Journal of Law Research

Ҳуқуқий тадқиқотлар журнали Журнал Правовых исследований ISSN: 2181-9130 www.tadqiqot.uz №5 Special issues 2017

International Journal of law and legal jurisprudence studies

ISSN 2348-8212 www.ijlljs.in :Volume 4 Issue

SEDITION LAW IN INDIA

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Abstract

Sedition is defined as the illegal acts done of inciting people against the Government in power. Sedition is any act or speech which incites anybody to form of anti-national views against a Government or is probable to disrupt the public peace or harmony of the state. The punishment for seditious offences is harsh with minimum seven years of imprisonment which may extend to life imprisonment. It is a cognizable, non- bailable and non-compoundable offence triable by the Court of Sessions. Section 124A of the Indian Penal Code tells that the prosecution must prove to the hilt that the intention of the accused is to bring into hatred or contempt or excite any form of anti-national views towards the Government of India or Government of the State in India. Sedition is a permissible restriction under Article 19 (2) of the Indian Constitution which states that a reasonable restriction may be imposed by the government.

What is Sedition?

Sedition is covered under section 124-A of the IPC. However, the section only gives a marginal note on the law of sedition. While, it covers the crimes that come under the law it does not give a precise definition of the term 'sedition' itself.
Stephen in his Commentaries, on the Laws of England, 21st Edition, volume IV, at pages 141-142, used the following words to define sedition: "Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with

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the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing." In Rex vs. Adler[1][2] the court defined the law of sedition in the following words, "Nothing is clearer than the law on this head – namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel. The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form…"

In addition to the above law, the Parliament of India by the Constitution (Fortieth Amendment) Act incorporated the Prevention of Publication of Objectionable Matter Act, 1976 in the Ninth Schedule. Objectionable matter has been defined as that which incites disaffection towards the government or to commit any offence or to interfere with the production and distribution of essential commodities or seduction of any member of Armed Forces, defamation of the President, Vice-President, Prime Minister, Speaker, or Governor of a State. Restrictions imposed on any of these grounds could not be challenged on the ground of unreasonableness. Also with the inclusion of fundamental duties [3] by the Forty-second Amendment, the implication that nobody should exercise his freedom of speech and expression so as to violate the fundamental duties, and it is likely that the courts may be inclined to give a harmonious interpretation to the restrictions imposed on the exercise of the right for the enforcement of the fundamental duties, as they have done in the case of fundamental rights and the directive principles of State Policy[4].

Under English Law, according to Stephen's Observations:

[2] Rex. v. Aldred (1909) 22 CCLC 1
[3] 2. Article 51A of the Constitution of India casts duties on the citizens to abide the Constitution and respect its ideals and institutions, the National Flag and the National Anthem and more important i.e. to uphold and protect the sovereignty, unity and integrity of India.
[4] Shukla V.N., the Constitution of India, Edi. 11th , 2008, P. 144

"Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of accused. This may be either.

1) To exercise disaffection against the king, Government or constitution, or against Parliament or the administration of justice;

2) To promote, by unlawful means any alteration in church or State;

3) To incite a disturbance of the peace;

4) To raise discontent among the king's subjects;

5) To excite class hatred.

Constitutionality of Sedition in India

The first case that tackled the constitutionality of Section 124-A was Ram Nandan v. State of U.P[5]. The Allahabad High court held that S.124-A of the IPC is ultra vires as it violates Article 19(1) (a) of the Constitution. 124-A was said to restrict freedom of speech and struck at the very roots of the constitution.

However, this was overruled in the case of Kedarnath Das vs State of Bihar[6]. The court in this case held that this section should limit acts involving intention or tendency to create disorder or

[5]AIR 1959 All 101, 1959 CriLJ 1
[6]1962 AIR 955, 1962 SCR Supl. (2) 769

disturbance of law and order or incitement of violence. However, if this section is used arbitrarily, it is in violation of Article 19.

It should also be noted that in 1951 there was an amendment made in Article 19(2) which included the expression "in the interest of" and "public order". This amendment included the legislative restriction on freedom of speech and expression. In Kedarnath Das vs State of Bihar the Court was of the view that, the expression "in the interest of public order" has a wider connotation, and not only includes acts which are likely to disturb public order but, can also be interpreted to include Section 124 – A. It was further held that any act which is enacted in the interest of public order can be saved from constitutional invalidity. The Court also held that the right guaranteed under Article 19 (1) (a) is subject to the restriction under 19 (2) which comprises of – First, security of the state. Second, friendly relations with foreign states. Third, public order. Fourth, decency or morality. Article 124 – A of the IPC is covered under security of the state and public order since, the section penalizes any spoken or written words or visible representation which, have the effect of bringing or which attempt to bring in hatred or contempt or excite or attempt to excite disaffection towards "the Government established by law".

