



FACULTY OF JURIDICAL SCIENCES

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Lecture-24



LECTURE 24: Sedition

Sedition

What constitutes sedition in the Indian context?

Sedition is traditionally understood as conduct or speech which incites people to rebel against the government or monarch established in a state. Sedition laws first crept into the Indian legal system in 1870 when the British colonial government added Section 124A to the IPC, with the purpose of suppressing Indian nationalists and freedom fighters in India.

Section 124A 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, the Government established by law in India, shall be punished [...]”. Explanation 1 to Section 124A states that ‘disaffection’ includes “disloyalty and all feelings of enmity”. Explanation 2 clarifies that comments which disapprove government measures/actions and administrative measures (without exciting or attempting to excite hatred/contempt/disaffection towards the government) do not constitute sedition.

The use of sedition laws in India to regulate speech on social media

Social media users have been routinely subjected to sedition laws in India. In October 2016, a Facebook user was booked for sedition for posting derogatory remarks against the Haryana government, the BJP and the RSS. In August 2016, the police arrested a Kashmiri engineer on the grounds of sedition, for ‘liking’ and posting a series of Facebook posts which called for India to withdraw from Kashmir. In December last year, the police charged a Malayali writer and theatre artiste with sedition for allegedly insulting the National Anthem via excerpts from his book that were posted on Facebook. In 2012, free speech activist Aseem Trivedi was arrested for posting caricatures on Facebook which mocked Parliament. One of the charges pressed against him was sedition.

In most of these cases, the Facebook posts in question do not classify as words which instigate hatred/contempt/disaffection towards the Indian government. Take for instance, the most recent case involving the Facebook post, ‘I support Pakistan’, along with a picture of the Pakistani flag. The post does not refer to the Indian government at all (either directly or indirectly). In fact, such arrests are often a knee-jerk reaction by the police to appease certain groups which take offence at Facebook posts for being ostensibly ‘anti-India’. The objective behind Section 124A is to punish speech which is serious enough to provoke citizens to act with

hatred/contempt/disaffection towards the government; therefore, it is wrong to use sedition laws to punish comments which merely lampoon/criticise the government.

When the threat of using sedition laws looms large over internet users, it produces a negative effect on online speech and directly impacts the fundamental right to freedom of speech and expression under Article 19 (1) (a) of the Indian Constitution.

Indian courts on sedition

Courts in India have interpreted Section 124A narrowly in the past in order to prevent the misuse of the said laws to wrongly silence individuals. In *Kedar Nath v. State of Bihar* (AIR 1962 SC 955), a five-judge bench of the SC held that Section 124A is applicable only in cases “where there is violence or incitement to violence in the alleged act of sedition”. Regarding the Kedar Nath case, the constitution bench had also highlighted the fact that the gist of Section 124A is “incitement to violence” or the “tendency or the intention to create public disorder”. In September 2016 the NGO, Common Cause, filed a petition in the SC for directing the police to produce a reasoned order before arresting/filing of FIR under section 124A. While the SC declined the PIL, it affirmed the view adopted in the Kedar Nath case.

Common Cause’s PIL could have been inspired by the 2015 Bombay High Court order in *Sanskar Marathe v. State of Maharashtra* (the Aseem Trivedi case) wherein the Bombay HC issued guidelines to the police that a reasoned legal opinion is required from a Public Prosecutor before filing a FIR under Section 124A. In deciding the Sanskar Marathe case, the Bombay HC relied on the Supreme Court’ decision in the Kedar Nath case.

Sedition laws worldwide and attempts to amend and/or repeal Section 124A

Sedition laws have historically existed in the legislations of various countries including Australia, the UK and the US. Countries worldwide have amended their sedition laws. For instance, in 2006, Australia reviewed its sedition law under the Criminal Code Act 1995 (Criminal Code). Through the National Security Legislation Amendment Act 2010, the Australian government abolished sedition as an offence and replaced with the offence of ‘urging violence’, under section 80.2 of the Criminal Code. Interestingly, the UK abolished the offence of sedition through section 73 of the Coroners and Justice Act in 2009.

Section 124A remains controversial in India and its relevance in the present era has been debated both within and outside the precincts of the Parliament. Critics of section 124A argue that the offence of sedition is a relic of the colonial past and needs to be repealed completely. Eminent

Indian lawyer Arvind Datar, however, cautions against the abolition of section 124A and argues that despite the provision's misuse, the sedition law is relevant when it comes to tackling rebel groups such as the Maoists.

The Law Commission in its 42nd Report in 1971 reviewed section 124A and while the Commission acknowledged the defects in the provision, it had recommended against the repeal of section 124A. In 2016, the Indian government stated that the definition of sedition was being reviewed by the Law Commission of India.

While there is a need to re-examine the law on sedition in India, it is also important to clarify how sedition law applies to social media users in the country. In the absence of a landmark judgment on this point, the government needs to be proactive and issue guidelines to law enforcement agencies regarding how the law of sedition applies to speech on social media. This will ensure that the right to free speech of internet users is not curbed under the garb of a sedition charge.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Sedition is traditionally understood as conduct or speech which incites people to rebel against the government or monarch established in a state.	True	False
2.	Sedition laws first crept into the Indian legal system in 1870 when the British colonial government added Section 124A to the IPC, with the purpose of suppressing Indian nationalists and freedom fighters in India.	True	False
3.	Section 124A 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, the Government established by law in India, shall be punished	True	False
4.	Courts in India have interpreted Section 124A narrowly in the past in order to prevent the misuse of the said laws to wrongly silence individuals	True	False
5.	In Kedar Nath v. State of Bihar (AIR 1962 SC 955), a five-judge bench of the SC <u>held</u> that Section 124A is applicable only in cases “where there is violence or incitement to violence in the alleged act of sedition”.	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)