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The Analytical Study of Sedition Law in India and its Constitutional Validity

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ABSTRACT

The use of sedition statutes in a number of recent instances has reignited debate over their undemocratic nature and usefulness in today's constitutional democracy. Unfortunately, these norms have resisted colonial rule. The implementation of sedition laws by various Indian courts demonstrates how out of date they have become for today's culture, and numerous proposals for their application are made. All citizens of a democratic society, such as India, have the fundamental right to freedom of expression and speech. Although a law of sedition is permissible if such rights are subjected to reasonable limitations, the breadth of such laws is crucial. In our country, where the rule of law reigns paramount, charging someone with sedition indiscriminately is a violation of the constitution. This paper attempt to bring together all of the debates regarding repealing and altering these laws into one place. The existence of this law in our statute books, as well as its prosecution, appears to be unjustified in our democratic society.

Keywords: Sedition, Section 124A, Freedom of Speech and Expression, Government.

I. INTRODUCTION

India has prospered in many aspects of its life over the years, including politically, economically, socially, and culturally. It has worked hard to achieve the objectives it has set for itself and continues to do so. Residents of India, on the other hand, are unsatisfied with various government actions that have the potential to generate animosity and discontent with the Indian government. People claim that the government has misused the law by tailoring it to their wants and interests. This paper is based on a study of Indian sedition law. Among the various provisions stated for the sedition act, the article will look at section 124-A² of the Indian Penal Code, 1860, and its applicability in modern times. Before delving into the present situation of the law, the paper provides background information to assist readers to understand why it was adopted in the first place. It then goes on to explain the concept of sedition as well as several court decisions. The report also details notable instances in which the administration

¹ Author is a student at Christ (Deemed to be University), India.

² Apurva Vishwanath, Explained: What is the sedition law, and why Supreme Court's fresh directive is important, INDIAN EXPRESS (May 12, 2022 10:59:46 am), <https://indianexpress.com/article/explained/sedition-law-explained-origin-history-legal-challenge-supreme-court-7911041/>

enforced sedition laws incorrectly. The article also considers whether the law fits under Article 19 (2) of the Indian constitution's reasonable restrictions or if it violates Article 19 (1) (a) guarantees freedom of speech and expression to the citizen of the country. The following questions will be investigated in this study: - Whether the Indian government has exploited the law's applicability; - Whether the age-old statute infringes on the constitution's right to freedom of speech and expression - Is the sedition law still relevant in today's world? What Is Sedition and What Does It Mean? Initially, sedition was regarded to be a crime committed against the 'Crown' and its people, with the former being the highest power and the latter being expected to show their loyalty to the former by remaining loyal to the latter. This was, however, before the country's independence. The constitution currently acts as the source of authority following independence. Because there is a distinction between "government formed by law" and "elected representatives," sedition is a threat to the life of the state. Sedition is a crime against the state done to stir hatred or dissent against the government.

II. SEDITION LAWS IN INDIA

Various statute books in the Indian legislature deal with the law of sedition. As previously noted, the offence of sedition is specified in section 124 A of the IPC. That is, however, one of the provisions dealing with this offence. The following provisions define sedition and the punishments that can be applied to it:

1. The Indian Penal Code (IPC) was enacted in 1860. The major part that can be resorted to for this offence is Section 124 A, which defines the offence of sedition. Under this clause, the maximum punishment that can be imposed on an offender is life imprisonment.

2. The Code of Criminal Procedure of 1973 (CrPC) Any publication that breaches section 124 A of the IPC can be confiscated or forfeited by the government under section 95 of the CrPC. In addition, the government has the power to request a search warrant to seize the publication. Two conditions must be met for this law to take effect:

- (1) the material must be penal under Section 124A, and
- (2) the government must present justifications for its decision to forfeit the punishable material.

3. According to section 2 (o) of the 1967 Unlawful Activities Prevention Act, "any act advancing secession claims, disputing or disturbing territorial integrity, and inciting or seeking to encourage disaffection towards India will fall within its jurisdiction." 12 Section 13 also defines the penalty for the offence, which can range from a fine to up to seven years in jail.

