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"Law of Sedition: A Colonial Bane"

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Abstract

'Sedition' is something which we hear frequently these days. One might have heard it on the T.V. while others might have read about it in the newspaper. Now the question arises what is sedition. To put it in the simplest possible terms, sedition can be said to doing of certain acts which bring the authority of a State into contempt. However, the actual definition of sedition is not confined to the above meaning. The history of sedition can be traced to the Sedition Act of 1661 which made sedition a criminal offence in the U.K. Sedition was introduced in India by the British in the year 1870 as Section 124-A of the Indian Penal Code. Soon after its incorporation in the Indian Penal Code, it was used to whittle down the freedom movement in India. Today it has emerged as one of the most misused laws in the country. This paper aims to discuss a brief history of sedition, where the line between free speech and seditious speech does exist and is it a colonial bane and present to its reader these concepts in a brief manner.

Introduction

The 'Law of Sedition' was introduced in the Indian Penal Code in 1870. The main purpose of inserting the law in the code was to suppress the Wahabi Movement. Since then the British had extensively employed the law as a tool to suppress freedom movement. This is very much evident from the fact that almost all the freedom fighters including Gandhi, Nehru and Patel were at least once charged with Sedition.

'Sedition' has been defined under Section 124-A of the Indian Penal Code, 1860. Section 124-A stipulates two essential ingredients: (1) bringing or attempting to bring into hated or contempt or exacting or attempting to excite disaffection towards the Government established by law in India, & (ii) Such act or attempt may be done (a) by words either spoken or written, or (b) sign, or (c) by visible representation. Hence, it can be said that the decisive ingredient for establishing the offence of Sedition under Section 124-A IPC is the doing of certain acts which would bring the Government established by law in Indian into hatred or contempt etc.[3]

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A Brief History

Initially, the law of Sedition was incorporated in the original draft of the IPC in 1837. However, when the IPC came into force in 1860, the law relating to sedition was dropped from the code. Sedition was subsequently added to the code in the year 1870 on the recommendation of Sir James Fitzjames Stephen. The main purpose of introducing sedition in India at that time was to suppress the Wahabi Movement and prevent any such religious uprising in future. Soon after the insertion of sedition in the code, various freedom fighters were charged with sedition and many arrests were made thereof. Due to this 19th century witnessed some of the most famous criminal trials on sedition.

One of such trials took place in the case of ***Queen v. Joginder Bose***[4], where Joginder Bose, was prosecuted for writing an article commenting upon the adverse impact of British colonialism on the Indian economy and making critical remarks on Age of Consent Bill, 1891. Although the court held Bose guilty for exceeding legitimate criticism the case is important for the reason that court took the liberty of explaining the term "disaffection". The court held that the term "disaffection" within Section 124-A means any word spoken or written calculated to create in the mind of others a disposition not to obey, subvert or resist the lawful authority of Government. Another important case on Sedition in the colonial era was ***Queen v. Balgangadhar Tilak***[5]. In this case, Balgangadhar Tilak was charged with Sedition for some of the speeches which were directed against the government. The court held him guilty of sedition thereby enlarging the scope of "disaffection". It noted that the term "disaffection" meant and included 'hatred', 'dislike', 'contempt', 'hostility' and all the feelings of enmity towards the government. This necessitated the government to pass Act IV of 1898 which added the words 'hatred' and 'contempt' to the Section. It also added 'disloyalty and all feelings of enmity' to disaffection to give the section a reflection of what had been held in **Balgangadhar Tilak Case**. Similar was the opinion of the courts in ***Queen v. Amba Prasad***[6] and ***Queen v. Ramchandra Narayan***.[7]

The Federal Court however in ***Niharendu Dutt Majumdar v. Emperor***[8] departed from its earlier view on sedition. The Court opined that words, deeds and writings can constitute sedition only if they cause public disorder or if there is a reasonable apprehension or likelihood that such words, deeds and writings will cause public disorder. Hence, public disorder or the reasonable apprehension or likelihood of public disorder is the gist of the offence of sedition. Later this view was overruled by the Privy Council in the case of ***Emperor v. Sadashiv Narayan***[9]. In this case, the Council reiterated the view taken by Strachey, J. in **Balgangadhar Tilak** and made a literal interpretation of Section 124-A.

[4] (1892) ILR 19 Cal 35.
[5] (1898) ILR 22 BOM 528.
[6] (1898) ILR 20 All 55.
[7] (1912) ILR. 39 Cal. 781.
[8] (1942) F.C.R. 38.
[9] AIR 1947 PC 82.

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After the independence, the constitutional validity of Section 124-A was challenged in ***Ram Nandan v. State***.[10] The Allahabad High Court held Section 124-A to be unconstitutional as being *ultra vires* Article 19(2) and observed:

> Section must be invalidated because it restricts freedom of speech in disregard of whether the interest of public order or the security of the State is involved, and is capable of striking at the very root of the Constitution which is free speech (subject of limited control under Article 19(2).

