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A Study on the Historical and Contemporary Impact of Sedition Laws in India with Comparison to the International Front

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ABSTRACT

Sedition laws in India, outlined in Section 124A of the Indian Penal Code (IPC), carry a complex history and remain a focal point of considerable debate. Originating during the colonial era under British rule, these laws were initially crafted to suppress dissent and quash movements against British authority. However, in the post-independence era, the continued existence of sedition laws has prompted discussions regarding their relevance in a democratic society. Section 124A defines sedition as any act or attempt to evoke hatred or contempt towards the government established by law through words, signs, or visible representation. The controversy surrounding sedition laws predominantly centers on their potential misuse to stifle dissent and impede freedom of expression. Critics argue that the severe penalties associated with these laws can be wielded against individuals expressing legitimate criticism of government policies, thus infringing upon the fundamental right to free speech. The question of whether it is necessary to abolish sedition laws in India has become a contentious issue. Advocates for their retention argue that these laws are essential for maintaining public order and safeguarding the integrity of the state. They contend that in a diverse and populous democracy like India, where divergent opinions and ideologies coexist, legal provisions are necessary to prevent attempts to destabilize the government through violent means. Conversely, proponents of the abolition of sedition laws assert that they are relics of a bygone era and are inconsistent with the principles of free speech in a democratic society. Concerns about their misuse, especially against journalists, activists, and dissenting voices, have fueled calls for reform or repeal. Striking a balance between protecting national security and upholding democratic values remains a nuanced challenge, prompting ongoing discussions about the necessity and appropriateness of retaining or abolishing sedition laws in India.

Keywords: *Sedition, Democracy, Freedom of Speech and Expression, National Security, Criticism, Colonial Law, Constitutionality*

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I. INTRODUCTION

Sedition laws, deeply entrenched in the legal framework of India, stand as a complex and often contentious facet of the nation's jurisprudence. Rooted in the colonial-era Section 124A of the Indian Penal Code³, these laws have undergone various interpretations and applications over the years, shaping the boundaries of free speech and dissent. In recent times, the intersection of sedition laws with the dynamics of a rapidly evolving society has sparked intense debates on the delicate balance between national security and individual freedoms.

Historically, sedition laws were introduced during British rule to suppress dissent against colonial rule, and post-independence, they found a place in the Indian legal system. However, the expansive nature of these laws has given rise to concerns about potential misuse and stifling of legitimate dissent. Cases involving activists, journalists, and citizens facing sedition charges have ignited a national discourse on the need for a nuanced and contemporary approach to sedition in a democratic India.

This article embarks on a comprehensive exploration of sedition laws in India, delving into their historical context, legal provisions, and the evolving judicial interpretation. It scrutinizes notable cases that have brought the issue to the forefront and examines the implications of the laws on freedom of expression and democratic ideals. As the nation grapples with the delicate balance between safeguarding national interests and upholding individual liberties, a critical analysis of sedition laws becomes imperative in fostering a legal framework that aligns with the principles of a modern and democratic India.

MEANING OF SEDITION

Section 124-A of the Indian Penal Code⁴ (IPC) addresses sedition, yet it notably lacks a precise definition of the term within its provisions. While the section delineates the offenses falling under the ambit of sedition, it does not explicitly articulate the nature of seditious conduct. Stephen⁵, in his Commentaries on the Laws of England (21st Edition, volume IV, pages 141-142), provides a definition of sedition, characterizing it as behavior that, either in its purpose or natural outcome, involves the illicit manifestation of dissatisfaction with the Government or the prevailing societal order. This seditious conduct can manifest through expressions by words, actions, or writings.

³ Indian Penal Code, 1860, Section 124-A

⁴ *Ibid.*

⁵ J. Stephen, A History of the Criminal Law of England.

In the legal case of *Rex vs. Adler*⁶, the court elucidates the law of sedition by emphasizing that clarity exists in the legal framework. According to the court, anyone who, through language—whether written or spoken—incites or encourages others to employ physical force or violence in a public matter connected with the State is deemed guilty of publishing a seditious libel. The court underscores the ordinary meaning of "sedition," suggesting that it signifies a tumult, an insurrection, a popular commotion, or an uproar, inherently implying the presence of violence or lawlessness in some form.

Sedition is characterized as active disloyalty, encompassing acts aimed at fomenting discontent, instigating public disturbance, or inciting civil strife. The legal perspective defines sedition as any actions with the intent to generate dissatisfaction, sow public discord, or engender civil conflict. This includes efforts to breed animosity or disdain towards the Sovereign, the Government, laws, or the constitutional framework of the realm. In essence, it encompasses all endeavors that seek to foster public disorder⁷.

