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Critical Analysis of the Sedition Law in India: With Freedom of Speech

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ABSTRACT

Sedition is a crime that involves inciting discontent or rebellion against the Government in power. In India, sedition is a criminal offense under Section 124A of the Indian Penal Code (IPC). This section defines sedition as an act that includes words, signs, or representations that can cause hatred or contempt for the government, or excite disaffection towards it. There has been some controversy surrounding the sedition law in India, with some arguing that it is being used to stifle dissent and suppress freedom of speech. Critics argue that the law is vague and can be misused by authorities to target individuals who are merely expressing their opinions, including journalists, activists, and academics. This shows that Sedition and freedom of speech are conflicting concepts as sedition laws criminalize speech that is considered seditious or disloyal to the government. Freedom of speech, on the other hand, is a fundamental right enshrined in many democratic constitutions, including India. In India, the Constitution guarantees the right to freedom of speech and expression under Article 19(1) (a), subject to reasonable restrictions. The Indian judiciary has recognized that freedom of speech and expression is essential for the functioning of a democratic society and has played a crucial role in upholding this right. However, the sedition law in India is often criticized for being too broad and vague, which can lead to its misuse by authorities to suppress legitimate dissent and criticism. There have been several instances in recent years where sedition laws have been used to silence voices critical of the government raising concerns about the impact on free speech. However, the Government of India upheld the Sedition Act, saying it was necessary to maintain law and order and protect the integrity of the country.

Keywords: *Sedition; Freedom of Speech; Fundamental right; democracy.*

I. INTRODUCTION

The Central Government and State continue to abuse sedition laws in the name of national security and integrity. In this state, section 19(1) (a) of the Constitution has been violated. As a result of these abuses, questions are often raised about how people who enjoy the freedom of speech and expression as a fundamental right can be convicted of sedition. One of the main

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problems with the Sedition Act is that political leaders take advantage of the vague definition of sedition in Section 124A of the IPC, which, according to the interpretation given by the Honorable Supreme Court, is much wider than that given in *Kedar Nath Singh vs. State of Bihar*², the court upheld the constitutionality of the sedition law by striking the right balance between the sedition laws on the one hand and the fundamental right to freedom of speech and expression on the other. Another problem with the law relating to freedom of speech and expression is the way it is applied. There are no clear and consistent guidelines on when sedition charges can be brought. It has been claimed that although very few sedition cases have resulted in actual convictions, it has resulted in the harassment of individuals prior to conviction, which in some cases took many years. In most cases, the charges are rarely established, but the process itself becomes a punishment. The lack of consistency in the ruling has led to inconsistencies in the area of free speech rights and opened the door for local officials and interest groups to continue to use the law to harass and intimidate unwanted dissidents. "If the freedom of expression is taken away from us, we will become silent, just like slaughtered sheep." India was once a British colony and inherited many laws, which once caused controversy. One of these laws is the Seditious Crimes Act. Since independence, the Governments have introduced certain amendments to the laws relating to the offenses of sedition to make them unconstitutional. However, this law has been used by contemporary governments to limit or restrict freedom of speech and expression. Jawaharlal Nehru also stressed the importance of freedom of speech: "I would rather have complete freedom of speech and expression, with all the dangers associated with its misuse, than oppressed regulated speech and expression." It thus includes the freedom of communication and the right to propagate or give opinions.³ And at the same time, this right asks certain difficult questions such as to which extent the state can regulate an individual's conduct. And to answer this question it can be said that reasonable restrictions can always be imposed on this right in order to ensure its responsible exercise and to ensure that it is equally available to all citizens.

II. HISTORY OF SEDITION LAW

Sedition laws have existed in various forms throughout history, but the modern concept of sedition law emerged during the 17th century in England. In 1661, the English Parliament passed the Sedition Act, which made it illegal to criticize the government, the king, or the Church of England. The law was intended to silence political opposition and dissent and was used to prosecute people who spoke out against the monarchy or expressed views deemed seditious.

² Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955

³ Radha Mohan Lal v. Rajasthan High Court, AIR 2003 SC 1467

The Sedition Act remained in force until 1689 when it was repealed as part of the Glorious Revolution. However, sedition laws continued to exist in various forms in England and other countries. In the United States, the Sedition Act of 1798 was passed by the Federalist-controlled Congress under President John Adams. The law made it illegal to criticize the federal government, the president, or Congress and was intended to suppress opposition to the Federalist Party. The Sedition Act was highly controversial and was widely criticized as a violation of the First Amendment to the US Constitution, which guarantees freedom of speech and the press. The law expired in 1801 after Thomas Jefferson and the Democratic-Republicans took power in the 1800 election.

The history of law of sedition can be traced back when the first draft of Penal Code by Macaulay in 1837 was made and the current section i.e. 124A was then placed as section 113 of the draft of 113 sections but this section was not implemented in the final draft of IPC which was implemented in 1860,⁴ But in 1870 it was further added by an amendment because at that time the absence of the law of sedition was keenly felt because of the increase in the activities of Wahabis during the year 1863 to 1870, because their agents moved freely amongst the established Muslim population of Bengal and Bombay.⁵

In India, the sedition law was first introduced by the British colonial government in 1870 and was intended to suppress Indian nationalism and independence movements. The law remained in force after India gained independence in 1947, and has been used to suppress political dissent and criticism of the government, and many Indian leaders were arrested and charged with sedition under this law. It has been noted in the history of India that most of the India's loved patriots have been convicted under this section by the British because they rose their voices against the then established government. The oldest and the first recorded case under this section was of **Queen-Empress v. Jogendra Chander Bose**⁶ in which there was a newspaper called 'Bangobasi' which was edited by Jogendra Chandra when he reacted to the section relating to the Age of Consent Act (1891) which he called "Religion in Danger" and blamed the government for the time of having forced the Europeanization of India and responsible for the economic crisis. However, he also said that Hindus never believed in rebellion and were not capable of it. The issue raised in this case is that Bangobasi once again goes beyond legitimate criticism. The prosecution alleged that their clear intent was to create a mindset in people that if given the power they would rebel, and that religious peace is so

⁴ Kunal Shah, "Journey of Sedition, Section 124A of the Indian Penal Code: has it lived up its life"? available at: [www.manupatra.com>articles>sedition](http://www.manupatra.com/articles/sedition)

⁵ Aravind Ganachari, *Nationalism and Social Reform in Colonial Situation* 57 (Gyan Publishing House, 2005)

⁶ ILR (1892) 19 Cal 35

exciting that it implies public peace. The defense, on the other hand, argued that there was no reference to "rebellion" and that it only distinguished "European and indigenous ways of thinking". However, the judge concluded that it was the spirit that was trying to keep him arouses hatred and contempt among people. But eventually, the accused demanded an apology from the then government and the court dropped the charges against him.

Another famous case of sedition in India was the trial of **Bal Gangadhar Tilak in 1897**.⁷ The trial of Bal Gangadhar Tilak started in 1897, so the facts of the case were that the Government claimed that certain speeches referring to the murder of Afzal Khan by Shivaji had incited the murder of two people, the commissioner and lieutenant British Amherst, and it happened a week later. When Bal Gangadhar Tilak returned from a reception and dinner at Government House in Pune, where he celebrated the Diamond Jubilee of Queen Victoria's reign, he was convicted of sedition but released in 1898 after an international intervention like Max Webers. It is a condition of famous personalities like Teh that they never do, speak or write anything that could arouse the government's displeasure⁸. In 1898, the Sedition Act was amended to include terms such as "hate", "contempt" and displeasure. The grievances were described at the time as "disloyal and hostile". Incitement to crime was also applied in the United Kingdom after the partition of Bengal in 1908; it was essentially a law that allowed magistrates to seize printing presses that had published seditious material. They also introduced the Seditious Meetings Act to prevent gatherings of more than 20 people. Bal Gangadhar Tilak strongly criticized the laws. Then that same year, 1908, Tilak was again indicted on the same charge of sedition. Even Mohammad Ali Jinnah tried to defend him, as Jinnah was one of the most famous faces in bars in Mumbai at the time, but Hon'ble Court judges still sentenced Tilak to 6 years in prison and sentenced to death.

