

Demystifying the law of Sedition - Section 124A of IPC

The ghost of this so called 'draconian law' of Sedition is again out. The Supreme Court recently in May 2021 issued notice to the Central government on a plea filed by two journalists challenging the Constitutional validity of Section 124- A of the IPC that penalises sedition. Let's explore the Sedition law in India.

What is Sedition?

Verbatim of Sec 124 A of Indian Penal Code

Sedition - 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.

Explanation 1. - The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2. - **Comments expressing disapprobation of the measures of the Government with a view 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.**

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.

Punishment for the offence of sedition

- ✦ Sedition is a non-bailable offence. Punishment under the Section 124A ranges from imprisonment up to three years to a life term, to which fine may be added.
- ✦ A person charged under this law is barred from a government job. They have to live without their passport and must produce themselves in the court at all times as and when required.

Origin of sedition law in modern India

- ✦ The law was originally drafted in 1837 by Thomas Macaulay, the British historian-politician, but was inexplicably omitted when the IPC was enacted in 1860.
- ✦ Section 124A was inserted in 1870 by an amendment introduced by Sir James Stephen when it felt the need for a specific section to deal with the offence. It was one of the many draconian laws enacted to stifle any voices of dissent at that time.

Use and Misuse of Sedition law: Section 124A of IPC

Arguments in support of Section 124A:

- ✦ Section 124A of the IPC has its utility in combating anti-national, secessionist and terrorist elements
- ✦ It protects the elected government from attempts to overthrow the government with violence and illegal means. The continued existence of the government established by law is an essential condition of the stability of the State. If contempt of court invites penal action, contempt of government should also attract punishment. Many districts in different states face a Maoist insurgency and rebel groups virtually run a parallel administration. These groups openly advocate the overthrow of the state government by revolution
- ✦ Against this backdrop, the abolition of Section 124A would be ill-advised merely because it has been wrongly invoked in some highly publicized cases

Arguments against Section 124A:

- ✦ Section 124A is a relic of colonial legacy and unsuited in a democracy. It is a constraint on the legitimate exercise of constitutionally guaranteed freedom of speech and expression.
- ✦ Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy. They should not be constructed as sedition. Right to question, criticize and change rulers is very fundamental to the idea of democracy.
- ✦ The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason, why should not India abolish this section.
- ✦ The terms used under Section 124A like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers.
- ✦ IPC and Unlawful Activities Prevention Act have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting the national integrity. There is no need for Section 124A.
- ✦ The sedition law is being misused as a tool to persecute political dissent. A wide and concentrated executive discretion is inbuilt into it which permits the blatant abuse.
- ✦ In 1979, India ratified the International Covenant on Civil and Political Rights (ICCPR), which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition and arbitrary slapping of charges are inconsistent with India's international commitments.

Cases Related to Sedition Law in India

A. Pre-Independence Cases

Sedition Trial of Lokmanya Tilak - I (1897)

- ✦ Bal Gangadhar Tilak has published the reports of the celebration followed by an 1894 paper on the Maratha king Shivaji by Professor R. P. Karkaria. Karkaria presented his paper to Bombay's Royal Asiatic Society in 1894. This paper led to the annual celebration of the Shivaji Coronation. Later, Tilak published the celebrations' reports. Tilak reported these celebrations as "Shivaji's Utterances" in his dailies – Kesari and Mahratta.
- ✦ The case was presided by Justice Arthur Strachey.
- ✦ This sedition trial is historically famous as in this case, an attempt to excite feelings of enmity against the government was also brought under the scope of Section 124A terming it is seditious. Hence, it widened the understanding of Section 124A. Tilak was sentenced to **18 months** of rigorous imprisonment.

Sedition Trial of Lokmanya Tilak - II (1908)

- ✦ Bal Gangadhar Tilak published two Kesari articles, titled "The Country's Misfortune" which he published on 12th May 1908 and "These Remedies Are Not Lasting" which was published on 9th June 1908.
- ✦ Under the newly drafted Section 124A, he was sentenced to **six years** of imprisonment in Burma (Now, Myanmar).

Sedition Trial of Mahatma Gandhi (1922)

- ✦ Mahatma Gandhi was imprisoned for **six years** for his articles in his newspaper, 'Young India'.
- ✦ The charges imposed on him were – "Bringing or attempting to excite disaffection towards His Majesty's Government established by law in British India"
- ✦ Mahatma Gandhi termed Section 124A as "Prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen."

