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"Out With The Old"—The Flaws in India's Archaic Sedition Law and Why we must Leave it behind

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A remnant of India's colonial past, sedition is a law that criminalizes any speech or publication that incites hatred or contempt towards the government in power in India. While the Supreme Court has instructed on multiple occasions that the power this provision grants to the State should not be exploited, contemporary statistics show that the Indian government has turned a blind eye to these guidelines. In such a time, a question arises—does India needs sedition at all? This paper will delve into Section 124A of the IPC, 1860, its misapplication in modern times, and answer the question of why and how the Act is against the fundamental rights enshrined in the Constitution of India.

Keywords: *section 124a, sedition, state, fundamental rights, government, supreme court.*

INTRODUCTION

Encouraging or organizing the public to oppose the government through speech or writing generally constitutes sedition. In its essence, sedition is a crime against the state. The concept finds its roots in English law. Brought to India by the British, the offence was added to the Indian Penal Code in the 1870s by an amendment to deal with those opposing colonial rule in India

swiftly and severely[1]. During this period, the sedition law had become an essential tool for the British to suppress the voice of dissenters and to curb various rebellions and protests. From the general public to freedom fighters, pre-independence India had to bear the brunt of this provision.[2]

This law and its legacy have been carried into modern India as well. Sedition law passed the test of constitutional validity in 1962 after the famous case of *Kedar Nath Singh v State of Bihar*[3]. Today, as mostly innocent citizens are jailed under this provision, people have begun to wonder whether sedition is even necessary for a democratic country like India, where one should have the right to question and criticize their government. This paper argues that sedition is an archaic law that violates the fundamental rights of Indian citizens as its phrasing makes it prone to exploitation. Further, Indian jurisprudence is such that its dilution would not improve conditions. The paper also addresses how recent developments may change the trajectory of sedition in India, such as the Supreme Court's recent order in *S.G. Vombatkere v Union of India*[4].

SEDITION LAWS IN INDIA

The offence of sedition is defined in Section 124A in Chapter VI of the Indian Penal Code, 1860, which lists out Offences against the State.

It explains that "*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, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine*."[5]

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[1] Apurva Vishwanath, 'Explained: What is the Sedition Law, and Why Supreme Court's Fresh Directive is Important' (*The Indian Express*, 10 October 2022) <https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/> accessed 01 November 2022

[2] *Ibid*

[3] *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955

[4] *SG Vombatkere v Union of India* (2022) 7 SCC 433

[5] Indian Penal Code 1860, s 124A

The Section also includes three explanations, which state the following:

Explanation 1: The expression "disaffection" includes disloyalty and all feelings of enmity[6].

Explanation 2: Comments expressing disapprobation of the measures of the Government to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section[7].

Explanation 3: Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.[8]

Apart from Section 124A, Sections 153A and 153B of the IPC and Section 95 of the CrPC, among others, also cover offences that sedition law also targets.

GLARING FLAWS IN SEDITION LAW

Lack of Clarity in Interpreting the Provision

In the case of *Kedar Nath Singh v State of Bihar*, the appellant criticized the Indian National Congress and its policies and showed support for the Forward Communist Party. He was then charged under sedition law. When the appellant approached the Supreme Court, the constitutional validity of sedition was questioned. While it was acknowledged that Section 124A of the IPC restricts Article 19 of the Constitution, the Court found that sedition was a reasonable restriction on this fundamental right, given that it is in the interest of protecting public order[9]. The Court did clarify that only seditious speeches that incite violence or disrupt public order would be punishable under Section 124A.

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[6] *Ibid*
[7] *Ibid*
[8] *Ibid*
[9] Basu Chandola, 'The Sedition Law: The Past, Present and Future' (*Observer Research Foundation*, 12 October 2022) <https://www.orfonline.org/expert-speak/the-sedition-law-the-past-present-and-future/> accessed 01 November 2022

This was reaffirmed in *Balwant Singh & Anr. v State of Punjab*[10]. However, this paper argues that the Court erred by reading the phrase "public order" into the provision when there was no such wording present. Since the ambit of public order is not explicitly defined, the wide language allows it to be exploited and imposed on dissidents. The provision has since become so expansive that it can be utilized to criminalize almost any publication or speech that remotely stirs up the public. For example, after some students allegedly celebrated Pakistan's victory in a T20 World Cup, three of them were charged with sedition[11]. In this case, given that their acts never led to any disorder or violence, it should've followed that Section 124A is not applicable. Yet, they were jailed under the Act. This is a complete misapplication of the law. As Supreme Court held in *Shreya Singal v Union of India*[12], when laws confer arbitrary power on authorities due to their expressions, it curtails citizens' rights and freedom and should therefore be struck down. Sedition law, given its lack of clarity, deserves the same fate.