Difference between Treason and Sedition Law

Treason and Sedition law are generally considered to be similar in nature and are applied to cases individually or against organizations who have acted in defiance of establishment. The main difference between treason and Sedition law is that treason is a more grievous offence than sedition. Treason refers to the act of brazen defiance against one's own government in a bid to bring harm or to overthrow the government. If you owe alliance to your government but do something to overthrow the government or betray your state by harming its interests and by helping an enemy state, you are liable to be charged with treason whereas sedition prohibits the citizens from acting in a particular manner, through anti-national speeches or any act which incites people to have any anti national views. Therefore the basic and main difference between treason and sedition can be stated as the cause of action of the act.

History of Sedition

Sedition laws are found in the following laws in India: The Indian Penal Code, 1860 (Section 124 (A)); the Code of Criminal Procedure, 1973 (Section 95); the Seditious Meetings Act, 1911; and the Unlawful Activities (Prevention) Act (Section 2 (o) (iii)). Common to these laws is the idea of 'disaffection' that we have inherited from the British. 'Disaffection' has been defined as a feeling that can exist only between 'the ruler' and 'the ruled'. The ruler must be accepted as a ruler. Disaffection is the opposite of that feeling, and manifests a lack of, or repudiation of acceptance of a particular government as ruler. The draft Constitution included 'sedition' and the term 'public order' as grounds on which laws limiting the fundamental right to speech (Article 13) could be framed. However, the final draft of the Constitution eliminated sedition from the list of exceptions to the freedom ofspeech and expression (Article 19 (2)). This amendment was the result of the initiative taken by K M Munshi who proposed these changes in the debates in the constitutional Assembly. The law of sedition was introduced by Sec. 124A of the IPC in 1870 as a draconian measure to counter anti-colonial sentiments, and most major leaders of the independence movement - – including Gandhi and Tilak – were tried under this provision. Gandhi described Sec.124A as the 'prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen'.When the constituent assembly deliberated on the scope and extent of restrictions that could be placed on free speech, the prominent exclusion from what eventually became Article 19(2) was the word sedition. In the original draft that was up for discussion, the word sedition had been included as one of the grounds for restriction on speech.A view of the constituent assembly during one of its debates.A number of the constituent assembly members took objection to this and reminded the assembly that Indians had suffered greatly through the misuse of sedition laws. T. T. Krishnamachari argued that the *word* sedition was anathema to Indians given their experience of it and he suggested that the only instance where it was valid was when the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder.

Recent Controversy over Freedom of Speech and Sedition

The issue of conflict between freedom of speech and sedition[7], has sparked the controversy regarding sedition laws and freedom of speech again. Both the Union Home Minister Rajnath Singh as well as the then Human Resources Minister SmritiIrani has opined that any insult to India will not be tolerated. The incident is also supporting the alleged suicide of Dalit scholar RohithVemula after he was suspended from his hostel for activities that the Union minister BandaruDattatreya considered "anti-national". Vemula committed suicide soon after and Dattatreya is now accused of abetting his suicide.[8]

Short term measures:

- All speech-related offences should be made bailable offences; this would lessen the harmful impact of using arrest and custody as a way of harassing anyone exercising their rights under Article 19(1)(a).
- The offences should be made non-cognizable so that there is at least a judicial check on the police acting on the basis of politically motivated complaints.
- In the case of offences under Sections 153A ("promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc, and doing acts prejudicial to maintenance of harmony") and 295A of the Indian Penal Code, it is mandatory under Section 196(1) of the Code of Criminal Procedure to obtain prior sanction of the government before taking cognizance of the offences. It has to be extended to the offence of sedition under Section 124A.

[7] where the Delhi Police arrested the President of the Jawaharlal Nehru University Students Union for allegedly anti-national speech, 21 www.hindustantimes.com/india
[8] www.hindustantimes.com/india

- In the case of hate speech, it is important to raise the burden of proof on those who claim that their sentiments are hurt rather than accept them at face value. And finally, it is crucial that courts begin to take action against those who bring malicious complaints against speech acts.

Why Sedition Laws in India?

As we know that most of the laws as prevailing in India are the gifts from the British to us, sedition law is one such law. The sedition law was introduced as an offence through clause 113 of the Draft Indian Penal Code by Thomas Macaulay in the year 1837. The reason for its incorporation in the draft was the increase in rebel by the Indian revolutionaries against the company rulers. The British seeing that the Indians were spreading hatred against them felt the need of a law which can suppress their rebel. As a result, the law of Sedition was introduced in the draft of Indian Penal Code. However, the Law of Sedition was not present in the original Indian Penal Code of 1860. It was in 1870 when due to rising rebels and unrest, the British government amended the Indian Penal Code and inserted Sec 124A. It can be implied that the Law of Sedition took birth in 1870 in India.

