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Offence of Sedition under the Backdrop of Freedom of Speech and Expression: A Comparative Study

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ABSTRACT

Freedom of speech and expression is often regarded as the fundamental right that underpins a free and democratic society. It is recognized as the cornerstone of individual self-development and is considered the most important of all rights. The virtues of democracy are praised due to the inherent presence of freedom of speech and expression. This freedom has been granted a paramount position in nearly all countries across the globe. The exercise of freedom of speech and expression can only be restricted according to the legal process. Sedition laws are one of the measures that might be implemented to limit freedom of speech in order to maintain public order. The absence of sedition as a basis for imposing restrictions on the freedom of speech and expression is notable. The Study used a doctrinal approach to examine and evaluate the legal framework governing freedom of speech and expression, specifically focusing on sedition laws in India, the United Kingdom, and the United States of America.

Keywords: *Freedom of speech and expression, Sedition, Democracy.*

I. INTRODUCTION

Crimes against public order, such as rioting and unauthorised assembly, are subordinate to sedition, which is an independent offence against the state. The crime is defined in detail in Section 124-A of the Indian Penal Code (IPC), which also specifies that the offender faces a life sentence in jail. A person is committing an act of sedition if they do anything or say anything that incites others to rebel against the government or ignore the law. In an effort to limit citizens' rights to free speech, the British government enacted these laws during the colonial era. Bal Gangadhar Tilak, Mahatma Gandhi, Subhas Chandra Bose, and others were accused of sedition. There has been a lot of back and forth about the tension between free expression and the threat of sedition. A common misconception is that politicians use sedition to subvert the First Amendment's protections for free expression. Free expression and maintaining peace are

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frequently at odds in democracies. The evolving concept of sedition as a crime exemplifies the precarious equilibrium between individual liberties and the requirements of community at large, and it is at the centre of this conflict. The complexity and contentiousness of the crime of sedition are magnified in a society that highly values the right to free speech. Because of this, we need to investigate its potential applications, definition, and compatibility with democratic principles. Freedom of speech and expression is a basic right guaranteed by the Constitution of India, as stated in Article 19(1)(a). The right to free expression is at odds with the needs of social order and national security in many countries, and the crime of sedition serves as a focal point in their legal systems. Acts or words that incite disobedience to the state or its established order constitute sedition, at its core. The original intent of sedition laws was to suppress dissent and keep the peace, but these laws have evolved throughout the years to mirror shifting social mores and political climates.

(A) Meaning

Before proceeding it is of paramount importance to comprehend the meaning of Sedition. Sedition is the act of engaging in behavior or expressing words that encourage opposition or rebellion against the established authority of a state or government. It commonly entails actions or utterances intended to incite rebellion, insurrection, or dissent to the existing system. Sedition laws are frequently employed to uphold social order and safeguard national security. However, their implementation might give rise to intricate inquiries concerning the boundaries of freedom of speech and expression. The Constitution of India provides its inhabitants with a number of essential rights that are absolutely guaranteed. The right to freedom, as outlined in Article 19, is one of these significant rights. This includes the right to freedom of speech and expression, the right to assemble without the use of arms and in a peaceful manner, the freedom to organise into unions and groups, the mobility to roam the whole Indian subcontinent, the permanence to live and work wherever in the country, and the opportunity to engage in any lawful profession, trade, or business. Article 19, paragraph 1, states that all citizens have the right to freedom of speech and expression. People who aren't citizens of India can't use this privilege; it's just for Indian citizens, often known as foreign nationals, are not eligible to exercise this right. To have the right to freely express one's own convictions and beliefs through the use of words of mouth, writing, printing, pictures, or any other medium of communication is what we mean when we talk about freedom of speech and expression. Therefore, it encompasses the act of expressing one's thoughts through any media that can be used for communication or through visible representations such as gestures, signs, and other similar means. This category includes the freedom of the press because the expression also implies publication, which is included in this