However, the judgement in **Ram Nandan** was overruled by the Supreme Court in ***Kedar Nath Singh v. State of Bihar***.[11] The Court while upholding the constitutional validity of Section 124-A opined that criticism of government action and policies, however strongly worded without exciting such feelings which generate or cause public disorder, would not be within the penal statute. The Court further noted that strongly commenting on the actions of Government or its agencies, to secure the repeal or modification of such acts by lawful means would not be considered as disloyalty towards the government established by law.

Where the line does exist?

One of the most important aspects of Sedition is to ascertain "what constitutes sedition" or "where the line between free speech and seditious speech does exist". It is also important from the viewpoint that an individual must know which speech is lawful and which speech is proscribed. Time and again, the courts have tried to lay down certain tests to determine what class of speeches can be legally proscribed.

Initially, the "bad tendency test" was applied by U.S. courts to see whether the speech is protected by First Amendment Rights. In ***Schenk v. United States***[12] the test of "bad tendency" was applied and the court held that any speech which has a tendency to cause any illegal action is unprotected by First Amendment Rights. Justice Holmes added a new dimension in his concurrence with the majority and observed: "whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." This lay the foundation of "clear and present danger test". In the **Abrams Case**[13] the majority reiterated the pronouncement of *Schenk* and applied the "bad tendency test". However, Justice Holmes, in his stringiest dissent intoned that it is only a 'clear and present danger' of a substantive evil which can qualify as a justified limitation on free speech.

In India, the first application of "bad tendency test" was seen in ***Ramji Lal Modi v. State of U.P***.[14] Although this was not a case on sedition; it dealt with the issue of 'public disorder' under Article 19(2). The court, in this case, observed that if a speech has a tendency to create

[10] AIR 1959 Alld. 101.
[11] AIR 1962 SCC 955.
[12] 249 U.S. 47, 52 (1919).
[13] Abrams v. United States, 250 U.S. 616, 624 (1919).
[14] AIR 1957 SC 620.

public disorder then the same can be restricted without requiring reasonable proximity between the speech and the consequence. In observing so, the court applied its coinage i.e. the "calculated tendency test", though in actuality it had applied the "bad tendency test". The "bad tendency test" was discussed *in extenso* in **Kedarnath's Case**.[15] In this case, the Supreme Court while declaring Section 124-A constitutional, held that only those words can be caught within the net of Section 124-A which are susceptible to inciting violence or have the tendency to creating public disorder. Applying the "bad tendency test" the court further held that, "It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order."

Similar were the observations made by the Court in ***Nazir Khan v. State of Delhi***[16] and ***Indira Das v. State of Assam***.[17]

Till 1960's the 'clear and present danger test' was the prevalent standard in the U.S. However, a doctrinal shift from 'clear and present danger test' to 'imminent danger test' began when the U.S. Supreme Court in ***Brandenburg v. Ohio***[18] held that a law penalising the mere advocacy of violence or incitement of public disorder cannot be sustained. The Court observed:

> That the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

In ***Balwant Singh v. State of Punjab***[19] the court applied the same test and held that mere raising of slogans would not attract the provisions of Section 124-A unless the same evoke any reaction from the public leading to a public disorder.

Finally, the 'imminent danger test' got incorporated in the Indian Jurisprudence in the case of ***Arup Bhuyan v. State of Assam***.[20] In this case, the court held that the mere advocacy to violence as a means to meet political ends or publishing or circulating any paper or book imbibing such advocacy is not illegal. It is illegal only if it incites imminent lawlessness or public disorder. Concerning the 'imminent danger test' the court observed: "We respectfully agree with the above decision, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution."

Thus, it is now well settled that only those speeches come within the ambit of Section 124-A which either incites 'imminent lawless action' or is likely to incite such action. Hence, it is

[15] Kedarnath Singh v. State of Bihar, AIR 1962 SCC 955.
[16] AIR 2003 SC 4427.
[17] (2011) 3 SCC 380.
[18] 395 U.S. 445, 447 (1969).
[19] AIR 1995 SC 1785.
[20] 2011 (3) SCC 380.

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the incitement of imminent lawlessness, where the line between free speech and seditious speech exists.

A Colonial Bane?

It is indeed no doubt that sedition has been one of the most baneful colonial vestiges in India. Earlier, during the British Raj, the British used it as per their whims and fancies for suppressing the freedom struggle. The same finds reflection in the fact that some of the most prominent freedom fighters including Maulana Azad, Shaukat Ali and Bhagat Singh were prosecuted under the said law. In his famous trial of 1922, Mahatma Gandhi had called Section 124-A "a prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen", he further added:

> Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence. But the section under which Mr. Banker and I are charged is one under which mere promotion of disaffection is a crime… I have studied some of the cases tried under it and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section.[21]

After the independence of India, there was a serious opposition in the Constituent Assembly against the inclusion of sedition as a restriction to Article 19 which was then Article 13 of the draft Indian Constitution. T.T. Krishnamachary while speaking against the inclusion of sedition said: "Sir, in this country we resent even the mention of the word 'sedition' because all through the long period of our political agitation that word 'sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique."[22]

Further, M. Ananthasayanam Ayyangar, while speaking on his motion to omit the word 'sedition' from Article 13 of the draft Constitution said:

> The word sedition has become obnoxious in the previous regime. We have therefore approved of the amendment that the word sedition ought to be removed, except in cases where the entire state itself is ought to be overthrown or undermined by force or otherwise leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.[23]

[21] Ashwaq Masoodi, Republic of dissent: Gandhi's sedition trial, Mint (Jan. 25, 2019, 08:49 A.M.), https://www.livemint.com/politics/news/republic-of-dissent-gandhi-s-sedition-trial-1548352744498.html
[22] Constituent Assembly of India, 2nd December 1948; Constituent Assembly Debates Official Report, Vol.VII, Reprinted by Lok Sabha Secretariat, New Delhi, Sixth Reprint 2014.
[23] Id.

