



Email:editorijless@gmail.com

Volume: 6, Issue 1, 2019 (Jan-Mar)

INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)

<http://www.ijless.kypublications.com/>

ISSN:2455-0418 (Print), 2394-9724 (online)

2018©KY PUBLICATIONS, INDIA

www.kypublications.com

Editor-in-Chief

Dr M BOSU BABU

(Education-Sports-Social Studies)

Editor-in-Chief

DONIPATI BABJI

(Law)

©KY PUBLICATIONS



SEDITION - THREAT TO FREE SPEECH IN DEMOCRATIC SOCIETY

ABHISHEK SHARMA P

LLM Student, University Law College, Bangalore University, Bengaluru

Email:sharmapabhishek@gmail.com

doi: <https://doi.org/10.33329/ijless.6119.37>



ABHISHEK SHARMA P

ABSTRACT

India is the largest democracy in the world and has bestowed upon its citizens certain freedom and rights. The Part III of the Constitution of India contains the list of Fundamental Rights which can be exercised by Citizens against State.

Article 19(1) (a) of the Constitution of India guarantees Freedom of Speech and Expression to all citizens which is restricted on the several grounds as mentioned in Article 19 (2) of the Constitution. Freedom of Speech and Expression is seen as the first and foremost human right, and is the mother of all liberties, as it makes the life meaningful.

The Law of Sedition in India has assumed controversial importance largely because of its impact on Constitutional provisions of Free Speech. Sedition is not mentioned as one of the ground on which Free Speech can be restricted.

The recent instances of invoking Sedition laws against human rights activists, journalists and public intellectuals to prevent fair comments against country has raised an important questions about the Constitutional Validity of the Sedition Laws which were introduced by the British Colonial Government. The Law relating to Sedition is used as restriction by the Government Authorities on the Free Speech to curb dissent. In the name of National Security and Integrity Government has misused Sedition and violated Free Speech

The scope of this Seminar Paper is to study the impact of Sedition as contained in Section 124-A of the IPC on the Freedom of Speech and Expression and the relevance of Sedition Laws in the present day society.

1. Introduction

Freedom of Speech and Expression is one of the most significant principles of Democracy. The purpose of this freedom is to allow an individual to attain self-fulfilment, assist in discovery of truth, strengthen the capacity of a person to take decisions and facilitate a balance between stability and social change. This freedom is termed as an essence of free society. The Universal Declaration of Human Rights, 1948, in its Preamble and Article 19 declared Freedom of Speech as a basic Fundamental Right¹.

¹ See also Article 19 of International Covenant on Civil and Political Rights, 1966 (ICCPR); Article 9 of African Charter on Human and Peoples Rights, 1981; Article 10 of European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Article 13 of American Convention on Human Rights, 1969.

(1) All citizens shall have the right

Article 19(1) (a) of the Constitution of India guarantees Freedom of Speech and Expression to all citizens. This right can be restricted on the grounds like interests of the Sovereignty and Integrity of India, the Security of the State, Friendly relations with Foreign States, Public Order, Decency or Morality or in relation to Contempt of Court, Defamation or Incitement to an offence.²

Freedom of Speech and Expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, sign, and the like³.

The operation of the Democratic system, for self-development and for setting up a homogenous egalitarian society requires Freedom of Speech and Expression. This Freedom includes the Freedom to critique Government policies, Government laws and Administration.

Freedom of speech and expression enjoys special position in India. The importance of Freedom of Speech and Expression can be easily understood by the fact that Preamble of Constitution itself ensures itself to all citizens inter alia, Liberty of thought, expression, belief, faith and worship.

-
- (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (f) omitted
 - (g) to practise any profession, or to carry on any occupation, trade or business
- (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence
- (3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause
- (4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause
- (5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe
- (6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,
- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business,or
 - (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

² 19. Protection of certain rights regarding freedom of speech etc

³ Lowell vs.. Griffin. (1939) 303 US 444.

