

Sedition

The law on sedition is a hangover from India's colonial past. It was drafted by Lord Thomas Babington Macaulay and became a part of the Indian Penal Code (IPC) in 1870. It was then used as a tool to oppress the freedom movement and suppress all forms of dissent by Indians against the British rule. Stalwarts of the Indian freedom struggle such as Mahatma Gandhi and Bal Gangadhar Tilak were also victims of this oppressive law.

It is ironic that the UK—the country that introduced the law in India — repealed sedition as a crime over a decade ago for being violative of the right to free speech. The UK acknowledged that sedition was a product of a bygone era and had no place in modern society when freedom of speech is considered an integral part of a meaningful democracy. It added that this relic was now being misused in countries previously under its rule to suppress political dissent and restrict freedom of speech.

In USA, the First Amendment stands as a strong safeguard against the restriction of the freedom of speech and expression. Following a long history of judicial pronouncements on the legality of sedition, the US Supreme Court, in the case of *Brandenburg v Ohio*, held that mere advocacy against the government was not prohibited — not seditious unless and until such advocacy was directed towards inciting lawless action. Australia repealed the section on sedition in 2010.

What is Sedition?

Sedition' is an offence incorporated into the Indian Penal Code (IPC) in 1870. Section 124A of the IPC defines sedition and says:

- 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, the government established by law; or
- whoever by the above means excites or attempts to excite disaffection towards the government established by law, has committed the offence of sedition.

The offence is punishable with imprisonment for life.

What you need to know about Sedition law?

The sedition law was incorporated into the Indian Penal Code (IPC) in 1870 as fears of a possible uprising plagued the colonial authorities. Most of this penal code was retained intact after 1947. Despite demands to scrap it, the law of sedition remains enshrined in our statute book till today.

Courts have interpreted 124A of Indian penal code in many cases relate to 124A section:

Kedar Nath Singh Vs State of Bihar 1962: constitutional bench of Supreme Court made clear that allegedly seditious speech & expression may be punished only if speech is an incitement to violence or public disorder. Subsequent cases have further clarified the meaning of this phrase.

Indra Das vs. State of Assam & Arup Bhuyan vs State of Assam: Supreme Court stated that only speech that amounts to “incitement to imminent lawless action” can be criminalised.

Therefore, advocating revolution or advocating even violent overthrow of State, does not amount to sedition, unless there is incitement to violence & more importantly, incitement is to imminent violence.

Maneka Gandhi case, 1978: The Maneka Gandhi judgment was a balanced judgment and is one of the best judgments that Indian Supreme Court has ever given.

The judgment’s importance can be seen today also because the way in which the bench construed Article 21 and expanded its horizons has given way for the resolving of problems left unsolved by the Parliament.

The SC stated that Criticizing and drawing general opinion against the Govt. policies and decisions within a reasonable limit that does not incite people to rebel is consistent with the freedom of speech.

The judgment saved the citizens from unquestionable actions of Executive.

Balwant Singh v. State of Punjab: In one of most important judgements in this regard, Supreme Court overturned the convictions for sedition(124A IPC) and Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc (153 A IPC).

In this case, accused raised slogans such Khalistan Zindabad, Raj Karega Khalsa (Khalsa will rule) & Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da (Hindus will leave Punjab, we will rule) i.e. a few hours after Indira Gandhi’s assassination.

Despite the slogans clearly undermining Indian sovereignty and government, SC acquitted or free from charge or verdict of not guilty the accused because the slogans did not imminently incite violence.

Thus, even advocating secession of country or violent overthrow of government, does not attract sedition unless there is imminent incitement to violence.

‘Incitement’ rather than ‘advocacy’ is the important element of section 124A.

Dark side of Applying Sedition Law:

- Before Independence, this charge was used by the British to suppress the freedom movement.
- Ironically, the same draconian law has become a tool that the country is now using against its own people.
- During colonial period section 124-A was interpreted by the privy council in a way to suppress every act that expressed discontent against the government.
- Many freedom fighters were slapped with these charges for invoking feelings of nationalism and educating people of India against the policies adopted by the colonial power.
- Draconian laws such as the Section 124-A only serve to give a legal veneer to the regime's persecution of voices and movements against oppression by casting them as anti-national.
- Figures of the National Crime Records Bureau reveal that in the two years preceding the JNU case, there were a total of 77 sedition cases.
- Beyond the high-profile urban cases, the reach of Section 124-A has extended even to faraway places. An entire village in Kudankulam, Tamil Nadu had sedition cases slapped against it for resisting a nuclear power project. Adivasis of Jharkhand, resisting displacement, topped the list of those slapped with sedition in 2014.
- Instead of critically analyzing why citizens, be they in Kashmir or Chhattisgarh or Bhima Koregaon, are driven to dissent, the government is using an iron-fist policy with the sedition law playing a leading role to completely shut out contrarian views.

Way Forward:

- Educate law enforcing agencies
- The word 'sedition' is thus extremely nuanced and should be applied with caution
- All speech-related offences should be made bailable offences; this would lessen the harmful impact of using arrest and custody as a way of harassing anyone exercising their rights under Article 19(1) (a). The chilling effect on freedom of speech and expression must be erased.
- Awareness building.
- Forming a committee involving Government and renowned civil society members while deciding cases under section 124 A.
- To limit the discretionary power as much as possible through better and comprehensive drafting of guidelines.
- The offences should be made non-cognizable so that there is at least a judicial check on the police acting on the basis of politically motivated complaints.
- In the case of offences under Sections 153A ("promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc, and doing acts prejudicial to maintenance of harmony") and 295A of the Indian Penal Code, it is mandatory under Section 196(1) of the Code of Criminal Procedure to obtain prior sanction of the government before taking cognizance of the offences. This needs to be extended to the offence of sedition under Section 124A.

- In the case of hate speech, it is important to raise the burden of proof on those who claim that their sentiments are hurt rather than accept them at face value.
- And finally, it is crucial that courts begin to take action against those who bring malicious complaints against speech acts.

Conclusion:

- Freedom of Speech and Expression is a fundamental right under Article 19(1)(a).
- Article 19(2) imposed reasonable restrictions. Moreover, the first Amendment to the Constitution on June 18, 1951, imposed further restrictions.
- To call for the overthrow of a stale and fearful social system is not sedition.
- The argument used against the scrapping of the sedition law is that the Supreme Court has repeatedly observed that the mere possibility of misuse of a provision does not per se invalidate the legislation.
- Democracy has no meaning without freedoms and sedition as interpreted and applied by the police and governments is a negation of it.
- Hence, before the law loses its potency, the Supreme Court, being the protector of the fundamental rights of the citizens has to step in and evaluate the law.
- To uphold the idea of democracy that the founders of the Constitution envisioned, India should deliberately avoid using the word sedition from its statute books and everyday vocabulary. Hoping that reason prevails over politics when it comes to freedom.

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