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Sedition under Indian Law

By: Gundala Praneeth

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Abstract

The term sedition refers to the actions which have a chance of making an individual revolt against the then prevailing authority or government. This is one of the criminal offences which are considered as betraying our own country. And who commits this offence is considered as anti-socials. The laws or provisions which govern these types of people are sedition laws. And the criminal law which defines this sedition law is section 124A of India Penal Code, 1860. First this law was drafted by Thomas Maculay in 1837 and was excluded in 1860, in a strange way, when Indian Penal Code came into force. Later in 1870 this was again included by an amendment by James Stephen when the nation showed the need of this law because of anti-socialism. The sedition law actually states that, any word or conducts of an individual which may or try to provoke or insist another individual to generate hatred or contempt or excites of attempts to excite disaffection against the government formed or established by the law of India, is said to be a criminal offence and the person who commits this shall be subjected to imprisonment which may extent for three years, and fine added to it. In light of this case one of the first cases in which this issue was raised is the trail of Jogendra Chandra Bose in 1891, where a journalist wrote an article criticizing the government and was held guilty of the offence of Sedition.

This research paper provides a detailed study on the offence of sedition along with discussing about the punishment for this offence and about the ongoing debate about this law.

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CHAPTER 1

Introduction

Now a days the law of sedition, that is, section 124A of Indian Penal Code, 1860 has acquired a controversial status and has been a regular topic in debates because its application slightly being visible as infringing the fundamental right of Speech and Expression which is mentioned in Article 19 (1) (a) of the Indian Constitution, 1950.

The term sedition refers to the actions which have a chance of making an individual revolt against the then prevailing authority or government. This is one of the criminal offences which are considered as betraying our own country. And who commits this offence is considered as anti-socials.[225]

The laws or provisions which govern these types of people are sedition laws. And the criminal law which defines this sedition law is section 124A of India Penal Code**,** 1860**.**

First this law was drafted by Thomas Maculay in 1837 and was excluded in 1860, in a strange way, when Indian Penal Code came into force[226]. Later in 1870 this was again included by an amendment by James Stephen when the nation showed the need of this law because of anti-socialism, in the IPC (amendment) Act of 1870[227]. This sedition law actually states that, according to "any person 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"[228], which means, any word or conduct of an individual which may or try to provoke or insist another individual to generate contempt or hatred or attempts to excite or excites disaffection against the government formed or established by the law of India, is said to be the criminal offence sedition and the person who commits this shall be subjected to imprisonment which may extent

[225] India Today Web Desk New DelhiOctober 9, 2019UPDATED: October 9 & 2019 15:04, Use and misuse of Sedition law: Section 124A of IPC India Today (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 (last visited Aug 20, 2020).
[226] Hrashavardhan, 'The Great Repression': The history of sedition in India National Herald (2020), https://www.nationalheraldindia.com/reviews-recommendations/the-great-repression-the-history-of-sedition-in-india (last visited Aug 22, 2020).
[227] Hrashavardhan, 'The Great Repression': The history of sedition in India National Herald (2020), https://www.nationalheraldindia.com/reviews-recommendations/the-great-repression-the-history-of-sedition-in-india (last visited Aug 22, 2020).
[228] Indian Penal Code, 1860, S. 124A

for three years, and fine added to it and here Disaffection indicates every feeling which can fill enmity and disloyalty in a person[229]. However, action or words which doesn't attempts to excite or excite hatred, disaffection or contempt, doesn't constitute to the offence mentioned under section 124A if Indian Penal Code, 1860, that is, Sedition[230].

Here the difference between the previous and the present law is that in the previous law, a person is said to be committed the crime of sedition only if he /she attempts excite or excites the feelings of any other person to bring "disaffection" towards the Government of India which is established by law. But in the present law a person is said to be committed an offence of sedition even if the offender "attempts to bring or bring the hatred or contempt towards the Government of India".

The crime, sedition was usually invoked on the freedom fighters by the British government in the times of the freedom fight. In light of this, one of the first cases in which this issue was raised is the trail of **Jogendra Chandra Bose** in 1891, where a journalist wrote an article criticizing the government and was held guilty of the crime called Sedition[231]. And apart from this, there are several more cases well known cases which took place in the times of freedom struggle, such as, the three trails of **Bal Gangadhar Tilak** and **Mahatma Gandhi**. Mahatma Gandhi and Shankerlal Banker were trailed for sedition for publishing three articles a week against British government[232].

