

**INTERNATIONAL JOURNAL OF LEGAL
SCIENCE AND INNOVATION**
[ISSN 2581-9453]

Volume 3 | Issue 5

2021

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Whether Sedition Law is Effective?

SANKARA GOMATHI M¹

ABSTRACT

The recent instance of wide misuse of sedition law against journalists and public activists has raised questions on the constitutionality and validity of such laws in the current period. Actually, Sedition law was once a protection used by the British to suppress the Indians. This article emphasizes on how sedition law affects fundamental right to freedom of speech and expression as enshrined under Article 19(1) (a) of the Indian Constitution. Although, some reasonable restrictions under Article 19 (2) support sedition law, such laws clearly abrogate fundamental rights. This article explains how the outdated sedition law affects our present democratic country. Corresponding to Sedition law, this article prove that the law in accompany with constitutional and administrative does not go together. It is necessary to do a detailed research on this topic to understand the relationship between two and how one affects the other.

I. INTRODUCTION

Sedition law is basically used to prevent any insult to the State by punishing with imprisonment and fine. But, A clear distinction between seditious act and non seditious act were absent in the sedition law. This poor distinction proceeds to false acquisitions on individuals. Sedition law violates the fundamental right i.e. right to freedom of speech and expression as enshrined under Article 19 (1) (a) of the Indian Constitution. Section 124A of the Indian Penal Code punishes any person who commits the offence sedition. A person is said to have been committed sedition when he/she by words either spoken or written or by signs or actions 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. Article 19(1) (a) of the Indian Constitution guarantees to all its citizens the right to freedom of speech and expression. This right allows citizen to express his view and opinion on any regard. It is one of the most important Fundamental rights guaranteed to the citizens of India. Recently, Many Supreme Court proceedings and the controversial arrest of activists and journalists have brought the law of sedition into the contemporary issue. In order to stop criticisms against the Government, Our constitution introduced sedition law under Sec 124A of Indian Penal Code which provides a maximum punishment of life imprisonment. At the same time, sedition law violated Article 19(1) (a)

¹ Author is a Student at Sastra Deemed University, India

(Freedom of Speech and Expression) of the Constitution. The activists and journalists had a trouble time in criticising Government's action, which clearly invaded freedom of speech and freedom of press. They were not clear regarding what amounts to sedition and what is not. What constitutes mere criticism and what constitutes hatred creates confusion among the citizens.

II. ORIGIN AND HISTORY OF SEDITION

The law owes its origin in early 1860's under the British Raj. Sedition came into force when foreign imperialist colonization was ruling India. The British used law of Sedition to curb any demand for independence. Mahatma Gandhi, Father of our Nation was also charged for Sedition. After Independence, in the year 1948 Sedition was removed from the constitution by the then Prime Minister Jawaharlal Nehru in Constitution (First Amendment) Act and freedom of speech and expression was guaranteed under Article 19(1)(a) of the Constitution. Nevertheless, Sedition was still there in Indian Penal Code under section 124A. Section 124A was held unconstitutional in the year 1951 stating section 124A was contravention on Article 19(1) (a) Freedom of Speech and Expression of the Constitution². After two years, the High Court again made Section 124A of the IPC valid stating that it does not violate Article 19 of the Constitution³

III. INGREDIENTS OF SEDITION

A person shall be punishable under section 124A of the Indian Penal Code if he/she commits any

act that is seditious such as:

- Any words either spoken by a person or group of people or written by them.
- Any signs of a person or group of people including visible representation like placards, posters and banners. Rising of slogans against the government.
- Any act which brings hatred and contempt against the government.
- Any act which results in imminent violence in the society causing Public disorder.

IV. THE ABUSE OF SEDITION LAW

In the recent times, sedition law is being misused against journalists and other peaceful dissenters who express their genuine criticisms against the Government. This is because of ambiguity in the distinction between genuine criticisms of the Government and statements which seek to overthrow the Government. The distinction between the nation and the Government has been blurred to the extent that any criticism of Government functioning, irrespective of merit, is seen as being anti-national and disloyal to the motherland. People expressing constructive criticisms are also prosecuted because of misuse of law. This hampers the citizens from giving genuine criticisms and suggesting ways for the nation's progress. The other major issue with the law on sedition is how it is governed in the legal system. The NCRB's Crime in India report 2019 shows that the number of cases filed under

² Tara Singh Gopi Chand v. The State, AIR 1951, Punj 27 (Z6).

³ Debi Soren and others v. The State, 1954 Cri LJ 758.

Section 124-A of the Indian Penal Code increased by 160% while the rate of conviction dropped to 3.3% from 33.3%⁴. The problem is the misuse of the law by an overly sensitive government and during its application, illegal actions accompany them. An instance to the misuse of sedition law is evident from the following case. A 19-year-old girl named Amulya Leona raised a slogan “Pakistan Zindabad” and she was charged under Sedition and when people started searching her facebook profile. She said that any Government that is long-lived and works for people as zindabad. Sedition can be charged when it promoted disaffection against the Government established by law. But, here, in this case, the girl’s statement “Pakistan zindabad” does not seem to create any disaffection against Government. She was charged for sedition and spent some time in jail. There is a clear abuse and misuse of sedition law by officials because of misunderstanding or misuse of authority for personal vengeance.

