



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

The Power of Sedition Law and Its Impact

Shaswat Shaurya^a

^aICFAI University, Dehradun, India

Received 25 July 2022; Accepted 26 August 2022; Published 29 August 2022

The character of the research paper is interdisciplinary. It focuses on the use and effects of the 151-year-old sedition statute established under Section 124 of the Indian Penal Code and is related to the idea of sedition. It discusses the definition, background, problem description, misuse, and effects on society. This essay also offers a comparative perspective by examining the application and effects of sedition laws in many nations, and it emphasises the necessity to repeal this legislation that is used to silence political criticism.

Keywords: *sedition, section 124 of IPC, impact, power, stifling, dissent, government.*

INTRODUCTION

The Oxford Dictionary defines sedition as behaviour or speech that encourages people to rebel against a state or monarch's authority. Section 124A¹ of the Indian Penal Code provides a definition of sedition in India. Sedition accusations are still filed under the 151-year-old sedition legislation, which is also used to silence political dissent. It limits the acceptable exercise of the freedom of speech and expression guaranteed by Article 19 (1) (a) of the Indian Constitution². The British have recently abolished sedition in their own nation after using it to

¹ Indian Penal Code 1860, s 124

² Constitution of India 1949, art 19(1)

subdue Indians throughout the colonial era. This statute has been repealed not only in Britain but also in South Korea, Scotland, Indonesia, and the US (struck down in large portions). According to the CJI, the government is abusing sedition to trample on citizens' basic freedoms of speech and association. He stated emphatically that the statute has outlived its usefulness and that it is important for the court to conduct a judicial assessment of how law enforcement agencies are utilising the sedition law to censor free expression and imprison journalists, activists, and dissenters. In a sense, the court considered whether Section 124A, British legislation that was used to imprison the Mahatma, should be on the books of contemporary democracy.³

REVIEW OF LITERATURE

Thomas Macaulay, a British historian, and politician, first drafted the statute in 1837; nevertheless, it was mysteriously left out when the Indian Penal Code (IPC) was adopted in 1860. Sir James Stephen's proposal, which saw the necessity for a special section to deal with the offence, led to the insertion of Section 124A in the law in 1870. The Indian Penal Code's Chapter VI, which deals with crimes against the state, contains Section 124A, which defines and punishes sedition in India. The British government added this provision out of concern that the Indians might go to war to rid themselves of the British Raj. Any speech or expression that incites or seeks to incite hatred, contempt, or unhappiness with the legally established government in India is considered sedition, a non-bailable crime in India that has a maximum punishment of life in prison. If found guilty, they will be denied access to passports and barred from employment with the government.

In 1948, after discussions in the Constituent Assembly, the word "sedition" was removed from the Constitution. The word "sedition," which was used in the original Constitution as a justification for restricting the right to free speech and expression, was removed by KM Munshi's amendment. Thus, when the Constitution was ratified on November 26, 1949, the

³ Krishnadas Rajgopalan, *Sedition law The Supreme Court sends a strong message to the government'* (*The Hindu*, 16 July 2021) <<https://www.thehindu.com/news/national/sedition-law-supreme-court-sends-strong-message-to-government/article61441546.ece>> accessed 25 July 2022

word "sedition" was removed from it, and Article 19(1)(a)⁴ guaranteed complete freedom of speech and expression. Nevertheless, Section 124A remained in the IPC. Jawaharlal Nehru adopted the first constitutional amendment in 1951 to restrict freedom under Article 19(1)(a) and to provide the State with the authority to impose "reasonable restrictions" on the right to free speech. For the first time in India's history, Section 124A became a punishable offence under the rule of the Indira Gandhi administration. Sedition was deemed a cognisable offence in the new Code of Criminal Procedure, 1973, which replaced the colonial-era 1898 Code of Criminal Procedure and went into effect in 1974. This allowed the police to make warrantless arrests.

RECENT JUDICIAL RESPONSE AND DEVELOPMENTS

N.V. Ramana, the Chief Justice of India, delivered a clear message to the administration, saying that the Supreme Court is presumptively satisfied that the government is abusing the sedition statute to restrict citizens' fundamental freedoms of expression and association. The CJI stated categorically that section 124A of the IPC is no longer relevant. The Chief Justice stated that this rule is a departure from the *Kedarnath Decision*⁵ by the Supreme Court in 1962, which maintained section 124A but interpreted it to imply any violent attempt to overthrow an elected government. The court will need to re-evaluate whether the 59-year-old ruling still holds true in contemporary democracy when the State is actively utilising a punitive statute to severely restrict the freedom of speech and expression that is granted by the constitution. The CJI mentioned the substantial increase in sedition conviction rates that has occurred since 2016. As opposed to 35 cases in 2016, 93 cases of sedition were filed in 2019. This indicates an increase of 165 percent. According to the National Crime Records Bureau, only 17 percent of these 93 instances have charge sheets filed, and the conviction rate is 3.3%. (NCRB). Only two persons have been found guilty of sedition out of the 96 suspects who were detained on sedition-related accusations in 2019 thus far.

