

The Sedition Law in India: Navigating its Tentacles

Mr. Rakesh Ranjan Kumar

Assistant Professor

Ishan Institute of Law, Gautam Buddha Nagar, Greater Noida, U.P.

Abstract

Nature had created us all free still we decided to regulate our self for better development but can this regulation be allowed to control our basic aspects of freedom and up to what extent. The laws like sedition quintessentially questions these fundamental facts. And what about the evolution of human society. Forms of punishment practiced and prevalent centuries ago can shake our soul today and have been outlawed in most part of human society. The same way our society has graduated from being a cranky security states to welfare states. All this development of human society has not been a gift but a result of long fought struggle. The laws of sedition in certain way coupled with its arbitrary misuses by lower bureaucracy ins states creates distinctive problems. Even where judiciary intervenes to safeguard basic rights, the process itself becomes the punishment. In this research paper the author has tried to discuss the laws of sedition from its origin to present scenarios especially in regard to the new Criminal laws that has been brought by the Union Govt recently. Although while presenting the bill the Home minister thumped the desk claiming to have eliminated Sedition laws, the paper dives deeper to check his claims that how most of the erstwhile sedition provisions have been retained under a new heading along with certain more tough punishments.

Keywords

Sedition, Freedom of Speech, Indian Penal Code, Bhartiya Nyaya Sanhita

Introduction

Very few laws in India have been so controversial and debated than the sedition laws that was present in the erstwhile Indian Penal code, 1860. Recently, Parliament passed Bhartiya Nyaya Sanhita, 2023 as a replacement of Indian Penal code. As widely debated on the law, one of the important Supreme Court took an audacious decision to overrule the state argument in the apex court & send the cases related to sedition to a constitution bench. This was necessitated due to a judgement of the Supreme court itself in the historic Kedar Nath Singh v. State of Bihar where a five-judge bench had upheld Sedition laws in India in 1962. Too much water has flown from the rivers by now as our democracy has matured in the last 76 years of independence. The issue of sedition has wide varieties in it. On one hand the nations which essentially brought sedition in the law book including of India has already stripped it from their penal laws. But in India we continued to follow the same laws for a very long period of time. Originally, Sedition law was not a part of Indian Penal code when it was implemented in 1860 on the recommendation of the first law commission headed by Lord Macaulay. However, later it was added to the lawbook.

Once sedition became a part of our statute books, as expected the colonial rulers started to use it aggressively to curb any dissent against their policies. The history is evident of many trials from famous Tilak trial to Mahatma Gandhi convicted of sedition. However, it was widely expected that this misuse law would not find its place in an independent India and would find its place in trashbin of history but it remained and in full extent and majesty. It passed the constitutional test by the highest court of the land. The examples of its use rather misuse will give u unmistakable impression to anyone about its continued misuse by the successive government. As of now, while the supreme court has put a stay on the law still the new criminal laws has retained most art of the earlier sedition laws with even stricter punishment.

The Origin of the Sedition Laws

Laws to suppress dissent and perturb the dissenters has been the hallmark tactics of the ruler prevalent from historic times. As in the earlier times the Kings used to consider themselves to be the holder of the Divine right and they used to claim inherited rights from God to rule the masses, any types of the dissent was always considered to be an attack not only on the king policies but on the ruling institution & the its divinity itself. Even the concept of Sovereign immunity where it used to said that the 'The King can do no wrong'. History is evident from examples and other incidences where people used to be punished arbitrarily for being against the King or his unjust policies. Even in ancient Hindu religious texts it is directed to respect the kings & be loyal to him. Kautilya's Arthashatsra is specifically obsessed about protecting kings even to the extent of being focused on queen consorts and princes who can be active participants to regicide. The punishments for spreading 'evil news' about king may result in tongue being rooted out. In cases of any incitement against king may result in being burnt alive after being tied. The same was the case for other parts of the globe where the dissent was not tolerated against the ruling elite even in narrowest terms.