In essence, sedition, as contemplated by these legal perspectives, encompasses acts and expressions that unlawfully convey dissatisfaction with the government or societal order, with the mode of expression extending to words, deeds, or written communication. The legal definition, as articulated by the court, emphasizes the connection between sedition and the incitement of physical force or violence in matters of public concern related to the State.

II. LAW RELATING TO SEDITION IN INDIA

1. Section 124A of Indian Penal Code 1860, provides that “*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 with 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*”.⁸
2. Section 95 of Code of Criminal Procedure 1973, provides that “*Power to declare certain publications forfeited and to issue search warrants for the same. Where-*
 - (a) *any newspaper, or book, or*
 - (b) *any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section*

⁶ *Rex v. Adler*, (1909) 22 CCLC 1.

⁷ *Nazir Khan v. State of Delhi*, 2003 (8) SCC 461.

⁸ *Supra*, at 1.

*153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub- inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be”.*⁹

3. Seditious Meeting Act 1907, was enacted during British Raj for purpose of consolidating and amending laws related to the prevention of meeting which promote sedition or to cause a disturbance to public tranquility. It was later replaced by Prevention of Seditious Meeting Act, 1911. Section 5 of this act provides that *“The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquility”.*¹⁰
4. Unlawful Activities (Prevention) Act 1967, also known as “Anti-terror law” was enacted to prevent unlawful activities direct against the integrity and sovereignty of India. Section 2(o) of this act provides that *“unlawful activity, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),--*
 - (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*
 - (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or*
 - (iii) which causes or is intended to cause disaffection against India”*¹¹

⁹ Code of Criminal Procedure, 1973, Section 95.

¹⁰ Prevention of Seditious Meeting Act, 1907, Section 5

¹¹ Unlawful Activities (Prevention) Act, 1967, Section 2(o).

III. HISTORY OF SEDITION LAW IN INDIA

Indian Penal Code was drafted by Lord Thomas Babington Macaulay in 1837 and it was enacted in the year of 1860. Section 124A of IPC which provides for sedition was inserted by an amendment which introduced by British politician, James Stephen in 1870. The British government claimed that the amendment was introduced to account for political conditions in India. This section was introduced for the purpose of preventing Wahabi activities.

In case of *Queen Empress v. Jogendra Chunder Bose*¹², Editors of Bengali Magazine were charged with sedition for criticizing the Age of Consent Act, 1891 passed by the British government. The petitioners contended that sedition law is only applicable to those who have written seditious matters and not those who have published it. The Calcutta High Court rejected their contention and held that they are liable for sedition on ground that mere publication of seditious magazine is sufficient to constitute sedition.

In the case of *Emperor v. Bal Gangadhar Tilak & Keshav Mahadev Bal*¹³, The Freedom fighter, Bal Gangadhar Tilak was charged with sedition for writing articles against the British government. The Bombay government claimed that his incited disaffection that led to killing of two British officials. The Bombay High Court widened the scope of disaffection towards the government under Section 124A of IPC include disloyalty. The court held that he was liable for sedition under section 124A of IPC. He was deported to Burma from 1908 to 1914.

In the case of *Mrs. Annie Besant v. The Advocate General of Madras*¹⁴ (1919), The Petitioner was charged with sedition on the ground that various articles criticizing the policies of government were published in 'New India', the printing press owned by the petitioner. However, the court acquitted the petitioner because the prosecution failed to establish intention that she has a tendency to excite or attempts to excite disaffection towards the government.

In *Re: Mohandas Karamchand Gandhi Case*¹⁵ (1920), The British government accused Mohandas Karamchand Gandhi of inciting rebellion through his writings in the Young India journal in 1922. He faced a sedition trial at the Sessions Court in Bhadra, Gujarat, along with the publisher of the journal. Both of them were held liable for sedition under section 124A of IPC.

In the case of *Niharendu Dutt Majumdar v. Emperor*¹⁶ (1942), the Federal Court observed that

¹² (1892) ILR 19 Cal 35.

¹³ (1917) 19 BOMLR 211.

¹⁴ (1919) 21 BOMLR 867.

¹⁵ (1920) 22 BOMLR 368.

¹⁶ AIR 1939 Cal 703

“Public disorder or likelihood of public disorder is sufficient to constitute an offence of sedition under section 124A of IPC”.

In the case of *Emperor v. Sadashiv Narayan Bhalerao*¹⁷ (1947), the Privy Council overruled the decision of *Niharendu Majumdar* case and held that “excitement of enmity feelings towards the government is sufficient to constitute an offence of sedition”

SEDITION IN INDEPENDENT INDIA:

The Constituent Assembly Debates in 1947-48 were about the Rights to Freedom of Expression. Vallabhbhai Patel wanted to make an exception for ‘seditious’ language and said that it should not be part of the right to free speech. But K.M. Munshi opposed this idea and said that this exception was from the colonial times and had been used to suppress the freedom movement. The Constituent Assembly agreed with Munshi and rejected Patel's idea in 1948.¹⁸

In the case of *Romesh Thoppar v. State of Madras*¹⁹ (1950), The Madras government banned the circulations of journal “Cross-road” within the state on the ground that the petitioners have criticize the government. Justice Patanjali Shastri highlighted the fact that the Constituent Assembly had deliberately removed the word ‘sedition’ from the Freedom of Expression exceptions.

