SEDITION LAW IN INDIA: AN ANALYSIS

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ABSTRACT

Sedition laws have been used in several recent cases, reigniting discussion about their undemocratic nature and applicability in today's constitutional democracy. Regrettably, these standards have defied colonial authority. Numerous Indian courts' application of sedition statutes reveals how archaic and irrelevant they have become considering contemporary culture, and numerous applications are suggested. Every person has the fundamental right to freedom of expression and speech in a democracy like India. The scope of such laws is essential, even though a law of sedition is acceptable provided such rights are subject to fair restrictions. It is against the law to accuse somebody of sedition without cause in our nation, where the rule of law is important. This paper tries to compile all the discussions surrounding the repeal and modification of these laws in one location. This law looks to be unjustifiable in our democratic society, as does the prosecution of those who break it.

1. Introduction

Any sort of speech, deed, or writing that stirs up animosity towards the status quo and jeopardises the nation's enduring peace is seditious. The word "sedition," according to the Oxford Dictionary, means," behaviour or speech encouraging people to rebel against the rule of a state or a king." Before and after independence, a number of writers, artists, and activists were targeted under the legislation of sedition under section 124A IPC, including Bal Gangadhar Tilak, Annie Besant, and Mahatma Gandhi. The IPC's political section 124A, which was created to restrict a citizen's freedom, was dubbed by Mahatma Gandhi as the section's crown jewel. India gains sovereignty upon its declaration of independence because the Preamble to the Constitution was created by its citizens. In contrast to the British Parliament, the Indian Parliament is limited in its authority. It now appeared that a citizen's right to criticise the government is more important than a government's right to defend itself from sedition. Sedition is a crime that falls outside of international rules, which restricts the freedom of expression. The law against sedition was created during the monarchical era, and it now goes against the basic foundation of the democratic form of governance.

2. Meaning of sedition

Sedition is defined as an act by "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 excites disaffection towards the Government established by law in India." This definition was drafted by British historian and politician Thomas Babington Macaulay in 1837. As per section 124A, sedition is a non-bailable offence, punishable with imprisonment from three years up to life, along with a fine. The person charged under this law is also barred from a government job and their passport is seized by the government. Incidentally, the sedition charge was abolished by the United Kingdom in 2010.[1]

3. Section 124A of IPC

The purpose of explaining Section 124A is to safeguard legitimate criticism of public policies and institutions in order to improve them and address injustices and abuses.[2] Section 124A's requirements are grounded in Common Law. The performance of specific activities that would inspire or attempt to incite hatred or contempt for the Indian government established by law

[1] Indian Penal Code,1860, Sec.124A, No. 45, Acts of Parliament, 1860 (India).
[2] RATANLAL AND DHIRAJLAL, the Indian penal code 207 (Wadhwa, Nagpur, 30th edn., 2004).

are the necessary elements for establishing the offence of sedition under section 124A. Such an act or attempt may be made using spoken or written words, signs, or other visual cues.[3] The IPC's sedition laws were revised in 1898 to add the words "hatred" and "contempt" to the definition of "disaffection." The phrase "disloyalty and all feelings of enmity" was used to define disaffection.[4] In Queen Empress v. Jogendra Chandra Bose[5] disaffection was described as the antithesis of fondness. In *Queen Empress v. Ramachandra*[6] it was held as positive emotion, not just the absence of attachment, was used to characterise it. Disaffection was construed by Balvant Bopatkar in the case of *Emperor v. Bhaskar*[7] as a sentiment one held for a ruler rather than for another person. The Oxford Dictionary defines the crime of contempt as showing disobedience to or scorn for a court of law and its agents. The judgements of the courts can still be examined, though, notwithstanding this. The law of contempt of court was drafted to uphold the rule of law and to safeguard the independence of the courts. The 1971 Contempt of Court Act is adequate to maintain the dignity of the court, hence the law of sedition would not be enforced in relation to courts. Hatred is characterised as a strong aversion, hostility, or malice.

