Page 310 - 319 **DOI:** *https://doij.org/10.10000/IJLSI.111113*

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 5

2021

Freedom from Sedition

SUHAS NARHARI TORADMAL[1]

ABSTRACT

Seventy-four years after Independence, the time has come for us to seriously ask whether the law of sedition in India needs to be reconsidered. According to the National Crime Records Bureau, in 2019, only 3.3% of sedition cases culminated in a conviction. This conviction rate is negligible in contrast to other offences under the Indian Penal Code (IPC) like murder (41.9%) and cheating (22.8%). The number of sedition cases registered is microscopic – in 2019, there were only 229 such cases pending investigation as against 2.84 lakh cases of forgery, cheating and fraud. However, the fear that the police might arrest you on trumped up charges of sedition if you criticize the government serves as a serious fetter on the fundamental right to free speech and expression. In 2019, some 96 people were arrested for sedition, many of whom might have been opponents of the government and, statistically speaking, most of whom will eventually be acquitted. Parliamentarians must consider some pressing amendments to the sedition law. Supreme Court sends strong message to government.

Keywords: *Sedition, Freedom of Speech and Expression, disaffection*

I. INTRODUCTION

Sedition in England

The law of sedition was introduced into the IPC by a colonial government intent on discriminat-ing against Indians. Since 1832 in England, sedition had virtually become a dead letter and prosecutions were extrem-ely rare. Sedition in England was a minor offence – a 'misdemeanor' as opposed to a 'felony'. It attracted a sentence of around two years in prison. It was a 'bailable offence', meaning that a person arrested for sedition had the right to be immediately released on bail[2]. A person charged with sedition had the right to be tried by a jury of his or her own peers, which made it very difficult to secure a conviction.

The definition of sedition in England, since 1832, was quite clear – only those who incited violence against the government or asked their listeners to take up arms against the government could be said to have committed sedition. Merely criticising the government, even harshly or unfairly, was no offence at all.

In 1870, an amendment to the IPC brought sedition into the statute books in India. Sedition in India was very different from its counterpart

[1] Author is an Assistant Professor at C.D. Deshmukh Law College, Ahmednagar, Maharashtra, India.
[2] Criminal Procedure Code, M.P.Tandon revised by Shailender Malik 18th Edition2011

 [ISSN 2581-9453]

in England. Here, it was a colonial device meant to quell even peaceful resistance. It was made punishable with transportation to an overseas prison for life – a far cry from the two-year punishment for the misdemeanor in England. Indian patriots who were accused of sedition were not entitled to be tried by a jury of their peers. Bal Gangadhar Tilak's trial, for instance, took place with a racially stacked jury of six white and three non-white jurors, who predictably voted to convict him by a majority of 6-3.

Sedition in India

Sedition in India was made a non-bailable offence, meaning that those who were arrested for sedition could only be released on bail at the discretion of a criminal court – they had no right to be immediately released on bail. Further, the definition of sedition in India was quite different from what it was in England. Here, merely 'exciting disaffection' against the government was sufficient to constitute sedition. As Justice Arthur Strachey of the Bombay High Court explained to the jury in Tilak's case, 'disaffection' means the 'absence of affection' – in other words, even if Tilak made his listeners fall out of love with the government, this was enough to prosecute and convict him.

The framers of India's Constitution were therefore understandably suspicious of sedition. Consequently, though the fundamental right to free speech and expression had many exceptions under the new Constitution of independent India, sedition was not one of them. In Master Tara Singh's case[3] (1950), the Punjab High Court held that Section 124A of the IPC (containing the law of sedition) was unconstitutional.

However, independent India's leaders soon found that they had been too idealistic while drafting the Constitution. Shortly after it came into force, State governments were unable to ban periodicals which had the tendency of inciting communal riots.

In a case decided by the Patna High Court, Justice Sarjoo Prasad chillingly observed that the fundamental right to free speech and expression in the new Constitution gave to all Indian citizens the right to incite murder and other cognizable offences with impunity. All this led to the enactment of the first amendment to the Constitution in June 1951 which, among other things, introduced a new exception to the right to free speech and expression – 'public order'. Sedition, an offence which was designed to preserve the 'public order', was now no longer unconstitutional.