[229] Sadaf Modak, Explained: Sedition law — what courts said The Indian Express (2020), https://indianexpress.com/article/explained/simply-put-sedition-law-what-courts-said-6254972/ (last visited Aug 20, 2020).

[230] Kedharnath v. State of Bihar, 1962 Supp 2 SCR 769.

[231] India Today Web Desk New DelhiOctober 9, 2019UPDATED: October 9 & 2019 15:04, Use and misuse of Sedition law: Section 124A of IPC India Today (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 (last visited Aug 20, 2020).

[232] India Today Web Desk New DelhiOctober 9, 2019UPDATED: October 9 & 2019 15:04, Use and misuse of Sedition law: Section 124A of IPC India Today (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 (last visited Aug 20, 2020).

CHAPTER 2

Sedition as an Offence in India

The present, prevailing sedition law has an everlasting effect of common law on it, from which it was derived. So, for the better understanding the researcher would like discuss about the evolution of sedition law in the common law and then in Indian criminal laws.

The common law's sedition law in the initial stages was very serious and had a vast scope[233]. And apart from this the evolution of "liberty of Speech and Expression" was very slow, particularly when it comes to criticizing the Government. And gradually the courts have begun to set some principles to decide whether a person has committed an offence Sedition in the cases like **R. v. Sullivan**[234] and **R. v. Burns**[235]. Justice Fitzerland in the above mentioned cases have observed that "Sedition in itself is a comprehensive term and it embraces all those practices 'whether by word, deed, or writing which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavor to subvert the Government and the laws of the Empire. Generally the objective of Sedition is to induce insurrection and discontent, and make people to turn their back on the Government and to cause insurrection or rebellion". Apart from this a similar decision was given by Justice Coleridge in the case of **R. v. Alfred**[236], it was held that the "word 'sedition' in its ordinary natural signification denotes a tumult, an insurrection, popular commotion or an uproar; it implies violence or lawlessness in some form".

Hence, now in English law, the crime, sedition is invoked on a person not only if he/she brings some other into hatred or disaffection or contempt against the government but also must attempts to generate or generate of excite the feelings to such an extent that the leads the another person to commit public disorder or a loud shouting against the government (loud slogans in India).

The now prevailing Indian law of sedition has been derived from the above mentioned Common Law by Sir James Fitz James Stephen[237]. As it is little severe and curtailing the

[233] Seven Bishop's Case, 1688, 12 St. T. 1
[234] R. v. Sullivan, 11 Cox. C.C. 44
[235] R. v. Burns, 16 Cox. C.C. 355, 361
[236] R. v. Alfred, 22 Cox. C.C. 1, 3
[237] Hrashavardhan, 'The Great Repression': The history of sedition in India National Herald (2020), https://www.nationalheraldindia.com/reviews-recommendations/the-great-repression-the-history-of-sedition-in-india (last visited Aug 22, 2020).

Fundamental Right which is mentioned in the Article 19(1) (a) of the Indian Constitution[238], this was challenged in many cases and came up with different views. In this aspect, one of the first cases to express its view on Law of Sedition in India was **Queen Empress v. B. G. Tilak**[239], in which, Justice Strachery had held that according to the sedition law every expression of bad feelings are punishable irrespective of whether it is the expression is of big scale or silent, in other words whether the feelings are express or implied[240]. These expressions on the scope of the sedition law given in the case of **Q.E v. B. G. Tilak**[241] were accepted by the Privy Council in the case of **K.E. v. Sadashiv Narayan**[242] and have been followed in the case, **Queen Empress v. Amba Prasad**[243] by the High Court. After this, in the case the **Q.E v. Ramachandra**[244], rejecting the literal and strict interpretation of the section 124A of Indian Penal Code, 1860 as it was done in English Law; Justice Ranade held that, "Disaffection is a negative emotion of disloyalty-like rejection, a stubborn insubordination to power, even when it is not rebellious. Makes people unable to follow or endorse the rules of the land, and foster confusion and public disorder". That is, the section 124A of Indian Penal Code is similar to the sedition law of Common Law but much more differently expressed and narrowed down.

