



Vidhyayana - ISSN 2454-8596

An International Multidisciplinary Peer-Reviewed E-Journal

www.vidhyayanaejournal.org

Indexed in: ROAD & Google Scholar

Indian Legislative and Judicial Approach to The Law of Sedition

Khyati Purohit

Assistant Professor,

Harivandana Law College, Rajkot



ABSTRACT

There is, without a doubt, a solid reason why the term "sedition" has returned to the forefront of legal issues nationwide after a long period and an ongoing series of talks. The concept of sedition did not initially appear on the front pages of significant newspapers until 1972. This debate has been going on for years, whether or not the issue at hand violates the Constitution. At Kedarnath, the constitutionality of sedition was subjected to its first substantial examination. After years of discussion and controversy, it has just returned to the public eye. Since the Kedarnath tragedy, there has been a lapse of almost fifty years. However, now, a troubling aspect of Indian criminal law is resurfacing. By analyzing many court decisions from the 20th century, this article examines the development of India's sedition legislation throughout the last century. The researcher explores the historical context of the law of sedition and its relevance in this paper, which can be found on their website. In addition, the researcher investigates the relevant legal provisions associated with it, which may be found in section 124A of the Indian Penal Code 1860. There is also an explanation of the view taken by some high courts and the Supreme Court concerning the statute governing sedition. As the study's conclusion, a comparison of the laws that control sedition in India, the United States of America, and the United Kingdom is offered.

Keywords: Sedition, Section 124A, Kedarnath Case, Indian Penal Code, etc.

Introduction

The plea to hold Farooq Abdullah, the former chief minister of Jammu and Kashmir, responsible for his words recommending the repeal of Article 370 and the separation of Jammu and Kashmir into two union territories was turned down by the Supreme Court on February 3, 2021. The case asked the Court to hold Abdullah accountable for his comments, which suggested the repeal of Article 370 and the division of Jammu and Kashmir into two union territories. It was proposed that Article 370 should be done away with and that Jammu and Kashmir should be divided into two different union regions. According to the decision of the nation's highest Court, holding opinions that oppose those of the party in power does not constitute the crime of treason. "Sedition Law in India" is brought to the forefront here.



Vidhyayana - ISSN 2454-8596

An International Multidisciplinary Peer-Reviewed E-Journal

www.vidhyayanaejournal.org

Indexed in: ROAD & Google Scholar

The Court is reviewing the Kedarnath case, in which the Supreme Court of India confirmed the constitutionality of one of the most troublesome British sections. In the Kedarnath case, the Supreme Court maintained a controversial provision's constitutionality. The most amazing part was how the administration abruptly withdrew, swiftly reversed its position, and agreed to look into this contentious paragraph after first battling vehemently against its reconsideration during earlier sessions. The most surprising part was this abrupt retraction, stance shift, and willingness to reexamine this problematic issue. On the other hand, the Indian government has urged that the Sedition Law not be examined by the Court.¹ The Supreme Court decided, after giving the issue considerable attention, that Section 124A had previously been used inappropriately. This section has historically been used to defend the prosecution of independence fighters, including Mahatma Gandhi, Jawahar Lal Nehru, and Bhagat Singh, on criminal charges.

The Supreme Court acted swiftly, albeit cautiously, to halt the application of the clause and require that no further FIRs use it. This action was taken in response to a petition that the government filed. The Supreme panel expects that the decision made by a three-judge panel on May 11, 2022, specifying how to handle sedition cases, would be followed.²

The British administration's goals were made abundantly clear by the inclusion of this article in the Indian Penal Code (IPC), which was written when India was under British colonial rule. The legislation against sedition dates back to this time. Before anybody accuses the British of doing this, it should be noted that governments in India have used this law to imprison dissidents more frequently after independence. Before anybody accuses the British of doing this, it is important to recognize that the main goal of this statute was to "silence the critics and hang the dissenters." Since then, several First Information Reports (FIRs) have been filed under this law, and the majority of those implicated in these FIRs are activists who work to criticize the administration. This is not the fault of any one political party or administration. The present government employs the same strategies the British used a century ago.