Cases Related to Sedition Law in India

B. Post-Independence – Relevant Supreme Court Decisions

Brij Bhushan and Another vs The State Of Delhi (1950)

&

Romesh Thappar vs the State of Madras (1950)

- ✦ The apex court held that a law that restricts speech on the ground that it would disturb public order was unconstitutional.
- ✦ The decision of the court prompted the 'First Constitution Amendment', where Article 19 (2) was rewritten to replace "undermining the security of the State" with "in the interest of public order"

Kedar Nath Singh vs State of Bihar (1962)

- ✦ The constitutional validity of Section 124A was put to a test in this case.
- ✦ A member of a Forward Bloc had given a speech which was charged as sedition.
- ✦ The Supreme Court upheld the constitutionality of sedition, but limited its application to "acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence".
- ✦ It distinguished these from "very strong speech" or the use of "vigorous words" strongly critical of the government.

Balwant Singh vs State of Punjab (1995)

- ✦ In 1995, the SC, in Balwant Singh vs State of Punjab (1995) held that mere sloganeering which evoked no public response did not amount to sedition.
- ✦ Balwant Singh who was the Director of Public Instructions (DPI) in Punjab, Chandigarh among other two, was alleged to have shouted pro-Khalistan slogans on the day of former PM Indira Gandhi's assassination.
- ✦ The apex court held that unless there is public disorder merely sloganeering can't attract punishment under Section 124A.

What is the viewpoint of the Law Commission of India?

- ✦ In August 2018, the Law Commission of India published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code that deals with sedition.
- ✦ In its 39th Report (1968), the Law Commission had rejected the idea of repealing the section.
- ✦ In its 42nd Report (1971), the panel wanted the scope of the section to be expanded to cover the Constitution, the legislature and the judiciary, in addition to the government to be established by law, as institutions against which 'disaffection' should not be tolerated.
- ✦ In the recent consultation paper on the sedition, the Law Commission has suggested invoking 124A to only criminalize acts committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means.

Sedition law and the stand of Supreme Court of India: Recent View

- ✦ The constitutionality of sedition was challenged in the Supreme Court in *Kedar Nath Vs State of Bihar (1962)*. The Court upheld the law on the basis that this power was required by the state to protect itself. However, it had added a vital caveat that "a person could be prosecuted for sedition only if his acts caused incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace". **This is a binding Precedent (thus reiterated)**
- ✦ The court held that "a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder".
- ✦ In September 2016, the Supreme Court had reiterated these necessary safeguards and held that they should be followed by all authorities.
- ✦ **Recently in 2020**, The Supreme Court refused to entertain a plea filed by social activist Yogita Bhayana seeking framing of a proper mechanism to deal with alleged misuse of the sedition law by the government machinery.
- ✦ **Most recently in May 2021**, A Supreme Court bench of Justices U U Lalit, Indira Banerjee and K M Joseph issued notice to the Central government on a plea challenging the Constitutional validity of Section 124-A of the IPC that penalises sedition. The said petition is filed by two journalists—Kishorechandra Wangkhemcha from Manipur and Kanhaiya Lal Shukla from Chhattisgarh. They were charged with sedition for questioning the state governments and the Centre, and for comments and cartoons shared on social media platforms. They contended that the provision infringes upon the fundamental right of freedom of speech and expression, guaranteed under Article 19(1)(a) of the Constitution.

Sedition Laws in International Jurisdiction

- ✦ The United Kingdom deleted the seditious libel through the Coroners and Justice Act, 2009.
- ✦ In Australia, following the recommendations of the Australian Law Reform Commission (ALRC) the term sedition was removed and replaced with references to 'urging violence offenses'.

The Disutility of the Sedition Law

- ✦ The data released by the National Crime Records Bureau for the year between 2014 and 2016 reflect the disutility of the law for the criminal justice system.
- ✦ Under the title 'offences against the State' the report shows a total of 179 arrests for sedition. However, no charge sheets were filed by the police in over 70% of the cases, and only two convictions during this time period. This data belies the claim for retaining the Section 124A of IPC.

Conclusion

- ✦ India is the largest democracy of the world and the right to free speech and expression is an essential ingredient of democracy. The expression or thought that is not in consonance with the policy of the government of the day should not be considered as sedition. The Law Commission has rightly said, "an expression of frustration over the state of affairs cannot be treated as sedition". If the country is not open to positive criticism, there would be no difference between the pre- and post-Independence eras.
- ✦ Of course, it is essential to protect national integrity. Given the legal opinion and the views of the government in favour of the law, it is unlikely that Section 124A will be scrapped soon. However, the section should not be misused as a tool to curb free speech. The SC caveat, given in Kedar Nath case, on prosecution under the law can check its misuse.

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Important References: (*inter alia*)

- *India Today Web Desk*
- *The Indian Express*

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