Apart from this another landmark case that has rejected the literal and strict interpretation of the Common Law, is **Niharendu Majumdar v. K.E**[245], in which Chief Justice Gwyer rejected the a close or narrow reading and interpretation of the common law of law of the sedition and expressed the need of law of sedition as follows: The first and foremost duty of every government is the preserve of order, since order is the one obligation which in turns preserves all civilization and human happiness. It is no question that the task has often been done in such a manner as to make the remedy greater than the disease; but it should not fail to be a matter of responsibility as it has been carried out wrongly by those on whom the task depends. It is to this dimension of government activities that the crime of sedition is linked in our view. This is the State's reaction to those who try to disrupt its tranquility for the intent of disrupting or subverting this, to cause public disruption and spread chaos, or to provoke others to do so. Words, acts, or writings constitute sedition whether they have this purpose or inclination, so it

[238] Indian Constitution. Art. 19 (1) (a)
[239] I.L.R. (1897) 22 Bom. 11
[240] Queen Empress v. Ramachandra Narain, I.L.R. (1897) 22 Bom. 152 and Nibarendu Mujumdarv. K.E., 1942 F.C.R. 38, 43
[241] B.G. Tilak v. Queen Empress, I.L.R. (1897) 22 Bom. 528
[242]K.E v. Sadhashiv, L.R. 74 LA. 89.
[243] Queen Empress v. Amba Prasad, I.L.R. (1897) 20 All.
[244] Q.E v. Ramachandra, I.L.R. (1897) 22 Bom. 152
[245] Niharendu Majumdar v. K.E, 1942 F.C.R. 38

is plain to see that they may also constitute sedition whether they try, as the term is, to contempt government. It is not an insult to tend to the damaged vanity of nations, but because only disorder will occur when rule and legislation fail to be obeyed because people no longer have reverence for them. The substance of the offense is public disorder, or the fair expectation or likelihood of public disorder. The actions or phrases that have been spoken of must either cause chaos or be such that they convince fair people that such is their purpose or tendency." This case has given a liberal interpretation to the sedition law of India and has given a value to it. But this didn't last long. The view put forth by the Chief Justice Gwyer in **Niharendu Majumdar v. K.E** was nullified by the decision of Privy Council in **K.E v. Sadhashiv**[246]. As there is no any Supreme Court decisions supporting the decision of Niharendu's case, Sadhashiv's case decision continued prevail over the former according to Article 372 read along with Article 225 of the Constitution of India[247].

After all these views expressed by the different cases, finally in **Nazir Khan v. State of Delhi**[248], the honorable Supreme Court explained the content and meaning of the law of sedition. So, the honorable court in this case has observed:

"Sedition as a disloyal action and the law considers all the actions which have tendency to excite discontent or dissatisfaction, to lead to civil war, or to create public disturbance; to bring hatred or contempt towards the sovereign or the Government, the laws of that government or the constitution of the country itself, and generally all endeavors to promote public disorder". That is, the Sedition is a crime which is equal to betraying one's own country, because the act of betraying one's own country always starts with the offence of generating hatred towards the government formed by the law. The sedition is a term which covers all the actions, whether vocal, writing or deed which is capable of disturbing the peace in society of the state and excites people to revolt against the government and the laws of the country. The objective of the crime, sedition is to induce a person with dissatisfaction, make people revolt and turn people against the government and to disrespect administration of justice.

The conclusive ingredient for incorporating the crime, sedition under the section of 124A of Indian Penal Code, 1860 is that certain act would bring hatred or contempt against the government formed laws of India[249]. Raising slogans couple of times along with one or two

[246]K.E v. Sadhashiv, L.R. 74 LA. 89
[247] Punjabai v. Shamra, I.L.R. (1954) Nag. 805, 811
[248]Nazir Khan v. State of Delh, (2003) 8 SCC 461
[249] Bilal Ahmed Kaloo v. State ofA.P.,(1997) 7 SCC 43.

people which doesn't anybody around to react is not punishable under the section 124A of Indian Penal Code, 1860. To be punishable under the section 124A of Indian Penal Code, 1860, the act should be more overt, that is, the act must be more provocative for the people around to revolt against the government[250].

CHAPTER 3

Validity of the Law

Similar to the questions regarding the meaning and the scope of the Section 124A of the Indian Penal Code' 1860, there also arise the question regarding the constitutionality of the law of sedition. This arises because the Freedom of Speech and Expression has been guaranteed by the Indian Constitution to all the citizens of India and as the courts are the protectors of the Fundamental Rights of the people these questions were frequently raised before the court.

Article 19 of Indian Constitution talks about the Freedom of speech and expression, in which clause (1) especially guarantees the above mentioned Fundamental Right and clause (2) talks about certain limitations on the Freedom of Speech that has been guaranteed to the pupil of India by the clause (1). The limitations set on the Freedom of Speech and expression by the clause (2), were actually considered by the Supreme Court in various cases[251] and also held that the limits set out on the freedom of speech and expression to be narrower and stringent[252]. Even though the limits were declared to be narrower and stringent, the cases questions questioning the validity of the law have not stopped showing up before the court of law.