Even when the kingship was expanded in western world to a bigger nobility with bigger ruling class with little check and balances, the act of suppressing the dissent started to evolve in newer concept and contours. A careful glance to the development of legal jargon of Sedition would divert us to the decree of 'The First Statute of Westminster, 1275' in England which was brought in enforcement after the lesson learnt by the English Royals during the rebellion of the barons. Although Barons generally were supportive of the king and were an important tool of strength for king John, however his policies including raising taxes etc had made him extremely unpopular between barons. The decree now proactively aimed to protect the ruling elite from any such rebellious uprising which aimed the challenge the existing status quo. Even as sedition started to develop as a legal argot, its definition and other details remained sketchy. But widely it was considered to be such acts or speech which would alienate the masses from 'divinely' king. These types of crime now started to be tried and punished under legal umbrella of treason, scandalum magnatum & even at time the Martial law.¹ However, treason generally meant violent acts & in subsequent centuries slowly even

¹ Australian Law Reform Commission, 104th Report on Fighting Words: A Review of Sedition Laws in Australia 51 (July 2006)

the act or speech that may aid or abet these activities also started to be made punishable which is now popularly known as acts of sedition. The scope of punishment now started to be widened where even the acts of abetment or indirect participation also started to be qualified enough to attract punishment under the new developments.

The evolution to the term seditious libel was laid down in United Kingdom in the *de Libellis Famosis*² case by the decision of the court of Star chamber. This decision initiated the darker interpretation of seditious libels. The court missed even the basic safeguards that had developed for the trial of treason of even *scandalum magnatum* which was added as an offence during rule of King Richard II to regulate and punish the criticism or ill speech against the royals, judicial members, nobles, peers etc.³ Although this court was abolished in 1641, still its judgments continued to influence the slander and libel doctrines for more than two centuries. The biggest setback for the free speech in the judgement was that the truth and veracity of the statement in question was immaterial & only the act of speaking against the people in power can be hauled in courts and punished as a criminal offence.

Sir James Stephen defined the seditious intention which included words that may not constitute treason in legal sense but may lead to such circumstances or has the probability for the same thereby making it a conduct crime as well as consequential crime and broadened its scope.

History of Sedition Laws in India

The sedition law in India has an interesting past. Initially in the ancient and medieval times there were many kings who had harsh punishments for criticisms of their policies but the sedition in its current legal form came in prevalence from the erstwhile Indian Penal code (IPC) that was framed by the Britishers in an attempt to codify the criminal laws & punishment for the criminal acts in British India. However, when the IPC was enacted officially in 1860, there was no mention of sections relating to sedition laws. Interestingly, legal historians have attributed the same to an oversight mistake and not

² *De Libellis Famosis* , 77 Eng Rep 250 (KB 1606).

³ *Scandalum magnatum* (Jan. 29, 2023),

<https://www.theguardian.com/world/2000/jan/31/law.theguardian>

some benevolence by the British drafters.⁴ Incidentally it was mentioned in Section 113 of the draft IPC which later came up in Section 124A.

Earlier British India was administered with multiple crown orders, parliamentary charters passed by Britishers, Common law, specific religious laws, specific legislations made for Indian subcontinent etc. After 1830s as the steps started to further codify and consolidate the British rule in India. The first Indian war of Independence i.e. Sepoy mutiny in 1857 played an important role in that regard. After this landmark assertion of Indian aspirations, the British crown decided to take the issues in their own hand and in place of East India Company, the crown took active control of the administration and governance of British India by Government of India Act, 1958. After famous Tilak trial case new expression of disloyalty were added to the provision making it more stringent. In the colonial period this act was regularly criticised not only in India but also by many foreign learned jurists.

As India gained independence the constituent assembly discussed this issue in detail and ultimately decided to omit the word 'Sedition' from the constitution. However, just after independence under PM Nehru govt further curbs were added on the freedom of speech by virtue of first amendment. Taking it even further Indira Gandhi govt made Sec 124 A a cognizable offence. This meant that now people can be arrested under this section by Police even without a warrant.

