

Analysis of Sedition in India

Surya Pratap Singh Jodha

Rajiv Gandhi National University of Law, Punjab

Introduction

Sedition law is read about in Section 124 in the Indian Penal Code. When IPC was drafted in the 1860s, sedition was not originally part of it. Sedition law was inserted to the Indian Penal Code in the year 1870 at the time when the Wahhabi movement was going on. It is a non - bailable offence and its punishment varies from 3 years of imprisonment to lifetime imprisonment along with fine. This British Era law has been used repeatedly by successive governments, often against people who criticize them and against political activists. While conviction rates are usually very low, the law often acts as a whip to silence the dissent. So, is there really a place for law, whose main purpose was to muzzle criticism in modern-day India?

The text of the sedition reads as “*Whosoever through his words, whether these words are spoken or in written format, if through words you are promoting either hatred or contempt or disaffection against the government established by law*”, then you shall be booked under sedition and you can be sentenced to three years in jail or life imprisonment in jail to which a fine can also be added.¹

History

What was the principal objective of the Sedition Law?

We were under illegal British occupation and we had to overthrow this British rule, we had to wage a battle, an ideological battle against the British rule because it was an illegal rule but the first step had to be propaganda. That means we had to carry on with our educational propaganda; we had to educate the masses that we are under illegal foreign occupation and we had to overthrow this illegal British occupation. How can we carry on this propaganda through speeches, through articles, through writings, through newspapers? It is through these means that we can educate the masses and we can inform and educate the people that we have to come together on a single platform and launch a

¹ Indian Penal Code, Act No. 45 of 1860, INDIA CODE (1993), § 124.

struggle for India's independence. The British soon realized, if we allow Indians to carry on with this educative propaganda, a day in India these numbers will increase, so Britishers thought that we have to criminalize the freedom of speech and expression, and for this very purpose the sedition law was incorporated in the Indian Penal Code and the primary objective was, that we have to somehow prevent nationalist feelings from getting development among the Indians. Bal Gangadhar Tilak, Maulana Abdul Kalam Azad, and Mahatma Gandhi are the prominent personalities who were booked under sedition. After India got freedom from the British, we were busy framing the new Constitution for the people of this country. Sardar Patel headed a committee on fundamental rights and added sedition as one of the grounds in which freedom of speech and expression under Article 19(1) A can be restricted. That means the Constitution would have provided us freedom of speech and expression, but it was not meant to be absolute, there would be reasonable restrictions on your freedom of speech and expression. One such restriction was Sedition. But, when Sedition as a ground for restriction on your freedom of speech and expression was introduced in the draft constitution, many people in Constituent Assembly protested, even one member of the Constituent Assembly asked Sardar Patel that previously we feared the government of the British and now, do we have to fear the government of the people of our own country as well. So the sedition ground was dropped which means sedition was not mentioned as the reasonable restriction under your freedom of speech and expression. Then Sedition was mentioned in 124A of Indian Penal Code.²

Cases related to Sedition Law

➤ ***The Queen-Empress vs. Bal Gangadhar Tilak (1897)***

This case is one altogether the foremost famed cases within the history of the law of infringement in our country. Bal Gangadhar Tilak, who was an advocate, was charged double for infringement. First in 1897, his speeches inspired many people to unfold violence against the Britishers that finished with the death of two British officers. This was the first time when Section 124A of IPC was outlined and applied. Second, in 1990, he wrote a writing in his newspaper 'Kesari' concerning the Mahratta person Shivaji

² R. S. Dossal, *Constituent Assembly Debates On Fundamental Rights A Sidelight*, 13 THE INDIAN JOURNAL OF POLITICAL SCIENCE 99, 99 (1952).

that was thought-about seditious by the govt. Interpretation of 'Disaffection' was given through this case. Bal Gangadhar Tilak, resolute backer of India's freedom was accused of sedition twofold. The first in 1897 for speeches that supposedly actuated the vicious conduct of others, that came about after the death of two British officials. He was condemned & discharged in 1898 on bail, and prosecuted another time for seditious writing in his newspaper Kesari in 1909. Section 124 A was known and smeared first in 1897. Provocation of people and inciting violence and mounting was irrelevant in the eyes of the chairing council with reference to guiltiness of the private that has been accused of infringement.³

