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THE JOURNEY OF SEDITION LAW IN INDIA HOW HAVE SEDITION PROVISIONS EVOLVED IN BNS?

-Pooja Narayan¹

ABSTRACT

"Dispute is it is Colonial Law, very same law was used by the British to silence (Mahatma) Gandhi. Is the law still necessary in our country after 75 years of Independence?"

- Justice NV. Ramana

Sedition in simple language means using words or action to encourage people to go against the Government. In India the Indian Penal Code, 1860 criminalizes Seditious act under section 124A. The minimum punishment provided for this offence is 3 years which can extend up to imprisonment for life and fine may also be added. The explanation added to the section defines the term 'disaffection' as disloyalty and all feelings of enmity.

The Section 124A of Indian Penal Code, 1860 had its fair share of criticism and has been put to scrutiny time and again. It is compared with the British rule when such laws were enforced to silence the voices for independence. The Hon'ble Supreme Court of India in several cases have opined about the need of removal of this section from country's most important statute book. And then the revolution came, when in December, 2023, three new criminal laws i.e. Bhartiya Nyaya Sanhita, Bhartiya Nagarik Suraksha Sanhita and Bhartiya Sakshya Adhiniyam, were given assent to by the Hon'ble President of India and they came into force on 1st July, 2024. Out of all the other things one remarkable feature of Bhartiya Nyaya Sanhita, act which replaced Indian Penal Code, is removal of the offence of Sedition. So now there is directly no offence of sedition but again it has been kept alive by incorporating its feature in the Section 152 of the Bhartiya Nyaya Sanhita.

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In this research paper I have attempted to discuss and analyze the journey of this offence right from its birth till the current state under Bhartiya Nyaya Sanhita.

Keywords: Sedition, Indian Penal Code, 1860, Bhartiya Nyaya Sanhita, 2023, Section 124A, Section 152

INTRODUCTION

Sedition in simple terms means an act of inciting disaffection among people towards the government of country. From the time this offence became a part of the Indian Penal Code, it has been under a strict scrutiny of the courts and public in general. This law was enacted in the British era to serve their purpose of curbing anti-government voices and was criticized even then by the courts. For instance in the case of *Niharendu Dutt Majumdar and ors v. Emperor*, the court observed that by sedition it can be understood an act of lawlessness and if this main ingredient is missing then a person cannot be held liable for this offence.

The origin of sedition law can be traced back to 1830s when an effort to codify laws for India began. The draft Indian Penal Code, 1837, by Macaulay had provisions similar to the current sedition law but it was not until 1870 when the present form of this offence was enacted through an amendment brought by J. F. Stephens. He was a law member of Governor-General's council. This law draws a lot of inspiration from the English Treasons Felony Act, 1798, enacted to address the dissent, mutiny and rebellious activities. During Pre-Independence era this law was used specifically to suppress the criticism and dissatisfaction existing among the Indians and has targeted many freedom fighters, one such name is that of Bal Gangadhar Tilak.

Section 124A of the Indian Penal Code defines and provides punishment for the offence of sedition. This Section states that –

“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.”

The section 124A has undergone several amendments even during the British era and after Independence with enactment of the Constitution of India and incorporation of fundamental rights under its part III created a rift between freedom of speech and expression and sedition law.

SEDITION LAW UNDER THE INDIAN PENAL CODE, 1860

Section 124A of the act defines and provides punishment for the offence of sedition. It states that if there is any act which creates or attempts to create 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. Due to lack of any definition of the terms ‘hatred’ or ‘contempt’, an ambiguity is created in the law, as it will be difficult to set any definite standard to define and recognize an offence of sedition. This ambiguity creates a loophole which in turn leaves space for vengeful use of the provision.

The Indian Penal Code, 1837 drafted by Macaulay did not have the provision of sedition and it was not until 1870s that it was added through an amendment.

The case of *Bangobasi* was the first reported case of section 124A, wherein Sir Comer Petheran C.J. explained this section in detail. He stated that disaffection means a feeling contrary to affection, means something like dislike, contempt or hatred. Sedition is non-bailable, cognizable and non-compoundable offence as per the provision of First Schedule of the code of criminal procedure. Not only section 124A of the Indian Penal Code but even Code of Criminal Procedure has provisions for sedition. For instance section 108 of Code of Criminal Procedure empowers an executive magistrate to direct a person to execute a bond, with or without sureties to security for good behavior from persons disseminating seditious matters. Under Section 95 of Criminal Procedure Code, State government is empowered to forfeit the publications and issue search warrants for the same which have seditious material in the form of newspaper, book or any document.