Judicial Developments on Sedition

The extraordinary step of the colonial British government to introduce amendments in then Indian Penal Code itself shows the real intention of the act was to stifle the freedom of speech and expression of ordinary residents who may ask accountability and responsibly ask for their legitimate rights. However, unfortunately even after this law acting as a thorn in the eyes of our great revered freedom fighters during the independence movement, it continued to remain in the law book for a very long period of time. In this paper we will see the judicial developments by separating the same in two parts from pre-independence to post-independence times. While during pre-independence times the sedition laws were invoked by the colonial rulers on natives even on slightest act of disagreement and many great personalities like Lokmanay

⁴ Nivedita Saksena et. al., *An Analysis Of The Modern Offence Of Sedition*, (Jan. 21, 2023), <https://docs.manupatra.in/newslines/articles/Upload/37E592F0-BE2A-475F-AF99-2F6909F3CF11.pdf>

Tilak, Mahatma Gandhi was hounded in the courts. However, even after the dependence the successive governments never honored the need of removing sedition from the law books. However, with passing times and Judicial interventions, the scope of the law kept shrinking and ultimately the Supreme court took note of it and decided to send the case to a larger bench to again check its constitutionality as it was earlier upheld in Kedarnath case⁵.

Cases in Pre-Independence era on Sedition

The Bangobasi Case 1891:

This is the first case to be tried under the sedition laws in British India officially named as *Queen-Empress v Jogendra Chunder Bode* . in this case the workers of the Bengali magazine Bangobasi were prosecuted under the sedition laws for the act of publishing an article critiquing the decision to raise the consent age for the sexual intercourse. The article criticized Britishers for their crude attempt of Europeanizing India & also attacking the religious sentiments. However, it remained conclusive in terms of judgments as judges in Calcutta HC were not unanimous in the case.

The Tilak Trials, 1897

The interpretations of sedition law got a meaning after this case when new contours were added to the meaning of sedition. In this case Bal Gangadhar Tilak was accused of instigating the murder of two British officers who had been killed a week after an article that was published in which Tilak had given example of how Chatrapati Shivaji killed Afzal. He was also convicted of sedition only to be released after the intervention of many important personalities like Max Weber. This case gave new excuses to the colonial administration to include terms like disloyalty ultimately influencing the govt to amend the IPC where new terms disloyalty and feeling of enmity were added to the definition of the term disaffection.

⁵ Padmakshi Sharma, *Supreme Court Refers Sedition Law Challenge To Larger Bench, Says New Bill To Replace IPC Can't Affect Past Cases* (Dec 12, 2023, 12:36 PM) <https://www.livelaw.in/top-stories/supreme-court-refers-sedition-law-challenge-to-larger-bench-says-new-bill-to-replace-ipc-cant-affect-past-cases-237574?infinite-scroll=1>.

The trial of Mahatma Gandhi

After the Tilak trials the another famous case that is always cited by the opponents of the sedition was the trial of Mahatma Gandhi along with an associate for the articles he had published in magazine Young India. Gandhiji in his submission emphasized his commitment to non-violence but at the same time he made it clear that there is nothing that can stop him from being disrespectful of the government which has destroyed Indian and its prosperity. The famous idiom of "Affection cannot be manufactured". In this case despite Gandhiji was convicted with a six year imprisonment, the judge noted Gandhiji's commitment to non-violence.

Cases on sedition after the Independence

Kedar Nath Singh vs State of Bihar⁶ 1962

This case upheld the constitutional validity of the sedition laws in India. A large number of speeches were in question where even the violent overthrow of the government was called. In this case the correlation of sedition and freedom of speech was directly in question. In this case the constitutional bench of the Supreme court upheld the constitutional validity of the sedition laws under Section 124A but also added caveat that it should be used only in exceptional circumstances when accused made an incitement to violence either through words or actions.

Recently in Sedition Trial of Dr. Binayak Sen, the Supreme Court took an important step while granting bail to Dr. Sen. The court drew a line where it accepted that even if someone is a sympathizer, it does not convict him of sedition. The Supreme Court observed in this case:

"...we are a democratic country. He may be a sympathiser (of Naxalites) but it did not make him guilty of Sedition...."

In Vinod Dua vs Union of India, The Supreme court straight away quashed a FIR against journalist Vinod Dua that was filed by a local BJP leader who had filed the

⁶ Kedar Nath Singh vs State of Bihar, 1962 AIR 955.

complaint due to certain observations made by Vinod Dua in one of the TV shows he had made regarding PM Modi. Even in recent Disha Ravi toolkit case the local Delhi court gave bail to Disha Ravi for the remarks she has made during the ongoing farmer protest. In another case of Elghar Prishasd where according to state police a violence occurred after the banned naxal groups had organized the remembrance of Bhima Koregaon.

