# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

# DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

ISSN: 2582-6433

# EDITORIALTEAM

## EDITORS

### Dr. Samrat Datta

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*

### *Dr. Namita Jain*

*Head & Associate Professor*
*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

**ISSN: 2582-6433**

## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*

## Avinash Kumar

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

ISSN: 2582-6433

# ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

# SEDITION LAW A COLONIAL REMNANT

AUTHORED BY - SHRIYANSH SHARMA

## ABSTRACT

In 2020 Ministry of Home Affairs tabled N.C.R.B. report in Loksabha on 16.01.2021, 356 cases of sedition under Section 124-A of the IPC were registered and 548 people were arrested between 2015 and 2020. Out of the total of these 548 people only 12 persons were found to be convicted of the offence. This shows the colossal amount of misuse in application of the above law. The law itself defines the offence as non-bailable, cognizable and non-compoundable. This gives full power to the authorities to book people who raises opposition to them considering that the accused arrested has to remain in judicial custody until the case has been disposed by the Court of Law. Almost every democratic country till the date has repealed such draconian law claiming such law to be orthodox and wholly undemocratic. Chief Justice N.V. Ramana strongly condemned the sedition law in India asserting that he found it quite bemusing that sedition law which was repealed in the U.K. the country of its origin the still continues to be present in India.

## History

The Ancient Greece state is where we find the first reference to laws resembling to sedition. "In Athens not only premeditated killing and sedition and high treason resulted in the death penalty, but also religious offences such as desecration of the temple and in particular the case against Socrates [2], 399 BC) publicly taught godlessness (asébeia). In a similar way, in Rome there was provision for the state death penalty for sedition and high treason (perduellio) by beheading (decollatio, in Greece apokephalízein) with an axe, later a sword. In the Roman Imperial period this was the typical death penalty for honestiores, but now sometimes also for homicide."[1]

In 1661 Britain passed its first ever Sedition Law in 1661 [2] which was further extended to the state of Scotland. The U.S. followed the U.K. trend and enacted The Sedition Act of 1798

[1] Brill's New Pauly: Encyclopedia of the Ancient World by Hubert Cancik, Helmuth Schneider, Manfred Landfester, Christine F. Salazar, 2011
[2] The Sedition Act 1661 (13 Car 2 St 1 c 1) , Parliament of England

ISSN: 2582-6433

[3]which permitted the deportation, fine, or imprisonment of anyone deemed as a threat or publishing "false, scandalous, or malicious writing" against the government of the United States. After it was made into various countries around the globe including the likes of African nations, European countries, western countries, etc.

## In colonial – India

The Indian Penal Code was originally drafted by Thomas Bribinghum Macauly in 1837 [4]but for some unspecified reasons the Provision was omitted in the original draft and got inserted into the Code in 1870. At the initial the Britishers were not favouring such draconian law but after the nationwide Wahabi movement in India the need was felt for bringing the law, on the pursuance of the English jurist Sir James Fitzjames Stephen, the colonial authorities introduced the above law under the umbrella title of "Exciting disaffection".

## Colonial Era judgments

After framing of law in India the first issue to be tried in India was that of Queen Empress v. Yogendra Chunder Bose[5] where the Calcutta High Court Judge Sir K.C. Pethrum distinguished between disaffection and disapprobation connoting them to be dislike and disapproval respectively. He further iterated that this affection was linked with a disposition not to obey the lawful authority of the government the authority concluded that the Petitioner was made to be liable under sedition.

In subsequent cases judgments had a common trend of punishing any kind of seditious act, whether it was with intent to show disaffection towards the government or not. The only point which was observed was whether the act was in pursuance of disaffection towards the British ideology and their rule. The Courts furthered disaffection definition to disloyalty. According to Stratchy J at Bombay High court in Emperor vs Bal Gangadhar Tilak[5] the strength of the feelings were immaterial all that method was the propagation of feeling of enmity." As one can axiomatically perceive that Colonial Courts were stringent as their main motto was only to foster the ruling British government and suppress anyone who was against the British ruling and ideologies. The Colonial government's aim was to only rule and exploit Indians and was

[3] The Sedition Act of 1798, US Senate
[4] Indian Law Commission., Macaulay, T. Babington Macaulay. (1888). The Indian penal code, as originally framed in 1837. Madras: Higginbotham.
[5] Emperor vs Bal Gangadhar Tilak, (1917) 19 BOMLR 211

ISSN: 2582-6433

ignorant for protecting the freedoms of Indian citizens. Hence they used it as a tool to book any person whom they found to be voicing opposition to them according to their whims and fancies. Freedom Fighters and Leaders like Maulana Ali, Shri Shanaracharya, Bal Gangadhar Tiklak, Mahatama Gandhi all were tried under the Sedtitoin Law by colonial authorities.