To be sure, after India became independent, some improvements were made to the sedition regime. Jury trials were abolished, so there was no question of sedition cases being tried before racially loaded juries. In a case decided in 1962 (Kedar Nath Singh v. State of Bihar[4]), the Supreme Court adopted the definition of sedition which had been in vogue in England. Now, only a person who incites others to take up arms against the government or to violently overthrow

[3] AIR 1950 CriLJ 547 with reference to website www.indiankanoon.com

[4] 1962 AIR 955, 1962 SCR Supl. (2) 769

the government can be said to have committed sedition.

Repressive features remain

However, many of the colonially repressive features of the law of sedition remain on the statute books in India. Sedition is still punishable with life imprisonment and a non-bailable offence. Perhaps most startlingly, when the new Code of Criminal Procedure was enacted in independent India in 1974, it made sedition a cognizable offence. A cognizable offence is one in which a police officer can investigate the case and arrest the accused without obtaining a warrant from a magistrate. In other words, while the police in colonial India needed a warrant from a magistrate before they could arrest Tilak, the police in independent India can freely arrest the political opponents of the government on trumped up charges of sedition, without any hope of eventually securing a conviction.

Sedition in England was formally abolished in 2009, though it had become obsolete much before that time. However, even if India's parliamentarians want to keep sedition on the statute books, they must seriously consider some pressing amendments. By making sedition a bailable and non-cognizable offence, and reducing the punishment to a maximum of two years' imprisonment, they must bring the law in line with what it was in England since 1832.

Chief Justice indicates that Section 124A (sedition) of the Indian Penal Code may have passed its time:

Chief Justice of India N.V. Ramana's remark sends a strong message to the government that the Supreme Court is prima facie convinced that sedition is being misused by the authorities to trample upon citizens' fundamental rights of free speech and liberty.

The Chief Justice has sent a clear signal that Section 124A (sedition) of the Indian Penal Code may have passed its time[5]. The CJI has made it clear that the court is sensitive to the public demand to judicially review the manner in which law enforcement authorities are using the sedition law to control free speech and send journalists, activists and dissenters to jail, and keep them there.

In a way, the Court has questioned the need for the continuance of Section 124A — a colonial provision which was used to jail the Mahatma — in the law books of a modern democracy. This is a step away from the court's own *Kedar Nath* judgment of 1962 which had upheld Section 124A but read it down to mean any subversion of an elected government by violent means. The court will have to re-examine whether this 59-year-old judgment holds in the modern context when the State is itself using a punitive law to impose serious burdens on free speech.

The CJI's reference to low conviction rates under the sedition law resonates with a petition filed by senior journalist Sashi Kumar highlighting the "dramatic jump in charging a person with the offence of sedition since 2016".

"In 2019, 93 cases were on the ground of sedition as compared to the 35 cases that were

[5] See Indian Constitutional Law Prof. M.P. Jain revised by Justice Rampal 6th Edition 2013

filed in 2016. The same constitutes a 165% increase. Of these 93 cases, chargesheets were filed in a mere 17% of cases and even worse, the conviction rate was an abysmally low 3.3%," National Crime Records Bureau reports show that in 2019, 21 cases of sedition were closed on account of no evidence; two were closed being false cases and six cases held to be civil disputes.

II. RECENT CASES

The sedition cases registered against climate activist Disha Ravi, filmmaker Aisha Sultana and journalists Vinod Dua and Siddique Kappan. The CJI's observations culminates the resolve shown by the Supreme Court in recent months to examine the sedition law. In May, Justice D.Y. Chandrachud said "it is time to define the limits of sedition". The judge had flagged the indiscriminate use of the sedition law against people who aired their grievances about the government's COVID management, or even for seeking help to gain medical access, equipment, drugs and oxygen cylinders, especially during the second wave of the pandemic.