In *Superintendent, Central Prison, Fatehgrah v. Ram Manohar Lohia*²⁰ (1960), The petitioner was a socialist leader who charged with sedition on the ground that exhorting citizens not to pay their taxes. The Supreme Court held that there must a proximate connection between speech and violence rather than relying on remote possibilities.

In the case of *Balwant Singh & Anr v. State of Punjab*²¹ (1995), the appellants were charged with sedition on the ground they raised the slogans “Khalistan Zindabad and Raj Karega Khalsa” in the public place on the day when former Prime Minister Indira Gandhi was assassinated. The Supreme Court acquitted the petitioners stating that merely raising without inciting violence does not amount to sedition.

In the case of *Raghubir Singh v. State of Bihar*²² (1987), the accused was charged with sedition based on letters recovered from him. It was held that in order to constitute an offence of conspiracy and sedition, it is not necessary that the accused himself should author of seditious

¹⁷ (1944) 46 BOMLR 459

¹⁸ Constitutional Assembly Debates – Volume VII – 1st December 1948.

¹⁹ AIR 1950 SC 124.

²⁰ AIR 1960 SC 633

²¹ AIR 1976 SC 230

²² AIR 1987 SC 149

material.

In the case of *Dr. Vinayak Binayak Sen Pijush Babun Guha v. State of Chhattisgarh*²³ (2011), the question before the court whether the term “otherwise” in section 124A of IPC includes possession. The court that held the accused is liable for sedition based on the articles including books, magazines and letters recovered from his house.

In the case of *Sanskar Marathe v. State of Maharashtra*²⁴ (2012), Political cartoonist Assem Trivedi was charged with sedition under section 124A of IPC. it was alleged that he published several cartoons defaming the Parliament of India and the Indian Constitution. Thereby, spreading hatred towards government. The Court observed that the cartoons created by him was devoid of wit, humor and sarcasm. It was held that he was not liable for sedition.

In the case of *Kanhaiya Kumar v. State of NCT of Delhi*²⁵ (2016), the accused were charged with sedition on the ground that he actively participated in an event organized to protest against the hanging of Parliamentary attack convicts namely Afzal Guru and Maqbool Bhatt. However, The Supreme Court dismissed the petition.

In the case of *Vinod Dua v. Union of India*²⁶ (2021), the petitioner was a journalist who was charged with sedition for speaking against the Prime Minister Narendra Modi and the Central government on his Youtube show. However, the Supreme Court quashed an FIR lodged against the petitioner. It upheld the rights to citizens to criticize the government.

In the case of *State v. Disha A. Ravi*²⁷ (2021), the accused was a climate change activist. She was charged with sedition for involvement with an online toolkit related to Greta Thunberg during Indian Farmers Protest. However, she was released by the court on the ground that there is no evidence to prove that she was connected to Khalistani separatists.

IV. CONSTITUTIONALITY OF SEDITION LAWS IN INDIA

In 1950, concurrent with India's emergence as a republic, the Punjab and Haryana High Court, in the case of *Tara Singh Gopi Chand v. The State*²⁸, declared Section 124-A (S.124A) unconstitutional. Judges Weston and Khosla posited that this sedition provision contradicted the fundamental right to freedom of speech and expression, asserting that laws applicable during foreign rule became inappropriate post-independence. They argued that in a dynamic

²³ (2011) 266 ELT 193

²⁴ Criminal Public Interest Litigation No. 3 of 2015

²⁵ W.P. (Cri.) 558/2016, Cri. M.A. Nos. 3237/2016 & 3262/2016

²⁶ W.P. (Cri.) 154/2020.

²⁷ W.P. (Cri.) 2297/2021

²⁸ 1951 CriLJ 449

democratic state, laws concerning sedition must evolve in tandem with changing political ideologies and ruling parties. Acknowledging Article 19(2)'s allowance for reasonable speech restrictions, the judges emphasized that such limits should align with constitutional principles.

In 1958, the Allahabad High Court, in the case of *Sabir Raza v. State*²⁹, faced a constitutional challenge similar to the one in 1950. Justice Raghubar Dayal asserted that any criticism directed at the Government, a Member of Parliament, or government policies falls within the protected domain of free speech. Even if such criticism disrupts public order, according to this perspective, it should not be subject to penalization under sedition. Addressing concerns about state security, the Court argued that the disturbance of public order doesn't necessarily imply an overthrow of the State. Only through acts of rebellion and mutiny can the State be overturned, emphasizing the protection of the right to criticize the government under the umbrella of free speech.