4. Law Commission on Sedition

The Constituent Assembly resisted including sedition as a restriction on freedom of speech and expression under the then-Article 13, according to the Law Commission of India's 2018 report. It considered the clause to be a remnant of colonial rule that had no place in a free India. The IPC's section 124A continued to apply to the crime. The report's conclusion reads, "Singing the same patriotic songs over and over again is not a sign of patriotism in a democracy. People should be free to express their love for their nation in their own unique way. For doing the same, one can engage in discussions or constructive criticism, pointing out the flaws in the government's policy. Although the language used in such ideas may be harsh and offensive to others, this does not automatically qualify the activities as seditious. According to its opinion, section 124A should only be used where the goal of a given act is to disturb the peace or overthrow the government using force and illegal methods. [8]

[3] *Ibid.*
[4] LEGAL SERVICE INDIA, https://www.legalserviceindia.com/legal/article-9028-law-of-sedition-in-india.html, (22 April 2023).
[5] *Queen Empress v. Jogendra Chandra Bose*, (1892) ILR 19 Cal 35.
[6] *Queen Empress v. Ramachandra*, ILR (1897) 22 Bom. 152.
[7] *Emperor v. Bhaskar*, (1906) 8 BOMLR 421.
[8] The Hindu, https://www.thehindu.com/news/national/explained-indias-colonial-sedition-law-origins-govt-abuse-courts-take-on-it/article65375097.ece, (Apr.30,2023).

5. The Constituent Assembly Debates.

"The original Article 13 of the Draught Constitution, which introduced a condensed concept of fundamental rights, initially followed the British model by proposing in Article 13(2) that the State would have the authority to make any law relating to libel, slander, defamation, sedition, or any other matter which would offend against decency or morality, or which would undermine the authority or foundation of the State. In the Constituent Assembly, this proposed measure sparked vehement debates as well as harsh criticism. Damodar Swarup Seth, a firebrand socialist from the United Provinces, brought up a fundamental issue. He claimed that granting the Legislature unchecked and unopposed authority to pass legislation with such broad restrictions nullifies the basic protections of Article 13.[9] "The Draught Constitution won't allow the journalists any more freedom than we did under the dreaded foreign dictatorship, and citizens won't have any options for having a sedition legislation struck down, no matter how flagrantly it would violate their civil rights. Damodar Swarup Seth, a member of the Indian Constituent Assembly Many members, most notably Professor KT Shah (Bihar) and Sardar Hukum Singh (East Punjab), spoke out strongly in favour of him. The requirement that all limitations imposed by the Legislature be "reasonable" was added to Article 13 by Pandit Thakur Dass Bhargava. This provided protection against the Legislature's arbitrary behaviour and made the judiciary the last arbitrator of the restriction's character, placing a significant and unenviable burden on the judiciary to defend the restriction's spirit.[10]

6. Statutory provisions governing sedition in India.

The Indian Constitution and any laws neither define the term "sedition." However, the marginal note of Section 124A of the I.P.C. uses the word "Sedition." The Section criminalises arousing or attempting to arouse hatred or contempt for, or disaffection with, the legally recognised government of India.[11] The government is authorised to confiscate property that is penalised under Section 124A of the Internal Revenue Code under Section 95 of the Criminal Procedure Code, 1973 ("Cr.P.C.").[12] Two conditions must be met for this section. First, the material must be punishable under Section 124-A, and second, the government must provide justification for why it believes the item should be forfeited under that provision. British officials introduced the Prevention of Seditious assemblies Act, 1911, which made seditious assemblies illegal in

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[9] Bloomberg Quint, https://www.bqprime.com/opinion/sedition-and-free-speech-an-antithesis0 (Apr. 23 2023).
[10] *Ibid*.
[11] Indian penal code, 1860, Sec.124A, No. 45, Acts of Parliament, 1860 (India).
[12] Code of Criminal Procedure, 1973, Sec.95, No. 2, Acts of Parliament, 1973 (India).

an effort to quell dissent. According to Section 5 of the Act, a District Magistrate or Commissioner of Police may forbid a public gathering if, in their judgement, it is likely to incite dissension or sedition or to disturb the peace of the community. [13] Given that this legislation was introduced to restrict the gatherings organised by nationalists to challenge the British government, its continued enforcement seems needless and unjustified.

7. Current Definition of Sedition.

The Supreme Court heard a new challenge to Section 124A's constitutionality and granted it the reading that is still in effect today. According to the court's interpretation, which was based on the *Niharendu Dutt Majumdar v. King Emperor*[14] decision, encouragement to violence must be present for an act to qualify as seditious. Sedition was therefore to be viewed as a crime against public peace rather than a criminal against the state's basic existence.

There are six justifications listed in Article 19(2), and the court believed that "security of the state" might be one of them that could preserve Section 124A's legitimacy. The Supreme Court applied the rule that, when there are multiple possible interpretations of a legal provision, it must uphold the interpretation that renders the provision constitutional when interpreting the provision. The provision must be rejected under any interpretation that would make it unconstitutional.20 Accordingly, the court ruled that any seditious act must be accompanied by an attempt to instigate violence and disruption, even though the clause does not appear to suggest this need on the surface. The Court supported applying anti-sedition legislation to maintain the state's public order and security.[15] When the law was first established, the crown had all of the supreme power, and all of the subjects were required to owe personal allegiance to the crown. However, after independence, things have changed. Currently, the constitution serves as the source of authority. Sedition is regarded as an offence that undermines or threatens the survival of this "state," where the government formed by the law differs from the elected representatives.