III. MISAPPLICATION OF THE SEDITION ACT

The Sedition Act has been subjected to different interpretations and repercussions since independence, including passing the constitutionality test in the Kedar Nath case³. Yet, just as the British did, current governments continue to utilise it to limit citizens' rights and suppress criticism. Furthermore, in cases involving sedition, there has been little consistency, and the outcome varies from case to case. In today's environment, someone could be charged with sedition based on flimsy evidence. Muhammed Ali, a resident of Eloor, for example, was punished with sedition after allegedly 'liking' a photo that read, 'I Love Pakistan.' Congress MLA Digvijay Singh was charged with sedition after making negative words about yoga guru expert Baba Ramdev and allegedly dubbing him a "fraud." The case was even approved in a local court. For just applauding the Pakistan cricket team during a match, a group of students was charged with sedition. The case of Sanskar Marathe v. The State of Maharashtra & Anr.⁴, which received worldwide condemnation, reveals how the police apply the law arbitrarily. Aseem Trivedi, a well-known cartoonist, was arrested by the Mumbai police for publishing in the newspaper some amusing caricatures ridiculing the state's then-chief minister. Despite being charged with sedition, the court declared him not guilty, upholding that a citizen has the right to talk or write whatever he wants about the government, no matter how strongly, as long as it does not inspire violence or disrupt public order. The court offered a few recommendations to the police before applying section 124A of the IPC. In 2014, 47 sedition charges were filed in nine states, according to the National Crime Records Bureau. In many of these instances, however, there was no incitement to violence. The court found only one of the 58 people arrested in connection with these acts guilty. According to NCRB records, 90 sedition cases were filed in 2018, but just two were found guilty. This reveals how the police force abuses its authority by failing to properly apply the law and attempting to curtail citizens' rights in the name of national security and integrity. According to the information presented above, the courts do not find all cases of sedition guilty. On the other side, a person charged with sedition faces numerous challenges in trying to live a normal life. They have trouble travelling internationally, are socially isolated and stigmatised, are barred from holding government posts, and must appear in court regularly and pay legal fees. This shows that, while people may avoid legal consequences, the effort required to prove their innocence is a punishment in and of itself. A person who is wrongfully charged under section 124 A of the Indian Penal Code

³ Karan Tripathi, What was the Kedar Nath Case? How did it redefine edition?, *The Quint* (July 5 2021), <https://www.thequint.com/news/law/getting-to-know-the-keedar-nath-case>

⁴ Prachi Kumari, *Sanskar Marathe v. State of Maharashtra*, *The Lex-Warrier* (Apr 20, 2015), <http://www.journal.lex-warrier.in/2015/04/20/sanskar-marathe-v-state-of-maharashtra/>

will now have to live with the penalties for the rest of their lives. People are afraid to express their differences in public, which is the country's main worry with sedition legislation. There appears to be a lack of governmental critique when dissent should be a natural element of a democratic society. The courts have attempted to strike a balance by seeking to draw a border between free expression and the crime of sedition on several occasions. The law, on the other hand, is being exploited for political ends and to serve the ruling class's objectives.

IV. CONSTITUTIONAL ASSEMBLY DEBATES ON SEDITION

According to deliberations in the Constituent Assembly, there was substantial opposition to sedition being included in the original Indian Constitution's Article 13 as a restriction on freedom of speech and expression. A clause like this has been seen as a vestige of colonial times that should never be seen in a free India. The Constituent Assembly unanimously eliminated the word "sedition" from Article 13 of the proposed Constitution. *"It must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working, and so on,"* Shri M. Ananthasayanam Ayyangar said during the discussion. During the previous government, the term "sedition" had become pejorative.

This (sedition) is made a crime not to assuage governments' wounded egos, but because anarchy can only emerge when the government and the law are no longer respected. Thus, public disorder, or the reasonable anticipation or likelihood of public disruption, is at the heart of the offence. The behaviour or comments complained of must either cause disturbance or lead reasonable men to believe that this is their intention or tendency. Due to strong resistance in the Constituent Assembly, the term "sedition" does not appear in our Constitution.