In case of cartoonist Asim Trivedi where he was detained for spreading cartoons mocking national signs, the Bombay High court took a strict view of it and ordered that in cases of arrest for sedition, senior officers should be consulted.

Ultimately in the landmark case the three-judge bench of the Supreme court presided by Chief Justice N.V. Ramanna ordered that sedition laws to be kept in abeyance. The highest court of the land also directed that all proceedings relating to the case be stopped and also instructed the state and central government not to register any fresh new FIR due to this provision. The review has to be sent to a larger bench and for all Practical purpose sedition laws as of today remains in abeyance.

Comparative Laws in other jurisdictions

The quest to curtail the freedom of speech and expression is not alien to only few countries and jurisdictions in globe. Rather, there has been concerted efforts in most of the countries to control the free speech of the people. In the old times there was more focus on the concept of strong security state which would protect the state itself instead of protecting the people. It can also be justified to a little extent as in those time there was continuous fights, aberrations & attempt to control maximum territory & influence. The concept of constitution and constitutionalism was so weak thereby further exaggerating these problems. In order to gain a broader understanding we would see the evolution of seditious laws in different jurisdictions in other parts of the globe.

United Kingdom

The role and influence of sedition laws in United Kingdom had the most influence on India as we were under direct colonial rule. It is also evident that sedition laws in India

were first brought by the Britishers⁷. In earlier part of the paper we had seen about the historical development of the sedition in brief. The use of sedition in Britain earlier was to control the citizens and protect the king and nobility from any unwanted criticism that may shake their authority in any way. After the advent of printing press, the flow of information became more easy and also secretive in nature, thereby further complicating the activity to control the information flow in masses.

The first recorded decree of such nature has been recorded under the First Statue of Westminster, 1275 where the attempt was made to protect the ruling class & the king. Slowly with passage of time it continued to evolve through the different statues related to acts of treason (1352 and 1534) & ultimately to the offence of seditious libel in the notable case of *De Libellis Famosis*⁸. The Sedition act of 1661 further solidified the provisions of sedition where any attempt to besmirch the reputation of king & ruling class was subject to trial according to the laws if it fulfilled certain conditions. The arguments behind the act was to protect the reputation of government in the eyes of people and to ensure that peace is maintained in the society.

However, as the society started to mature and deliberations started to grow on the use and need of sedition laws in Britain. Remarkably in 1977, The Law commission of United Kingdom proposed total abolition of sedition laws in United Kingdom in its working paper. Ultimately U.K. eliminated the offence of sedition under Section 73 of Coroners and Justice Act, 2009.

United States of America

The offence of sedition had its own journey in United States of America (USA). Although sedition remains a valid act under USA laws as of today but its scope has been broadly reduced after judicial interventions by USA courts. In 1798 for the first time Sedition was made an offence in USA. It was repealed in 1820 but again legislated in the year 1918 when USA was fighting in the First World War. Here, in this paper we would see the gradual metamorphosis of sedition laws through legislations, judicial review & interpretations and Public opinions. The legislation of the offence of

⁷ Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore, *Sedition Laws & The Death Of Free Speech In India* (Feb. 2011), <https://altnlawforum.org/wp-content/uploads/2021/09/Sedition-Laws-the-Death-of-Free-Speech-in-India.pdf>.

⁸ *De Libellis Famosis*, 77 Eng. Rep. 250.

sedition also ensured the active participation of the political parties and pressure groups in opposition to the act.

The Alien and Seditions Act

It was a part of four set of laws which were brought by the federalist controlled congress to protect the interest of the federal government. The remarkable thing was that it only applied to the President but not to the Vice President Thomas Jefferson who was also a political opponent. The act also aimed to target many newspapers who may had certain leanings towards to the Jefferson. The act was supported by the then ruling party but the political opponents including the official opposition party decried the laws. It became a very important issue in the elections of the time. When the opposition Democratic-Republicans gained majority in the house they repealed the seditions acts. Their victory also was attributed generally to severe backlash generated due to the Alien and Sedition Act. However, these acts were challenged in the Supreme Court but later on different occasions it was mentioned by the court that it would have been unconstitutional in case it was challenged.⁹ The law was allowed to expire but it remained in some other forms