➤ ***Dr. Binayak Sen vs. State of Chhattisgarh (2011)***

Dr. Binayak first in 1897 for speeches that supposedly actuated the vicious conduct of others, that came about after the death of two British officials. He was accused of intrusion, amongst other things, for allegedly aiding Naxalites, and condemned to detention at the Session Court in Raipur. He was respondent of serving to radicals, who were terribly on the go within the province of that time, by transiting currencies from the Maoist captive who was his persistent to somebody outside the jail. Rejecting all burdens contrary to him, Dr. Binayak declared that they were underneath the continuous oversight of jail officers throughout his conduct, thus such an action wouldn't be attainable. It had been his condemnation of murders committed by the volunteer cluster which triggered the arrest of him and resulting allegations. Doctor Binayak confirmed to The Wall Street Journal that Salwa Judum, is the cluster he is pertaining, aimed, and maintained by the regime of Chhattisgarh to stop the rising within the rural community of Autochthonous ethnic group wherever it prospered, in step with them. Nevertheless, Dr. Sen, who is a human rights activist along with a paediatrician, claims that the team's real job is to clear village land that is wealthy in minerals, diamonds, and ores for it to be extracted. His arrest engorged an excellent deal of international responses & the United States-based international Health Council awarded Dr. Binayak its 2008 eating apple Mann Award for international human rights and health in gratitude for his service to underprivileged and autochthonous groups in Bharat. Later that year, twenty-two Nobel laureates sent a letter to the Indian gov. condemning the captivity and asking that

³ Namit Saxena, *A Look Back At Tilak's Sedition Trials*, LIVE LAW (Jul. 8, 2018), <https://www.livelaw.in/alook-back-at-tilaks-sedition-trials/>.

he be discharged to receive the award within the flesh. “We conjointly would really like to specific grave concern that Dr. Sen seems to be confined alone for calm and peaceful efforts, which is his elementary human rights.”⁴

Explanation

India has a very unique liberal democracy in which every citizen is guaranteed complete liberty, but the state is left with few possibilities to put control on the citizens. There are reasonable limitations on freedom of speech and expression like sovereignty of the country, Public order, a provocation to violence, contempt of court, etc., but sedition is not the ground. Sedition is mentioned in 124A of IPC. Indian Constitution is Article 13, says that law that is passed before independence, if this law is an agreement with the fundamental rights chapter, under part 3 of the Indian Constitution, it will be valid. However, if this law violated the Fundamental rights provided under part 3 of the Indian Constitution, it will be declared unconstitutional. This matter went to the court in a famous case *Kedarnath Singh v. The State of Bihar*.⁵ Sedition law’s constitutional validity was challenged, but the Supreme Court said the Sedition law under IPC is valid, but we will narrow down the interpretation of the Sedition law. We cannot have Sedition law as well as Freedom of speech and expression at the same breadth. That means we will give precedence to Freedom of speech and expression, but if you are using your Freedom of expression and speech to incite people to violence, then you can be booked under Sedition and you can be sentenced to three years in jail or life imprisonment. Because if you are inciting people to violence, you are also violating public order and since, public order is one of the reasonable restrictions under Article 19(2) on which your freedom of speech and expression can be restricted, in that case, the constitutional validity of Sedition law is intact but we are narrowing down the interpretation of Sedition law. You can say whatever you want to say but you can’t incite people to violence.⁶

Then we entered the 1980s, Operation Bluestar was launched because there were Khalistani terrorists present inside the Golden Temple and we had to flush out these

⁴ Dr. Vinayak Binayak Sen Pijush v. State Of Chhattisgarh, ELT 193 Chhattisgarh (2011).

⁵ Kedar Nath Singh v. State of Bihar, A.I.R. S.C. 955 (1962).

⁶ Santosh Singh, *Kedar Nath Singh vs State of Bihar: Once forgotten, now sedition case landmark*, INDIAN EXPRESS (Sep.8,2016), <https://indianexpress.com/article/india/india-news-india/sedition-cases-ke-dar-nath-singh-vs-bihar-reference-landmark-3019344/>.

terrorists. Then Indira Gandhi was assassinated by her Sikh bodyguards, and then the slogans were raised like “Raj Karega Khalistan”, “Khalistan Zindabad” because there was a section of the Sikh community in Punjab, which wanted an independent state, an independent country called Khalistan for the Sikhs. Those people who raised these slogans, they were arrested and were booked under sedition for promoting cynicism contrary to the government recognized by law. This matter went to the court, *Balwant Singh case* of 1995, Supreme Court held, the mere slogan, no matter how unpalatable these slogans are, they won't be deemed as sedition, as you have the freedom of expression and speech, unless and until you are inciting the people for violence, and promoting people to raise arms to overthrow the government presently, then can be booked under Sedition and acquitted everyone. ⁽⁷⁾⁽⁸⁾Then came the landmark case, *Shreya Singhal v. Union of India* in 2015⁽⁹⁾ and it was in this case that perhaps for the first time the Supreme Court defined what speech primarily is all about. The Supreme Court said, through your spoken words or written words, you can advocate whatever you wish and propagate, but not to incite people to violence. That means advocating an idea or to propagate anything is your Freedom of speech and expression, but you not to incite people to violence. If, through your speeches, there is a breakdown of public order, you are violating public peace and tranquillity in the state, and then only someone can be booked under sedition.

