

# CONFLICT BETWEEN OFFENCE OF SEDITION & THE DEMOCRATIC SYSTEM OF INDIA

Medha Tankha<sup>1</sup>

Mayurakhi<sup>2</sup>

---

## *Abstract*

India is the largest democracy of the world. However with the diversity and liberty given to citizen there comes the complexity for smooth working of this parliamentary government. Lately India has seen many protests nationwide in opposition to the new Citizenship Amendment Act, 2019. Students from renowned universities such as Jamia Milia Islamia, Jawaharlal Nehru University, both in the capital city protested widely against the Act. This has undoubtedly separated the country into two groups one where activists, intellectuals are supporting the protestors and one supporting the new act, thus the Government. The Government tried to suppress the protest in its own way as it was their unambiguous stand not to bow down to the demands of the protestors. In all these occasions government has only one solution to tackle all this and that is the very infamous draconian gift of British Law background "Section 124A" the "Sedition." The misuse of such law had time and again called for its removal from the Statute of Indian Penal Code 1860. However is this ultimate solution of this issue? This paper seeks to analyses the conflict that continuously arises between sedition law and fundamental rights exercised by the citizen in a democratic country. And why is it in spite of all the regressive opinions for this law India still needs Sedition but as offence against the principle enshrined in Constitution and not against a particular Government.

## *Introduction*

Since lately the atmosphere in the country has been driven by a drift between citizens and the Government. The citizens as protestors are exercising their right to protest guaranteed to them by the Supreme law of the country, The Constitution of India. The protest sees that the ultimate rule of a democratic country is to express their dissent regarding any policy or bill presented by the Governments. However any government in the country has a powerful weapon in their hands to suppress any voice that arises against them, the Section 124A of Indian Penal Code, popularly known as the offence of "Sedition". The draconian law which was earlier used by the British Government to curb the slogans and protest for the freedom and basic rights under their regime is now used by the Governments of this democratic country to suppress any disagreement against them. This has certainly raised questions regarding the efficacy of this section in a democratic country like India.

As established by KENNY- the Law of Sedition is defined as an offence related to the "uttering of the seditious words, the publication of seditious libels, and conspiracies to do an act for the furtherance of a seditious intention. Sedition, whether by words spoken or written,

---

<sup>1</sup>Student of B.A LL.B(Hons.) (5<sup>th</sup> Year) Law College Dehradun faculty Uttaranchal University.

<sup>2</sup> Assistant Professor , Law College Dehradun faculty of Uttaranchal University

or by conduct, is a misdemeanour at common law punishable by fine and imprisonment. It in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the state”.<sup>3</sup>

Primarily the reasons for questioning the laws of sedition are simple, firstly India is no more a colony it's a 'Sovereign Democratic Republic' which gives the supreme power in the hands of its people. Such law was introduced by British Rule to repress the voice of Independence. Many of our own freedom fighters were also victim of this vicious law. To know the series of events tracing the source of this law in India, we must understand from when it came into existence.

### ***Evolution of Law of Sedition in India***

The foundation of sedition law in India can be traced back from the year 1837 when clause 113 draft of Indian Penal Code was prepared by the First Law Commission of India under the chairmanship of Thomas Babington Macaulay. However such offence was not the part of the Indian Penal Code of 1860 due to some unknown omission. In the year 1870 the law was inserted mainly due to the voices raised against the colonial government. The Wahabis group posed a series of threats from 1863 to the working of the British Rule. The group was also the part of the revolt of 1857 and now was ready for another blow to the government. Thus petrified by these threats the government through amendment in the Indian Penal Code inserted a new section 124A in 1870 exactly as it was in the draft of 1837. It was taken from the British Common laws act of 1848 known as The Treason Felony Act which charged seditious libel and contents.