Violation of Fundamental Rights

The right to freedom of speech and expression is a fundamental right under Article 19(1)(a) of the Indian Constitution. It does, however, come with the caveat that the State is empowered to restrict this right to maintain public order, decency, security, and morality. However, this curtailment is meant to be an exception. In the case of *Prakash Karat & Ors. v State of Kerala & Anr.*[13], the Kerala High Court observed that people have the right to dissent, and as long as the dissent is expressed without causing harm, it is incorrect to proceed against them in court.

It is clear that freedom of speech is a rule, and the exception's application mustn't exceed the rule itself. The same was also established in the Balwant Singh case, wherein sloganeering "Khalistan Zindabad" was not found to be seditious speech as it was not accompanied by any other action that caused public disorder. Similarly, in *Vinod Dua v Union of India*[14], wherein

[10] *Balwant Singh v State of Punjab* (1995) 3 SCC 214
[11] Sakshi Rai & Nikita Bansal, 'India's Spiralling Sedition Crisis & Why A Dilution Of The Law Will Not Prevent Its Misuse' (*Article 14*, 14 October 2022) <https://www.article-14.com/post/india-s-spiralling-sedition-crisis-why-a-dilution-of-the-law-will-not-prevent-its-misuse-61a83b9694436> accessed 01 November 2022
[12] *Shreya Singhal v Union of India* (2015) 5 SCC 1
[13] *Prakash Karat & Ors v State of Kerala & Anr* 2022 LiveLaw (Ker) 523
[14] *Vinod Dua v Union of India* 2021 SCC OnLine SC 414

journalist Vinod Dua was booked under Section 124A for criticizing the government's handling of the COVID-19 pandemic on his YouTube channel, the Court held that mere criticism of government policy wouldn't be seditious. Yet, Dua had to go through the tedious process of litigation to prove his innocence. This is a blatant violation of his rights not just as a citizen but also as a journalist of India's free press and media. Hence, it is argued that the State imposing sedition on the general public is ultra vires to Article 19(1)(a) of the Constitution. Further, in a democracy, people have the right to express discontent about any legislation of the government, as long as there is no incitement of hatred against it. But given the wide coverage of Section 124A, almost any publication or speech could be targeted with this provision. So, this paper argues that it is a stretch to state that sedition fits into Article 19(2) as a reasonable restriction.

Cannot Be Fixed by Dilution or Replacement

It is often believed that diluting sedition is enough of a solution, as it has "replacements". Pre-existing laws governing public order and national security like the Arms Act, 1969, National Security Act, and Unlawful Activities Prevention Act, 1967, are considered apt replacements in case of the dilution of sedition law. However, this paper argues that this notion is flawed, as there are other provisions in Indian law that, when invoked, would have the same destructive effect as Section 124A of the IPC. This is because they are just as broad and arbitrary in their range and language as sedition provisions. The UAPA, for example, was amended in 2019, allowing the State to designate individuals as 'terrorists' along with organizations. Yet, nowhere does the Act define the word 'terrorist'.

Further, the Act stretches the default bail duration from 60-90 days as given in the CrPC to a compulsory 180 days in custody[15]. These alternative provisions have been imposed on many peaceful dissenters, including students, doctors, and scholars from reputed institutions, like Sharjeel Imam from JNU. Imam, during a protest against the controversial Citizenship (Amendment) Act of 2019, gave a speech, which according to him was misinterpreted by the police as supporting separatist movements in the Northeast. Police from five states in the

[15] Sakshi & Nikita (n 11)

country charged him with sedition as well as provisions of NSA and UAPA. He was granted bail for the sedition charges but remained in jail for a significant period due to the UAPA charges, which were evoked for allegedly conspiring in the Delhi Riots of 2020. There is hardly any evidence linking him to the same[16]. Dissenters like Imam languish behind bars and lose out on months or even years of their lives. Hence, these laws barely make a difference and should not be stated as a reason for the dilution of Section 124A of the IPC. Even if sedition is diluted, these laws will continue to violate the rights of the Indian populace, just as sedition laws did.