Arguments

➤ *Against the Sedition Law*

As we have seen in the recent case in JNU, where many students were charged under Section 124 of the IPC just because they tried to criticize the ruling government. This section is used as a tool to suppress dissent considering that the chart sheet had come three years after the actual case happened. As India is a democratic country and has Freedom of speech and expression, if the Sedition law doesn't allow us to use that right, then definitely there is no place for this law in our statute. As Section 124 of IPC does

⁷ Samanwaya Rautray, *Supreme Court in 1995: Stray slogans do not attract Section 124A pertaining to sedition*, THE ECONOMIC TIMES (Feb. 20, 2016) <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-in-1995-stray-slogans-do-not-attract-section-124a-pertaining-to-sedition/articleshow/51062254.cms>.

⁸ *Balwant Singh & Anr. v. State of Punjab*, A.I.R. 1975 S.C. 230.

⁹ *Shreya Singhal v. Union of India*, A.I.R. 2015 S.C. 1523.

not clearly define the meaning of “Disaffection”, it keeps on changing from person to person on the basis of their interpretation.¹⁰

➤ ***Favour of Sedition Law***

As Sedition is still a part of statute books, no one can say, there is no place of this law in Modern India. When IPC came into existence in 1860, laws of murder, rape etc., were also there in the same statute as the Sedition law. 100 years later, we cannot say that Sedition law is out-dated. Law is in the context, and these provisions are there to protect the citizens. Actually, there is no other law or section present for punishing those who are waging war, spreading dissatisfaction, or inciting violence to overthrow the ruling government. This is the reason to remove this section, and thus it is part of the statute even today. Even it is not constitutionally being struck out by the court, after the Balwant Singh and Kedarnath case; still, it is the part of the statute because courts believe that it is an essential part of the statute. The argument we have been seeing from a long time that this law is being misused by many people, but when we see there are instances when false rape cases are filed, false dowry cases are filed, does that mean we should throw all these laws out the Statute book?

This is the time when courts come into picture. If someone is misusing any law, we should try to punish the person, not that we should remove the law directly. In the case of Facebook posts and others, when the court found that Section 66A of the IT Act did not satisfy, what are the basic protections for citizens and their rights; it was struck down by the court. In this case it's not about the government, as a citizen we all have the right to criticize the government, but the question is whether there is any implicit attempt to spread disaffection or to incite violence.¹¹

Conclusion

The law is clear, the Supreme Court is clear, no matter how unpalatable the speeches of someone are or the words are, whether someone raises any slogans against the country like “*Bharat Ki Barbadi Tak Jung Rahegi*” (The war will still be there till India is destroyed), even that is not Sedition until it does not incite hatred among the public and does not incite people to violence, you won't be charged with sedition. Although we

¹⁰ India Today Web desk, *Use and Misuse of Sedition Law: Section 124 of IPC*, INDIA TODAY (Oct. 9, 2019), <https://www.indiatoday.in/education-today/gk-current-affairs/story/use-and-misuse-of-sedition-law-section-124a-of-ipc-divd-1607533-2019-10-09>.

¹¹ Dossal, *supra* note 2.

have seen in many cases, the Supreme Court is very clear about the actual definition of Sedition law, but then also we have seen many cases where police have misused the Sedition Law. JNU student activists were arrested and we saw activists in Assam, who were objecting to the amendment in the citizenship bill, were booked under sedition. After so many cases where we have seen misusing this law, the Law Commission in its report suggested re-considering the entire Sedition law and that is why many people today are asking for, that this Sedition law is altogether scrapped. It's a relic of colonial error and it should be thrown into the dustbins of history.¹²

¹² Krishnadas Rajagopal, *Article on Law Commission calls for re-think on sedition clause*, THE HINDU (Aug. 30, 2018), <https://www.thehindu.com/news/national/law-commission-backs-dissent-in-a-democracy/article24822850.ece>.