The dispute in the definition of sedition given under IPC first time came into examination in the case popularly known as *The Bungabasi Case*. In this case the Justice Strachery pointed out that “there was a huge difference between the terms “disaffection” and “disapprobation.” Disaffection means to not like something or hatred towards it however it does not amount to disagreeing with something. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling.”<sup>4</sup> After this case though the Chief Justice was very clear about what actually amounts to sedition, still the law was distorted to curb the demand of independence by are famous freedom fighters. The trial of *Balgangadhar Tilak* brought the ill effects of this law under limelight.<sup>5</sup> The defendant and famous freedom fighter Bal Gangadhar Tilak was the editor of newspaper Kesari in which complained seditious matter was published. *Justice Strachery* defined similar meaning of term “Disaffection” as was previously held. This judgement became the steering principle for the amendment in this section held in year 1989 wherein the explanation defined “disaffection” to include disloyalty and feelings of enmity. The father of our nation Mahatma Gandhi also was a victim to this section. In his great speech he said, “Section 124A, under which I am happily charged is perhaps the prince among the political

---

<sup>3</sup> Ratanlal & Dhirajlal by LexisNexis, The Indian Penal Code.

<sup>4</sup> Queen Empress v Jogendra Chandra Bose and Ors. (1892) ILR 19 Cal 36.

<sup>5</sup> Queen Empress v. Bal Gangadhar Tilak, (1892) ILR 22 Bom, 135.

sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law.”<sup>6</sup>

In *Niharendu Dutt Mazumdar V. The King Emperor*<sup>7</sup>, the Federal court held that in order to be an offence amounting to sedition “the acts or words reported of must either incite to disorder or must be such as to satisfy reasonable men that there is intention or tendency”. This created a liberal interpretation of the section and assured the defence given in previous cases that all words cannot be seditious in nature. However such was again reverted in case of *King-Emperor v. Sadasiv Narayan Bhalerao*.<sup>8</sup>

The framers of constitution during the debates priory included the clause of sedition as an exception to the freedom of speech and expression under article 19(1) (a) restricting the scope of freedom given to a citizen. However the clause was eradicated by the efforts eminent lawyer K.M Munshi nevertheless it was still the part of offence against the state under Indian Penal Code. *K.M Munshi* objected it and said “A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case, a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State.”<sup>9</sup>

### ***Constitutionality of Section 124A of I.P.C***

As soon as the Constitution of India came into the effect the quarrel between freedom of speech and expression guaranteed under Article 19 with the penal provision of section 124A came into constant clash. Freedom of speech is the bulwark of democratic government.<sup>10</sup>

Section 124 A,<sup>11</sup> as it stands today, reads: “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 fi ne may be added, or with imprisonment which may extend to three years, to which fi ne may be added, or with fine.” However this was not the originally drafted section. This section has gone through tremendous test. One such test was the objection of it as unconstitutional.

The constitutionality of this section was challenged for the first time in case of *Tara Singh Gopi Chand v. The State*.<sup>12</sup> The Punjab High Court held that the section stands

<sup>6</sup> Statement in Sedition Trial of Mahatma Gandhi

<sup>7</sup> AIR 1942 FC 22

<sup>8</sup> AIR 1947 PC 84

<sup>9</sup> Constituent Assembly Debates on 1<sup>st</sup> December, 1948

<sup>10</sup> Prof. M P Jain, Indian Constitutional Law 1078 (Lexis Nexis Butterworths Wadhwa Nagpur 6th Ed., 2012)

<sup>11</sup> Indian Penal Code, 1860

<sup>12</sup> AIR 1951 Punjab 27

unconstitutional as it abridges the right of freedom of speech and expression assured under Article 19(1) (a) of the Constitution. The Court gave its observation that — “a law of sedition thought to be necessary during the period of foreign rule has now become inappropriate by the very nature of the change which has come about”.