Currently, sedition is defined by section 124 A of the Indian Penal Code as an act that incites or strives to instigate hatred or contempt for the government established by law in India through words, whether spoken or written, signs, physical representation, or any other means.

V. RELATIONSHIP BETWEEN FREEDOM OF SPEECH AND SEDITION

John Stuart Mill advocated for a community's free flow of ideas and expressions, emphasising the importance of freedom of speech. He argued that citizens' opinions should not be silenced for the sake of a society's stability, no matter how uncomfortable it may be. In some cases, open public debates and discussions are necessary to conclude, and that conclusion must be correct. This can be accomplished, according to Mill, by exercising one's right to free speech. The right enables suppressed and unheard people a platform to speak out against any treasured

culture, as well as allowing a society's mainstream viewpoint to be highlighted. A good government, according to Mill, is one that supports the "knowledge of the people."

Under Harijai Singh, the Supreme Court of India crystallised the relationship between a democratic society and freedom of speech. The court noted that in a democratic system, people must participate actively and intellectually in all sectors and activities of their community as well as the state. It is their right to be kept informed about current political, social, economic, and cultural events, as well as hot topics and important issues of the day so that they can consider and form broad opinions about how the government and its functionaries are managing, tackling, and administering them. People demand a clear and correct explanation of events to form their own opinions, express their own thoughts and viewpoints on such things and themes, and decide on their next course of action.

Democracy is not the same as majoritarianism; it is a system in which every voice is heard and every person's opinion is valued, regardless of the number of people who agree with the concept. Diverse and conflicting interpretations of a given narrative of an event are unavoidable in a democracy. Not only should the majority's thoughts be taken into consideration, but so should dissenting and critical viewpoints. Free expression is protected because it is necessary to achieve a larger, often ultimate, social aim. Denial suffocates people's lives and burys the race's hopes. Abuse kills in a day, but denial suffocates people's lives and burys the race's hopes.

While morality and criminality cannot coexist, the Supreme Court declared in *S. Khusboo v. Kanniamal & Anr* that a society's residents are well informed, resulting in effective governance. Similarly, people should not be afraid of facing severe consequences if they express opinions that differ from the majority. The Supreme Court stated in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors* that "freedom of speech lies at the heart of the natural right of an organised freedom-loving society to disseminate and collect information about that common interest," emphasising the importance of freedom of expression.

Section 66A of the Information and Technology Act, 2000, was held unconstitutional in the case of *Shreya Singhal v. Union of India*⁸⁰, on the basis that it was in direct conflict with the basic right to freedom of speech and expression. Freedom of speech and expression is a fundamental principle of the Constitutional system, according to the Supreme Court, and is necessary for democracy to survive. After discussing the significance of free speech and expression, it's difficult to argue that the right to free speech and expression is insufficient in and of itself.

It must be understood that to speak or transmit a concept, one must be well-versed in all aspects and concepts of the subject. It is impossible to form an opinion without first hearing the truth about an event and participating in debates about it. The right to listen is another feature of free speech, which is followed by the free flow of available information. Freedom of speech, according to Alexander Meiklejohn, is what keeps democracy alive. The right to hear, not freedom of speech, was Meiklejohn's primary concern.

Allowing people to self-govern necessitates them making an informed and well-researched decision, which they can only do if they have access to all voices in society, according to him. In *S. P. Gupta v. Union of India*, the Supreme Court declared that under Article 19(1) (a), the right to know is inherent in the right to freedom of speech and expression.

In *Union of India & Ors. v. Motion Picture Association & Ors, etc., etc.*, the Supreme Court stated, "Free expression is the cornerstone of a democratic society." The free interchange of ideas, the unrestricted circulation of information, the dissemination of knowledge, the hearing of different points of view, the debating and shaping of one's own thoughts, and the expression of those beliefs are all key indicators of a free society.