## Judgement After independence

Post-Independence the law revolved around constant power tussle between power retainers and liberty proponents. The government and State wanted the law to be preserved as by the help of this law they could easily suppress any kind of distaste against them by getting the opposition leaders or main people arrested. While on the other side the liberty seekers in order to promote liberty and freedom of speech and expression wanted the law to be scrapped.

After Independence, though many laws of the British government were held void as they were found to be violating the provisions of Fundamental Rights of Indian Constitutional. But despite of the fact that the section 124-A abridged the Freedom of Speech and Expression, it was not subjected to any kind of scrapping by the Legislatures. It was borrowed as it is from the pre-colonial Indian Penal Code originally drafted by the Imperial Legislative Council.

After the Independence two cases Romesh Thappar v State Of Madras[6] and Brij Bhushan & Anr. v State of Delhi[7] came up before the Supreme Court dealing with the same aspect of Law. In both of them Petitioners were detained on disturbing the public order of thier respective states, in reply the Petitioners side argued that there Freedom of Speech and Expression can only be abridged on the ground that their actions disfigure the unity and integrity of the State or the security of the State, friendly relations with foreign States, decency or morality or in relation to contempt of court, defamation or incitement to an offence. But none of the their actions were based on the said grounds hence they cannot be booked by the authorities, as they didn't have the requisite backing of the law. The Court noted their point and ordered in their favour.

The Government in response brought the First Constitutional Amendment Act 8, 1951 to widen the scope of restrictions on Article 19. India's then Prime Minister, Jawaharlal Nehru himself

[6] 1950 AIR 124
[7] 1950 AIR 129
[8] THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951

ISSN: 2582-6433

said that, "That the Law doesn't fit India's post colonial era .Section 124-A of the Indian Penal Code is highly objectionable and obnoxious, it should have no place, both for practical and historical reasons." He only did such fancy and lucrative talk and on the other hand the parliament passed First Constitutional Amendment Act, 1951 which inserted the word "public order" to Article 19(2) of the Constitution. It further expanded the scope of Article 19 restrictions to the Freedom of Speech and Expression, which dealt with the insertion of new ground "public order" to the restriction clause. Earlier the State was powered to put restrictions on freedom of speech and expressions only on the justifications of matters pertaining to the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign countries, decency, morality or in relation to contempt of Court, defamation or incitement to an offence. By insertion of the new ground the state incremented its own power to restrict citizen's Freedom of Speech and Expression, it became a new ground for the state to put hindrance on freedom of speech and expression of citizens and apply Section 124-A IPC. Reasoning it the Prime Minister Jawaharlal Nehru avowed that government need to do amendments in Fundamental Rights according to the dynamic conditions of the time's need, he further argued "that the fall of one of the finest idealistic constitutions like Wiemar Republic in Germany and Spain was only due to that these constitution were merely idealistic and far from reality . If it is true that a country and community are to grow—they are not static—then surely conditions which should be dealt with in a different way, not in the old way."9

The First Constitutional Amendment Act also inserted the word "reasonable restrictions". It assured that the Executives will not enjoy the monopoly and provide the Judiciary scope of reviewing the executive actions. In the words of Pandit Thakur Das Bhargava, the person who persuaded it "this would ensure that the courts shall have to go into the question and it will not be the legislature and executive who could play with the fundamental rights of the people." Had the word "reasonable" not added before "restrictions" clause it would have given the government inexorable power to act according to its whims and fancies, debarring the judiciary in deciding the matters related to arbitrary restrictions on Freedom of Speech and Expressions by the State. The First Constitutional Amendment Act proved to be both in favor of citizen's Freedom of Speech and Expression protection as it added the Reasonable restriction providing the scope of judicial review and in disfavor of the citizens as it expanded the scope of Article 19(2).

[9] Parliamentary Debates , Third Session of the Parliament ,1950-51,Pg-9621, 29th May , 1951

ISSN: 2582-6433

After 1950 came the case of Kedar Nath Singh vs State Of Bihar10 the issue raised was that of whether section 124 A of IPC was violative of fundamental rights of freedom to speech and expression. The Supreme Court in it favored the law and cited Britian where such law was still in force for enacting such law held that "Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardize the safety and stability of the State or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder." 11

Later in 1967 Dr. Ram Manohar Lohia vs State Of Bihar And Others , 1966 AIR 740 12case came up, in it Dr. Ram Manohar Lohia was detained under the order of district magistrate who rationalized the detainment for preventing him from acting in any manner subject to any public safety and maintenance of law. The arrest was done according to the provisions of Defense of India Act, Defense of India Rules, 196213 which gave police full power to arrest anybody who was dissenting during war times on adjudicating the petition in Supreme Court, it held that direct and eminent degree must be there between speech or expression and reach of public order in order to convict any person in case of reasonable restrictions for freedom of speech your expression.