A year later, in *Ram Nandan v. State*³⁰, the Allahabad High Court unequivocally declared Section 124-A (S.124A) unconstitutional. The court asserted that this section, imposing restrictions on freedom of speech, did not align with "public interest." Ram Nandan, an activist charged with sedition for criticizing the Congress government's handling of extreme poverty and advocating for cultivators to organize an army, further fueled the court's stance.

In 1962, the Supreme Court faced a pivotal moment in the landmark *Kedar Nath* case³¹. The constitution bench departed from earlier High Court decisions, establishing a new legal precedent. The court ruled that sedition remains a valid exception to free speech as long as its intent is to incite violence. The case revolved around Kedar Nath, facing sedition charges for a speech accusing the Congress government of corruption and criticizing its actions against land redistribution efforts.

Justice Sinha, delivering the judgment, outlined the scope within which sedition could be applied. He emphasized that expressions of disloyalty toward the government, even in strong language, would not qualify as sedition unless they resulted in "public disorder by acts of violence." The *Kedar Nath* judgment introduced a pivotal criterion for sedition: a clear nexus between seditious expressions and the potential for violence.

The ruling redefined the contours of sedition law in India, influencing subsequent interpretations and applications. It established a precedent requiring a connection between

²⁹ Cri. App No. 1434 of 1955

³⁰ AIR 1959 All 101

³¹ *Kedarnath Singh v. State of Bihar*, AIR 1962 SC 955.

sedition expressions and the potential for violence, striking a balance between free speech and safeguarding against potential harm. The court underscored that the mere possibility of resulting public disorder did not justify restricting the fundamental right of freedom of speech and expression. In the context of Nandan's case, the court concluded that sedition charges did not align with the broader public interest, deeming Section 124-A unconstitutional.

This ruling highlighted a commitment to safeguarding the constitutional right to free speech, emphasizing the need for restrictions grounded in substantial concerns rather than conjecture. The legal landscape surrounding the intersection of free speech and the preservation of public order in India was significantly shaped by the Kedar Nath judgment, setting a precedent for evaluating the legitimacy of sedition charges.

V. ABUSE OF SEDITION LAWS – A THREAT TO DEMOCRACY?

In contemporary democracies, the assertion that democracy is the most effective form of government is a widely held belief. At the core of this system is the notion that the people are the paramount element, and the government operates on their behalf. Democracy, characterized by the sovereignty of the people and the rule of law, is deemed robust when these fundamental elements are preserved. As articulated by Abraham Lincoln, democracy is a form of governance crafted, operated, and intended for the people. Despite this democratic ideal, certain limitations on freedom of speech and expression exist in democratic nations, including India.

India, recognized as one of the world's prominent democratic nations, imposes restrictions on freedom of speech and expression. Section 124A of the Indian Penal Code, commonly known as the sedition law, is one such restriction. The law of sedition has generated considerable controversy as it is perceived by many as a draconian measure against individuals who express dissent against the ruling government. Although ostensibly aimed at protecting the government from unlawful activities, particularly violence against the state, the sedition law's application becomes contentious when considering whether contempt against the government equates to sedition.

The vagueness and ambiguity within the legal provisions contribute to the rampant misuse of Section 124A. Individuals expressing criticism against the state, especially when highlighting issues such as abuse of power, have found themselves subject to sedition charges. Recent instances, such as cases involving Facebook pages, critiques of yoga experts, charges against students for cheering Pakistan, and sedition cases against scholars and authors, including Arundhati Roy, underscore the contentious nature of the sedition provision. These instances point to a significant undermining of citizens' rights to dissent, protest, and criticize the

government within the framework of a democratic India.

The crux of the issue lies in the broad interpretation of sedition, where even mild criticism or comments against the state can result in sedition charges, depriving individuals of their right to express opinions freely. In a democratic system, opposition parties are expected to create disaffection against the ruling government, and citizens have the right to voice public opinion against governmental policies. This process is essential for drawing attention to the government's shortcomings, such as corruption or misuse of power, fostering accountability within the democratic framework.

Controversy surrounding the misuse of the sedition law in India has historical roots. Initially added to the legal code, it faced opposition from the drafters of the Indian constitution who were concerned about its potential abuse to suppress the voices of nationalists. The abuse of sedition provisions against nationalists led to its exclusion from restrictions on freedom of speech and expression under Article 19(2) of the Constitution. However, in contemporary times, the sedition law has evolved into a tool employed by the government to suppress dissent and bona fide criticism, a departure from its intended purpose.