Sedition Act of 1918

The sedition act of 1918 was an extension of espionage act of 1917 with a logic to forbid “disloyal, profane, scurrilous, or abusive language” against USA government and its armed forces. The words of the law even allowed the post department to refuse to deliver such ‘scurrilous’ posts. Although the Supreme Court declared this act as constitutional in reference to people who were urging to stop the production of war time measures in case of *Abrams vs United States*¹⁰. But as the war ended the call grew to repeal this act or even has a peacetime version of the same. The evolution of ‘Doctrine of Chilling Effect’ by the USA Supreme court ensured that these laws of sedition and curtailing free speech is being sparingly used by the governments in power. Ultimately Congress repealed the sedition laws in 1920 & clemency was offered.

⁹ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

¹⁰ *Abrams vs United States*, 250 U.S. 616 (1919).

As of today many countries like Kenya, Ghana, New Zealand, Jamaica, Maldives, Singapore etc. have repealed sedition laws while countries like Australia and Canada have modified to a large extent.

Old vs New Sedition Laws : A comparative Analysis

While introducing the new criminal laws in the country Union Home Minister Amit Shah claimed that Sedition laws are being scrapped in the new laws.¹¹ He said in the parliament that “Everyone has the right to speak. We are completely repealing sedition”. However, a careful consideration of the new *Bhartiya Nyaya (Second) Sanhita, 2023* shows that the provisions have been largely retained in the Section 152 of the act. The reality is contrary to the assertions that has been made by the union Home minister and the government. Here, we would have a comparative analysis of the differences between the two laws:

Differences in Provisions of Sedition between the new and Old laws:

- 1) In the new act there is no mention of the word sedition but the provisions now related to the same have been retained under the heading of Act Endangering sovereignty, unity and integrity of India.
- 2) The punishment has been made more severe as compared to old law. Earlier under section 124a of IPC a person can be discharged after paying fine however in the new law, punishment can be up to life imprisonment and up to seven years of minimum imprisonment has to be given along with fine.
- 3) The words like contempt etc. have been removed from the new laws but the focus remains on the secession or armed rebellion or subversive activities.
- 4) Use of Electronic communication, use of financial means also has been added as a tool for Act endangering sovereignty, unity and integrity of India.
- 5) Due to the wording and judicial pronouncements, under the old laws only the harsh word may have come under the definition of sedition but now only one word can attract the provisions under the new act.
- 6) Offences relating to terrorism, organized crimes and other criminal activities have also been added in this new Act.

¹¹ Sedition law to be scrapped, says Amit Shah, punishment enhanced in new provisions <https://www.indiatoday.in/law-today/story/sedition-law-repeal-amit-shah-parliament-indian-criminal-laws-overhaul-2419568-2023-08-11> (last visited Jan. 22, 2023).

Conclusion

By textual definition we can say today that the sedition laws have been removed from the statute books by the new criminal amendments. But the reality is that it is there even with tougher punishments in certain cases just in a different section with different heading. Even if we pay a glance to the international laws, the freedom of speech remains the bedrock of democracy. Undoubtedly, this right can be curtailed in extreme cases of threat of National security but mere suspicion or presumption cannot be said to be suffice.

There was a growing issue of the misuse of sedition laws that cannot be denied. More seditions cases were filled against the protesters against nuclear reactor than Maoists. Not only that in these types of cases process itself become a punishment when someone is being tried of the offence of sedition. As we have seen in the paper that the Police has got power to arrest in these cases without any warrant and after arrests are made, it results in problems of greater magnitude. It is not only limited to physical incarnation where the person is put in jail with the stringent bail provisions do not allow his suspension of jail periods. In addition, it also results in defamation & monetary expenses.

Although the best way forward would be to delete these types of laws that promote state arbitrariness and curtail public rights, the provisions under new laws can certainly be called old wine in a new bottle where punishments have been increased. The problem in these types of cases is also the reluctance of judges especially at lower judiciary to grant bail in this case which further complicate the things as many people not have the monetary power to hire big lawyers to fight their cases in higher courts. The biggest victim of same is the poor protesters which are sent to jail on these grounds. Another reform needed would be ask for sanction of higher police authorities before sedition laws are invoked on any individuals and there should be accountability for every wrong use of law.

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