The constitutionality of Section 124A has been challenged time and again as being violative of Article 19(1)(a) of the Indian Constitution, which guarantees the fundamental right of freedom of speech and expression. In the constituent Assembly debate Shri M. Ananthasayanam Ayyangar stated that-

In the event that we find that the legislature for the present has a talent of digging in itself, anyway awful its organization may be it must be the principal right of each resident in the nation to oust that administration without savagery, by convincing the individuals, by uncovering its deficiencies in the organization, its technique for working, etc. The word 'dissidence' has gotten disagreeable in the past system. We had along these lines affirmed of the correction that the word 'subversion' should be expelled, with the exception of in situations where the whole state itself is looked to be toppled or subverted forcibly otherwise, prompting open issue; however any assault on the administration itself should not to be made an offence under the law. We have picked up that opportunity and we have guaranteed that no legislature might dig in itself, except if the addresses lead to a topple of the State inside and out."

However, Article 19(2) does contain certain restrictions which can be imposed on the fundamental right of free speech and expression. The constitutionality of Section 124A was challenged in the no. of cases, one such case is *Tara Singh Gopi Chand v. State*, the court observed sedition law as unconstitutional. The Allahabad High Court in the case of *Ram Nandan v. State*, held that-

"Sec.124A of the Indian Penal Code is ultra vires. "The words used in the amended Cl.(2) of Art.19 are "interest of public order" and not "maintenance of public Order" still what is "in the interest of public order" necessarily tends to the maintenance of it and so there must be some real likelihood of public disorder taking place either immediately or in the near future, and where there is no such possibility the interest of public cannot be said to be affected."

In the journey of Sedition law the landmark judgement is that of *Kedar Nath Singh v. State of Bihar*, issue formed for consideration was whether Sections 124A and 505 of the Indian Penal Code are ultra vires in view of Article 19(1)(a) read with Article 19(2) of the Constitution? And the court observed that the provision of sedition restricts freedom of speech and expression under Article 19(1)(a) but it is within the reasonable restrictions enshrined under Article 19(2) and the statements made punishable under Section 124A would disturb the peach and public order. Henceforth this case did not declare section 124A as unconstitutional or violative of Article 19(1)(a) of the Constitution instead the court held that this section merely restrict this fundamental right and it should be used only on activities involving incitement to violence or intention to create disturbance of public peace.

SEDITION LAW UNDER THE BHARTIYA NYAYA SANHITA, 2023

On 25th December 2023, Bhartiya Nyaya Sanhita was enacted with Bhartiya Nagarik Suraksha Sanhita and Bhartiya Sakshya Adhiniyam and these acts came into force on 1st July, 2024. Indian Penal Code is now stand replaced by Bharitya Nyaya Sanhita, 2023. Among various changes that came along with these fresh acts is the removal of offence of sedition in Bhartiya Nyaya Sanhita, 2023. Though section 124A of Indian Penal Code did not find place in the new law still its essence stays intact with the section 152 of BNS. The Section 152 states that –

“Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.”

The drafting of section 152 BNS is different from section 124A as the word ‘sedition’ is not used. Section 152 aims at protecting the safeguard, unity and integrity of India still this section is also attacking on the same ground of violation of Article 19(1)(a) of Indian Constitution as was the case of section 124A of the Indian Penal Code.

In the case of Shreya Singhal, the section 66A of Information Technology Act was declared unconstitutional as the terms like “grossly offensive or of menacing character”, “annoyance”, “inconvenience”, “danger”, “enmity”, “hatred”, “ill will” are vague and ambiguous and can be misused by the people in authority. Similarly in the section 152 there is a term like ‘subversive activities’ which is again vague and ambiguous and hence can be misused

CONCLUSION

Sedition law has been under scrutiny since its very inception. Time and again questions have been raised regarding the ambiguity which is inherent due to the words used and gap created for misuse. Use of vague words and restrictions created on the fundamental right of free speech and expression has led this offence to become a mechanism for supressing dissent and curtailment of

free speech. There are several incidents where the section 124A has been used against activists, reporters, journalists and other people who criticised government in some way.

Still it is not to be forgotten that this offence in some ways has been very essential for maintaining peace and tranquillity in the society. Our country is a symbol of unity in diversity and therefore there was a need to put reasonable restrictions on the exercise of fundamental rights. As it has been said that sedition law is violative of Article 19(1)(a) of the Indian Constitution but as per the decision of the court in the case of *Kedarnath v. State of Bihar*, the offence of sedition under section 124A of Indian Penal Code is not violative of fundamental right and it is well within the reasonable restriction under Article 19(2). Leaving a country free to speak whatever they want, whenever they want and however they want might not be a best idea. Still there is a need of creating balance between the exercise of fundamental right and its curtailment. It should be worked out in such a way that there exists a harmony between the exercise and curtailment.

After the enactment and enforcement of *Bhartiya Nyaya Sanhita* word 'sedition' has been deleted and instead of keeping section 124A verbatim a new section has been created that is section 152. This section does not have word sedition but still if check the essence then both sections are more or less very similar to each other, infact they have same pith and substance.

Section 152 is also suffering from the same defects as that were in section 124A which is a lot of vague and ambiguous terms and restriction on free speech.

The judiciary plays a crucial role in interpreting and balancing the right to freedom of speech and expression with the need to maintain national security and public order and hence legal challenge continues to shape the interpretation and application of this law.