Pt. Jawaharlal Nehru, one of India's founding leaders, expressed reservations about the relevance of Section 124A in the Indian Penal Code, stating that it did not deserve a place in the legal framework. The misuse of sedition provisions today serves as evidence of its dubious role in stifling legitimate dissent and freedom of expression. The law, perceived as vague and ambiguous, becomes a potent weapon in the hands of the ruling government to target anyone critical of its ideology and actions.

The vagueness of the sedition law, as evidenced by the *Shreya Singhal* case³², adds to the complexity. While the legal judgment clarified that only incitement against the government constitutes a criminal activity, advocacy itself is not a crime. However, the gap between legal interpretation and practical application widens, leading to increased misuse of the law. Recent statistics from the National Crime Reports Bureau reveal a surge in sedition cases between 2015 and 2018. In the period from 2016 to 2018, 332 people were arrested under sedition provisions, with only seven resulting in convictions.³³

Thus, the sedition law in India has become a subject of intense scrutiny and controversy. Despite its initial exclusion from constitutional restrictions on freedom of speech, its contemporary

³² *Shreya Singhal v. UOI*, AIR 2015 SC 1523.

³³ NCRB, January 10 2020, available at <https://www.deccanherald.com/national/only-4-sedition-cases-saw-conviction-in-4-years-ncrb-793187.html> (Last visited on 24.11.2023)

application raises questions about its compatibility with democratic principles. The widespread misuse of Section 124A, coupled with its vague and ambiguous nature, underscores the urgent need for a reevaluation of the sedition law to ensure it aligns with the democratic ideals enshrined in the Indian Constitution. The balance between safeguarding national interests and preserving citizens' rights to dissent and express their opinions remains a critical challenge for India's legal and political landscape.

VI. SEDITION IN THE INTERNATIONAL CONTEXT

The British colonial rule in India introduced the concept of sedition as a means to suppress the voices of prominent freedom fighters such as Bal Gangadhar Tilak and Mahatma Gandhi, aiming to maintain control over India. This historical context highlights the origin of sedition laws in India as tools of colonial oppression. Interestingly, in the United Kingdom, the country that introduced sedition to India, the law underwent significant changes, leading to its abolition in 2009.

The evolution of sedition legislation in India reflects a dynamic process over time. While it has seen modifications, it remains a point of contention and debate. Globally, variations in the interpretation and application of sedition laws are notable. Different nations have diverse perspectives on the concept, leading to substantial differences in understanding and implementation.

Examining cases from around the world illustrates this divergence in the approach to sedition. Varied legal traditions and cultural contexts influence how nations perceive and enforce sedition laws. The discussion of select cases will shed light on the multifaceted nature of sedition legislation on a global scale, emphasizing the need for a nuanced understanding of its implications in different jurisdictions.

1. UNITED KINGDOM:

During the era of monarchy, seditious conduct was equated with treason, and the Statute of Westminster in 1275 solidified the king's divine right and the principles of feudal society as indisputable. Seditious libel was closely tied to blasphemous libel, as the State and the Church were perceived as inseparable entities. The Sedition Act of 1661 formally criminalized sedition in the United Kingdom, with the 'De Libellis Famosis' case³⁴ firmly establishing the concept of seditious libel.

In 1977, the Law Reforms Committee, now the Law Commission, recommended the abolition

³⁴ 77 Eng. Rep. 250, 5 Coke 125 (1605).

of sedition statutes in the UK. Subsequently, the Criminal Justice and Immigration Act of 2008 made blasphemous libel illegal, and the democratically elected government passed this legislation³⁵. The provisions related to seditious libel and sedition were later eliminated in 2009 through the Coroners and Justice Act.³⁶

Crucially, the United Kingdom, which serves as a foundation for Indian law, no longer recognizes sedition as a crime. The UK's abandonment of these outdated charges has been cited as a model for other nations with similar laws that have been employed to suppress political dissent and curb journalistic freedom. By discarding these offenses, the UK is poised to take a leadership role in advocating against legislation used to curtail free speech in other countries.

The elimination of these charges not only reflects a departure from historical legal relics but also positions the UK as a proponent of free expression on the global stage. This move underscores a commitment to fostering an environment where dissent is not stifled, and individuals can freely express their opinions without fear of legal repercussions.

2. UNITED STATES OF AMERICA:

The bastion of freedom, the United States, has not hesitated to deploy anti-sedition laws to quell dissent. In response to the quasi-war with France, the Federalist administration enacted the Aliens and Sedition laws in the late 18th century, specifically targeting foreigners and non-citizens sympathizing with France residing in the United States of America. Among these laws was the infamous Sedition Act of 1798, which prohibited Americans from uttering, writing, or publishing slanderous or libelous remarks about the federal government.³⁷

Given that press publications were the primary political tools for political parties during this period, the Sedition Act disproportionately targeted Democratic-Republican journalists. This incited widespread public opposition, and in a significant turn of events, the Sedition Act was repealed on March 3, 1801, with the inauguration of the incoming Republican administration.