The Freedom of Speech and Expression is not an absolute right and the State can regulate the exercise of this Right by imposing reasonable restrictions to ensure that it is equally available to all citizens. According to Article 19(3) of the International Covenant on Civil and Political Rights 1966 (ICCPR), this Freedom may be subjected to restrictions, provided they are prescribed by law and are necessary for respecting the rights or reputation of others or for the protection of national security, public order, public health or morals.

The author opines that, Law of Sedition in India has assumed controversial importance largely because of Constitutional provisions of Freedom of Speech and Expression guaranteed as a Fundamental Right under Article 19 (1) (a) of part III of the Constitution. Sedition is not mentioned as one of the ground on which restriction on the Freedom of Speech and Expression may be imposed.

The term of Sedition is derived from the Latin word –Sedition|| which in Roman times meant an Insurrectionary Separation (Political or Military) Dissension, Civil Discord, Insurrection, Mutiny. The Sedition laws are part of a larger framework of colonial laws that are now used liberally by both the Central and State Governments to curb Free Speech. Sedition Laws were used to curb dissent in England, but it was in the colonies that they assumed their most draconian form, helping to sustain imperial power in the face of rising nationalism in the colonies including India

The Law relating to Sedition can be found in the following laws of India: Section 124-A of Indian Penal Code 1860 (hereinafter called as IPC) Section 95 of the Code of Criminal Procedure, 1973; Section 55 of the Seditious Meeting Act, 1911 and Section 137 of Unlawful Activities (Prevention) Act, 1967.

2. Sedition – A Brief Note

Section 124-A of the IPC defines Sedition as follows 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 excite or attempt 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.⁴ The relevance of this section in an Independent and Democratic Nation is the subject of continuous debate.

In India, Sedition is an offence which is against the State as enumerated in the IPC and Chapter 6 of IPC which deals with offences against the State contains Section 124- A of IPC relating to Sedition. To constitute an offence under Section 124-A of the IPC it is not necessary that one should excite or attempt to excite mutiny or rebellion or any kind of actual disturbance, it would be sufficient that one tries to excite feelings of hatred or contempt towards the Government. Sedition is any form

⁴ 124A. 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.

of speech action, writing that incites hatred against the established under and harm the systematic peace of the country.

Sedition laws have survived the demise of colonial rule and have been used to curb dissent by haunting media personnel, human rights activists, political dissenters and public intellectuals across the country. There has been increase in the instances where citizens have been charged for Sedition and this shows that this colonial law has an impact on the Freedom of Speech and Expression. According to the National Crime Records Bureau 35 cases of sedition (all over India) were reported in 2016⁵.

The author is of the opinion that ambiguity in the provision of law as contained in Explanation appended to Section 124- A the IPC has been misinterpreted by various Government Authorities to construe even fair comments against Government as Disaffection or Disloyalty against Government and charge people for Seditions. The Government and authorities in the name of National Security and its Integrity, apply Section 124-A of the IPC to impose restrictions against Freedom of Speech and Expression and thereby suppress the voice of citizen who criticize the Government and its policies.

The contemporary discernment of Sedition in India encompasses all those practices, whether by word, deed, or writing that is reckoned to disturb the tranquillity of the state lead by a person to debase the Government. Sedition often includes subversion of a Constitution and incitement of Discontent or Resistance to Lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are called as Seditious Libel⁶.

The Author opines that gist of the offence of Sedition is incitement to violence, mere abusive words are not enough. The acts or words complained of must incite public disorder or must cause reasonable anticipation or likelihood of public disorder in order to constitute disaffection. The intention of the speaker writer or publisher may be inferred from the particular speech, Article or letter. The requisite intention cannot be attributed if the person was not aware of the contents of the seditious publication. Feeling of hatred, contempt or disaffection would be excited towards the Government⁷.

3. Law of Sedition and Free Speech in India

The Constitution of India in Article 19 (1)(a) grants the Fundamental Right of Speech and Expression which is a qualified right and can be restricted on the two important grounds such as the integrity' and sovereignty of the India' which were added by the Constitution 16th amendment Act 1963. The problems related to meaning and scope of the Section 124-A of the IPC is the question of vires which arises because of the guarantee of freedom of speech in the Constitution of India and the power of the Courts under the Constitution to act as the Guarantors and Protectors of Liberties⁸.