The Sedition law wasn't the only law which was passed by the British government to suppress the voices of Indian revolutionaries. Other laws such as *the Vernacular Press Act, 1878,* [repealed in 1881], *the Newspapers (Incitement of Offences) Act, 1908,* and *the Indian Press Act, 1910* [repealed in 1921] – gave legal backing to the British government to restrict voices that went against it.

The law of sedition in India can be questioned for the following reasons:

1. Colonial law: The law of sedition was framed by the British to suppress the rebellious Indians who were engaged in activities which were against the decorum of the colonial rule and is hence out of place in a democratic republic where the sovereignty rests with the citizens.

2. Sedition law: The law of sedition is more likely to be a law for which the political parties crave for their own benefits. The ruling party exploits the power against anyone questioning their policies and criticising the functioning of government. It is said so because despite the highest judiciary of independent India has criticised the law; it has not yet been amended or repealed.
3. The existing provisions of the Indian Penal Code (IPC) are sufficient to address all threats to violence and public order.
4. During the first amendment, the then PM of India, Pandit Jawaharlal Nehru had identified offence of sedition being fundamentally unconstitutional and further said that "now as far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better."

Constitutional History of Sedition law

Tara Singh v State of Punjab(8): Section 124A was struck down as unconstitutional being contrary to Freedom of Speech and Expression guaranteed under Article 19(1).

Ram Nandan v State(9) :Allahabad High Court overturned Ram Nandan conviction and declared Section 124A to be unconstitutional because –

If criticism without having any tendency in to bring about public disorder, can be caught within mischief of section 124A of the Indian Penal Code, then the Section must be invalidated because it restricts freedom of speech, and is capable of striking at the very root of the Constitution providing right to speech and expression with certain limitations provided under Article 19(2) of the Constitution of India.

Kedarnath v State of Bihar(10) : The Supreme Court overruled the 1958 judgment and held that the Sedition law was constitutional but at the same time observed that the sedition law must be narrowly interpreted and if given wider interpretation, it would not survive the test of constitutionality.

The Apex Court sustained the constitutionality of Section 124A, but at the same time limiting its connotation and restraining its application to acts linking intention or propensity to create chaos, or disturbance of law and order, or provocation to violence. The Supreme Court distinguishing clearly between unfaithfulness to the government and remarking upon the actions of the government without inciting public disorder by act of violence.[9]

IndraDas v State of Assam(11) -. The Supreme Court reiterated that all laws, including Section 124A, have to be "read in a manner so as to make them in conformity with the Fundamental Rights". In **ArupBhuyan v State of Assam(12)** , Supreme Court reiterated that the speeches which amounts to "incitement to imminent action "can only be criminalized. Recently in the **Shreya Singhal v Union of India(13),** the Supreme Court clearly drew distinction between "Advocacy" and "incitement", in which only incitement can be punished.

[9]8. Tara Singh v State of Punjab, AIR 1950 SC 124.
9. Ram Nandan v State, AIR 1959 All 101.
10. Kedarnath Singh v State of Bihar, AIR 1962SC 955.
11. Indra Das v State of Assam, (2011) 3 SCC 380.
12. Arup Bhuyan v State of Assam, (2011) 3 SCC 377.
13. Shreya Singhal v Union of India, AIR 2015 SC 1523.

Therefore, only the words and speech which cause incitement to "*imminent violence*" can be criminalized and punished. Mere using words however distasteful, do not constitute sedition.

Law Of Sedition Vs Freedom Of Speech

Every case of sedition has a common defence that the action was done in pursuance of Article 19(1)(a). It was his freedom of speech under which he said those statements. But what people are not aware of is Article 19(2) which states that a speech or an act should not be something which can invoke or incite others against the state. If something is capable of causing unrest in the nation, it can't be defended by using Article 19(1)(a). This act which incites others to destroy the unity and integrity of the nation will be termed as sedition .It would not be called free speech.

Conclusion:

Democracy is meaningless without freedoms and sedition as interpreted and applied by the police and Governments is a negation of it. But,before the law loses its importance, the Supreme Court, which is the protector of the fundamental rights of the citizens has to step in and evaluate the law and could declare Section 124A unconstitutional if necessary. The word 'sedition' should be applied with caution. It is like a cannon that ought not be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.