

Background Note

No.1

Free Speech and Seditious in a Democracy



THE HINDU CENTRE

for

Politics and Public Policy

Background Note

Panel Discussion on Free Speech and Sedition in a Democracy

(March 24, 2016, Chennai)

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 the 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

The Trial Speech,

From *The Great Speeches of Modern India*, 2014¹

There is a strong case to question the continuation of sedition laws in democratic India for at least three reasons. First, they were framed by colonial ‘rulers’ to suppress dissent raised by the ‘ruled’, and is out of place in a democratic republic in which political sovereignty rests with the citizens. Second, despite the highest judiciary of independent India reading down the Section, there appears to be little political restraint in invoking it to incarcerate dissenters of all hues. Third, the existing provisions of the Indian Penal Code (IPC) are sufficient to address all threats to violence and public order.

Section 124A of the IPC, which relates to sedition was introduced in Indian law in 1870 and continues to be operational in independent India. It states:

“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. 2[* * *] the Government established by law in 3[India], 4[* * *] shall be punished with 5[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.”²

History and Context of the Sedition Law

To understand the usage of the sedition law, one needs to look back at the time in which it was incorporated into the IPC. In 1837, Thomas Macaulay introduced sedition as an offence through clause 113 of the Draft Indian Penal Code. However, in 1860, when the IPC was enacted, the section pertaining to sedition was omitted. Many British lawmakers saw this as a dangerous development because they believed that the press had to be kept in check through such a law or they would further an anti-colonial agenda. In 1870, British suspicions about Wahabism and increasing Wahabi activities in the subcontinent led to the introduction of sedition under Section 124A of the IPC.³

Section 124A – and other short-lived laws that curbed free speech – the Vernacular Press Act, 1878, [repealed in 1881], the Newspapers (Incitement of Offences) Act, 1908, and the Indian Press Act, 1910 [repealed in 1921] – gave legal backing to the state to restrict voices that went against it.

Sedition Laws in Colonial and Independent India

The year 1892 saw the “first recorded state trial for sedition” in *Queen Empress v. Jogendra Chunder Bose*. The judgment “laid down a distinction between ‘disaffection’ and ‘disapprobation’, and observed”:

“It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling.”⁴

In 1898, in the case of *Queen Empress v. Bal Gangadhar Tilak*, the scope of the offence was expanded by the colonial courts and mere attempts to incite feelings of disaffection could be seen as sedition. The *Tilak* case defined sedition law under Section 124A for the first time⁵ as follows:

“The offence consists in exciting or attempting to excite in others certain bad feelings towards the government. It is not the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles is absolutely immaterial.” (Cited in Achary, 2015)

This historic trial is important for the two verdicts handed down by the Federal Court and the Privy Council, which are benchmarks in sedition cases. The former read down the section, but the latter subsequently upheld the conviction on Tilak. Juridical history suggests that understanding of sedition is largely subjective.

Well past the end of the British rule in India, Section 124A is still a tool to suppress speech that can be uncomfortable to the Union or State governments. In recent years, this Section was invoked against individuals perceived to be carrying out anti-state activities. Some examples include cases against

- a political leader in Tamil Nadu, Vaiko, [for speaking in support of the banned Liberation Tigers of Tamil Eelam],
- a human rights activist, Binayak Sen, [who was sentenced to life imprisonment by a trial court in Chhattisgarh, and then released on bail by the Supreme Court, which held that no case of sedition was made against him],
- a cartoonist, Aseem Trivedi, [for a cartoon highlighting corruption, who was subsequently released by Bombay High Court],
and
- most recently, Kanhaiya Kumar, the president of the Jawaharlal Nehru University Students Union and other students.

A recent article in the *Economic & Political Weekly*, highlighting the grave mistakes made in the process of interpreting the law, notes:

“The problem, in my opinion, is deeply rooted in the reading of ‘speech-acts’. In other words, India is increasingly failing in the act of interpretation. This is definitely a cognitive problem of failing to receive speech-acts appropriately.”⁶

An important factor driving arrests under sedition is that speech is often taken out of context and is then deemed seditious. Once this happens, only the portion of the speech that is seen as seditious is isolated from the context in which it was made. For instance, there is enough evidence to make a theoretically and factually sound statement that grave human rights violations in Kashmir have spurred on a local movement for *Azadi*. However, speech surrounding this issue, once devoid of the factual content is increasingly seen on social media and in the public sphere as anti-national. Such cognitive dissonances signal a democracy, which is weakening in terms of civil society and public debate, even while procedurally it remains strong.

What is the history of the use of the law of sedition in India and what do previous cases reveal about the political system that charges individuals under the law and the legal system that seems to have, on several occasions, acquitted such individuals? The use of the law of sedition against those who have not bought into the project of a parochial and xenophobic nationalism is not coincidental. Though the judiciary has held that critiquing the state does not amount to sedition, the existence of the law on the books acts as a political tool to deter free speech.