¹ Hannah M Varghese, BREAKING-KEDAR NATH GOOD PRECEDENT, NO NEED TO RECONSIDER SEDITION LAW ON THE GROUND OF INDIVIDUAL INSTANCES OF MISUSE: CENTRE TO SUPREME COURT LIVE LAW (2022), <https://www.livelaw.in/top-stories/sedition-kedar-nath-good-precedent-no-need-to-reconsider-it-on-the-ground-of-individual-instances-of-misuse-centre-to-supreme-court-198550> (last visited May 2, 2023).

² 1 Livelaw News Network, BREAKING: KEEP THE SEDITION LAW IN ABEYANCE: SUPREME COURT RULES IN A HISTORIC ORDER [UPDATED WITH ORDER] LIVE LAW (2022), <https://www.livelaw.in/top-stories/breaking-supreme-court-urges-centre-states-to-refrain-from-registering-firs-invoking-section-124a-ipc-198810> (last visited May 2, 2023).



Meaning of Sedition

When the International Criminal Code 1860 was written, "sedition" was not included. There are no instances of the word "sedition" anywhere else in the code, not even in this particular section. In compliance with IPC Article 124A³, "Whoever brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection toward the Government established by law in India shall be punished by imprisonment for life, to which fine may be added; with imprisonment that may extend to three years, to which fine may be added; or with fine." It also offers three different explanations for the phenomena. Suppose we dissect the terms in the section. In that case, we can say that the prosecution must demonstrate that the defendant acted in a way or said anything that caused hatred or contempt to spread within the community and that their actions suggest that they disagree with the government. This may involve demonstrating how the accused person engaged in conduct or made statements that incited hate or disgust within the community. In the case of *Manubhai Tribhewandas Patel v. State of Gujarat*, the Supreme Court decided that spoken words, acts, or written statements might show seditious intent.⁴

If one were to believe what is said in Black's Law Dictionary,⁵ Sedition is "an insurrectionary movement tending towards treason but lacking an overt act; attempts made by meetings, speeches, or publications to disturb the tranquillity of the state," according to Merriam-Webster.

In the case of *Nazir Khan v. State of Delhi*, the Supreme Court issued its decision.⁶ Sedition is a crime against society that typically precedes treason. The most severe seditious conduct is treason. Sedition encompasses "all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the state and induce ignorant persons to attempt to subvert the Government and laws of the country," so remember this.

The term "sedition" refers, in its most basic sense, to any action taken to cause division among a group. Everything that could be confused, whether through words, signs, or other visual communication, falls under this category. In order to determine whether or not an action is subversive, it is important to look at the motivations of the individual doing it. Sir James Stephen defines seditious intent as any action taken to incite opposition to the government via either words or deeds. *Niharendu Dutt Majumdar v. the King and Emperor*

³ Indian Penal Code, 1860.

⁴ 1972 CriLJ 388.

⁵ Bryan A. Garner & Henry Campbell Black, BLACK'S LAW DICTIONARY (2021).

⁶ (2003) 8 SCC 461.



of India is the name of the legal dispute.⁷ Established that for utterances to be considered seditious, they must have the potential to disrupt society. There is a high risk of undermining the fundamental principles of democracy due to the ambiguity in the legal meaning of the term "sedition."⁸

Sedition in History

The crime of sedition was originally considered and defined during British colonial control. At the same time, the Indian Penal Code was written.⁹ Thomas Macaulay was the person responsible for the establishment of the IPC, and he presented a draft of the code in the year 1837.¹⁰ The omission of sedition from the Indian Penal Code in 1860, when it was finally put into effect, surprised everyone. Despite this, it is said that Macaulay erred by forgetting to include seditious conduct as a code transgression. After some time, the problem was finally rectified when 1870, the British government added a brand-new section 124A to the IPC. Bal Gangadhar Tilak was the first person to be prosecuted as a defendant under this flawed legislation.

The British government employed a similar law to terrorize Indian patriots fighting for freedom in the years before the American War for Independence. This statute was frequently applied at the time to imprison politicians and activists who said something seen to be subversive. The decision to remove the part of the Constitution that classified sedition as the nation's leadership decided a crime after it gained independence. The late activist and politician K.M. Munshi believed that the statute against sedition damages the foundations of democracy. He worked with the well-known politician Bhupinder Singh Mann on an effort that finally got the word "sedition" removed from the Constitution. Sedition was abolished in the Indian Constitution in 1949, but the Indian Penal Code was not changed to reflect this change. Following the ratification of the Constitution First (Amendment) Act, 1951 by the government, the crime of sedition was added to the Constitution as a violation of the "freedom of speech and expression." The year 1951 saw the implementation of this change. The legislation has undergone many modifications since 1974 that have

⁷ AIR 1939 Cal 703.