The Sedition Act of 1918 marked another chapter in the United States' history with anti-sedition legislation, emerging during World War I. This Act criminalized actions encouraging disloyalty among military personnel, treason against the government, the Constitution, the armed forces, or the flag, or assistance to nations at war with the United States. However, the US Supreme Court later overturned this Act.³⁸

³⁵ Criminal Justice and Immigration Act, 2008.

³⁶ Coroners and Justice Act, 2009.

³⁷ The Sedition Act, 1798.

³⁸ The Sedition Act, 1918.

Presently, treason and seditious conspiracy remain offenses under Articles 2381 and 2384 of the Federal Criminal Code in the United States.³⁹ Notably, the evolution of anti-sedition laws in the US has been marked by instances of implementation followed by judicial intervention, highlighting the delicate balance between national security concerns and protecting individual freedoms.

A pivotal distinction between the approach of India and the United States toward sedition lies in the broader scope of India's sedition law compared to its historical counterpart in the US. In India, punishment can be levied for any expression of contempt, disaffection, or hatred against the government, enabling charges against individuals who speak out against the government. In contrast, the United States lacks a specific sedition provision with comparable breadth.

Fundamentally, both countries share a common objective of safeguarding the people and their rights to freedom and expression. However, the nuances of how each nation interprets and applies sedition laws reveal divergent legal landscapes. While the United States has experienced periods of enacting and subsequently revising anti-sedition laws, India's sedition law persists, generating debates about its compatibility with democratic principles and the need for potential reforms.

In essence, the historical and contemporary contexts of sedition laws in the United States and India underscore the complexities involved in balancing national security concerns with the preservation of individual liberties. The contrasting trajectories and current implications of these laws in the two nations offer a rich terrain for comparative legal analysis and reflection on the evolving nature of free speech in democratic societies.

3. RUSSIA:

The criminalization of sedition in Russia operates under the guise of treason and espionage, delineated within the Russian Criminal Code, outlining specific behaviors deemed unlawful. For Russian nationals, the revelation of state secrets or collaboration with a foreign entity in actions perceived as hostile to Russia's security is classified as treason. Foreign nationals engaging in activities such as providing state secrets to a foreign entity or collecting information directed by a foreign intelligence service are also encompassed within this legal framework.⁴⁰

Notably, recent legislative developments in Russia have expanded the scope of prohibited activities. Two new laws have been enacted, criminalizing acts of open disobedience to the government, its officials, and Russian society. Furthermore, dissemination of false material

³⁹ 18 U.S. Code, Articles 2381 and 2384.

⁴⁰ The Criminal Code of Russian Federation, Article 282.

concerning matters of public interest, commonly referred to as fake news, is now considered an offense.

While both India and Russia maintain sedition laws with the overarching goal of safeguarding state interests, distinctions emerge in their respective applications. India's sedition law possesses a broader ambit, encompassing a diverse array of activities. In India, sedition charges can be invoked for any act or attempt to instigate hatred or contempt toward the government established by law. In contrast, Russia's sedition law specifically addresses public calls for actions aiming to violate the territorial integrity of the Russian Federation.

Furthermore, variations in the severity of penalties exist between the two nations. India imposes a more stringent maximum punishment for sedition, with the potential for a life sentence. In contrast, Russia's sedition law carries a maximum sentence of up to four years in prison.

It is imperative to acknowledge that sedition laws in both India and Russia have faced criticism from human rights organizations for their perceived use in stifling dissent and curbing freedom of speech. Over the years, there has been a growing chorus advocating for the repeal of these laws in both countries, citing concerns about their potential misuse to suppress legitimate expressions of dissent and criticism.

The legal landscapes in India and Russia, shaped by their respective sedition laws, underscore the delicate balance between national security imperatives and the preservation of fundamental democratic principles. The recent legislative changes in Russia signal an expansion of state control over dissenting voices, raising concerns about the trajectory of freedom of expression in the country. Similarly, the continued existence of sedition laws in India prompts ongoing debates about the need for legal reforms to align with contemporary democratic norms and ensure the protection of citizens' rights to dissent and express their opinions freely.

4. AUSTRALIA:

The inception of sedition as a criminal offense in Australia can be traced back to the Crime Act of 1920, representing the first comprehensive legal framework that incorporated provisions for sedition. Notably, this Act diverged from the traditional common law definition of sedition, as it did not necessitate proof of subjective purpose or instigation of violence or public disturbance for a conviction. Consequently, the prohibitions on sedition outlined in the Crime Act of 1920 were broader in scope than the conventional common law understanding.