category. The freedom of speech is considered to be a genus, whereas the freedom of press is considered to be a species among itself. In order to accomplish the desired goal, which is the free dissemination of ideas, this can be accomplished either on the platform or through the press. It was in the Preamble to the Constitution of India that the people of India made a solemn declaration of their determination to ensure that all of its citizens had the freedom to think and express themselves. In the Constitution, the right to freedom of speech is affirmed. This right encompasses the right to express one's opinion, the right to seek knowledge and ideas, the right to receive information, and the right to convey information to others. It is the responsibility of the Indian state to establish all of the conditions necessary for all of its inhabitants to be able to effectively and efficiently enjoy the rights that have been mentioned. The Supreme Court of India ruled in the case of *Romesh Thappar v. State of Madras* that the freedom of speech and expression encompasses the freedom to propagate ideas, which is guaranteed by the freedom of circulation of a publication. Without circulation, a publication is of little value.

II. HISTORICAL BACKGROUND

The concept of sedition has a convoluted and lengthy history that originates with the regulation of political dissension and opposition. Throughout history, it has been used by rulers as a means of maintaining their control and putting an end to any form of resistance or rebellion. The ancient Romans were the first to codify laws prohibiting sedition, according to historical records. Treason and sabotage were severely punished in the Roman Empire due to the seriousness with which the acts were perceived as endangering the security of the state. Those found guilty of insurrection face the death penalty, exile, or confiscation of their possessions. Throughout history, governments have employed sedition laws as a means to control their citizens and censor any dissenting voices. Throughout the Middle Ages, European monarchs and other powerful people enacted anti-sedition legislation to quell any potential rebellion from the commoners, monks, and nobility. Concerns about treason grew entangled with those about free speech and political rights during the Enlightenment, which occurred in the 17th and 18th centuries. Philosophers such as Voltaire and John Locke argued that citizens need to have the liberty to voice their political disagreements and criticisms of the government. Contemporary concepts of free speech and expression have their origins in their work. The concept of treason underwent more transformations throughout the Age of Revolutions, particularly in the wake of the French and American Revolutions. In 1798, under President John Adams's leadership and with the support of the Federalist Party, Congress approved the Sedition Act. It was made illegal to critique the government under this statute. The Federalist Party's political opponents were targeted using it, leading to significant opposition and disruption. Global authoritarian

regimes of the twentieth century resorted to sedition laws as a tool to stifle dissenting voices and political dissent. For example, the United States was one of several nations that enacted sedition laws in response to the perceived threat of communism during the Cold War. Even though their interpretations and applications vary greatly, sedition laws are still in place in many countries today. While some nations employ treason laws to punish terrorists and dangerous criminals, others use them to stifle nonviolent dissent against the government. The constitutionality of sedition rules is still a matter of debate for many. Some worry they might be used to stifle political expression and other forms of free speech.

III. CONSTITUTIONAL VALIDITY OF SEDITION LAWS

(A) Indian Perspective: -

Section 124A of the Indian Penal Code (IPC), established in 1870 under British colonial rule, encompasses the sedition provisions of the country. In accordance with the legislation, individuals who intentionally or unintentionally provoke feelings of hatred, disdain, or disapproval towards the officially recognised Indian government through verbal or non-verbal means may be subject to a life imprisonment term, along with the potential imposition of a fine. Alternatively, they may face a prison sentence of up to three years, also with the possibility of an additional fine. The seminal case that examined the legality of Section 124A was *Ram Nandan v. State of UP*. Section 124A of the Indian Penal Code has been ruled by the Allahabad High Court to be *Ultra Vires* and to violate Article 19 (1)(a) of the Constitution. The negative impact of Section 124A on freedom of expression has drawn criticism as it is seen to compromise the fundamental principles of the Constitution. Sedition legislation constitutionality was proven by the *Kedarnath Singh v. State of Bihar* case. Both written and spoken wording in this law implies an intention to overthrow the government and spark civil strife. Though people are free to voice their opinion of the government, it is important that such criticism does not incite others to stage demonstrations against it. The Section ought to restrict actions meant to encourage anarchy or incite violence in society, the Supreme Court ruled. Insufficient justification for applying this provision may lead to a constitutional breach of Article 19. The Supreme Court ruled in *Balwant Singh v. State of Punjab* that the man's Section 124A charges of saying "Khalistan Zindabad" after Prime Minister Indira Gandhi was assassinated were quashed. The raised chants did not intend to incite anyone or disturb the peace, the court said. Therefore, casually saying slogans did not give sufficient grounds to file charges under Section 124A. *Romesh Thappar* brought an appeal before the Supreme Court against the State of Madras. According to the petitioner, the Madras State's ban on his magazine