"This is muzzling the media," Justice L. Nageswara Rao, another Supreme Court judge, had noted while considering a plea made by two TV channels, TV5 and ABN, against the Andhra Pradesh government for using the sedition law to "silence" them. The CJI Bench issued notice to the government on a petition filed by the Editors Guild of India to quash the sedition law. Senior journalist Arun Shourie has also challenged the constitutionality of Section 124A.

Justice U.U. Lalit, in his recent judgment quashing a sedition case against Mr. Dua[6] for his alleged remarks about the Prime Minister and the Union Government in a YouTube telecast, upheld the right of every journalist to criticise, even brutally, the measures of the government with a view to improve or alter them through legal means.

The time is long past when the mere criticism of governments was sufficient to constitute sedition. The right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness, the judgment had recorded.

An urgent review of the Kedar Nath judgment is necessary as 'sedition' violates the basic right of speech and expression[7].

III. SEDITION LAW TODAY

Sedition is a crime under Section 124A of the Indian Penal Code (IPC). Section 124A IPC: It defines sedition as an offence committed when "any person 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". Disaffection includes disloyalty and all feelings of enmity. However, comments without exciting or attempting to excite hatred, contempt or disaffection, will not constitute an offence under this section.

Punishment for the Offence of Sedition: Sedition is a non-bailable offence. Punishment

[6] 2021 with reference to website www.indiankanoon .com

[7] See Art.21 of Constitution Right to Life and personal Liberty.

under the Section 124A ranges from imprisonment up to three years to a life term, to which fine may be added. A person charged under this law is barred from a government job. They have to live without their passport and must produce themselves in the court at all times as and when required[8].

Major Supreme Court Decisions on Sedition Law:

The SC highlighted debates over sedition in 1950 in its decisions in Brij Bhushan vs the State of Delhi and Romesh Thappar vs the State of Madras[9]. In these cases, the court held that a law which restricted speech on the ground that it would disturb public order was unconstitutional. It also held that disturbing the public order will mean nothing less than endangering the foundations of the State or threatening its overthrow. Thus, these decisions prompted the First Constitution Amendment, where Art.19 (2) was rewritten to replace "undermining the security of the State" with "in the interest of public order". In 1962, the SC decided on the constitutionality of Section 124A in Kedar Nath Singh vs State of Bihar. It upheld the constitutionality of sedition, but limited its application to "acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence". It distinguished these from "very strong speech" or the use of "vigorous words" strongly critical of the government.

In 1995, the SC, in Balwant Singh vs State of Punjab[10], held that mere sloganeering which evoked no public response did not amount to sedition.

Arguments in Support of Section 124A:

Section 124A of the IPC has its utility in combating anti-national, secessionist and terrorist elements. It protects the elected government from attempts to overthrow the government with violence and illegal means. The continued existence of the government established by law is an essential condition of the stability of the State. If contempt of Court invites penal action, contempt of government should also attract punishment. Many districts in different states face a maoist insurgency and rebel groups virtually run a parallel administration. These groups openly advocate the overthrow of the state government by revolution. Against this backdrop, the abolition of Section 124A would be ill-advised merely because it has been wrongly invoked in some highly publicized cases.

Section 124A is a relic of colonial legacy and unsuited in a democracy. It is a constraint on the legitimate exercise of constitutionally guaranteed freedom of speech and expression. Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy.

They should not be constructed as sedition. Right to question, criticize and change rulers is very fundamental to the idea of democracy. The British, who introduced sedition to oppress Indians, have themselves abolished the law in

[8] See Constitution Of India P.M.Bakshi 12th Edition
[9] 1950 AIR 124, 1950 SCR 594
[10] AIR 1995 (1) SCR 411

their country. There is no reason why India should not abolish this section.

The terms used under Section 124A like 'disaffection' are vague and subject to different interpretations to the whims and fancies of the investigating officers. IPC and Unlawful Activities Prevention Act[11] have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting national integrity. There is no need for Section 124A.

The sedition law is being misused as a tool to persecute political dissent. A wide and concentrated executive discretion is inbuilt into it which permits the blatant abuse. In 1979, India ratified the, which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition and arbitrary slapping of charges are inconsistent with India's international commitments.