After this section was added in the Penal Code, the British government tried to strengthen the law by making other statutes that will have the ambit to cover seditious expressions in all form. So with regard to the same The Dramatic Performances Act of 1876 was passed to keep a check on seditious activities in plays and Vernacular Press Act of 1878, to suppress criticism against British policies in print media was passed.⁹ Then again in 1898 the section was amended by the Indian Penal Code (Amendment) Act 1898 which provided for punishment of transportation for life or any shorter term. With the coming of this amendment it also bought certain changes in

⁷ ILR (1898) 22 Bom 112

⁸ Economic and Political Weekly Vol xlvi no 8 February 19, 2011

⁹ Arvind Ganachari, *Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response in Engaging Terror* 56 (Brown Walker Press, 2009)

the existing definition and also made bringing or attempting to bring in hatred or contempt towards the Government established by law punishable. Again in the year 1995 the section was amended and the amendment was related to the term of punishment mentioned in the act as - imprisonment for life and/or with fine or imprisonment for 3 years or both. The British Parliament enforced the Prevention of Seditious Meetings Act in 1907, so that they can prevent public meetings which are likely to lead the offense of sedition or can cause disturbance.

After India gained independence in 1947, the sedition law remained in force and was used by the Indian government to suppress political dissent and criticism. The law was widely used during the Emergency period from 1975 to 1977, when Prime Minister Indira Gandhi suspended civil liberties and arrested thousands of opposition leaders and activists.

In recent years, there has been increasing criticism of sedition laws as a violation of free speech and human rights, and many countries have repealed or amended their sedition laws citing misuse and abuse of the law by the government to suppress dissent and silence opposition. Despite these calls, the sedition law remains in force in India, and several high-profile cases have been filed under this law in recent years. One of the case was named as 'Aseem Trivedi Case'¹⁰- Aseem Trivedi is a well-known cartoonist, but his arrest in 2012 sparked debate about the purpose of India's sedition law and whether it violates fundamental rights to free speech and expression enshrined in the Indian constitution. The incitement was used to punish cartoons deemed insulting to the country. One of the designs replaced the four lions in India's national emblem with hungry wolves, and it also stated that the beginning of "Satyamev Jayate", which means truth always prevails, was replaced with "Bhrastmev Jayate", which means that only corruption reigns. He was also accused of insulting the country's national emblem and breaking India's IT laws. A cartoon depicts the Indian parliament building as a toilet and toilet paper is attached to the same cartoon. Aseem Trivedi is facing serious sedition charges against him in the Beed District Court of Maharashtra, in addition to insulting him. Additional charges for national emblems and national symbols. He was arrested in Mumbai on September 9, 2012 for sedition related to the content of his work. Former judge Markanday Katju defended Trivedi saying he had done nothing illegal. Aseem Trivedi has said he will not seek bail until the sedition charges against him are dropped, but his bail has been set at 5,000 personally based on a motion filed by the Independent Lawyers Book. Another case was 'Binayak Sen sedition case trail'¹¹ Binayak Sen was convicted of sedition in 2010 by Bilaspur District Court. In this case,

¹⁰ Sanskar Marathe v. The State of Maharashtra, Criminal Public Interest Litigation No. 3 of 2015

¹¹ Dr Vinayak Binayak Sen v. State of Chhattisgarh, Criminal Appeal No. 20 of 2011

he applied for probation and pleaded for bail pending appeal, but was rejected by the Chhattisgarh High Court, so Binayak Sen opted to oppose the Chhattisgarh High Court. On appeal, the High Court said that at the stage where the court needs to consider applications for bail and probation, the court need only briefly assess all the evidence to determine whether a conviction is warranted. justified, in which case the Supreme Court The Court held that Sen is now with Persons belonging to Maoist groups were associated with and were also involved in creating disloyalty and public hatred and inciting the people against the state, leading to the death of members of the armed forces. Sen's claim is that he was an activist working with a group called the People's Union for Civil Liberties (PUCL), which works in remote rural and forested areas, where he sought to expose police brutality and armed forces. The Honorable Supreme Court held that the right to freedom of speech and expression enshrined in Article 19(1) (a) of the Constitution of India should be used reasonably and should not be extended to disturb public order and disrupting the law. Sen was found in possession of some documents that were intended to incite public hatred against the government, and his appeal was dismissed, the court heard. But the Honorable Supreme Court allowed him to appeal, asking for probation and bailing him out until the Court of Sessions was satisfied. The Supreme Court did not give reasons for the order but said that mere possession of the documents was not enough to prove a sedition charge. Hence, Binayak Sen was released on bail.