However, even after dropping the word 'sedition' from Article 19 of the Constitution, the situation hasn't got any better. From being used as an instrument of suppressing freedom movement in the pre-independence era to being used as a tool to stifle voices of political dissent in the post-independence era, the law of sedition has not changed much. In 2007, the Chhattisgarh police charged Dr Binayak Sen with sedition for his alleged links with Maoists.[24] Another incident of sloppy charging of sedition arose when Aseem Trivedi, a satirist was charged under Section 124-A for highlighting widespread corruption in his cartoons.[25]

The current debate on sedition started with the debacle of the JNU Sedition Case. On 9th January 2016, some masked students at Jawaharlal Nehru University raised anti-India slogans and martyred the execution of Afzal Guru. Later Kanhaiya Kumar, JNU Students' Union president with two other students was arrested on the charge of sedition. The government didn't stop here, in the last few years many human rights activists, journalists, lawyers and intellectuals have been booked under sedition. An apt instance of this came to light when intellectuals like Ramchandra Guha was charged with sedition on the mere addressing a letter to the PM.[26] Recently, three engineering students in Kashmir were book under sedition for raising pro-Pakistan slogans and posting it online.[27] Further, one of the most shocking incidents came to light when the teachers of a school in Bidar were charged with sedition for performing a play on the Citizenship Amendment Act, 2019.[28]

Apart from the above instances of injudicious slapping of sedition, the Law Commission of India has also highlighted the need to redefine the law of sedition in India. It has stated:

> Every irresponsible exercise of right to free speech and expression cannot be termed seditious. For mere expressing a thought which is not in consonance with the policy of the Government of the day, a person should not be charged under sedition. Expression of frustration over the state of affairs, for instance, calling India 'no country for women' or a country that is 'racist' for its obsession with skin colour as a marker of beauty are critiques that do not 'threaten' the idea of a nation. Berating a country or a particular aspect of it, cannot and should not be treated as sedition. If the country is not open to positive criticism, there lies little difference between the pre- and post-

[24] Dilip D'souza, Did Binayak Sen's conviction for sedition foretell the mess we are in today?, Scroll.in (Mar. 10, 2016, 08:00 A.M.), https://scroll.in/article/804414/did-binayak-sens-conviction-for-sedition-foretell-the-mess-we-are-in-today.

[25] Jason Burke, Indian Cartoonist Aseem Trivedi jailed after arrest on sedition charges, The Guardian (Sep. 10, 2012, 13:16 P.M.), https://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition.

[26] Abhay Kumar, Sedition against Guha, 48 others, Deccan Herald (Oct. 5, 2019, 08:24 A.M.), https://www.deccanherald.com/national/sedition-case-against-guha-48-others-766386.html.

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[28] Sukanya Shantha, 'Sedition' for School Play on CAA: Student's Dialogue 'Insult to PM'; Parent, Official Arrested, The Wire (Jan. 30, 2020), (https://thewire.in/government/bidar-karnataka-anti-caa-play-school-sedition.

independence eras. Right to criticise one's own history and the right to 'offend' are rights protected under free speech.[29]

Furthermore, while India still carries the colonial bane, the U.K. has abolished sedition as an offence by enacting the Coroners and Justice Act, 2009.

Conclusion

In light of the discussion above, it is stated that the main objective behind the incorporation of Section 124-A in the IPC was to suppress the freedom struggle in India. Several freedom fighters have been booked under the baneful law so far. The Law of Sedition as defined under Section 124-A penalises all those acts which bring the Government established by law in contempt or hatred. However, from enlarging the scope of Sedition to restricting it, different courts have interpreted Section 124-A differently. At the same time, the courts have tried to demarcate free speech from seditious speech. From time to time certain tests have been laid by the courts to determine what class of speeches constitutes the offence of sedition. The 'imminent danger test' stands as a current standard of determining whether a speech is seditious or not. However as the present scenario rolls out, the above test is being ignored *in toto*. The law enforcement agencies have become arbitrary in charging people with sedition. Further, it has become the tendency of the state to use sedition as an instrument to curb and suppress political criticism. Lastly, even the regime which cursed India with such a draconian law has repealed sedition in its own country some 11 years ago.

Suggestion: It is suggested that Sedition under Section 124-A IPC should be repealed forthwith as there is no need for any such law in a modern democracy like ours. Further, the dissent and criticism of government policy is the epitome of a vibrant democracy.

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