

THE WORDPLAY BETWEEN DISSENT AND SEDITION

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Introduction

Freedom of speech and expression forms the bedrock of a democratic society, allowing citizens to voice opinions, challenge authorities, and contribute to the nation's progress. However, the thin line between dissent and sedition has been a longstanding legal and moral debate, especially in countries with colonial legacies like India. While dissent embodies legitimate criticism and the right to disagree peacefully, sedition is often perceived as an act aimed at undermining state authority or inciting violence. Historically, sedition laws have been used as tools to suppress political dissent and curb freedom of expression. In India, the sedition law (Section 124A of the Indian Penal Code) has its roots in colonial legislation designed to quell anti-British sentiment. Post-independence, this law has continued to be controversial, with courts and lawmakers grappling to balance state security with individual freedoms. This paper explores the evolution of sedition law, its interpretation in landmark cases, the constitutional right to dissent, and contemporary examples where sedition and dissent have clashed. The analysis further considers whether the sedition law remains relevant or requires reform to safeguard democratic principles in modern India.

Poetic Prelude

“Where the mind is without fear and the head is held high;
Where knowledge is free;
Where the world has not been broken up into fragments by narrow domestic walls;
Where words come out from the depths of truth;
Where the clear stream of reason has not lost its ways into the dreary desert sand of dead;
Where the mind is led forward by thee into ever-widening thought and action;
Into that heaven of freedom my father, let my country awake”
— Rabindranath Tagore

Historical Background of Sedition Law

During the 13th century in Britain, sedition was used as a tool to suppress the freedom of printing and its ability to criticize the King. Hence, broadly speaking the Sedition Act of 1661 criminalised any act of writing, printing, or preaching any word against the King. By the 18th century, the law received much criticism in U.K but its efficacy was observed and hence later applied on India. The original draft of Macaulay's Indian Penal Code did not have the sedition law but it was in the year 1870 which was piloted by James Stephen through the Indian Penal Code (Amendment) Act, 1898.

Early Judicial Interpretations of Sedition in India

The first recorded case on sedition was *Queen v. Jogendra Chunder Bose* (1892) and it was pronounced the act of encouraging the masses to resist the Government or disobeying its authority to be seditious. The High Court of Calcutta in this case further provided the distinction between the terms "disapprobation" meaning legitimate criticism and "disaffection" meaning any feeling contrary to affection. It also added to convey that since disaffection is penalised, the offence of sedition does not take peoples right away.

Landmark Cases on Sedition

The next landmark cases on the matter of sedition was raised in the case of *Queen-Empress v. Bal Gangadhar Tilak & Keshav Mahadev Bal* (1897) where B.G. Tilak was tried of sedition on the basis of raising incitement through speech that had led to the killing of two British Officials. The Bombay High Court in their judgment on this matter accepted the definition of "disaffection" which was provided in the *Jogendra Chunder Bose* case and opined that any bad feeling towards the government is criminal, irrespective of the level of such bad feelings. This however strongly disallowed any legitimate criticism and the Court further held that it is the intention of the offender which is primary and his intention can be presumed based on the content, audience and circumstances of their seditious speech.

B.G. Tilak was again tried for sedition in another case of Emperor v. Bal Gangadhar Tilak (1917) for an article which he advocated the attainment of self rule (swarajya) for Indians and he thereon explicitly criticised the civil services arguing that the civil services and the British Government were two different entities. The Division bench of the Bombay High Court rejected Tilak's contention and this is where the court provided relatively liberal stance rejecting the interpretation of "disaffection" previously provided by the court in the case of 1897.

Sedition Law in Independent India

Tracing now to the period of Independent India, India's First Parliament passed the Constitution (First Amendment) Act, 1951 which among other things also sought to resolve the anomaly in the constitutionality of the law on sedition. It did so in the face of introducing new ground on which the right of freedom of speech and expression could be restricted on reasonable grounds. It is to say that invocation of the offence of sedition was not merely just confined to acts undermining the security of State or tending to overthrow State but now it merely had to be "in the interest of the security of the State". Such wide oriented concept contemplated greater discretion to the State to invoke the offence of Sedition. Thereafter after almost two decades in the case of Debi Soren & Ors v. The State (1954), the Patna High Court not only confirmed the constitutionality of Section 124A of IPC but it also ruled out that it does not violate Article 19 of the Indian Constitution.

The Supreme Court's Stance: Kedar Nath Singh Case (1962)

We then arrive to the most landmark judgement of the Supreme Court in the case of Kedar Nath Singh v. State of Bihar (1962) where the constitutional validity of Section 124A was challenged on the basis that it was "inconsistent" with the right of freedom of speech and expression. The Bench held that the provisions laid in Section 124A when read as a whole along with the explanations so provided under the same makes it reasonably clear that it aims at rendering penal to only such activities which would be intended or have a tendency to create disorder or disturbance of public peace by resort to violence. The explanations appended to the main body of Section 124A makes it clear

that criticism of public measures or comment on Government action, however strongly worded as far as possible be within reasonable limits and hence will remain consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the said section strikes the correct balance between individual fundamental rights and the interest of public order. This gives birth to the opinion now in the mind of people that they are provided with the right to dissent under the pretext of Article 19.

Understanding Right to Dissent and Its Limits

The question now is “What is Right to Dissent and how contrasting it is from the concept of sedition?”