⁸ Meher Manga, SEDITION LAW: A THREAT TO INDIAN DEMOCRACY? ORF (2023), <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/> (last visited May 12, 2023).

⁹ Sunny Kumar, Is indian sedition law colonial? J. F. Stephen and the jurisprudence on free speech, 58 THE INDIAN ECONOMIC & SOCIAL HISTORY REVIEW 477-504 (2021).

¹⁰ 10 Apurva Vishwanath, EXPLAINED: WHAT IS THE SEDITION LAW, AND WHY SUPREME COURT'S FRESH DIRECTIVE IS IMPORTANT THE INDIAN EXPRESS (2022), <https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/> (last visited May 12, 2023).



increased its strictness.

Since it was first enacted, the British legislation of sedition has been the subject of heated debate. The landmark case *Tara Singh Gopi Chand v. The State* established the precedent.¹¹ According to the High Court of Punjab, the "freedom of speech and expression" guaranteed by Article 19 is restricted by Section 124A.¹² This was the first time a court in India had opened its doors to evaluate this contentious law. The High Court of Patna, on the other hand, adopted a contrary view in the case of *Debi Soren and Others v. The State*.¹³ and kept the clause in place after that in 1954. According to the Court, the law did not restrict people's "freedom of speech and expression." In the wake of this decision, the Allahabad High Court ruled that the law of sedition was unconstitutional in the case of *Ram Nandan v. State*.¹⁴ The Court also said that the government must be ready to handle criticism since it is an essential part of democracy.

After some time had passed, in the year 1962, the Supreme Court issued a verdict in the matter of *Kedar Nath*.¹⁵ The largest Constitutional Bench's decision is still final. The Court ruled that the IPC should continue to contain the sedition laws and affirmed them as constitutional. The prohibition is legal, the Constitutional Court said, because it is intended to safeguard both society and the legitimacy of the government.

Statistics on Sedition

According to the "National Crime Records Bureau" (NCRB), the number of sedition accusations filed in India increased by 25% in 2019. However, the percentage of those found guilty is low—perhaps 3%. The administration's target is a rise in arrests that is 41% higher than before. In 2019, there were 93 reported incidents of sedition, which led to 96 arrests and 76 charge papers being filed against individuals. In 2018, there were a total of 70 incidents that were reported, 56 of which led to arrests, and 27 of which resulted in charge sheets. After the major CAA and NRC protests in 2019, the number of people charged with sedition drastically rose. As a result, members of the opposition and activists could not participate in the march, which contributed to a decrease in communal animosity. Remember that 65 per cent of the 10938 persons

¹¹ 11 1951 CriLJ 449.

¹² 12 R. K. Misra, Freedom of Speech and the Law of Sedition in India, 8 JOURNAL OF THE INDIAN LAW INSTITUTE 117-131 (1966).

¹³ 1954 CriLJ 758

¹⁴ 14 1951 CriLJ 1.

¹⁵ 1962 AIR 955.



behind bars since 2010 were arrested after 2014. The increase is projected to reach nearly 28% between 2014 and 2020.¹⁶

Judicial Rulings

There have been instances in which the courts have upheld people's rights in a manner consistent with morality. However, there have also been instances in which they have failed to do so. This judgement is analogous to the one handed down in Ram Nandan v. State of Uttar Pradesh.¹⁷ After one Court found Section 124A to violate the right to free speech and expression, other courts followed suit. However, the Supreme Court overruled its prior finding and now considers the restriction lawful and within its legal power.

About the controversy between Balwant Singh and Punjab¹⁸ In 1995, the Supreme Court of India concluded that just using the words "Khalistan Zindabad...Hindustan Muradabad" does not constitute inciting a riot or an act of sedition on its own. This decision was made. 1995 was the year when this judgement became official. P.J. Manuel v. State of Kerala is the name of the court case that is being discussed here¹⁹. During the elections for the assembly, the accused posted the message, "No vote for the masters who have become swollen exploiting the people, regardless of the difference in parties," which led to his indictment under Section 124A of the Criminal Code and the finding that seditious material should always be interpreted with the letter. The defendant was ordered to read seditious material with the letter as part of the prosecution under section 124A.