"Cross Roads" violated his Article 19 (1) constitutional right to freedom of speech and expression. The Supreme Court explained that the limitations of article 19 (1) only apply in cases involving public security when it overturned the Madras State decision. Without such issue, it is therefore still legally valid but cannot be regarded as constitutional. One might wonder if the freedom to talk and express oneself is restricted by Section 66(a) of the IT Act 2000. The court decided in *Shreya Singhal v. Union of India* that section 66 (1) is unconstitutional and set guidelines for limiting freedom of speech and expression as specified in Article 19 (2). For many years, there has been a great deal of debate on the legitimacy of India's sedition legislation. It is said by critics to restrict freedom of expression and to be frequently employed by powerful people to stifle criticism and dissent. They contend that people ought to be free to question the government in a democratic society without worrying about being called seditious. Section 124A of the IPC is valid, the Supreme Court of India has repeatedly ruled, citing the need to prevent behavior that may jeopardize state security. The court has put into place exact guidelines to stop the sedition laws from being abused to stifle justifiable criticism and dissent. Though the court has reached its rulings, there is still discussion and demands that the sedition statute be repealed or changed to align it with the fundamental rights to free speech and expression guaranteed by the Indian Constitution. The Act, according to critics, is too broad and ambiguous, which makes it easy for those in positions of power to abuse. New laws that especially target the promotion of violence or hate speech should take the place of the sedition act in the suppression of resistance.

Impact of Sedition Law on Democracy & Fundamental Rights

Sedition laws can have a significant impact on democracy and fundamental rights particularly freedom of speech and expression. Following points have their impact on democracy and fundamental rights:

1. Restriction on Freedom of Speech:- Sedition Laws, by their very nature, restrict people's ability to speak their minds and express themselves freely. It is possible for people to self-censor themselves out of fear of being charged with sedition, which can stifle the free flow of ideas, criticism of the administration, and public debate. The range of perspectives that is necessary for a thriving democracy can be restricted as a result of this restriction, which can weaken the democratic values.
2. Chilling Effect on Dissent:- Sedition laws have the potential to have a stifling effect on voices that are in opposition to the government. It is possible for individuals to refrain from participating in political conversations, non-violent protests, or lobbying for

change when they are afraid that expressing their dissident beliefs could result in charges of sedition. By suppressing disagreement, we are eroding the democratic foundation upon which our nation is built.

3. Suppression of Legitimate Criticism:- Sedition laws have the potential to be abused in order to silence criticism that is legitimately directed at the government or public authority. Authorities have the potential to suppress criticism, stifle opposition, and undermine accountability by labelling the voices that disagree with them as seditious. The checks and balances that are essential for the smooth functioning of a democratic system are undermined as a result of this.
4. Threat To Freedom Of Press:- Sedition charges could be brought against journalists who investigate sensitive matters or report on wrongdoing committed by the government as a result of their work. There is a risk that this may result in self-censorship among members of the media which would undermine their function as watchdogs and as distributors of critical information to the general public.
5. Disproportionate Punishment:- Sedition laws frequently entail severe consequences, including imprisonment, which may be disproportionate to the accused offence when compared to the severity of the punishment. Individuals may be dissuaded from exercising their right to freedom of speech and expression if they are subjected to severe punishments for speech activities. When applied in a democratic society, punishment that is disproportionate to the crime committed contradicts the principle of proportionality and fairness.
6. Violation Of International Human Rights Standards:- Sedition laws that do not comply with international human rights standards may be interpreted as an infringement on fundamental rights. This is because such laws violate international human rights standards. International human rights frameworks place a strong emphasis on the need of ensuring freedom of speech and expression, as well as limiting the scopes of limits on speech to just those that are necessary and appropriate.
7. Impact On Democratic Discourse:- Sedition laws have the potential to stifle dissent and restrict freedom of speech and expression, both of which can impair what is known as open democratic discourse. Participation in robust discussions and debates, as well as the capacity to criticize and question the actions of the government, are all necessary components of a robust democracy. In democratic countries, the establishment and development of democratic society is hampered when sedition laws ban such talk or