In 1984, the Hope Commission was established, and it recommended aligning the definition of sedition in Australian law with the definition recognized at the Commonwealth level. Subsequently, in 2005, sedition was explicitly included as an offense in Schedule 7 of the Anti-

Terrorism Act (No 2) 2005. Concurrently, defenses against charges of sedition were incorporated into the Criminal Code Act of 1995 through the addition of articles 80.2 and 80.3.

An important juncture in the evolution of Australia's approach to sedition occurred with the Australian Law Reform Commission (ALRC) scrutinizing the terminology employed in the 2005 amendment. Following the ALRC's examination, it was recommended that the term "sedition" be replaced with a focus on charges involving the incitement of violence. This recommendation found legislative expression in the National Security Legislation Amendment Act of 2010, signifying a shift away from the explicit use of the term "sedition" in the legal context.

The trajectory of Australia's sedition laws reflects a dynamic process shaped by legal amendments and recommendations from commissions and reform bodies. The evolution, notably marked by the alignment with Commonwealth definitions and the subsequent transition away from explicit references to sedition, underscores the ongoing efforts to balance legal frameworks with contemporary understandings of free speech, public order, and national security.

5. NEW ZEALAND:

The definition of sedition in New Zealand closely mirrors that of England and finds its codification in Sections 81 to 85 of the Crimes Act of 1961. The legal considerations leading both England and New Zealand to criminalize sedition encompass several key aspects:

Firstly, the definition of sedition is deemed ambiguous and poorly defined, violating fundamental tenets of criminal law. This ambiguity is particularly problematic as it alludes to a historical context, specifically the concept of sovereignty residing in the person of the King, which is no longer applicable in the contemporary legal landscape. The outdated nature of this law underscores the necessity for its repeal.

Additionally, the criminalization of certain political opinions, even if they may be perceived as absurd or unpopular, is considered incompatible with democratic principles. The recognition that certain viewpoints, however unconventional, should not be deemed illegal reflects a commitment to safeguarding democratic values. The notion of sedition is seen as a violation of widely acknowledged fundamental rights, specifically the rights to free speech and expression. This recognition is critical in acknowledging that diverse political opinions, even those challenging the status quo, should not face legal censure.

Moreover, the critique against sedition laws emphasizes their potential misuse as tools to stifle political dissent and impede official criticism. The fear is that, rather than serving a legitimate

legal purpose, these laws can be wielded to suppress free speech and intimidate those who may wish to express dissenting opinions. Consequently, the criminalization of sedition is viewed as a threat to free speech, undermining the principles that form the bedrock of democratic societies.

In essence, the legal arguments against sedition in both England and New Zealand converge on the notions of clarity in legal definitions, alignment with democratic principles, and protection of fundamental rights. The recognition of the evolving societal context and the imperative to safeguard free speech underscore the need for reconsideration and, in some cases, repeal of sedition laws to ensure that legal frameworks align with contemporary democratic values.

VII. DOES INDIA STILL NEED SEDITION LAWS?

The introduction of the sedition law in India by the British colonial rulers was a tool used to suppress dissent and prevent Indians from expressing opposition to the government. A notable historical figure, Bal Gangadhar Tilak, was the first individual to be convicted under this law for articles published in his Marathi newspaper, *Kesari*. Prominent freedom fighters such as Mahatma Gandhi, Jawaharlal Nehru, and Bhagat Singh also faced charges under the sedition law.

In 1962, the Supreme Court of India deemed the sedition law constitutionally valid, asserting that its existence was crucial to preventing a state of chaos and maintaining order by curbing the spread of hate or disorder against the government. However, over time, concerns have been raised about the misuse of sedition charges to stifle criticism of government policies, which is an inherent part of a democratic society. Criticism, whether from the media or the general public, is a fundamental aspect of freedom of expression and should not be curtailed.⁴¹

A significant development occurred in May 2022 when the Supreme Court of India temporarily suspended the sedition law and halted all pending court trials under Section 124A of the IPC. This decision allowed the Union of India to review the colonial-era law. Led by Chief Justice N.V. Ramana, a three-judge bench directed the suspension of all sedition charges to prevent further misuse of the law. This marks a commendable step, signaling a departure from historical abuses of the sedition law in India.

The suspension of the sedition law is a timely move to reassess and address the colonial-era legislation that has been criticized for hindering freedom of speech and expression. The contention lies in the inappropriate use of the law to silence dissenting voices. Criticism, whether directed at government policies or laws, is an essential aspect of democratic discourse

⁴¹ Kedar Nath Singh v. State of Bihar, AIR 1962 SC

and should not result in individuals being labeled as anti-national. The move by the Supreme Court reflects a progressive stance to rectify the misuse of laws that infringe upon fundamental rights.