It can be said that Right to dissent is an entitlement to disagree, it is a difference of opinion and there exist a very thin line between sedition and the right to dissent in the Indian Democracy. Under Article 19 (1) (a) of the Indian Constitution, Right to Freedom of speech and Expression is granted to all citizens and Article 19 (1) (b) provides the citizen with freedom of right to assemble peaceably and without arms; then again Article 19 (1) (c) ensures the citizen of freedom to form unions and associations. So, an amalgamation of these three specific rights enables the citizens to express their contrasting views. However, moving forward to clause (2) of Article 19, it imposes reasonable restrictions on the exercise of this right. Hence, the Right to Dissent under the purview of Article 19 is impliedly provided. In the context of India being a of sovereign country, its integrity, security, relations with foreign countries, public order, decency, morality or contempt of court, defamation or instigation of illegal activities provides the government to may make laws that prevent such exercises. Thus, the citizens are allowed to speak and express themselves using their right under Article 19 in whichever way they want, they are allowed to agree or disagree with anything openly and freely. However, such disagreement, criticism, opposition must be within the limits of reasonable restrictions without raising organized public chaos.

Contemporary Challenges: Sedition and the Right to Dissent

Evidently, we can now make a proper guess of what really is obstructing the proper functioning of the right to dissent and if Sedition is the first guess, let's include the draconian Unlawful Activities (Prevention) Act, 1967 along. These two laws are proved to be the common method of curbing the right to dissent of Indian citizens. As already stated above, sedition law under Section 124A provides that if anyone uses either word (spoken or written), signs, visible representation or attempts with the view of causing hatred, disaffection against the government shall be subject to life imprisonment or fine or both.

The Unlawful Activities (Prevention) Act, 1967 aims to minimize the number of illegal activities committed to causing harm to the integrity and sovereignty of India and within its ambit also covers foreign nationals. This Act awards death penalty, imprisonment for life as punishments. For better understanding, let us now have a read some of the examples where there is recorded violation of the right to dissent with an anti-national element hence making it fall within the ambit of sedition and UAPA. For example, Safoora Zargar, a student of Jamila Milia Islamia who was arrested by the Delhi Police for her involvement in anti-CAA protest and was bailed after two months. The truth is, all she did was carried a peaceful protest through which a common opinion regarding the Citizenship (Amendment) Act, 2019 exuded.

Another incident of Umair Khalid's sedition controversy, where Delhi police arrested him after claiming that the student (Umair Khalid) from Jawaharlal Nehru University was a part of Delhi riots concerning CAA and allegedly made provocative comments in his speech to public exciting to cause public violence however, when the full video clip of his speech was leaked on digital platforms people realised that he did not speak any provoking words.

Yet again, Kanhaiya Kumar being misunderstood for supporting the Kashmiri migrants on the ground of shouting the catchword "anti- India" when he was protesting the alleged illegal execution of Kashmiri migrants.

One Gurmehar Kaur, a student from Lady Shri Ram College of DU who went on record to express her dissenting perspective against ABVP (a student wing of RSS) and she soon became the talk of the news that day as many portrayed her being an anti-nationalist because she had different opinions from the ruling party. And the most recent Toolkit case where climate activist Disha Ravi and Nikita Jacob were accused of collaborating with pro-Khalistani elements to spread disaffection against India by creating and spreading the toolkits that lists ways to lend support to an ongoing farmers protest. Thereafter, instances of arrest of 50 Tata Institute of Social Science (TISS) students for raising slogans supporting Sharjeel Imam, a PhD student of JNU; to charge the teacher and a mother of a child of 6 years old for a play against NRC-CAA-NPR with alleged insulting remarks against the Prime Minister with the charge of sedition remain the most grotesque examples of authoritarian government throttling dissent in the garb of sedition.

International Perspectives on Sedition Laws

However, now the question arises if India needs the sedition law or does it need some amending? The UK, US, New Zealand, Australia, Indonesia have either junked the sedition law or have amended it to reflect upon the idea of freedom of speech and expression in the modern era. Advocates, activists, journalists etc have argued about the sedition law in India being archaic. Under Section 2385 of the US Code, provides that it is unlawful for anyone to knowingly teach or advocate the propriety of overthrowing the government, by force. However, in respect of freedom of speech, this law is rarely enforced.

Section 73 of the Coroners and Justice Act 2009 in the UK has abolished sedition and seditious libel. A seditious act in the UK is described as something which brings into “hatred or contempt, or to excite disaffection. Apart from the fact that the development of England’s criminal and constitutional law pretty much rendered this offence obsolete and most likely in contravention of human rights legislation, part of the reason for abolishing it was to send out a message to the common law countries that both retain, and use this law. The Parliamentary Under Secretary of State at the Ministry of Justice, Claire Ward conveyed:

“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... The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom... Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech”.

Conclusion

In conclusion, the intricate relationship between dissent and sedition in India reveals a persistent tension between safeguarding state interests and upholding democratic freedoms. While sedition law was initially conceived to protect colonial rulers from criticism, its continued existence in independent India has posed significant challenges to the right to dissent. Landmark judicial pronouncements, especially the Supreme Court's interpretation in Kedar Nath Singh, have attempted to delineate reasonable limits, allowing space for criticism and peaceful dissent while curbing incitement to violence or disorder. Yet, the misuse of sedition and related laws like the Unlawful Activities (Prevention) Act illustrates the struggle of a democracy grappling with internal conflicts and political dissent. Internationally, the trend has been towards either abolishing or reforming sedition laws to better align with contemporary values of free speech and human rights. India’s challenge lies in balancing national security with constitutional freedoms, ensuring that the law is not weaponized to stifle legitimate dissent or democracy itself. As citizens and the judiciary continue to engage with these issues, reform or repeal of archaic provisions may be imperative to foster a vibrant, inclusive democracy where dissent is not feared but respected as an essential pillar of governance and social progress.

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