The Problem of Sedition being constitutional

The law of sedition was not struck down by the Supreme Court in 1962 as unconstitutional even though sedition, as defined in Section 124A of the IPC, clearly violates Article 19(1)(a) of the Constitution which confers the Fundamental Right of freedom of speech and expression, the most valuable right of free citizens of a free country.

Further, this section does not get protection under Article 19(2) on the ground of reasonable restriction.

It may be mentioned in this context that sedition as a reasonable restriction, though included in the draft Article 19 was deleted when that Article was finally adopted by the Constituent Assembly. It clearly shows that the Constitution makers did not consider sedition as a reasonable restriction[12].

However, the Supreme Court was not swayed by the decision of the Constituent Assembly. It took advantage of the words ‘in the interest of public order’ used in Article 19(2) and held that the offence of sedition arises when seditious utterances can lead to disorder or violence.

This act of reading down Section 124A brought it clearly under Article 19(2) and saved the law of sedition. Otherwise, sedition would have had to be struck down as unconstitutional.

IV. WAY FORWARD

1. Role of Judiciary:

i. It falls on the judiciary to protect Articles 19 and Article 21 of the Constitution. Section 124A should not be misused as a tool to curb free speech.

ii. The argument used against the scrapping of the sedition law is that the Supreme Court has repeatedly observed that the mere possibility of misuse of a provision does not per se invalidate the legislation.

iii. Democracy has no meaning without freedoms and sedition as interpreted and

[11] See IPC and Unlawful Activities Prevention Act, 2019.

[12] Supra 7

applied by the police and governments is a negation of it.

iv. Hence, before the law loses its potency, the Supreme Court, being the protector of the fundamental rights of the citizens has to step in and evaluate the law.

v. It needs to be examined under the changed facts and circumstances and also on the anvil of ever-evolving tests of necessity, proportionality and arbitrariness.

vi. The higher judiciary should use its supervisory powers to sensitize the magistracy and police to the constitutional provisions protecting free speech.

vii. The definition of sedition should be narrowed down, to include only the issues pertaining to the territorial integrity of India as well as the sovereignty of the country.

2. Role of Parliament:

i. It is only Parliament that revoked a law like POTA [The Prevention of Terrorism Act, 2002], which was draconian and flagrantly misused.

ii. All these laws have always been upheld by the judiciary. It is only the parliamentarians when they get a push from the public, who swing into action.

iii. A strong will of Parliament holds the key to get rid of this draconian colonial-era law that has been used only to suppress dissent.

iv. Given the legal opinion and the views of the government in favour of the law, it is unlikely that Section 124A will be scrapped soon.

v. However, the section should not be misused as a tool to curb free speech. The SC caveat, given in the Kedar Nath case, on prosecution under the law can check its misuse.

vi. The definition of sedition should be narrowed down, to include only the issues pertaining to the territorial integrity of India as well as the sovereignty of the country.

The word ‘sedition’ is extremely nuanced and needs to be applied with caution. It is like cannon that ought not to be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting. Civil society must take the lead to raise awareness about the arbitrary use of the Sedition law.

The Delhi Police filed a charge sheet against 10 people, including former Jawaharlal Nehru University Students Union (JNUSU) president Kanhaiya Kumar in a sedition case for allegedly raising “anti-national slogans” during an event on the Jawaharlal Nehru University (JNU) campus in February 2016.

This fits a disturbing pattern. There have been many incidents in recent times where “misguided” people have been termed “anti-national”. For Instance, demonstrations through a slogan, a cheer, a statement, protest against a

nuclear power project, or an innocuous post on social media.

In all these cases, the state, across regimes, has filed charges of sedition. What is meant by Sedition and when it has to be applied? "Conduct or speech inciting people to rebel against the authority of a State or monarch" can be considered as Sedition. The sedition law was incorporated into the Indian Penal Code (IPC) in 1870 as fears of a possible uprising plagued the colonial authorities.

Section 124 A of IPC 1860:

"Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by Law is punishable with imprisonment for life. For India, it's a question of walking the fine line between liberty and security, tough choices and hard lessons.