The court stated in the case of *S.Rangarajan vs. P. Jagjivan Ram* that "the effect of the words must be judged from the standards of reasonable, strong-minded, firm, and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view." As a result, it supports the idea that considering the audience when classifying

[13] Prevention of Seditious Meetings Act, 1911, Sec.5, No. 10, Acts of Parliament, 1911 (India).
[14] *Niharendu Dutt Majumdar v. King Emperor*, AIR 1939 Cal 703.
[15] *R.M. D Chamarbaugwalla v.Union of India*, AIR 1957 SC 628.

an act as seditious or not is crucial. It should be done in accordance with people's mentalities rather than just the words of speeches and a cursory reading of the basic statute regarding the provision, as society develops and emerges at a constant rate.[16]

In the famous sedition *Tilak case Queen Empress v. Bal Gangadhar*[17], the court overruled both parties' arguments and construed 124A primarily as stirring "feelings. "it included feelings like anger, animosity, dislike, antagonism, contempt, and all other types of ill-will. of disaffection' with the administration. By asserting that the presence of feelings, rather than the seriousness of the deed or the depth of disapproval, was crucial and that merely attempting to arouse such feelings was sufficient to establish an offence, it broadened the definition of the offence.

8. Recent developments in the law.

The law of sedition has been used by the courts on numerous times since the Supreme Court's famous decision in Kedar Nath. In the past fifteen years, there have only been fourteen sedition-related cases, of which only two have been heard by the Supreme Court. In addition, there have only been three convictions, one of which was handed down by the Supreme Court. In one such recent case, *P.J. Manuel vs. State of Kerala*[18], the accused posted flyers encouraging people to boycott the state's Legislative Assembly general election on a board at the Kozhikode public library and research centre. No vote for the bloated bosses who have grown fat on abusing the people, regardless of political differences, read the poster. As a result, he was subject to criminal investigation for the crime of sedition under IPC section 124A. The court granted acquittal after ruling that the definition of sedition must be defined in accordance with the word and spirit of the Constitution, not by the standards used during colonial authority. In a separate case, *Gurjatinder Pal Singh v. The State of Punjab*[19], the defendant asked the Punjab & Haryana High Court to order the suppression of the FIR that had been filed against him in accordance with Sec. 124A. The petitioner spoke to those supporting the creation of Khalistan, a buffer state between Pakistan and India, during a religious service held in honour of the martyrs. Importantly, it was decided that even outright calls for secession and the creation of a new State would not qualify as seditious activity. The FIR filed against the accused was thus dismissed. The defendant in the other case, *Mohd Yaqub v. State of West Bengal*[20], has already

[16] *S. Rangarajan vs. P. Jagjivan Ram*, 1989 SCR (2) 204, 1989 SCC (2) 574.
[17] *Queen Empress v. Bal Gangadhar*, (1917) 19 BOMLR 211.
[18] *P.J. Manuel vs. State of Kerala*, ILR (2013) 1 Ker 793.
[19] *Gurjatinder Pal Singh v. The State of Punjab*, AIR 1995 SC 1785.
[20] *Mohd Yaqub v. State of West Bengal*, 2004 (4) CHN 406.

admitted to working as a spy for the Pakistani intelligence service ISI. The CIA would provide him instructions on how to engage in anti-national activities. He was so accused with sedition in accordance with IPC Section 124A. The Calcutta High Court determined that the prosecution had failed to prove that the acts were seditious and that they had the impact of inciting people to violence by noting the elements of sedition that were established in Kedar Nath. As a result of the rigorous evidence requirements not being met, the defendants were ruled not guilty.

In the other case*, Nazir Khan v. State of Delhi*[21], the defendant was given the assignment to carry out terrorist acts in India after receiving training from militant groups including Jamet-e-Islamic and Al-e-Hadees. He then abducted British and American tourists who were in India and demanded the release of ten terrorists who were being held in jail in exchange for the release of the foreigners. But after one of the hostages attempted to escape, the authorities managed to apprehend him. Later, he was put on trial for several crimes, including sedition. The Supreme Court declared it to be an act of sedition and stated that it was impossible to make a clear distinction between preaching disapproval of the government and acceptable political participation in a democratic setting.

