

DE JURE NEXUS LAW JOURNAL

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2nd Year, BA; LL.B.**SCRAPPING THE DRACONIAN ERA LAW RELATED TO SEDITION****ABSTRACT:**

“Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.”

-Mahatma Gandhi, March 1922

Sedition is a term that is often heard in news debates or in newspapers, and a term that people quickly equate with being anti-national. It is a strong charge, no doubt, and it is striking to see that very often it has been used as a tool by governments and political parties to target opposition or students or people who muster the gumption to speak against their policies or actions.¹

In fact, it is interesting to note that 'sedition' was not even included as a substantive offence under the IPC initially. It was to the IPC a decade later, in 1870. Look at the year carefully and think of a reason why it was introduced? It is not a tough nut to crack, in fact. Scholars attribute the introduction of this provision against sedition to the intense desire of the British government in India at that time to curb any voice of dissent against the British Raj.

Ironically, sedition and seditious libel, the offence of defamatory libel, and the offence of obscene libel were abolished by the very same country whose legal scholars came up with the

¹Prabhash K. Dutta, Anti-national or anti-government, what is sedition?, India Today, (March 4, 2021 19:14 IST), <https://www.indiatoday.in/news-analysis/story/anti-national-or-anti-government-what-is-sedition-1775513-2021-03-04>

*idea in the first place. The repeal was affected through the Coroners and Justice Act, 2009. "Sedition and seditious and defamatory libel are archaic offences - from a bygone age when freedom of expression wasn't regarded as the right it is today," Claire Ward, then Parliamentary Under Secretary of State at the Ministry of Justice, said at the time of the Act's adoption.*²

INTRODUCTION:

Section 124-A 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 which fine established may be by added, law in or India, with shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, fine."*³

The essential ingredients of the offence of sedition are as follows an act/attempt done by-

- words, either spoken or written; or
- signs; or
- visible representation; or
- otherwise

This shows that the means by which the offence of sedition can result have been kept very broad, so that the net to hold one guilty under the offence can be cast far and wide.

The act/attempt mentioned above should bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards the Government established by law in India. "Disaffection" includes disloyalty and all feelings of enmity.⁴

There are two exceptions to this offence: -

² Yashovardhan Azad, Scrap sedition. Stop UAPA's misuse, Hindustan Times, (JUL 21, 2021 06:26 AM IST), <https://www.hindustantimes.com/opinion/scrap-sedition-stop-uapa-s-misuse-101626779794925.html>

³ Indian Penal Code, section 124-A

⁴ Soma Sarkar, Sedition – Section 124A IPC, Law Times Journal, (29th November, 2018), <https://lawtimesjournal.in/sedition-section-124a-ipc/>

Statements voicing displeasure of the government's policies in order to change them by legal methods, without inciting or attempting to incite hatred, contempt, or disaffection, does not constitute sedition. This restores some semblance of justice for it allows people to express displeasure/ disapproval of a person on any actions of the Government, as long as such expression does not promote or seek to inflame passions against the Government. It entitles such person to express his/her opinion to try to trigger reconsideration of such governmental measures. For instance, one can publish an editorial piece in the newspaper critiquing the government's move to waive off farmer loans.

“Comments expressing disapproval of the Government's administrative or other activity without inciting or seeking to incite hate, contempt, or disaffection,” do not constitute defamation. This expands the prior exemption to include administrative measures performed by the government.

The sedition story: Intricate history of Section 124A

Though a provision on sedition was included in Thomas Macaulay's draught Penal Code, it did not make it into the final form when the IPC was established in 1862. In 1870, Section 124-A was included into the IPC. This harsh legislation was invoked for the first time against JC Bose in 1891, for insulting the British government" In 1908 Bal Gangadhar Tilak was condemned for a very long time under this Section for a publication distributed in his paper "Keasari". In 1922 Gandhiji likewise was given six years under this abusive area for censuring the Britishers through his "Young India". Gandhiji considered this law the sovereign among the political areas of the IPC intended to smother the freedom of the resident. Nehru had clarified that this law ought to have no bearing in any group of laws that the country may pass, both for pragmatic and verifiable reasons, depicting it as exceptionally frightful and offensive."