The case became citing example in case of Allahabad High Court namely *Ram Nandan v. State of Uttar Pradesh*<sup>13</sup>. The court while citing the views of our own very first Prime Minister of India, Jawaharlal Nehru, declared the section ultravires to the provision of Constitution of India. *Jawaharlal Nehru* expressed his displeasure about the section through following words during the introduction of Constitution (Amendment) Bill, 1951:

“Take again Section 124 (A) of the Indian Penal Code. Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, in any body of laws that one might pass. The sooner we get rid of it the better.”<sup>14</sup>

The landmark case which gave guidelines for the accusation in offence of sedition was the *Kedar Nath Singh v. State of Bihar*<sup>15</sup>. The constitution bench reversed the earlier judgements and declared the section 124A of I.P.C as constitutionally valid. The Bench gave its observations as:

“‘Government established by law’ is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence.”

The Court also tried to provide guidelines by referring that A citizen has right to say and exercise his freedom of speech as long as he doesn't incite people to violence against the Government established by law or with the intention of creating public disorder. Thus this case became the governing precedent for the cases to be followed and was clear that Section 124A was constitutional.

### ***Conflicting Situations between Article 19(1) (A) Under Indian Constitution and Section 124A Indian Penal Code***

Prof. Upendra Bakshi said, “Sedition should never be a way of governance of dissent. Our SC has ruled early that every citizen has a right to discuss and dissent; only incitement to violent

---

<sup>13</sup> AIR 1959 All H.C

<sup>14</sup> Parliamentary Debates of India , Vol XII , Part 11, (1951)

<sup>15</sup> AIR 1962 SC 955

or criminal action stands outlawed. Shouting slogans that are not anti-Indian, conducting and joining protest marches, are regarded by the court as an integral aspect of freedom of speech and expression & democratic dissent.”<sup>16</sup>

The government both state or centre had continuously alleged activists, cartoonist, editors and intellectuals with sedition charges on numerous occasions which have formed harsh criticism towards this section. In 2010 Arundhati Roy, a renowned activists and writer was slapped with sedition charges over her lecture in conference held in Jammu & Kashmir to speak on topic “Azaadi- The Only way”<sup>17</sup>. Same year Binayak Sen was charged with sedition against Chattisgarh Government when he showed support to Naxalites in the area hence violating the provisions of Chhattisgarh special public security act (CSPSA) and the Unlawful Activities (Prevention) Act 1967<sup>18</sup>. In 2011, Aseem Trivedi, a cartoonist was accused of sedition because he drew series of cartoons protesting and targeting the corrupt system of government and need of Lokpal Bill in India.<sup>19</sup> His cartoon website was alleged by Crime Branch, Mumbai to display offensive pictures and texts associated to Indian National Flag and National emblem. In 2014 Kashmiri students who cheered for Pakistan in Asia Cup in Meerut were slammed with this section.<sup>20</sup> In 2015, a Patel leader, Hardik Patel, the Gujarat Government arrested him for sedition for using “offensive language against the Prime Minister, the State Chief Minister and Amit Shah, the President of BJP”.<sup>21</sup> In February 2016, political atmosphere in India went through a uproar when Jawaharlal Nehru University Student Union President Kanhaiya Kumar was arrested from the campus on charges of sedition. The stifle between his supporters and the Government went far ahead when people came on streets against the ruthlessness of the Government. However he was later released on basis of lack of evidence. In cases like *Shreya Singhal v. Union of India*<sup>22</sup> Section 66A of Information Technology Act, 2000 was struck down as it abridged the freedom of speech and expression given under Article 19(1) (a) of the Constitution of India the issue once more was raised against the law of sedition. The Apex Court in this case clarified that there is a difference between “advocating a fact” and “inciting violence.”

However this year has seen new series of events widely astonishing the worldwide intellectuals and human rights activists. A school in Bidar district of Karnataka has been summoned with sedition charges because the children performed Anti- CAA play. “Each of such cases is bogus and against the Supreme Court judgement given in case of Kedar nath .There is no incitement to violence or public disorder,” said activist and lawyer Prashant Bhushan.<sup>23</sup>

---

<sup>16</sup> <http://thewire.in/2016/02/13/a-short-summary-of-the-law-of-sedition-in-india-21472/>

<sup>17</sup> <http://www.ndtv.com/india-news/arundhati-roysstatement-on-possible-sedition-case-437396>

<sup>18</sup> <http://www.thehindu.com/news/national/Binayak-Senamong-six-charged-with-sedition-in2010/article15502281.ece>.