The Supreme Court cleared those who shouted "Khalistan zindabaad, Raj Karega Khalsa" and "Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da" in the case of *Balwant Singh v. State of Punjab*[22]. The convictions for "sedition," (124A, IPC), and "promoting enmity between different groups on grounds of religion, race, etc,". In the well-known case of *Binayak Sen v. State of Chhattisgarh*[23], one of the defendants, Piyush Guha, admitted outside of court that Binayak Sen, a public health lawyer, had given him certain letters that needed to be sent to Kolkata. Some of the Naxal literature purportedly found in these letters discussed police brutality and human rights. The High Court highlighted the extensive violence committed by Naxalite groups against members of the armed forces as justification for convicting the sedition suspects. It did not, however, clarify how the simple act of owning and disseminating books might be considered a seditious conduct. The High Court also skipped over the issue of encouragement to violence, which was obviously non-existent in this instance.

9. Application of the law of Sedition.

When Bengali cartoonist Asim Trivedi was accused of sedition for publishing several funny

[21] *Nazir Khan v. State of Delhi*, 2007 AIR (SC) 2774.
[22] *Balwant Singh v. State of Punjab*, 1976 AIR 230.
[23] *Binayak Sen v. State of Chhattisgarh*, (2011) 266 ELT 193.

cartoons in the newspaper that referred to the state's former chief minister, sedition became a hot topic.[24] Another controversy which sedition attracted was when Dr. Binayak Sen from Chhattisgarh was charged with sedition and evidence being books in support of the Maoists at his home.[25] Arundhati Roy was accused of sedition for denouncing the military's abuses in the north-eastern region. When sedition was unfairly applied to Gujrat community leader Hardik Patel while the entire community was out in the streets demanding reservation for the Patidar group, there was a great deal of uproar. The Kanhaiya Kumar case, in which a JNU student community leader was prosecuted with sedition for his on-campus chants honouring Afzal Guru, was the one that ultimately resulted in the statute being instantly repealed. The general public and the media both harshly criticised it. A person accused with sedition must live without a passport, is prohibited from holding public office, and must appear in court repeatedly while paying a legal fee. Most of the time, the accusations have not been proven, but the penalty instead is the procedure.

10. The International Scenario.

The law of sedition, which was established in India by the British and dates back approximately 500 years, is an antiquated statute. As a result, it is important to research and compare this sedition law to the sedition law of the nation that passed it. In 2009, the nation that gave origin to section 124A repealed its own sedition statute.

In the United Kingdom, seditious libel or sedition was a common law crime. The Statute of Westminster, which is the oldest statute in existence in Britain, declared that denial of the truth was not a defence for the crime of sedition and that the existence of actual injury was not significant. From this, the common law rules of seditious libel developed. The "Digest of Criminal Law" then provided a detailed definition of the offence. In the 18th and 19th centuries, this was often employed, primarily against activists who questioned the limits of media and speech rights.[26] But things started to alter over time. As British democracy liberalised throughout the 20th century, the crime of seditious libel was generally ignored. The last time this charge was ever prosecuted was in the 1970s. The Law Commission later stated in 1977

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[24] THE GUARDIAN, https://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition (Apr.30, 2023).

[25] The Hindu, https://www.thehindu.com/news/national/Binayak-Sen-among-six-charged-with-sedition-in-2010/article15502281.ece, (Apr.30, 2023).

[26] CLARE FEIKERT AHALT, Sedition in England: The Abolition of a Law from a Bygone Era (2012), Library of Congress Blogs, (Apr. 23, 2023, 2:48 PM), https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/.

that it believed the common law offence of sedition was poorly defined, superfluous, and had been abandoned for nearly 150 years.26 There was general agreement that the statute was unnecessary and improper, thus a move to repeal it was made. Before the Government finally agreed to abolition and vowed to repeal the statutes itself, amendments to the Coroners & Justice Bill were first introduced in the House of Commons and then again in the House of Lords in March 2009[27]. With this, the law of seditious libel was completely uprooted from the English legal system with the additional hope to help campaigners overseas argue for its abolishment. They professed that it would be helpful to open the door for other countries that retain the law to move forward and abolish the offence when it was out of books in the country which in the colonial era was responsible for its implementation. The sedition statute was similarly repealed in New Zealand in 2007 since its underlying legal concepts violated those of natural justice and the rule of law.[28] In a similar vein, sedition laws were repealed in Australia, Indonesia, and South Korea after being deemed unconstitutional. Additionally, Canada does not have any laws that restrict free expression, and its residents enjoy a high degree of freedom as a result of the infrequent application of such rules. Malaysia is one example of a democratic nation where the use of the sedition law was widespread, but it is currently facing criticism, especially from the United Nations Human Rights Commission to repeal the 'archaic and draconian' Sedition Act 1948 – a pre-Merdeka British enactment intended to control dissenters and to strengthen their political grip in Malaya at a time when the nationalism spirit was rising high among the people.