speech.

(B) US Perspective: -

The US introduced Sedition to protect the Federal Government under John Adams' administration, the Sedition Act of 1798 was passed, making it illegal to make false comments critical of the federal government. Since the government's protection during the quasi war served as the rationale for enacting these laws, it was intended for them to expire in 1801. The next instance of sedition being mentioned and made illegal occurred during World War 1. The sedition act of 1918 was created with section 3 in mind, punishing anyone who interfered with US war efforts by making false assertions. This includes making fun of the US military, government, flag, or constitution. In this context the most well-known case is in *Re Debs*, in which socialist laborer Eugene Debs received a 10-year prison sentence for making an anti-war speech. According to Justice Oliver Wendell Holmes, there are situations in which restrictions on the right to freedom of speech and expression are appropriate. The act was revoked 1921. Libel laws were impacted by the case *Sullivan v. New York Times* ruling, which maintained first amendment freedom of speech. The US Supreme Court held that criticism of public officials was protected by the First Amendment unless it was done maliciously or with reckless contempt for the facts. The First Amendment's free speech provisions restrict the extent to which states and the federal government can criminalise sedition, even if the United States still does so under 18 U.S.C. § 2384. In 1969, the decision of *Brandenburg v. Ohio* before the U.S. Supreme Court established a standard that stipulated that speech must either directly or very likely result in violence. Today, terrorist plots are the main reason for convictions under § 2384 for seditious conspiracy. In the case of *U.S. v. Rahman*, for instance, the Second Circuit affirmed the convictions of the Muslim clerics under Section 2384 for their plot to assassinate the President of Egypt, blow office buildings, tunnels, and bridges in New York City, and kill Israeli citizens who proclaimed militant Zionism.

(C) UK Perspective: -

Over the course of the thirteenth century in Britain, the concept of sedition emerged as a means of repressing the freedom of the printing press and the ability of the press to oppose the King. Anyone who wrote, printed, or preached any remarks that were in opposition to the King was subject to penalty under the Sedition Act of 1661. Over time, it came to denote slander and libel committed against the character or conduct of judges and officials in administrative positions. Protecting the faith that the average person had in the government and preventing a "breach of peace" in society were the two primary objectives of this endeavor. The Law Commission

suggested that the Act should be repealed in a working paper that was issued in the year 1977. Consequently, this indicated that there were other pieces of legislation that addressed the difficulties that were associated with sedition, and that a law that was based on "politics" rather than the policy was not required. Sedition was made illegal by Section 73 of the Coroners and Justice Act of 2009, which was passed thirty-two years after the crime was first committed.

IV. REFERENCES

1. The Great Repression: The Story Of Sedition In India by Chitranshul Sinha.
2. Kedarnath v. State Of Bihar MANU/SC/0074/1962.
3. Queen Empress v. Bal Gangadhar Tilak, 22 ILR 112(1898).
4. Ram Nandan v. State of UP, AIR 1959 ALL 101(1959)
5. Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties by James Morton Smith.
6. The Crimes Of Seditious Libel and Seditious Speech: Political Weapons For Suppressing Dissent in Britain and America? By Wendell Bird.