III. FREEDOM OF SPEECH

At the time of colonial rule, the British suppressed the voices of the Indians by introducing various legislations from time to time such as the provisions of sedition under section 124A of IPC, The Vernacular Press Act 1870, and the Seditious Meetings Act, 1907. These kinds of legislation acted as a driving force to include the Freedom of Speech and Expression as a fundamental right.¹² This concept of freedom of speech has a long and complex history, dating back to ancient times. In ancient Greece, the concept of free speech was seen as essential to the functioning of democracy, with citizens given the right to speak their minds and engage in political debate. Similarly, in ancient Rome, the concept of freedom of speech was recognized as a fundamental right, and orators were allowed to speak freely in the Forum.

In modern times, the concept of freedom of speech evolved through various stages. During the Enlightenment in Europe in the 17th and 18th centuries, philosophers such as John Locke and

¹² Rai Bahadur G.K. Roy, *Press and Sedition* 133 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd Edition, 2013)

Voltaire developed theories of individual rights and freedoms, including freedom of expression. In the United States, freedom of speech is enshrined in the First Amendment of the Constitution, which was adopted in 1791. The First Amendment prohibits the government from passing laws that abridge the freedom of speech, press, religion, or assembly. However, the concept of freedom of speech was not always universally accepted. In many countries, including the United States, the right to free speech was limited to certain categories of people, such as property-owning white men. It was not until the 20th century that the right to free speech became more inclusive and was extended to all citizens, regardless of race, gender, or social class.

The history of freedom of speech in India can be traced back to ancient times when the concept of free speech was recognized as an essential element of intellectual and spiritual development. Indian literature, philosophy, and mythology are replete with references to the importance of free speech, debate, and dissent. In modern times, freedom of speech was enshrined in the Constitution of India, which was adopted in 1950. Article 19(1) (a) of the Indian Constitution¹³ guarantees the right to freedom of speech and expression to all citizens of India. However, this right is subject to certain reasonable restrictions in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense.

Over the years, there have been several instances where freedom of speech has been curtailed in India. During the colonial era, the British government imposed strict censorship laws, which restricted the freedom of the press and other forms of expression. After independence, the Indian government passed several laws that limited free speech, including the sedition law, the Official Secrets Act, and the Information Technology Act. In recent years, freedom of speech in India has come under attack from various quarters, including the government, political parties, and extremist groups. Several journalists, writers, activists, and artists have been threatened, harassed, or arrested for expressing their opinions or criticizing the government. The rise of online hate speech and fake news has also led to calls for greater regulation of social media platforms. Despite these challenges, freedom of speech remains a fundamental right in India, and civil society organizations and human rights activists continue to fight for its protection and preservation.

There have been several events throughout history that have recognized the importance of freedom of speech and its role in promoting democracy, human rights, and social justice. Some of the most significant events include:

¹³ INDIA CONST. art 19, cl. 1.

- In 1215, Magna Carta was signed, which later was regarded as the touchstone of liberty in England. While the Magna Carta did not explicitly address freedom of speech, these and other principles established in the document helped to lay the foundation for the development of this fundamental right in the centuries that followed. Today, the Magna Carta is still celebrated as a symbol of liberty, democracy, and human rights, and its legacy continues to inspire efforts to protect and expand freedom of speech around the world.
- In 1789, Declaration of the Rights of Man provided for freedom of speech.
- In 1791, The First Amendment of the United States Bill of Rights guaranteed freedom of speech, prohibiting congress from enacting any law restricting free speech except by due process of law.
- The adoption of the Universal Declaration of Human Rights by the United Nations in 1948, which recognizes freedom of expression as a fundamental human right.
- The Arab Spring uprisings in the early 2010s, which were sparked in part by demands for greater freedom of speech and political participation.
- The Charlie Hebdo shooting in Paris in 2015, which sparked a global debate about the limits of free speech and the importance of defending the right to express controversial or offensive ideas.
- The Black Lives Matter protests in the United States and around the world in 2020, which highlighted the importance of free speech and the right to protest as tools for advocating for social justice and reform.
- The ongoing debate about online hate speech and disinformation, which has raised new challenges for protecting freedom of speech in the digital age.