WHY RECENT DEVELOPMENTS AREN'T IMPROVEMENTS

In May 2022, the Supreme Court passed an order in the case of *S.G. Vombatkere v Union of India,* which was challenging the constitutionality of sedition. During the hearing, the Union government hinted at its intention to reexamine the colonial law of sedition and recommended that the Supreme Court only review the constitutional validity of the law once the Union's exercise is complete. Accordingly, in its order, the apex court stated that it would hold out on revisiting sedition and that it expects and encourages the Central and State governments to put a hold on registering FIRs, carrying out investigations, or taking stringent measures under Section 124A while it is being reconsidered.[17]

The move was greatly applauded and many claimed that this would change the future of dissent in the country[18]. However, while this is a step in the right direction, it is argued that the Court's order falls short. The language of the order disregards the current political climate of the country. Multiple public statements by Ministers and other government officials have shown that the government is not only aware but also intends to continue exploiting the vagueness of the provision[19]. It is disappointing to note that in such a scenario, the Supreme Court resorted

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[16] Tarushi Aswani, 'Accused of Sedition, Terrorism for a Speech, JNU Student Steadfast After 535 Days in Jail' (*Article 14*, 14 October 2022) <https://article-14.com/post/accused-of-sedition-terrorism-for-a-speech-jnu-student-steadfast-after-535-days-in-jail-60f06089bfd4d> accessed 01 November 2022

[17] SG Vombatkere (n 4)

[18] Basu (n 9)

[19] Lubhyathi Rangarajan, 'Hold The Celebrations: Supreme Court's 'Hopes & Expects' Order Misses Opportunity To Judicially Review Sedition' (*Article 14*, 14 October 2022) <https://article-14.com/post/hold-the-celebrations-supreme-court-s-hopes-expects-order-misses-opportunity-to-judicially-review-sedition--627c131d5f0c9> accessed 01 November 2022

to suggesting and urging the Centre instead of directing them to not file FIRs under the Section. Further, a charge of Section 124A is often accompanied by other laws along similar lines, such as the aforementioned UAPA and NSA. While the Court has ordered that sedition case proceedings stay, adjudication of other Sections is to continue.

This would mean that many innocent dissidents who have been charged with other provisions of sedition would have to remain in prison as under-trials, be denied bail, and stay framed under unjust charges. Therefore, instead of using the petition as an opportunity to put sedition under constitutional review, it is argued that the Supreme Court has improperly left this paramount issue for an executive mandate, which is unlikely to yield a positive result.

CONCLUSION

Although the British introduced the law to crack down on dissenters and freedom fighters, the judiciary post-independence has clarified that sedition law serves a different purpose in modern Indian jurisprudence. In cases like *Kedar Nath Singh v State of Bihar* and *Balwant Singh & Anr. v State of Punjab*, Courts held that sedition was only to be invoked against people whose publications or speeches have incited violence or disrupted public order. Every other act, speech, and publication was to be exempted from the provision. However, time and again, one can observe that the same hasn't been true in India, especially with the current regime. Arrests have been and continue to be made despite being violative of the apex court's guidelines. The issue at hand is not just the exploitation of power granted to the government but also the presence of vague and arbitrary powers in the first place.

As is argued above, Section 124A of the IPC is vague in its wording, which leaves far too much to the police and government's interpretation. It is hence often misapplied, leading to wrongful and unjust arrests of activists, journalists, and even the common people, merely for expressing an opinion or rightfully critiquing those in power. Sedition is also ultra vires to fundamental rights guaranteed by the Constitution, and its dilution or replacement with other similar laws would barely make a difference if any. Despite having multiple opportunities to reexamine the provision, the Supreme Court has delayed the exercise, adding to the predicament. In the end,

the Court's application of these provisions will determine whether citizens' right to democratic dissent take precedence over the State's powers.