V. CONSTITUTIONAL VALIDITY

According to article 13(7) of The Indian Constitution, any law whether enacted before Independence and after Independence has to be consistent with fundamental rights to be constitutionally valid and any law which is inconsistent with part III of the Indian Constitution has to be declared unconstitutional and invalid. Sedition and freedom of speech

cannot go hand in hand. Therefore, whenever there is a conflict, freedom of speech and expression being a fundamental right will have an upper hand but misuse of this freedom will lead to imprisonment and fine. In modern democracy and developing nation, laws like that of sedition should not prevail. Section 124A of IPC is vague when it says “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.”⁵ The expression “disaffection” includes “disloyalty and all feelings of enmity”. The vagueness of law can be a sufficient ground for its invalidation. Certainly, section 124A of IPC is very large to catch dissenters, dissidents, critics in media, political opposition, and civil society representatives who perform the critical adversarial function so important for a healthy democracy.

VI. SEDITION LAW IN INDIA VS OTHER COUNTRIES

In United States of America, it is unlawful to advocate the propriety to remove the leader or Government from power, by using force, with knowledge. But, when freedom of speech is concerned, this law is rarely considered⁶. In Germany, there is a legal concept called

⁴ Rahul Tripathi, Arrests under sedition charges rise but conviction falls to 3%, The Economic Times (Feb.17,2021,07.51AM) <https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?from=mdr>

⁵ The Indian Penal Code, 1872, Section 124-A.

⁶ Meher Manga, Sedition Law: A threat to Indian Democracy?, Observer Research Foundation (July 26, 2021) <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/>

VOLKSVERHETZUNG which means sedition in liberal term. In Canada, freedom of speech comes first among laws that restrict such freedom. After 20th century, no sedition has been brought to light. Under Dutch Penal Code, it is an offence to disrespect the King, the Heir Apparent and their spouse. In United Kingdom, Sedition law has been abolished, but, Sedition by an alien is a crime. Of all these, Malaysian law is unique because it consists of laws not only on sedition but also laws on forbidding of racial hate-speech. In India, after Independence, the legality of sedition law was first come into consideration in *Romesh Thapar v. State of Madras*. In that case, it was declared that ‘Unless the freedom of speech and expression threaten the security or tend to overthrow the State’, any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution. The Sedition law in India seems to put restriction on the citizen expressing his dissent on any opinion of the State in a democratic country. Although, other countries have abolished sedition, India still considers this law valid.

VII. CURRENT SCENARIO

One of the predominant problems with the sedition law is that it is very vaguely defined so that it can misinterpret in various ways. As sedition is not clearly defined we don’t know what acts are seditious and what are all the acts non seditious. Police and other government officials falsely accuse individuals because of this reason. There is no clear differentiation

between seditious acts and non seditious acts. This issue was mentioned by Justice D.Y. Chandrachud while restraining the Andhra Pradesh government from taking adverse action against two Telugu news channels booked under Section 124A of the Indian Penal Code, 1860. In other vital case Justice Chandrachud stated, “Expression of views which is dissent and different from the opinion of the government cannot be termed seditious⁷”. Also in *Disha Ravi* case Delhi High Court explained that the government cannot put citizens “behind bars simply because they chose to disagree with the state policies” and “the offence of sedition cannot be invoked to minister to the wounded vanity of the governments.” All these judicial interpretations are way different from the sedition law.

VIII. ABOLISHING SEDITION LAW

The main reason why the sedition law should be abolished from the penal book in India is that only one or two convictions happen in the country every year. Another reason is the increase in the number of cases registered under the law every year which, read with the low conviction rate, shows that it is more an instrument of harassment than a legal measure to deal with an offence. Minister of State for Home Kishan Reddy told the Lok Sabha on Tuesday that he number of sedition cases doubled in the five years of the Narendra Modi government’s reign. According to the National Crime Records Bureau’s report, Crime in India, in 2019, the number of cases filed for sedition was 93, which

⁷ *Rajat Sharma v. Union of India*, 2021 SCC Online SC 162.

is a 165% increase from 35 in 2016.. Around 77% of the 195 sedition cases since 2010 were registered in the last four years during the time when Yogi Adityanath was Chief Minister⁸. More than fifty percent of these cases aimed those who protested against the Citizen (Amendment) Act, 2019. So, the sedition law should be declared unconstitutional. Also, the prevailing provisions are enough to deal with all threats to violence and public order.

IX. CONCLUSION

In a democracy, People should be at liberty to show their view point regarding society whether in the form of constructive criticism or advice to the State. Such action might be harsh but it cannot be branded as an offence and seditious. Expressing one's dissent is not spreading enmity or disaffection towards the State. Acts which incite offence and disrupt public order with violence should be declared seditious. In the absence of clarity regarding the fair and unfair criticisms, the law is prone to unconstitutional use. Such violation of the Constitution supports the abolition of sedition law as the Constitution of India has many provisions to preserve its security, unity, integrity, and sovereignty. So, in every way, Sedition affects the fundamental right and making itself unconstitutional when viewed under Article 13(7) of the Constitution.

⁸ Kapil Sibal, Indiscriminate application of sedition law, *The New Indian Express* (Feb. 6, 2021, 07.26 AM) <https://www.google.com/amp/s/www.newindia>

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