Article 19 of International Covenant on Civil and Political Rights also provides for freedom of speech and expression and of opinion without any interference, but at the same time it says that these laws are not absolute and are subject to the laws which restrict freedom of speech in order to maintain public order, or morality.¹⁴

There are various International treaties where the significance of freedom of speech can be found such as Article 19 of Universal Declaration of Human Rights, which provides for freedom of opinion and expression and says that everyone has the right to hold opinions without

¹⁴ Article 19, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

interference and shall have access or disseminate the information by way of any medium.¹⁵

IV. COMPARATIVE ANALYSIS OF LAW OF SEDITION IN INDIA AND IN OTHER COUNTRIES

Sedition is a legal offense that involves the use of speech or actions to incite people to rebel against their government. The law of sedition varies from country to country. In this comparative analysis, the researcher compares the law of sedition in India with that of other countries-

- **India:**

In India, sedition is defined under Section 124A of the Indian Penal Code. It states that any person who brings or attempts to bring hatred or contempt towards the government by words or by signs, or by visible representation or otherwise, will be punished with imprisonment for life, or for a term of three years or more.¹⁶ In recent years, the Indian government has used the law of sedition to suppress dissent and opposition.

- **United States:**

In the United States, sedition is a federal crime, and it is defined under 18 U.S. Code § 2384. The law states that any person who conspires to overthrow, put down, or destroy the government of the United States by force or violence will be punished with imprisonment for not more than twenty years. However, the law of sedition in the United States is rarely enforced, and it has been challenged on the grounds of violating the First Amendment of the Constitution.

- **United Kingdom:**

In the United Kingdom, sedition is not a separate criminal offense, and it has been abolished. However, there are other laws such as the Treason Act 1351, which criminalizes acts such as assisting an enemy during wartime.

- **Australia:**

In Australia, sedition is defined under Section 80.2 of the Criminal Code. The law states that any person who urges the overthrow of the government by force or violence or promotes a seditious intention will be punished with imprisonment for not more than seven years.

- **Canada:**

In Canada, sedition is defined under Section 59 of the Criminal Code. The law states that any

¹⁵ Article 19, Universal Declaration of Human Rights, 10 December 1948, 217 A(III)

¹⁶ The Indian Penal Code, 1860, Act No. 45 of 1860

person who advocates or promotes the use of force or violence to overthrow the government will be punished with imprisonment for not more than fourteen years.

In conclusion, the law of sedition varies from country to country, and while it is considered a serious offense in some countries, it has been abolished or rarely enforced in others. It is important to strike a balance between protecting national security and safeguarding the right to free speech and expression.

V. CONCLUSION AND SUGGESTIONS

• **Conclusion-**

Sedition laws attempt to limit the right to freedom of speech and expression more than international law allows. The researcher argues that the scope of the sedition law should be narrowed in some respects. One of the main purposes of restricting freedom of speech and expression is to protect the national security of the country. However, the exercise of freedom of expression is fundamental for the normal functioning of a country's democracy, but it can be restricted when national security is threatened in one way or another. In a democratic country, people should have the freedom to express their love and express their feelings towards the country in their own way. This can be done when there is some kind of constructive criticism and when gaps are found in national government programs and policies. Criticism may be harsh and unpleasant, but that does not mean it is incitement, and in the opinion of the researcher, Section 124A should only be invoked in cases of serious public order or which could pose a threat to national security.

• **Suggestions-**

The researcher suggests that-

- i. There must be reorganization of section 124A of the Indian Penal Code.
- ii. The scope the law of sedition must be narrowed down.
- iii. If section is not reorganized then the said section must be repealed from the Indian Penal Code.
- iv. Civil Society must raise awareness about the arbitrary use of sedition law.

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