WHAT IS THE LAW COMMISSION'S STAND ON SEDITION LAWS?

In its 39th Report in 1968, the Law Commission dismissed the proposal to repeal Section 124A of the Indian Penal Code (IPC), which deals with sedition.⁴² However, in its 42nd Report in 1971, the Commission advocated for an expanded scope of the section. It recommended including the Constitution, the legislature, and the judiciary, in addition to the government established by law, as entities against which 'disaffection' should not be tolerated.⁴³

A significant shift in perspective occurred in August 2018 when the Law Commission of India released a consultation paper, suggesting a reconsideration or repeal of Section 124A.⁴⁴ The paper recommended that the provision should only criminalize acts carried out with the intention to disrupt public order or overthrow the government through violence and illegal means. The Commission emphasized the importance of allowing individuals the liberty to express their affection for their country in diverse ways. Constructive criticism, debates, and pointing out government policy loopholes were cited as valid means of expressing patriotism.

According to the consultation paper, expressions used in conveying such thoughts might be harsh and unpleasant to some, but this alone should not qualify the actions as seditious. The Commission proposed invoking Section 124A only in cases where the intention behind an act is to disrupt public order or overthrow the government through violent and illegal means. The document underscored that not every exercise of the right to free speech and expression should be labeled as seditious. Mere expression of thoughts incongruent with the government's policies should not warrant charges under Section 124A.

The Commission proposes the introduction of a procedural safeguard for Section 124A, mandating a preliminary inquiry by a police officer of Inspector rank before the registration of a First Information Report (FIR) for sedition. Subsequently, based on the officer's report, permission from the Central or State Government would be required to proceed with the FIR. To establish procedural safeguards against potential misuse of Section 124A, the Commission recommends incorporating a provision akin to Section 196 (3) of the Code of Criminal Procedure, 1973, as a proviso to Section 154 of the same code.

⁴² 5th Law Commission of India, 39th Report, 1968.

⁴³ 5th Law Commission of India, 42nd Report, 1971.

⁴⁴ 21st Law Commission of India, Consultation Paper on Sedition, 30th August 2018.

Additionally, the Commission suggests amending Section 124A to explicitly state that it penalizes individuals "with a tendency to incite violence or cause public disorder." In terms of enhanced punishment, the report proposes an increase in the jail term for sedition to a maximum of seven years or life imprisonment, compared to the current provision allowing for a term of up to three years or life imprisonment.

Regarding the justifications for retaining the sedition law, the report contends that allegations of misuse alone do not warrant the automatic repeal of Section 124A. It underscores instances where various laws have been misused for personal rivalries and vested interests. The report argues that repealing the sedition law entirely could pose serious adverse consequences for the security and integrity of the country, providing opportunities for subversive forces to exploit the situation.

This shift in the Law Commission's stance reflects a more nuanced understanding of sedition laws. The emphasis is now on differentiating between legitimate expressions of dissent and actions with the actual intention of causing public disorder or violently overthrowing the government. The evolving perspective seeks to strike a balance between preserving the right to free speech and maintaining public order while avoiding the indiscriminate use of sedition charges.

VIII. CONCLUSION & SUGGESTIONS

In summary, the examination of sedition laws in India reveals a delicate equilibrium between the imperatives of national security and the necessity to uphold democratic principles. The consequential impact of these laws on the freedom of expression and dissent underscores significant concerns, particularly when instances of potential misuse come to light. Navigating this intricate landscape underscores the pressing need for amendments. Essential measures include refining the definition of sedition, introducing stringent intent requirements, and establishing mechanisms for legal oversight to ensure a fair and balanced legal framework. The incorporation of periodic reviews, alignment with international standards, and active public consultations are integral facets of fostering a responsive and dynamic legal system. In the pursuit of national interests, it is paramount to safeguard the very democratic ideals that form the bedrock of our nationhood.

Enhancing sedition laws in India demands a meticulous equilibrium between upholding national interests and preserving essential democratic principles. To bolster the efficacy and fairness of these laws, several recommendations can be considered. Some of the recommendations to improve the current position of Sedition Laws in India are as follows:

1. Clarify and narrow the definition of sedition, avoiding vague language.
2. Introduce a requirement to prove intent to incite violence or public disorder.
3. Consider proportionate penalties for different levels of seditious acts.
4. Align sedition laws with international human rights standards and best practices around the globe in formulating and amending sedition laws.
5. Conduct periodic legislative reviews to ensure relevance.
6. Establish an independent body to assess the validity of sedition charges.
7. Differentiate between seditious acts and those not directly threatening national security.

By incorporating these suggestions, India can work towards creating sedition laws that effectively address national security concerns while upholding the principles of democracy and protecting citizens' rights to free expression and dissent.