The author is of the view that, Law of Sedition in its present form obliterates the distinction between the State and the Government. It is an indisputable fact that the State is permanent and sovereign, but the Government is neither sovereign nor permanent. The Indian State would continue to exist while the Government may go on changing. Thus, to oppose a Government, to attack its

⁵ Crime in India - Statistics, National Crime Records Bureau, Ministry of Home Affairs (2016).

⁶ A.G., Noorani Indian Political Trials: 1775-1947, New Delhi: OUP, 2009

⁷ Dr. Hari Singh Gour, Penal Law of India, Vol. 2, 1232 (Central Law Publishers (India) Pvt. Ltd., Allahabad, 11th edn 2011)

⁸ K.I. Vibhute, P.S.A. Pillai's Criminal Law 335 (Lexis Nexis Butterworths, Nagpur, 2012).

policies and carry on a campaign to alienate the people from it to oust it by legitimate means is the right of a people in a democracy, and it cannot be misconstrued as Sedition

4. Importance of Free Speech for a Democratic Society

The importance of Freedom of Speech can be understood in the words of John Stuart Mill who advocated for the Free Flow of the Ideas and Expressions in a society. He argued that for the stability of a society one must not suppress the voice of the citizens, how so ever contrary it might be. To reach a point of conclusion and that too a right conclusion, in certain cases, open public discussions and debates are inevitable⁹. According to Mill, this could be achieved through the Right to Freedom of Speech. The right not only makes it possible to highlight the popular opinion of a society but also provides a platform to the suppressed and unheard people who wish to voice against any celebrated culture. Mill further points out that a good government is the one where the intelligence of the people is promoted¹⁰.

In *Channan vs. State of Punjab*¹¹, the importance of Free Speech was emphasised by noting the purpose of Free Speech in the following words:

- (1) We cannot exercise collective control of the culture; we must have the right to tell people what they do not want to hear.
- (2) There is an issue of democratic transparency, where a free press has a duty and responsibility to hold Government and other powerful groups accountable.
- (3) Democratic fairness, if we want people to accept democratic procedure and laws that express the will of the majority, then everyone must have not just a vote but a voice, however much we may dislike what they are saying

5. Information Technology Act 2000 - A Medium of Free Speech

The Information Technology (IT) Act, 2000 provides for legal recognition for transactions through electronic communication, also known as 'E-Commerce'. The Act also penalizes various forms of cybercrime. The Act was amended in 2009 to insert a new section, Section 66A which was said to address cases of cybercrime with the advent of technology and the internet. Section 66(A) of the Act criminalises the sending of offensive messages through a computer or other communication devices. The Section covers two different Acts:

1. Sending offensive or menacing messages by using electronic communication means; and
2. Sending false messages with intend to cheat, mislead or deceive people or to cause annoyance

In the case of *Shreya Singhal vs. Union of India*¹², Section 66A of the Information and Technology Act, 2000, was declared unconstitutional on the ground that it was in direct conflict with the Fundamental Right of Freedom of Speech and Expression. The Supreme Court held that under the Constitutional scheme for the democracy to thrive, the liberty of speech and expression —is a cardinal value and of paramount importance.

⁹ Sir James F Stephen "History of the criminal law of England" Vol.2, Chapter. 24. (London 1883)

¹⁰—Freedom of Speech, Stanford Encyclopaedia of Philosophy available at <http://plato.stanford.edu/entries/freedom-speech/> (Last accessed on February 10 2019)

¹¹AIR 1965 Punj 74(77)

¹² AIR 2015 SC 1523

The Supreme Court in this case struck down Section 66A of the IT Act, calling it unconstitutional. The judges said that the Section 66 A suffered from the vice of vagueness and was overbroad—virtually any opinion on any subject would be covered by it¹³.