⁴ Constitution of India 1950, art 19(1) (a)

⁵ *Kedarnath v State of Bihar* (1962) AIR 955

Another noteworthy finding is the age range of those detained in sedition cases; most of those detained are between the ages of 18 and 30 and one lady is 55. According to the NCRB, Assam had the second-highest number of sedition cases in 2019 with 17, followed by Jammu & Kashmir with 11 instances, Uttar Pradesh with 10, and Karnataka with 22 cases. The other three states were governed by the BJP at the time, but J&K was governed by the President. The West Bengal government, according to NCRB, did not give the data for 2019. The Delhi Police filed sedition charges against a number of people, including three young Muslim women, during the anti-CAA rallies last year. Amulya Leona, 19, was also arrested by Karnataka Police for sedition after yelling "Pakistan zindabad" during a demonstration last year during an anti-CAA protest. The Supreme Court has often urged the government to abide by the rules established by the *Kedarnath v State of Bihar* decision and not to abuse section 124A of the IPC to restrict people's basic freedoms of speech and expression.

In a study on sedition published in 2018, the law commission⁶ stated: "While it is important to defend national integrity, it should not be abused as a tool to restrict free speech. In a healthy democracy, dissent and criticism are necessary components of a robust public discussion of policy matters. Therefore, any restriction on the right to freedom of speech and expression must be carefully considered to prevent unfair limitations on the rights of people who disagree with the government. According to the NCRB report, for cases now in court, 21 cases were dismissed owing to a lack of evidence or knowledge, 2 cases were labelled as frivolous, and 6 cases were discovered to be disputes of a civil character based on the police's final report presented to the courts. Lawyers defending sedition cases have claimed that the low conviction rate is due to a lack of fundamental legal principles and elements. In one of the cases, Geeta Luthra remarked that "the prosecution may not offer evidence or a charge sheet, as their main goal is to throw someone in jail. The government wants to convey a strong message about what will happen if you disagree with the government, not because they want to punish anyone. Mrinal Bharti, a renowned attorney who defends media organisations and journalists accused of sedition, claimed that prosecutions are pushed by the current

⁶ Law Commission of India, *Consultation Paper on Sedition* (Law Comm. 2018)
<<https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>> accessed 25 July 2022

administration to stifle criticism. She continues by pointing out that incomplete investigations and a lack of evidence are to blame for the low conviction rates.

The Sedition Act has been suspended as a result of a recent Supreme Court decision. The Honourable Supreme Court issued an interim direction urging the Central and State governments to refrain from filing any FIRs under section 124 of the IPC and requesting the Union Government to re-examine the 151-year-old sedition provision. A court that includes the Chief Justice of India, NV Ramana, Justice Surya Kant, and Justice Hima Kohli dismissed all ongoing trials, appeals, and processes. The bench ordered as follows: "We hope and anticipate that while the case is being reconsidered, the Center and State Governments will hold off on filing any formal complaints, conducting any inquiries, or exercising coercive power under Section 124A of the IPC." It will be acceptable to wait to employ this legal provision until any additional re-examination is finished. The Court further ruled that individuals who have already been detained and arrested for violating Section 124A IPC may file a bail application in the proper tribunals. It has also been determined that in the event that a new case is filed, the appropriate parties are free to approach the court for the appropriate remedy, and the court is compelled to evaluate the relief demanded in light of the verdict delivered by the court.

MISUSE AND CASE STUDIES

Statistics and the judiciary both demonstrate that the government is abusing the sedition statute to silence those who disagree with it. The government's widespread application of the sedition statute brings to mind colonial times. People who disagreed with British policy were imprisoned by colonial authorities using the charge of sedition. Legendary liberation fighters like Lokmanya Tilak, Mahatma Gandhi, Jawaharlal Nehru, Bhagat Singh, and countless others were imprisoned for their "seditious" speeches, publications, and actions while the country was ruled by the British. The sedition statute is now being utilised against activists, protestors, students, Dalit and tribal campaigners, and members of minority communities on tenuous justifications. By mercilessly using sedition accusations against government critics, the administration is imitating the behaviour of British tyrants.

