

Freedom Of Speech and Expression with Emphasis on Sedition and Comparing It to That of Other Countries

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Sedition is defined as any action, whether by words, signs or visible representation, which brings or attempts to bring into hatred or contempt, or attempts to excite disaffection towards the government established by law in India.¹ The explanation given says disaffection includes disloyalty and all feelings of enmity as it embraces all those practices that, whether by word, deed or action are calculated to disturb the peace of the State and lead innocent people against the government. Incitement to violence and public disorder is the gist of the offence. However, criticism of the existing government or system and expression of a desire for a different system altogether is not prohibited.² Following the same principles in *Kedar Nath Singh v. State of Bihar*³ the Supreme Court held that considering the history of sedition and reasons for introducing section 124A the provision must be construed to limit its application as to the act involving intention or tendency to incite violence, create public disorder or disturbance of law and order.⁴ This judgment leads to burial of a high court judgment that declared this provision unconstitutional.⁵ Allahabad high court despite the first amendment followed two cases of High courts for declaring it unconstitutional. Unfortunately the Kedar Nath judgment buried them all.⁶

*Kedar Nath Singh v. State of Bihar*⁶, the Supreme Court made it clear that allegedly seditious speech and expression may be punished only if the speech is an “incitement to violence”, or “public disorder”. Further the court also stated that Section 124 A is not unconstitutional

and not violative to Article 19 (1) (a) of the Constitution. Thus, words and speech can 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 met.⁷ Further one may argue that state may impose reasonable restriction on the freedom of speech and expression of an individual and that is why sedition

¹ Section 124A of the Indian Penal Code, 1860

² *Nihrendu v. Emperor*, AIR 1942 FC 22, 26

³ AIR 1962 SC 955

⁴ AIR 1962 SC 955

⁵ *Ram Nandan v. State of U.P.*, AIR 1959 All. 101

⁶ *Tara Singh Gopi Chand v. The State*, CriLJ 449; *SabirRaza v. The State*, Cri App No. 1434 of 1999, D/-11-21958

⁷ <http://thewire.in/2016/02/13/a-short-summary-of-the-law-of-sedition-in-india-21472/> (accessed on 03/06/2018)

law must be there. But if we examine even other provisions of IPC 1860, we will find the ingredients of sedition would be covered by them and will render Section 124-A obsolete.

Chapter VIII of the IPC contains offences against public tranquility- These include being the member of joining, hiring people to join, or constituting an unlawful assembly.⁸ It also includes rioting⁹, assaulting or obstructing a public servant trying to suppress a riot,¹⁰ provocation with the intent to spark a riot,¹¹ and promoting enmity between different groups on the basis of religion, race, place of birth, residence, language etc.¹² Further it also contains a provision for punishing acts that were prejudicial to national integration.¹³ Minor squirmishes are covered by the crime of 'affray' which punishes the act of two or more persons disturbing the public peace by fighting in a public place.¹⁴ Thus any such act that was 'prejudicial to the maintenance of harmony' would be punishable. This would also include the organization of any form of training activities. (exercise, movement or drill) to train for the use of criminal force or violence.¹⁵ Thus, the crux of the crimes of sedition, violence and public disorder, can be contained by applying the

aforementioned provisions of the IPC. The various state also have specific legislation addressing the issue of the maintenance of public order¹⁶ Consequently, there would be no need for a specific provision for the punishment of acts committed against the state or the government. Other provisions that are clearly defined and less stringent may instead be applied. An obvious advantage arising out of charging offenders under ordinary criminal laws as opposed to under the laws of sedition is that offenders are not counterproductively marked out and legitimized as 'political offenders' rather than ordinary criminals.¹⁷ Further Unlawful Activities (Prevention) Act, 1967 has been enacted by Parliament which prohibits and makes punishable similar kind of activities.

Given that most offences covered under sedition can potentially be addressed by other provisions in criminal law, it might be difficult to justify the retention of seditious offences in the statute books in light of its obsolescence. It only serves the purpose of undermining the public interest in having access

to opposing political views.¹⁹

Countries that abolished the sedition law or made it dysfunctional.

The UK abolished Sedition law in 2009. It was abolished through the Coroners and Justice Act, 2009 under Gordon Brown's Labour government. Three offences were abolished: the offences of sedition and seditious libel; the offence of defamatory libel; and the offence of obscene libel.

The then Parliamentary Under-Secretary of State at the Ministry of Justice, Claire Ward said at the time of the act's enactment: "Sedition and seditious and defamatory libel are arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today".¹⁵

⁸ Section 141, Indian Penal Code, 1860

⁹ Section 146, Indian Penal Code, 1860

¹⁰ Section 152, Indian Penal Code, 1860

¹¹ Section 153, Indian Penal Code, 1860

¹² Section 153-A, Indian Penal Code, 1860

¹³ Section 153-B, Indian Penal Code, 1860

¹⁴ Section 159, Indian Penal Code, 1860 ¹⁹³ Ibid

¹⁵ E.g. the West Bengal Maintenance of Public Order Act 1972, the Assam Maintenance of Public Order Act,

¹⁶, the Goa Maintenance of Public Order and Safety Act, 1972

¹⁷ Ben Saul, Speaking of Terror: Criminalizing Incitement to Violence, 28 UNSW LJ 874 (2005)

¹⁸ Unlawful Activities (Prevention) Act, 1967

¹⁹ ERIC BARENDT, INTERESTS IN FREEDOM OF SPEECH: THEORY AND PRACTICE IN LEGAL

The following reasons are given to abolish sedition law in England & New Zealand:

- Sedition is defined in vague and
- While certain political views may be unreasonable or unpopular, they cannot be criminalised. This offends democratic values.
- The definition of sedition offends fundamental freedoms of speech and expression which are universally recognised.
- The definition of sedition offends fundamental freedoms of speech and expression which are universally recognised.
- In practice, the law is used to silence political opposition or criticism of the government. This has a “chilling effect” on free speech.

In Indonesia and South Korea too, Sedition has been struck down. In the United States, Canada and Australia, the law is practically in disuse. The Parliament of India should follow the footsteps of other countries like the UK, USA etc. in order to prohibit the arbitrary use of sedition law and to protect freedom of speech & expression of its people.

EXPLORATIONS: Essays in Honor of Professor Michael Chesterman 175 (Kam Fan Sin, 2003)