Dark side of Applying Sedition Law:

Before Independence, this charge was used by the British to suppress the freedom movement. Ironically, the same draconian law has become a tool that the country is now using against its own people. During colonial period section 124-A was interpreted by the Privy Council in a way to suppress every act that expressed discontent against the govt.

Many freedom fighters were slapped with these charges for invoking feelings of nationalism and educating people of India against the policies adopted by the colonial power. Instead of critically analysing why citizens, be they in Kashmir or Chhattisgarh or Bhima Koregaon, are driven to dissent, the government is using an iron-fist policy with the sedition law playing a leading role to completely shut out contrarian views.

When will be Sedition Law has to be applied?

Kedar Nath Singh Vs State of Bihar, 1962: Constitution Bench of Supreme Court upheld the validity of Sedition Act. But, Supreme Court stated that Persons can be charged with sedition only if there is incitement to violence in his speech or writing or an intention or tendency to create disorder or disturbance in law and order.

Maneka Gandhi case, 1978: The Maneka Gandhi judgment was a balanced judgment and is one of the best judgments that Indian Supreme Court has ever given. The judgment's importance can be seen today also because the way in which the bench construed Article 21 and expanded its horizons has given way for the resolving of problems left unsolved by the Parliament.

The SC stated that Criticizing and drawing general opinion against the Govt. policies and decisions within a reasonable limit that does not incite people to rebel is consistent with the freedom of speech. It's quite evident that this judgment has played an imperative role. The judgment while saved the citizens from unquestionable actions of Executive.

One of most important judgements in this regard is Balwant Singh v. State of Punjab, Supreme Court overturned the convictions for sedition(124A IPC) and Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc (153

A IPC).More importantly, in the Balwant Singh vs State of Punjab, where the sedition charges were removed even when there were allegation of yelling 'Khalistan Zindabad' is a testimony to the fact that 'incitement' rather than 'advocacy' is the important element of section 124A. Of course, we know that sedition can't be applied to instances of criticism of the government or a political functionary. More importantly, words alone are not enough for such a charge to be slapped. Incitement to violence is the most crucial ingredient of the offence of sedition. In times like these, it seems like a sham to say that criticism of the state is the essence of democracy.

In raking up the JNU issue after three years, the government is not shying away from playing politics around patriotism and nationality. Going through the numbers that the National Crime Records Bureau puts out every year, it is clear that despite the rise in sedition cases, convictions happen in barely a few. Even if these people are not convicted, the slapping of these charges is a way the Governments over the years have been sending a strong message to its own people obey or be ready to face consequences.

V. CONCLUSION

It is the largest democracy in the world and the right to free speech and expression is an essential ingredient of democracy. Dissent is the lifeblood of democracy. But today when the stench of fascism looms large, exercising this constitutional right can get one branded as anti-national, thrown behind bars or a lynch by mob waiting outside to teach you a lesson.

Clearly, dissent, criticism of the government, questioning politicians, all of which are fundamental to democracy, have come to be treated as sedition by the police and a section of the magistracy in the prevalent political order. Such terrorising of critics and protesters endangers the very idea of democracy. A law that has especially come in handy for the self-proclaimed nationalists of our times to suppress dissent is the archaic colonial-era sedition law.

Of course, it is essential to protect national integrity. However, the expression or thought that is not in consonance with the policy of the government of the day should not be considered sedition.

Freedom of Speech and Expression is a fundamental right under Article 19(1)(a).Article 19(2) imposed reasonable restrictions. Moreover the first Amendment to the Constitution on June 18, 1951, imposed further restrictions.

To call for the overthrow of a stale and fearful social system is not sedition. The argument used against the scrapping of the sedition law is that the Supreme Court has repeatedly observed that the mere possibility of misuse of a provision does not per se invalidate the legislation.

Democracy has no meaning without freedoms and sedition as interpreted and applied by the police and governments is a negation of it. Hence, before the law loses its potency, the Supreme Court, being the protector of the fundamental rights of the citizens has to step in and evaluate the law.

To uphold the idea of democracy that the founders of the Constitution envisioned, India should deliberately avoid using the word

sedition from its statute books and everyday vocabulary. Hoping that reason prevails over politics when it comes to freedom.

*****