11. Interpretation of the offence of Sedition.

The requirements of this law are only put into effect when there is a violent occurrence caused by the speeches made, as it has been specifically stated. The public order test is the primary prerequisite for triggering this section. In the *Kedar Nath case*[29], where it carefully read this provision, the Supreme Court stressed the claim. The most sacred notions of national sovereignty and unity exist on the one hand, and the inalienable right to free expression exists on the other. The supreme court tried to build this unsatisfactory system harmoniously and decided that disruptions of the law and order at a public gathering should only be permitted in circumstances where the speaker or person charged deliberately or habitually provokes

[27] U.K PARLIAMENT, https://bills.parliament.uk/bills/372 (Apr. 23 2023).
[28] NEWSLAUNDRY, https://www.newslaundry.com/2016/02/16/a-quick-history-of-sedition-law-and-why-it-cant-apply-to-jnus-kanhaiya-kumar (Apr.23 2023).
[29] *Kedar Nath Singh v. State of Bihar*,1962 AIR 955.

violence. This specific interpretation of the law by the court has withstood the test of time and is still valid today. However, the lower judiciary and executive branches have shrugged off the plan, and the government's erroneous application of this section has resulted in violations of not only the unalienable and inalienable right to free speech but also of human rights because of the unprecedented arrests. Considering this, we will investigate instances in which the authorities failed to interpret this colonial law's terms.

A famous case involving the confiscation of a book that promoted the ideologies of a communist leader, specifically "Mao Tse-Tung," is the *Manubhai Patel case*[30]. This was done in accordance with Section 99A of the Criminal Procedure Code's guidelines. Content from the contentious book featured lectures and other occurrences that promoted communist doctrine as developed by numerous Chinese thinkers. The book was seized on the grounds that it might have incited violence in the nation and thus violated Section 124A of the IPC's criminal code. However, the judiciary steps in to protect the standards of fairness and reasonability that are essential to a fair trial when the government and the legislature let down the accused. In this case, the Gujarat High Court intervened to help and ruled that this particular book did not attempt to disturb public order in any way and did not attempt to destabilise the government that was in power. In the Aravindanl[31] case, the accused was charged with violating several severe penal code prohibitions, including sedition. In this case, the court was unsatisfied and said that the proceeding was still pending the Magistrate's decision. It then quashed the baseless accusations brought out against the accused. This provision's need that the government's consent be obtained prior to taking any action against the accused constitutes an important component that must be taken into consideration. This inconsistency was highlighted by the Andhra Pradesh High Court in the *Kandi Reddy case*[32], when the petitioner was accused of sedition without the State Government's prior approval. The previous sanction is crucial because only by going through the appropriate channels can a prosecution under section 196 of the Criminal Procedure Code be started. Considering this inconsistency, the court dismissed the petitioner's case.

12. Conclusion.

According to the study above, even if section 124A of the Indian Penal Code is necessary to

[30] *Rajendra Manubhai Patel vs State of Gujarat and Anr*, AIR 1992 Guj 10, (1992) 1 GLR 223.
[31] *Aravindan vs State of Kerala*, 1983 CriLJ 1259.
[32] *Kandi Buchi Reddy vs State Of Andhra Pradesh*, 1999 (3) ALD 193, 1999 (1) ALD Cri 450.

preserve public order and national integrity in India, its provisions need to be re-examined. If this clause were to be repealed, society members would simply indulge more than what would be considered reasonable speech restrictions. The author believes that these arrests should only be undertaken when there is no reasonable question of commission, despite the fact that it has been reported that in some situations, the police arrest the accused on suspicion of sedition. The author goes on to say that section 124A's application should be limited to prevent unauthorised use by powerful authorities. To hold persons accountable for harm done to the public, the government has various laws in place, including the Prevention of Damage to Public Property Act of 1984 and Section 505 of the IPC, which deals with public mischief. Given the existence of these provisions, Section 124-A is no longer necessary and should only be utilised in the most exceptional circumstances, which essentially include the government not abusing its authority. As a result, we can state that the use of sedition does not violate citizens' rights because Article 19 of the Indian Constitution prohibits it intended should be checks even though the clause is intended to prevent the overuse of the right to free speech and expression.