The right to information is based on the right to know, which is an inseparable aspect of Article 19(1), a guarantee of freedom of speech, according to the Supreme Court in *Cellular Operators Association of India & Ors. v. Telecom Regulatory Authority of India & Ors.* Reasonable speech and expression restrictions, which allow the government to limit the right to free speech, are another crucial aspect to consider. The restrictions are being justified based on harm. Mill, for example, explains the 'harm principle,' which states that a statement cannot be silenced until it causes injury. The bar for judging this harm, however, must be set quite high.

The hurt must be severe enough to put the society's basic existence in jeopardy; it must destroy public order and lead to chaos. "In the name of freedom of speech and expression, protection is not given to those who say statements that have the full force of law," Justice Holmes wrote in *Gompers v. Buck's Stove & Range Co.*

VI. JUSTIFICATION ON WHY SEDITION LAW SHOULD BE RECONSIDERED

The crime of sedition has grown vague in India. An examination of the I.P.C. demonstrates that the offence that sedition is intended to cover may be covered by other statutes as well, making 124A obsolete.

In contemporaneous England, the notion of sedition was significantly larger than it is today in India. It was repealed on the advice of the law commission because just a few persons had been

charged with it during the century. The commission's report was based on the basic premise that the law's intended offences were adequately addressed by the multiple statutes adopted under various statutory sections. The British parliamentary reasons for repealing the statute focused on the contradiction of comparable laws throughout colonial India's political independence, citing Tilak as an example. The government rarely utilised the strong hand of the criminal law against outspoken critics of the administration because sedition statutes had become obsolete in the United Kingdom. The felony of seditious libel was abolished as a result of the 2009 Coroners and Justice Act.

When we look at the sections of the I.P.C. that deal with public tranquilly offences, we can see that they include offences that disrupt public order, society's peace, and other comparable offences that are harmful to sustaining public order and harmony. As a result, the numerous provisions of the I.P.C. effectively cover the present concept of sedition, which has its essence as an encouragement to violence and disrupting public order. Furthermore, state governments have taken steps to ensure public order in the current situation. As a result, it appears that a federal law covering a crime that has no universal application is unnecessary in light of different state legislation as well as the I.P.C. Other regulations are less onerous and, since they can be applied consistently, they perform the same function more efficiently. The most significant benefit would be that those accused of the crime would not be labelled "traitors" until their guilt was established and that if their sentence was completed or they were acquitted, they would be free to live regular lives as "other inmates." As a result, the current law of sedition resembles a punitive legal philosophy rather than a distributive justice system.

VII. CONCLUSION

There have been anomalies in the implementation of the law of sedition in England since its inception, with its applicability vague and non-uniform in all circumstances. Its applicability was kept unclear and unknown at first because it was used to oppress the public as and when it suited their interests and damaged their power. It was used to attain political goals by silencing speeches that put the state's authority in jeopardy. Furthermore, the courts have failed to offer a clear and unmistakable definition of the offence. In recent years, the application of the sedition legislation has become so arbitrary that it has provoked widespread discussion. Even though our sedition policy was established in 1860, it is still used as a harassing tool. Indian civilization has grown fast in the last 50 years, and people have exhibited 'tolerance' toward what could be termed as 'violent incitement.' The nature of government has changed as well, and its representatives have various perspectives on it. Sedition is now utilised to address local

issues and concerns that can be broadly defined as defamation of the elected representative, therefore the pretext that it is intended to maintain public order is no longer valid. It should be following the example of England, where it was phased out due to obsolescence. Several other rules may be applied to offences involving public peace. As a democratic country, India must go beyond its narrow approach of not tolerating constructive criticism, and it is past time for the legislature and judiciary to propose newer reforms that repeal or update sedition laws so that they are no longer arbitrary and can be applied uniformly. This colonial regulation should no longer be used to curtail citizens' rights in its current form. Everyone has the freedom to criticise the government in a democratic state, and doing so should not be labelled "anti-national" or "traitorous," because criticism is not seditious and does not inspire violence. Sedition laws must be changed for democracy to function properly because criticism is the foundation of democracy.

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