- In 1950, the first judicial interpretation of Section 124A in independent India came in two cases linked to the circulation of two magazines that were seen as threatening public order. In these two cases - *Romesh Thappar v. State of Madras* and *Brij Bhushan v. Delhi* – the court ruled:
“unless a law restricting free speech is directed solely against the undermining of the security of state or overthrow of it, a law cannot be a restriction on free speech.”

The outcome of these rulings was the first amendment in 1951, which incorporated the “reasonable restrictions” exemption to the operation of Article 19.

- In 1962, in *Kedar Nath Singh v. State of Bihar*, the Supreme Court held that the law is valid but cannot be used to stifle free speech. A five-member Bench specified that sedition could be invoked only if it can be proved that the speech incited people to violence and would result in public disorder.
- In 1995, in the case of *Balwant Singh v. State of Punjab*, the Supreme Court overturned a sedition conviction for sloganeers who shouted incendiary slogans shortly after the assassination of Indira Gandhi.
- More recently, in 2011, in *Indra Das v. State of Assam*, the Supreme Court clearly made the case that only such speech that can be considered “incitement to imminent lawless action” can be criminalised.

- In a 2015-judgement, in *Shreya Singhal v. Union of India*, the Supreme Court stated that one had to differentiate between “advocacy” and “incitement”, and that only “incitement” was punishable.

It is clear from the law’s history and usage that sedition became an offence to muzzle critics of the colonial government. It is ironic that the law has been used in India to seek to punish opinion contrary to the dominant state narrative. In this manner, as Rajeev Dhavan has correctly stated, “the imperial powers of a foreign government are transformed into the normal powers of an independent regime”. (Cited by Narrain, S., 2016). It has stayed on the books under the cover of ‘reasonable restrictions’, but the pattern of usage suggests that it is used more for political reasons.

***The Hindu* Newspaper Group on Free Speech**

The Hindu has spoken out consistently against invoking sedition and other laws to stifle free speech. Opposing the Newspapers Act, 1908, it said:

“A terrible means has been devised for the strangling of newspapers in this country...It has only to be made out that the paper contained an incitement to any violence and woe to the owner and proprietor of the press in which the paper was printed. Violence may easily be made to mean resistance and resistance to include passive resistance which latter expression may mean anything to constitute an act of violence which term the Act has left undefined.”⁷

The newspaper gave primacy of space for news, opinion articles and Letters to Editors relating to the sedition trials including those of Tilak, V. O. Chidambaram Pillai, and Aurobindo Ghose. It also condemned “anarchist activity which it said was alien to Indian soil” (Parthasarathy, p. 187).

After independence, the group’s publications have questioned the rationale behind sedition law, basing their arguments on the potential for mischief in application of the law. Most recently, on March 16, 2016, *The Hindu* concluded an editorial, *Be bold in revisiting the sedition law*, by saying: “One way to limit its mischief is to narrow the definition; but a more rational and constitutional option is to scrap the provision altogether.”⁸

The panel discussion organised by The Hindu Centre for Politics and Public Policy on **Free Speech and Sedition Laws in India** aims to provide a platform for an informed debate on this important legal question. The spirit in which it is held reflects one of the core values of the group – freedom of speech. This was best captured in what *The Hindu* firmly said on December 13, 1921:

“To interfere with the freedom of speech and opinion is the worst form of tyranny possible and every Indian whatever his politics, ought to stand up and effectively protest against the infringement of his much valued right.”⁹

End Notes:

- ¹ Gandhi, M. K., 2014. The Trial Speech. In: R. Mukherjee, ed. *The Great Speeches of Modern India*. Gurgaon: Random House, p. 83.
- ² Govt of India, Ministry of Home Affairs, n.d. *The Indian Penal Code, 1860*. [Online] Available at: http://www.mha.nic.in/sites/upload_files/mha/files/pdf/IPC1860.pdf [Accessed 17 March 2016].
- ³ Narrain, S., 2016. 'Disaffection and the Law: The Chilling Effect of Sedition Laws in India. *Economic & Political Weekly*, XLVI(8), pp. 33-37.
- ⁴ Saksena, N. & Srivastava, S., April - June 2014 . An Analysis of the Modern Offence of Sedition. *NUJS Law Review*, pp. 120-147.
- ⁵ Achary, P.D.T, 2015. Render sedition unconstitutional. *The Hindu*, 14 October. Available at: <http://www.thehindu.com/todays-paper/tp-opinion/render-sedition-unconstitutional/article7758729.ece> [Accessed 18 March 2016].
- ⁶Gundur, N. S., 2016. Misreading speech. *Economic & Political Weekly*, LI(9), pp. 95-96.
- ⁷ Parthasarathy, R., 1978. *A Hundred Years of The Hindu: The Epic Story of Indian Nationalism*. Madras: Kasturi & Sons, pp. 186-187.
- ⁸ The Hindu, 2016. *Be bold in revisiting the sedition law*. [Online] Available at: <http://www.thehindu.com/opinion/editorial/editorial-on-sedition-law-be-bold-in-revisiting-the-sedition-law/article8366598.ece> [Accessed 18 March 2016].
- ⁹ Parthasarathy, R. op. cit. p. 281.

Additional resources:

Web link:

[From The Hindu and Frontline: Free Speech and Sedition in India](#)

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