In the case of Mohd. Yaqub v. State of West Bengal, a Pakistani man who had previously worked as an undercover spy for the ISI was found to have committed anti-national activities violating Section 124A²⁰. However, in this instance, the High Court concluded that the accused could not be held criminally accountable for sedition because the prosecution failed to produce adequate evidence linking the accused's involvement with any public provocation. The High Court came to this conclusion because the prosecution failed to present sufficient evidence connecting the accused's involvement with any incitement of the public.

¹⁶ Explainer: How the sedition law has been used in the modi era, THE WIRE, <https://thewire.in/law/explainer-how-the-sedition-law-has-been-used-in-the-modi-era> (last visited May 13, 2023).

¹⁷ 1951 CriLJ 1.

¹⁸ 1995 (1) SCR 411.

¹⁹ 2012 (4) KLT 708.

²⁰ 2004 (4) CHN 406.



In the case of *Indra Das v. the State of Assam*, the accused²¹ was accused of spreading false information and is said to be a member of a terrorist organization that is accountable for multiple killings. When the accused was declared not guilty of sedition by the Court, the accused obtained some much-needed relief.

In the case of *Asit Kumar Sen Gupta v. State of Chhattisgarh*, the charge levelled against the accused is as follows:²² was the fact that he incited them to participate in a criminal organization. Additionally, it was found that he had a collection of books in his possession. The accused was allegedly preparing a violent overthrow of the government via violent means. Regarding the current matter, the Court referred to its decision in *Raghu Bir Singh v. State of Bihar*.²³, during which it was ruled that anyone discovered in possession of seditious material belonging to another person is also accountable for the content of the material.

A Discussion on Kedar Nath's Judgement

In the case of *Kedarnath Singh v. State of Bihar*, the Supreme Court of India has provided the conclusive answer to whether or not sedition violates India's constitutional provisions. Kedar Nath, the individual being charged in this case, was a member of the Communist Party. As a result of his different political leanings, he used several unsuitable and subversive expressions for the administration that Congress governed. Words such as "dogs of the CID" and "goondas to the gaddi" were among those he used. He also used other words that were of a similar kind. Following these words and his harsh criticism of the present administration and his membership in the Communist Party, he was ultimately charged with sedition and Section 505 of the Criminal Code.

In this particular instance, the Court had articulated two issues:

- "Whether Section 124A and 505 of the IPC are beyond the powers granted by A.19(1)(a) when read in conjunction with A.19(2) of the Constitution?"
- "Whether the intention of the accused is to create disorder, disaffection, or incitement to violence to be found guilty of the offence of sedition law?"

²¹ [2011] 4 S.C.R. 289.

²² Cri App No. 86 of 2011.

²³ 1987 AIR 149.



The Supreme Court of India has decided upon seven guiding principles or guidelines concerning the crime of sedition in India. The Court also explained the conditions under which a sedition prosecution could not be filed.

1. In the first principle, the Court distinguished between the term "the Government established by law" and other conceptually equivalent words. The highest Court in the land concluded that "Government established by law is the visible symbol of the State." If the legitimate administration is overthrown, the State's continued existence is in jeopardy. As a consequence of this, it is essential to continue operating the legitimate government in order to guarantee the continued stability of the State.
2. It is considered a violation of this article for anybody to engage in behaviour that has the potential to incite violence or endanger the public peace.
3. The provision does not apply to any action that could be aggressive but does not encourage or promote violence and does not disrupt public order.
4. Although there is a human right to voice genuine criticism of the government, such criticism cannot promote violence or disturb public life in any other way.
5. A cursory reading of this rule makes it very evident that the primary intent of this regulation is to restrict actions that have the potential to disturb the order of public spaces.
6. The restriction only applies to actions or comments considered disruptive to public order. This criterion only comes into play when looking out for the public's best interests would be counterproductive.
7. This article applies to "Activities involving incitement to violence or the intention or tendency to cause public disorder or disturb public peace."

