used to augment rationality.

¹⁴ *Dr. Binayak Sen v. State of Chhattisgarh*, 2011 (266) ELT 193

¹⁵ *Sanskar Marathe v. State of Maharashtra*, 2015 Cri LJ 356.

1. The limitation should have a legitimate goal;
2. Limitations has to be a viable means of accomplishing that aim (stage of appropriateness or rational link).
3. There should be no substitute that is less restricted but similarly efficient (prerequisite phase); and
4. The limitation cannot have an undue consequence on the choices and decision (inordinate effect phase)

There have been several instances in the past where there was an interface between Section 144 and freedom of speech as a right. Huge numbers of people rushed to the streets to protest the Citizenship (Amendment) Bill, 2019, believing it to be prejudiced. As the legislation helps to relax citizenship standards for all non-Hindu minority from Bangladesh, Afghanistan and Pakistan, many leaders and the public at large were delivering hateful rhetoric in which specific communities were the target, and print media was viewed as the origin to make such information accessible all throughout the nation, leading to protests on the streets, forcing the Government of India to impose Section 144 of the Code of Criminal Procedure in the cities like Bengaluru, Chennai, Delhi and more. Another instance was the arrest of Aseem Trivedi, a cartoonist and caricature artist. Aseem Trivedi was detained in Mumbai, arrested and subsequently charged with Sedition under Section 124 of the Indian Penal Code, 1860, Section 66 A of the Information Technology Act, and Section 2 of the Prevention of Insults to National Honor Act. The Kanpur-based illustrator was blamed for allegedly putting up posters and banners ridiculing the Constitution of India during an anti-corruption rally or event presided over by prominent campaigner Anna Hazare in Mumbai and for then posting them on his site, resulting in clashes and disturbing the peace, necessitating the enforcement of Section 144 of the Code of Criminal Procedure, 1973.

On 6th August, 2019, the Government of India took a decision to abrogate Article 370 as the center deemed it "inoperative" resulting in Jammu & Kashmir, along with Leh and Ladakh to be granted the status of Union Territory of India. This decision was met with massive but expected backlash for several regional and national opposition leaders condemned the move stating that this was cause further instability in a region that had for long drowned in uncertainty. Regional leaders and former chief ministers like Omar Abdullah, Farooq Abdullah and Mehbooba Mufti held rallies and gave speeches voicing out their concerns regarding the same. All of this resulted in the locals resorting to protests, strikes and public dissent some of

which turned violent and potentially dangerous. Even the highly coveted Amarnath Yatra had to be halted as Section 144 was imposed. Allowing such a pilgrimage to continue amidst this imposition would have resulted in a direct contravention. The provision *vide* the curfew was enforced for a totality of 138 days at a stretch leading many to believe that such an imposition was done in order to suppress dissent and curb freedom of speech.

Discussion/ Findings

There have been numerous instances where persons have been prosecuted with sedition and have been unable to attach genuine and substantial evidence to the allegation of sedition. In the course of translation, the restricted context is used, instead of comprehending and sorting out the right route of implementation, the legislation can be eliminated or changed entirely.

Recent estimates predicated off data from the National Crime Records Bureau (NCRB) show that the number of cases filed under Section 124A surged by 160 % between 2016 and 2019, while the incarceration rate declined to 3.3 % from 33.3 % in 2016. The present contemporary Indian gamut can simply trace the increasing bigotry in the modern worldview and growing polarization. Citizens raising their voices against the political rule have been subjected to street violence, lynching, and incarceration, and it has become a feature of the current societal and state's modern color. The current Indian terrain does not allow for free flow of ideas and perspectives, and widespread beliefs are suffocating criticism and instilling fear in persons, preventing them from voicing their concerns. Individuals who are illiberal cannot define freedom of expression. Regulations must be supported by evidence. For citizens' advancement, a democratic system necessitates accommodation of controversial viewpoints. In participatory societies, a general populace and proactive personality is required. When a person does not engage in community affairs and collective interests in a democracy, however, the capacity for social action remains dormant. Due to the current condition of affairs, it is clear that the growth of the very democratic core and principles is under jeopardy.

Conclusion

The ability to be appreciative and critical of the people in power, is the beauty and power of a democratic nation. This principle finds little to no avail in a monarchy or dictatorship. A democracy is built on the fundamental theory that there is freedom for all citizens of the land to collaborate with each other and work in congruence for a better tomorrow. This also entails having disagreements, differences in opinion and most importantly, dissent. To masquerade

the intentions behind dissent and critique and present them as sedition deals a heavy blow to the democratic ethos of a society. It is negative and hurtful. Dissent should be encouraged for progress and most importantly, for the collective collaboration. This doctrine thrives vibrantly when it is left free and not shackled by fascist ideologies and philosophies.

Sedition is a crime, no doubt. But, sedition is an act that concurs with a latent motive to cause destruction to the nation. Dissent, on the other hand, is a tool in order to ensure humility, accountability and responsibility with the intent, in most instances, to help the nation progress forwards by providing constructive criticism.