<sup>19</sup> *Sanskar Marathe v. The State of Maharashtra & Ors* CrI. PIL No. 3 of 2015

<sup>20</sup> <http://economictimes.com/kashmir-students-booked-for-sedition-for-cheering-pakistan-team/articleshow/31544801.cms>

<sup>21</sup> <http://indianexpress.com/article/india/india-newsindia/hardik-patel-booked-for-sedition-over-commentson-gujarat-police>

<sup>22</sup> Writ Petition(Criminal) No. 167of 2012

<sup>23</sup> <http://economictimes.com/news/politics-and-nation/a-few-slogans-against-india-not-enough-for-sedition-charges-sc/amp-article15502281.ece>

### *A Step towards Harmonising the Conflict*

The number of cases filed for offence of Sedition in past 5 years stands to 191 however only 4 managed to get conviction<sup>24</sup>. This shows the intolerant attitude of the administration to file as many sedition cases as possible and repress any uncooperative opinion towards them.

The Law Commission of India several times suggested changes in the ongoing procedure taken up in offence of Sedition. In “42nd Report (1971) titled —Indian Penal Code”, it made three fundamental proposals to be included in section 124A, IPC. These were: inclusion of mens rea in the section, the scope of the section be widened, incorporating Constitution of India, Legislatures and the administration of justice (Judiciary), along with the executive Government, against whom disaffection would not be tolerated, and, bridging the odd “gap between imprisonment for life and imprisonment which may extend to three years”, or fine, by fixing the maximum punishment for sedition at seven years rigorous imprisonment and fine.<sup>25</sup>

Also in The 267th Report of the Commission on —Hate Speech, (2017), distinguished between “sedition” and “hate speech”, on condition that the offence of hate speech affects the State indirectly by disturbing public tranquillity, while the sedition is directly an offence against the State. The Report says, that to meet the criteria as sedition, the impugned term must threaten the sovereignty and integrity of India and the security of the State.

These reports show that suggestive measure can be taken where both sedition law and freedom of speech and expression can survive together. However there are rapid changes that are to be brought in section 124A of Indian Penal Code. In an attempt to change the language of the section 124A an amendment known Indian Penal Code (Amendment) Bill, 2016<sup>26</sup> was brought in Lok Sabha. The sole purpose behind this amendment was to substitute the terms “Government established by law” with term such as “the principles of democracy, secularism or national unity enshrined in the Constitution of India.” This amendment was very necessary to limit the misuse of the law in the hands of the Government. Since constitution and its principles are supreme and government is a part of state not the state itself.

### *Conclusion*

The famous words of Charles Bradlaugh left us the essence of democracy. He quoted “Better a thousand-fold abuse of free speech than denial of free speech. The abuse dies in a day, but the denial slays the life of the people and entombs the hopes of the race.”

Thus repealing of sedition laws in India is not a solution all that can happen is to strictly decide the ambit of the section. Is it offence against the Government or against the state? These questions create divergence in the minds of people and just because they are against the policies of a particular government, they are termed as anti- nationals. This trend has to be stopped for it is very dangerous for the democratic setup of our country. We need a system of

---

<sup>24</sup> <https://www.deccanherald.com/amp/national/only-4-sedition-cases-saw-conviction-in-4years.html>

<sup>25</sup> Consultation Paper On Sedition by Law Commission of India

<sup>26</sup> Bill No. 74 of 2016

checks and balance to hold back the abuse of this section. At last it can only be concluded by saying that governments should be valiant enough to take criticism in a democratic country as it is rightly said "When the people fear the government, there is tyranny. When the government fears the people, there is liberty" by Thomas Jefferson, 3rd US President and one of the founding father of America."<sup>27</sup>

---

<sup>27</sup> Suman Yadav & Jay Khese "An Insight Into The Constitutional Validity Of The Section-124a" Journal Of Legal Studies And Research [Vol. 2 Issue 5] ISSN 2455-2437