There is no rejecting that our legal executive has not used the force of legal survey in a significant way to the extent that this antediluvian law is concerned. Legal audit is a protected component to defend the essential standards of the Constitution. Rules themselves can be struck somewhere around the Judiciary if the equivalent are not in consonance with the fundamental teachings of the Constitution. Additionally, at crossroads, when majoritarianism sounds the passing chime of vote-based system, the Judiciary needs to support the sacred certifications. Lamentably, our peak court has not given us a relief from the antique subversion law. However, two High courts had announced this relic of the past illegal the Supreme Court interceded to save the law. At the same time the summit court read down the law and essentially made another law. This was nothing, at the same time, legal enactment. The court while deciphering a resolution can't enact as its capacity is just to elucidate the law and not to administer. As the expressions of the rule being referred to are totally clear and unambiguous there is no degree for any understanding. This fierce law was intended to rebuff any Indian who scrutinized the pioneer government. By any standard the law is unlawful and should have been subdued.⁵

⁵ Julio Ribeiro in TOI Edit Page, India, TOI, Are we a nation prone to sedition? The draconian law's increasing application makes it seem so, February 28, 2021

Concerning the detail that the insubordination law ought to be called just if the public solicitation is subverted, it can't, yet, be communicated that the IPC as of now has enough regions identifying with public solicitation. Part VIII of the IPC contains as much as 22 regions relating to offenses against public quietness. In criminal law obscure definitions lead to deceitful indictments. However, the legal executive has adjusted the actual law, liberal people who will not conform to absolutism, majoritarianism or xenophobic patriotism are made to confront the ancient dissidence law that has incredible potential as a device for provocation. The impediments specified by the legal executive have only here and there controlled the political force communities from smothering difference and analysis mercilessly. Figures from National Crime Records Bureau uncover that a couple of instances of subversion charges bring about feelings. However, our unwieldy lawful techniques themselves end up being brutal disciplines to the charged residents. This is the place where the cruelty of this draconian law of pilgrim vintage lies. There are positively no reasons at all concerning why this obsolete law ought to have a spot in the resolution books of current vote-based India. When this ruthless law is rejected through and through, the Legislature can discuss the issue, rethink "rebellion" and consolidate another law. The issue is as of now under the steady gaze of the Law Commission which had in the year 1971 dismissed canceling the part. Allow us to trust that the Commission, while returning to the issue, will be in for a protected alternative and prepare for rethinking concerning what ought to establish dissidence.⁶

LEGAL ISSUES:

The crime of sedition, which has yet to be repealed in India, has had an intriguing career. To emphasize the argument, consider the following critical decisions:

The Allahabad High Court ruled in *Ram Nandan v. State AIR 1959 All 101* that Section 124-A was unconstitutional because it allowed persons who lawfully and peacefully criticised the government to be caught "in the mischief of this proscription. In the mischief of this provision, and punished under it.

However, in *Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955*, the Supreme Court ruled that Section 124-A was unconstitutional. It was not ruled unconstitutional, but was given a restricted interpretation, indicating that the crime would be complete only if the statements complained of had the potential to cause public disturbance through violence.⁷

The Supreme Court recently held in *Common Cause v. Union of India (2016) 15 SCC 269* that authorities dealing with the offence under Section 124-A IPC shall be guided by the principles laid out in the Kedar Nath Singh case, and that using "fighting words" against another person at a public gathering cannot be considered "free speech."⁸

⁶ Ananthkrishnan G, Sedition law colonial, is it still needed, concerned over misuse: Supreme Court, The Indian Express, (July 16, 2021 12:48:50 am), <https://indianexpress.com/article/india/sedition-law-colonial-independence-supreme-court-centre-7405793/>

⁷Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955

⁸Common Cause &ANR v. Union of India (2016) 15 SCC

CONCLUSION

Analysis of present-day govt or its chiefs (in what way ever cowardly it very well might be, can't be treated as hostile to public regardless. Thus, we saw a wide range of analysis, for example, that are the public authority is partitioning the general public, it needs to bring religious state, etc. prior! No one was charged as hostile to public due to such words. Along these lines, it seems somewhat uncalled for to say that bigotry is powering this draconian law. Each law can be possibly abused. Subsequently potential abuse can't be the sole rules to scrutinize the law or to call it draconian.



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