DISHA RAVI CASE: Section 120B⁷ of the Indian Penal Code, which deals with criminal conspiracy, Section 124A (sedition), and Section 153A⁸ were the charges brought against Disha Ravi (Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony). The Delhi High Court applied Supreme Court precedents that take a limited view of applying the provisions to both the conspiracy and sedition accusations and came to the conclusion that the Delhi police had not shown any proof. The court stated that conclusions about conspiracy cannot be used to show it; they must be supported by facts. Regarding sedition, the Delhi High Court emphasised that there must be either actual violence or the instigation of violence coupled with the remarks, citing the Kedarnath case. By recognising that the fundamental right to freedom of speech and expression includes the right to seek a global audience and that there are no geographical restrictions on communication as long as it is conducted "under the four corners of law," the court went one step further to refute the state's allegations that Ravi is a member of a "global conspiracy." Regarding sedition, the court examined the toolkit's material and came to the conclusion that it was "harmless" and did not advocate violence. The court even rejected the toolkit's reference to genocide.org, a website that advertises early warning signals of a genocidal process.

VINOD DUA CASE: Ajay Shyam, the head of the BJP's Mahasu unit, filed a complaint, and journalist Vinod Dua was charged under sections 124A (sedition), 268 (public annoyance), 501 (publishing content known to be defamatory), and 505⁹ (statements conducive to public mischief). The BJP leader asserted that throughout his 15-minute YouTube presentation, Dua made absurd accusations. According to the complaint, the journalist had claimed that Prime Minister Narendra Modi used "deaths and terror attacks" to win support. Regarding the protection of media professionals' freedom of speech and expression, the Supreme Court panel presided over by Justices UU Lalit and Saran stated that "every journalist is entitled to protection under the Kedarnath Judgment. The top court had declared in 1962 that sedition charges could not be brought against a citizen for criticising government acts since doing so

⁷ Indian Penal Code 1860, s 120B

⁸ Indian Penal Code 1860, s 153A

⁹ Indian Penal Code 1860, ss 124A, 268, 501, and 505

would violate their right to free speech and expression. However, the court did affirm the legality of section 124A (sedition) of the IPC.

COMPARISON WITH OTHER COUNTRIES RELATED TO SEDITION LAW

- a) **USA:** The Sedition Act of 1798¹⁰ served as the foundation for the Supreme Court of the United States of America's evolution of the Sedition idea in that nation; today, the court protects free expression. Sections 2381 to 2385 of the United States Code dealing with treason, sedition, and other subversive activities that call for the overthrow of the government. However, the law is rarely used to preserve the right to free speech.
- b) **UK:** In the 1960s, the British-made statute in the United Kingdom became out-of-date and was finally repealed in 2009. Sedition committed by an alien (a resident who is not a national of the country) is nonetheless illegal.
- c) **SINGAPORE:** In 2021, Singapore removed its sedition laws, which had been put in place 83 years before to put an end to local resistance to British colonial rule. Singapore, like India, inherited colonial English law. According to the Home Ministry, the Sedition Act's key clauses are no longer applicable in modern Singapore, and prosecutions under the law are extremely uncommon. It asserted that a number of other pieces of legislation can effectively address the issues raised by the sedition law. Singapore has passed new legislation over time to deal with the issues covered by the Act in a more targeted and methodical manner.
- d) **AUSTRALIA:** The first comprehensive statute in Australia to include a sedition offence was the Crime Act of 1920. It was reviewed twice, in 1984 and 1991. In 2005, revisions were made to Schedule 7 of the Anti-Terrorism Act (No 2) 2005. The Australian Law Reform Commission looked into the use of the word "sedition" to characterise the offences listed in the 2005 amendment (ALRC). In 2010, the National Security Amendment Act of 2010 changed the term "sedition" to "urging violence offences," adopting an ALRC proposal.

¹⁰ Sedition Act 1798, s 2

RECOMMENDATIONS

- One of the biggest democracies in the world, India, has a constitution that upholds the fundamental democratic principle of freedom of speech and expression. It should not be taken as sedition when a word or thinking is in opposition to the current policy of the government.
- The authorities should not abuse Section 124 of the Indian Penal Code to suppress political opposition in the name of national security.
- The higher courts should exercise their oversight authority to educate the police and magistrates on the constitutional protections for free speech.
- The concepts of integrity and national sovereignty should be included in the definition of sedition.
- The term "sedition" is exceedingly subtle and should only be used sparingly. It's analogous to a cannon that shouldn't be used to kill mice, but the arsenal also necessitates the presence of cannons, primarily as a deterrent and occasionally for firing.

CONCLUSION

Our administration continues to stifle dissent and restrict the constitutionally guaranteed freedom of speech and expression under the pretext of a threat to national security by using the same law that jailed India's freedom fighters. The Indira Gandhi administration in independent India was the first to abuse the law, and the current administration of our country is continuing that trend. There are several instances where frivolous lawsuits are brought to quell opposition to the government. This research article provides statistics on legal misapplication and offers a few case studies as supporting evidence. The law should be changed and applied in a way that avoids giving it an authoritarian feel.