Comparative Analysis of Sedition with USA and UK-

To put a stop to the independence movement in India, the British government adopted this contentious statute. For this precise reason, Mahatma Gandhi referred to this clause as "the prince among the political sections of the Indian Penal Code (IPC) designed to suppress the liberty of the citizens." In 1798, the United



States of America approved legislation that made it unlawful to criticize the government.²⁴ It had been planned for this statute to expire in 1801. Section 3 of the Sedition Act of 1981 was enacted as a response to World War I to punish those who disseminated false information and the likelihood that their statements would hamper the activities of the government. Despite this, the Sedition Act was enforced in the United States until 1921, when it was repealed. The government of the United Kingdom decided to do away with it in the year 2009.²⁵ Other countries, such as New Zealand, Australia, and Indonesia, reexamined their sedition laws and decriminalized the act as a result of their findings.

India And the Future of Sedition Law

The validity of Section 124A's legality was questioned once more on April 30, 2021, when the Supreme Court agreed to hear a writ petition. Because of a post they made on social media, two journalists, Kishore chandraWang Khemcha and Kanhiaya Lal Shukla, have filed a petition with the Court asking for a stay of proceedings per the contentious law. In this case, the petitioner is contesting the decision that the Supreme Court made in Kedar Nath Singh, which supported the validity of Section 124A as a reasonable restriction. This decision is being challenged because the petitioner believes the judgment was incorrect. The petitioner, in this case, has also provided examples of situations in which bogus accusations were brought against individuals for their critical remarks against the government and the policies it implements.²⁶ Posting things online has become a normal practice for reaching a broad audience and speaking one's ideas, yet labelling every criticism of the government as sedition would be an extreme excess of the government's power and a violation of the right to freedom of speech and expression. Following Section 124A, several First Information Reports (FIRs) have been lodged against journalists who express disapproval of official policies. Vinod Dua, a journalist, is one example of a person who has spoken their opinion on the country's poor healthcare infrastructure and management during crises.²⁷ After some time, further counts of sedition were added to his indictment, along with articles 268, 501, and 505. However, the First Information Report

²⁴ Sedition: Why does India follow a law that the world has junked? India News - Times of India, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/sedition-why-does-india-follow-a-law-that-the-world-has-junked/articleshow/83205097.cms> (last visited May 23, 2023).

²⁵ How various countries have junked sedition law, INDIA TODAY (2022), <https://www.indiatoday.in/law/story/how-countries-junked-sedition-law-supreme-court-section-124a-1948152-2022-05-11> (last visited May 13, 2023).

²⁶ Nivedita Saxena & Siddhartha Srivastava, An Analysis of the Modern Offence of Sedition, 7 NUJS LAW REVIEW 121–147 (2014).

²⁷ 27 SC quashes sedition case against Vinod Dua, says every journalist entitled to protection, THE WIRE, <https://thewire.in/law/supreme-court-quash-vinod-dua-sedition-case> (last visited May 30, 2023).



Vidhyayana - ISSN 2454-8596

An International Multidisciplinary Peer-Reviewed E-Journal

www.vidhyayanaejournal.org

Indexed in: ROAD & Google Scholar

(FIR) that was filed against Vinod Dua was thrown out by the Court, which protected his right to freedom of speech and expression. The hearing before the Supreme Court is now taking place, and the Centre has also submitted that it is reevaluating the statute governing sedition. Suppose the government does not shift its stance on the legislation. In that case, the Supreme Court needs to reevaluate its decision in the Kedar Nath case in light of the bogus cases currently being launched against individuals who have recently strongly criticized the government.

Conclusion

Since the British attempted to subdue the Indians who spoke out against them 152 years ago, we have been forced to abide by the restrictions during colonial times. A significant number of freedom fighters were put behind bars as a consequence of the things that they said and did. Laws criminalizing sedition were enacted for the specific purpose of silencing these individuals. Ironically, the disputed colonial statute has not been abolished even though administrations have consistently violated it. It is not the fault of any one government since, throughout history and even now, governments at both the state and union levels have utilized charges of sedition against individuals who disagree with their policies and ideology. This practice continues. Regrettably, not only do we preserve and make full use of the presents that the British provided to us, but we also do so at our expense. The British made these gifts to us.

The legal process is critically important to removing the vestiges of colonial rule. The response of the Court to this matter during the previous 152 years has not been particularly noteworthy. Some courts dare to throw out false police reports and issue a ruling on whether or not Section 124A is lawful. India is still hoping for the day when its legal system will finally end the vestiges of colonialism and declare that laws prohibiting sedition violate the country's Constitution. Now, both the administration and the court need to decide whether they want to get rid of the statute altogether or if they want to continue using it to suppress critics.