Further in 1989 in S. Rangarajan Etc vs P. Jagjivan Ram , 1989 SCR (2) 20414 the Shetty, K.J. (J) reaffirmed the Supreme Court previous judgment in Ram Manohar Lohia case and stated that the relation between them or speech, expression and that of breach of public order need to be like that of spark in a powder keg. From the statement that it can be easily inferred that the relation between the two need to be immediate, inevitable and need to have direct effect.

In the ongoing case two journalist who were themselves the victim of being subjected to punishment u/s 124A IPC for criticizing certain politicians, filed a petition in Supreme Court challenging the constitutionality of the law. Subsequently nine other petitions were filed in the same matter and were tagged with the main petition. The case is named as SG Vombatkere v Union of India.

[10] Kedar Nath Singh vs State Of Bihar, 1962 AIR 955, 1962 SCR Supl. (2) 769
[11] Para 18 , Kedar Nath Singh vs State Of Bihar , 1962 AIR 955, 1962 SCR Supl. (2) 769
[12] Dr. Ram Manohar Lohia vs State Of Bihar And Others , 1966 AIR 740
[13] Defence of India Rules,1962
[14] S. Rangarajan Etc vs P. Jagjivan Ram , 1989 SCR (2) 204

ISSN: 2582-6433

On adjudging the matter in Supreme Court India bench comprising of Chief Justice N.V. Ramana, Justice Surya Kant and Justice Hema Kohli, Chief Justice N.V. Ramana asked the Attorney General K.K. Venugopal and Solicitor General Tushar Mehta, appearing for the Centre Government "Sedition is a colonial law. It suppresses freedoms. It was used against Mahatma Gandhi, Tilak and many other freedom fighters. Is this law necessary after 75 years of Independence?".

## Certain considerable issues were raised during the hearing

- The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason, why should not India abolish this section.
- The terms used under Section 124A like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers.

The Court held an interim order that put halt on any type of proceedings in the section by refraining the State and the Central governments from registering FIR or to continue any investigation and to take any coercive action in this regard. The Government side was directed to re-examine the law till further orders are passed by the Court. It would have been crucial judgement for liberty seekers and the ones who promote represion.

## The present stance

In the new legislation of BNS provides for sedition in section 152

"Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial means, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine."[15]

Even the government has been bolstering that they have removed sedition from the legislations but still a veil has been made regarding the government's intention in framing the new law.

The words separatist activities and subversive activities are vague and contain expansive interpretation which has not been provided in the section which leaves a great question as to how the enforcement agencies interpret it. There are clear possibilities that law enforcement

[15] Bhartiya Nyay Sanhita, 2023

ISSN: 2582-6433

authorities could easily interpret the law and harass the accused. Even though an accused is later discharged of the offence during the trial but he is to pass through an elongated process of trial to get a clean chit.

Criticism of the Government policies and actions by opposition could easily lead to being booked under this section. Even though an intent could not be proved in the trial still the accused has to endure the mental harassment for an elongated timeline considering that in India on average trial court take 6 years (2,184 days) for disposing cases[16].

The section restricts freedom of speech and expression given under Article 19(1)(a) as government dissent or even trolling a government move could be interpreted by the enforcement authorities as sedition as the terminologies used in the section as very vague.

The meaning of subversive activities as per Merriam Webster is systematic attempt to overthrow or undermine a government or political system by persons working secretly from within.[17]

Though the new law has been able to differentiate that the offence would be charged in only a condition where the accused has been found of doing the action of overthrowing the government systematically, but the danger of being accused under the section still looms as the term is subject to vide interpretation.

Latest instances of the misuse of sedition law include the case of Disha Ravi in 2021 who was an climate activist & Vinod Dua in 2021 who criticized the government' s action in covid-19. Timeline of passing the new law also raises suspicion as the sudden passing of new laws in the form of reform is a step only to overshadow the past deeds of the government.

In Administration everyone wants to keep control over activist activities that are against the government, that's why they want to keep such law which gives them the license to stop these activities by arresting them. The government knew regarding the nuisances of sedition law to fundamental rights, but it kept mum on the issue and instead used it many instances for its

[16] Harish Narasappa, "The long, expensive road to justice", indiatoday.in, Accessed on 27/01/2025, https://www.indiatoday.in/magazine/cover-story/story/20160509-judicial-system-judiciary-cji-law-cases-the-long-expensive-road-to-justice-828810-2016-04-27
[17] Merriam-Webster

ISSN: 2582-6433

favor.

As the government was made to halt arrests under sedition law and it was further asked to submit its reply, hence the government found a new way of solving its purpose by passing the new law.

The punitive aspect of sedition law has been increased in the new law as then the offender could be left with only a fine but in new sedition law even if the presiding officer is of the opinion that the convict has committed not so gravious offence then it has to sentence the offender to imprisonment.

Hence even if the number and sentences of sections are changed in legislation, the threat of sedition still looms in our legislation.