One of the first case in which the validity of this law questioned was, in **Tara Singh v. state**[253], in this case it was held that the Section 124A of India penal Code, 1860 was void as it is curtailing the Fundamental Right of Freedom of Speech in a manner not suggested by the Constitution of India. As a result of which through the Constitution (First Ament Act), 1951,

[250] Balwant Singh v. State of Punjab, (1995) 3 SCC 21.
[251] Romesh Thappar v. State, [1950] S.C.R. 594; Brij Bhushan v. State, AIR 1950 S.C. 129; Dharam Dutt v. Union of India, AIR 2004 SC 1295. See also Surjan Singh v. State of Rajasthan, AIR 1965SC 845; Supdt. Central Prison v. Dr. Lohia, AIR 1960 SC 633; Madhu Limaye v. S.D.M. Monghyar,l970 (3) SC
[252] Romesh Thappar v. State, [1950] S.C.R.
[253] Tara Singh Gopichand v. State, AIR 1951 E.P.27.

two amends were made to the Article 19 which deals with the Freedom of Speech and Expression. They are:

- Increased the scope for legislative restrictions on free speech
- Made clear that the restriction imposed must be reasonable.

Now, it should be checked whether the section 124A of Indian Penal Code, 1860 is infringing the amended Fundamental Right. In response to this several views were put for by the honorable courts of India. They are:

- In **Ram Nandan v. State**[254], it was held that the Section 124A of Indian Penal code, 1860 is acting beyond its legal authority by infringing the Fundamental Right of Speech and Expression and its actions are not justified by the expression "in the interest of public order".
- In **Dobi soren v. state**[255] it was held that "Section 124-A is not void because the expression "in the interestscof public order" has a wider connotation and should not be confined to only one aspect of public order viz. to violence. It has a much wider content, and embraces such action as undermines the authority of Government by bringing it into hatred or contempt or by creating disaffection towards it, from this point of view S. 124A of Indian Penal Code, 1860 is saved under clause (2) of Article 19".
- In the case of **Indramani v. State of Manipur**[256] it was held that, the section 124A of Indian Penal Code is half void and half valid, this is because the law is void in infringing the Fundamental Right to Freedom of Speech and expression by imposing restriction and in the same time is valid as the restrictions imposed on the Freedom of speech for making people punishable who commits the crime, sedition, are made by the provisions of Article 19 clause (2).

Here the Supreme Court have failed to declare whether the section 124A of IPC can infringe the Fundamental Right in the interest of public order but made a thing clear that the restriction must have a rational and reasonable relation with the public order in order to make the restriction valid[257]. Here the courts seem to having difference in their opinions and could not decide whether the Section 124A of Indian Penal Code, 1860 is constitutionally valid or not.

[254] Ram Nandan v. State, AIR 1959 All. 101
[255] Debi Soren v. State, AIR 1954 Pat. 254.
[256] AIR 1955 Manipur 9
[257] V.K. Javali v. State of Mysore, AIR 1966 SC 138

Finally after deciding all these cases and could not acquire the answer for about the constitutionality of S.124A of Indian Penal Code, 1860[258], the constitutional bench in 1962, in the case of **Kedarnath vs. State of Bihar**[259] have said that, the utmost importance of the state is the maintenance of law and order and disturbance of formed would be the criteria for legislation to punish people who does a wrongful act against the state. And similarly, the legislation also has the duty to protect the Fundamental rights of people and guard them. But it also has to limit the freedom from misused as an approval for condemnation of the government. So, from this, it can be said that, a person speak anything or write anything about the Government or its policies, in a criticizing or commenting manner provided this criticism or comments should not provoke the people revolt or commit violent actions against the government or should not be done intending to disturb the public disorder.

In addition this the court also shared its view upon imposing a reasonable restriction of freedom of speech in the following cases:

- The court in the case of State of **Kamataka v. Dr. Praven Bhai Thogad**[260] has valued the Fundamental Rights the most and tried its best to protect them. And it also held that, sometimes, for the maintenance of peace, preservation of rule of law and public order this freedom of speech can be subjected to restrictions.
- The apex court in the case of **Nazir Khan v. State of Delhi**[261], have accepted for the section 124A of Indian Penal Code, 1860, to impose restriction on by hearing to the line "inciting disaffection in the people's mind against the government or legal political policies is a crime".