The verdict in *Shreya Singhal* is immensely important in the Supreme Court's history for many reasons. In a rare instance, the Supreme Court has adopted the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. The Judgment has increased the scope of the right available for citizens to express ourselves freely, and the limited space given to the state in restraining this freedom in only the most exceptional of circumstances¹⁴. Justice Nariman has thrown light on the liberty of thought and expression is not merely an aspirational ideal. It is also—a cardinal value that is of paramount significance under our constitutional scheme. Thus, the decision given in this case was a fair one keeping in mind the welfare of the society and protecting their basic fundamental rights¹⁵.

5. Freedom of Speech and Media in India

The Media in India enjoys a great deal of Freedom and when it is threatened the response is vociferous. Nevertheless, there is the need to maintain a balance between free expression and other community and individual rights, this responsibility should not be borne by the judiciary alone, but by all those who enjoy these rights¹⁶.

Entities engaged in the business of news/media are the prime source of information helping people to cultivate opinions on the Political, Economic and Social situation in the country. The traditional print media still retains influence and television is widely popular, but public opinion, especially of youth, can be gauged through social networking platforms and the so called 'New Media'. In this way the media continues its role as a kind of non-formal educator, helping citizens to make judgements, often by presenting views which are contrary to those Governments. This vaunted position occupied by the media, including surveying the judiciary, executive and legislature alike, does not come without a share of responsibility.

Media in its exercise of free criticism may slip either intentionally or through its routine activity into any kind of criminal liability under different circumstances. The Indian Penal Code 1860 envisages certain crimes which a media person may get entangled into and face prosecution. They are basically under the same obligation as the people in general abide by general principles of penal law. Seditious and obscene are the main grounds where the media persons could be vulnerable to face prosecution.

The Right to Free Speech of Media persons cannot extend to Seditious, to bring disrepute of the state, or affect the reputation of individual leading to defamation or represent obscene or base material disturbing the moral and sense atmosphere of society. In case they do so the criminal provisions of the Indian Penal Code are attracted. Thus Defamation, Seditious and Obscene are the main grounds where the media persons could be vulnerable to face prosecution.

6. Seditious Trials – An illustration for Curtailment of Free Speech

¹³ Case Commentary on *Shreya Singhal* case, available <http://www.legalservicesindia.com/article/article/shreya-singhal-v-u-o-i-2473-1.html>, (Last accessed on 11th March 2019)

¹⁴ Meera Mathew, —Expression, Advocacy and Incitement|| Working Paper submitted to the Law Commission of India (2017).

¹⁵ Seditious Laws and Death, available https://www.nls.ac.in/resources/csseip/Files/SeditiousLaws_cover_Final.pdf

¹⁶ *State of Madras vs. V. G. Row*, AIR 1952 SC 196

The following is the list of recent popular instances where many innocent individuals were charged for Sedition under Section 124 – A of IPC in relation to their speeches or public talks. These instances relating to Sedition Trials demonstrate that Article 19(1)(a) continues to be held hostage by Section 124A which has indeed proved M. K. Gandhiji right in being the prince of the political sections of the IPC.¹⁷ There is no justification for a draconian law of this nature, created to squash peaceful and non-violent dissent, to operate in a country, which claims to be the world's largest democracy.

1. In February 2010, E. Rati Rao Resident Editor, Varthapatra was arrested in Mysore for writing and publishing an article alleging encounter deaths of innocent tribal who revolted against Government Activities in Bandipur Forests.
2. In November 2010, Arundhati Roy, S.A.R. Geelani, Varavara Rao, Shuddabrata Sengupta were arrested for offence of Sedition in Delhi based on a Private Complaint made to police alleging that Anti-India speeches at a seminar on Kashmir titled –Azadi- The only Way.
3. In February 2016, Kanhaiya Kumar, Student Leader, JNU, Delhi was arrested and charged with sedition for allegedly shouting anti-India slogans. After long drawn protests from various student organisations, he was released on bail.
4. In August 2018, The Pune Police detained 4 alleged Maoist sympathisers, viz., Varavara Rao, Vernon Gonsalves, Sudha Bharadwaj and Arun Ferreira for alleged links with Maoist in planning the assassination of the Prime Minister of India, Narendra Modi. They were also charged for Hate Speeches under Section 153 A of the Indian Penal Code 1860 and also under various provisions of the Unlawful Activities Prevention Act 2004. All the four accused had moved to Supreme Court challenging their arrest, the matter is still pending before Supreme Court

7. Suggestions to protect the Free Speech

A Colonial legacy like Sedition Law, which presumes popular affection for the State as a natural condition and expects citizens not to show any enmity, contempt, hatred or hostility towards the Government established by Law, does not have a place in a modern democratic state like India.