[258] Indian Penal Code, 1860, S.124A
[259] Kedharnath v. State of Bihar, 1962 Supp 2 SCR 769.
[260] State ofKamataka v. Dr. Praven Bhai Thogadia, AIR 2004 SC 20.
[261] NazirKban v. State of Delhi, (2003) 8 SCC 461.

CHAPTER 4

Punishment for the offence of Sedition Law

- The sedition law is an offence which is non-bailable in nature. The person who is accused of crime of sedition is subjected to imprisonment for three years and which may be extended for life and fine may be added to it.
- The person who is accused of sedition is barred from government jobs, had to live without passport and have to appear in the court whenever it may be required.

CHAPTER 5

Should the Sedition Law be scrapped?

Before discussing whether the Sedition Law in India should be scrapped or not, first we have to know about the basic objective of the Sedition Law in India. The basic objective of the sedition law in India is to preserve peace, public order and prevent anti nationals to brain wash peoples mind and make them revolt against the government established by the law. That is, anyone who disturbs the peace in the state or disturbs the public order or excites or attempts to excite other people to revolt on the people on the government by filling their minds with hatred towards the government is punishable under S. 124A if Indian Penal Code, 1860. But now-a-days this section has become a mere tool of politics, precisely the party which forms the government. In simple words the political parties are using it as a tool to shut the mouth of common people who are protesting against their laws and policies. For an instance let's consider the protests which have taken place in the December month of year 2019, a large number of sedition cases were filed against the people who were on protest against the Citizenship (Amendment) Act, 2019[262]. According to the data from National Crimes Bureau, the filing of no. of cases increased, in past three years, after the CAA was passed and about

[262] Jayant Sriram, Should the sedition law be scrapped?, The Hindu, March 6, 2020, https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece (last visited Aug 22, 2020).

194 cases were filed after the CAA was passed on December 11, 2019[263]. Here the people were just fighting for their rights, neither revolting against the government nor provoking other to revolt. Here the other view is that, the people might be wrong in interpreting the act, so, the government should try to control the public and try to explain them in detail, instead of invoking a crime which nearly equal to treason on them.

And just by looking at we can simply scrap the law sedition, because this may lead to provocation of people again the government by the opposition parties. So, the nation need the Law of Sedition provided there should be certain guidelines to invoke the offence on the people as mentioned in the case of **Chudwala v. State of Maharastra**, which was decided with the help of the case **Kedharnath v. State of Bihar**[264].

CHAPTER 6

Research Questions

- What is the brief History of Section 124A of Indian Penal Code, 1860?
- What is the offence of sedition?
- What is the punishment for this offence?
- What is the status Constitutional validity of the Law of Sedition and Should the Sedition Law be scrapped?

CHAPTER 7

Research Objectives

- To know about the brief history of the Section 124A of Indian Penal Code, 1860.
- To know about the Sedition as an offence in India.

[263] Jayant Sriram, Should the sedition law be scrapped?, The Hindu, March 6, 2020, https://www.thehindu.com/opinion/op-ed/should-the-sedition-law-be-scrapped/article30993146.ece (last visited Aug 22, 2020).
[264] Kedharnath v. State of Bihar, 1962 Supp 2 SCR 769.

- To know about the punishment for the offence of Sedition.
- To know about the Constitutional validity of S.124A of Indian Penal Code, 1860 and whether the law should be scrapped.

CHAPTER 8

Conclusion

After analyzing and studying extensively the Concept of Law of Sedition, the researcher would like to conclude that the researcher is successful gathering the information required to answer the question that the researcher has set up for this research paper. The researcher also wants to conclude that the researcher would agree with the Mahatma Gandhi's statement of calling the law of sedition as the "prince among all the political sections of the Indian Penal Code designed to suppress the liberty of the citizen" because this is one section or provision which has the scope of completely suppressing the Fundamental Rights of the Speech and Expression and take a common into control even when it is the time when that common man should react to has happened to him. But at the same time this provision is very important to be included in criminal law, because still, as told in the case of **Kedharnath v. State of Bihar**[265], government established by law is the body which protects the each and every right of a citizen and absence of any such law would result in provocation of people to turn them against the government established by the law, by the opposition parties or anti-social elements. So, it can be said that this law is a provision which can be used both legally and illegally depending upon the discretion of part which forms government.

[265] Kedharnath v. State of Bihar, 1962 Supp 2 SCR 769.