The author is of the view that case for repealing the Law of Sedition in India is rooted in its impact on the ability of citizens to freely expresses themselves as well as to constructively criticise or express dissent against their Government. The existence of Sedition Laws in India's statute books and the resulting criminalization of disaffection towards the state is unacceptable in a democratic society.

When it is the duty of the people to comment fairly upon the Government, how truth could be neglected as a defence of the crime. The nature of this crime is vested in the concept of Sovereignty and the Authority of Government. It is not the Government which is Sovereign, it is the Country which is Sovereign, and it is the people who are Sovereign. Now when the Government is no more the Sovereign, they don't have the right to possess the protection against Sedition. In a scenario where there is a constant abuse of the law to silence dissent the balance of convenience should lie in favour of the rights of the citizenry rather than the State. An individual advocating civil disobedience would satisfy the requirements of Sedition, but mere advocacy, tendency and incitement cannot be termed as the sole grounds for justifying the public order criterion¹⁸.

The author suggest that, an Individual must be held liable for offence of Sedition only when –the words, signs or representations bring the Government (Centre or State) into hatred or contempt or cause or attempt to cause disaffection, enmity or disloyalty to the Government and the

¹⁷ A P Shah, Free Speech, Nationalism and Sedition, Economic & Political Weekly, Vol. 52, Issue No. 16, 22 Apr, 2017

¹⁸ Dr. Hari Singh Gour, Penal Law of India, Vol. 2, 11th edn., Law Publishers (India) Pvt. Ltd., Allahabad, 2011, p. 1232

words/signs/representations must also involve an incitement to violence or must be intended to create public disorder or a reasonable apprehension of public disorder.

9. Conclusion

Criticism of Government is not Sedition. The expression Sedition generally means of defamation of the State but the legal meaning of Sedition is different. Sedition is crime against the State and includes the misdemeanour of publishing verbally or otherwise any words or documents with the intention of exciting disaffection, hatred or contempt, against the Sovereign or the Government and Constitution of the Kingdom or either house of Parliament and the Administration of Justice.¹⁹ In recent times, Sedition is generally used to suppress the voice of that person who criticised the Government. While the Constitution provides a guarantee to Freedom of Speech and Expression, which is exercised by the media, the Criminal Law imposes certain restriction on that Freedom for protecting the Social or Group Interests and Public tranquillity.

Information that may be grossly offensive or which causes annoyance or inconvenience, are undefined terms which take into the net a very large amount of protected and innocent speech. An individual may discuss or even advocate by mode of writing, disseminate information that may be a view or point of view pertaining to governmental, literary, and scientific or other matters which may be unpalatable to certain sections of society, any serious opinion dissenting with the mores of the day would be caught within Sedition. Such is the reach of the Laws relating to Sedition in India whose constitutionality is questionable in light of Fundamental Right of Speech and Expression²⁰.

The words and speech should be criminalized and punished only in situations where it is being used to incite mobs or crowds to violent action. Mere words and phrases by themselves, no matter how distasteful, do not amount to a criminal offence unless this condition is met²¹.

¹⁹ B.S. Chauhan, —Freedom of Speech and Expression|| 3 Lexgentia 4 (2016).

²⁰ <https://indiankanoon.org/doc/110813550/> (Last accessed on January 9 2019)

²¹ Vasundhara Sirnate and V.S. Sambandan, Free Speech and Sedition in a democracy, The Hindu Centre for Politics and Public Policy, 1, (2016).