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SEDITION

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ABSTRACT

The 1950 Indian Constitution confers on us several fundamental rights. One such right, provided in Article 19(1)(a), is “the right to free speech and expression”. That right is not absolute, however. In particular cases like as preventing the defamation of another person, safeguarding public order and decency, protecting the national integrity, etc., referred to in Article 19(2) which are certain reasonable limits that can be imposed by the State. The sedition is one such situation where the “right to freedom of speech and expression” may be curtailed. This sedition refers, in an attempt to instigate violence or hate against the existing government in the State, to an overt act, gestures or words by an oral or written by person. Since 1870, it has been classified as a crime in India and was defined in accordance with Chapter VI, Section 124A of the Indian Penal Code of 1860. This section states that anybody who stimulates, seeks to stir hate or disaffection to the Indian Government by spoken or written words, signs, etc. is reported to have committed sedition crimes. The article covers the various aspects of law and also states about why it should be and should be not imposed.

Keywords: Sedition; Article 19(1); Article 19(2); freedom of speech and expression; overt act; government

INTRODUCTION

During seventeenth century in England the Sedition laws were enacted on the grounds that only opinions favoring the government should persist, and opinion against government is hindrance to the government and monarchy. The sedition legislation is a relic of India's colonial past. Lord Thomas Babington Macaulay authored it in 1837, but it was unexpectedly deleted when the Indian Penal Code (IPC) was adopted in 1860. When it saw the necessity for a separate provision to deal with the offense, Section 124A was inserted in 1870 by an amendment proposed by Sir James Stephen. It was then employed to repress the Indian independence movement and all forms of anti-British protest.

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In 1897, the legislation was utilized for the first time to convict Bal Gangadhar Tilak². Following the case, Section 124A³ of the Indian Penal Code was changed to include the terms “hatred and contempt in the definition of disaffection”, which was previously meant to encompass disloyalty and sentiments of hostility. “The government has transformed the entire nation into a jail, and we are all prisoners,” Tilak reportedly stated in 1908 after being convicted of sedition in another case and imprisoned. Gandhi too was subsequently prosecuted and reputedly pled guilty for sedition for its writings in *Young India*.⁴ Some have sought to use sedition as a basis for curtailing the freedom of expression twice during the Constituent Assembly. Yet, for concern that this might be used to stifle political opposition, it was vigorously and successfully resisted.

LAW OF SEDITION

Section 124A of the Indian Penal Code makes sedition a felony under the Act.

Section 124A IPC is read as “any person 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”. Disaffection covers all sentiments of disloyalty and hostility. Comments, though, are not an offence under this Section without incitement or attempts to incite hatred, contempt or discontent.

Punishment

Sedition is a crime that cannot be punished with a fine. The penalty under Section 124A can vary from a three-year jail sentence to a life sentence, and a fine. An individual accused of breaking this legislation is prohibited from working for the government. They are forced to live without their passports and must appear in court whenever they are summoned.

IMPORTANCE OF SEDITION LAW

Freedom of expression frequently raises complex issues, such as the extent to which the government can restrict individual behaviour. Because an individual's autonomy is the bedrock of their freedom, every limitation on it is scrutinised closely. The Indian constitution stipulates that reasonable limits can be put on this right at any time in order to guarantee that it is exercised responsibly and that it is equally available to all people. The interests of India's sovereignty and integrity, the security of the state, cordial relations with foreign states, public order, decency or morality, or in connection to contempt of court, defamation, or incitement to a crime are all the

² Emperor vs Bal Gangadhar, (1917) 19 BOMLR 211

³ Ins. by Act 27 of 1870, s. 5 and subs. by Act 4 of 1898, s. 4, for s. 124A.

⁴ (1920) 22 BOMLR 368, 58 Ind Cas 915

restrictions are listed under Article 19(2) of the Indian Constitution. The Sedition Act aids the government in suppressing separatist and other heinous campaigns.

Arguments in favour

The IPC Section 124A can be used to combat anti-national, separatist, and terrorist groups. It safeguards the elected government against efforts to overturn it by violent or unlawful methods. The presence of a legally formed government is a necessary prerequisite for the state's stability. If contempt of court carries a penalty, then contempt of government should as well. A Maoist insurgency has erupted in a number of areas across many states, and rebel groups are effectively running a parallel government. These organisations openly call for revolution to topple the state government. In light of this, repealing Section 124A would be injudicious because on the grounds that it has been incorrectly applied in a few high-profile cases.

Arguments against

Section 124A is a colonial remnant that has no place in a democracy. It restricts the lawful exercise of constitutionally protected freedoms of speech and expression. Sedition has the effect of stifling free expression, resulting in an unofficial self-censorship. It prevents citizens from doing what they should in a democracy: asking questions, debating, disagreeing with, and challenging the government's decisions. The right to dissent, which is at the heart of Gandhi's ideology, is methodically destroyed through sedition. In a healthy democracy, dissent and criticism of the government are necessary components for a strong public discussion. They should not be designed to incite dissent. The right to question, criticise, and replace authorities is central to the democratic concept.

The British, who first used sedition to persecute Indians, have now repealed the legislation in their own nation. There is no reason why India should keep this part. In Parliament, Jawaharlal Nehru explained that Section 124A, the associated criminal law, was "very unpleasant and offensive, and repealing it would be in public interest. The words employed under Section 124A, such as "disaffection", are ambiguous and open to varied interpretations depending on the interest of investigating officers. The provisions of the IPC and the Unlawful Activities Prevention Act make it unlawful to "disrupt public order" or "overthrow the government by violence and criminal methods". These are adequate safeguards for national security.

The legislation against sedition is being exploited to suppress political opposition. It has a broad and focused executive discretionary built in, allowing flagrant misuse. The International Covenant

on Civil and Political Rights (ICCPR)⁵, which establishes globally accepted norms for the protection of freedom of expression, was ratified by India in 1979. Misuse of the term “sedition” and arbitrary accusations are, nevertheless, incompatible with India's international obligations.

JUDGEMENT OF SUPREME COURT

In its rulings in “**Brij Bhushan v. State of Delhi**⁶ and **Romesh Thappar v.State of Madras**⁷” in 1950, the Supreme Court emphasised disputes on sedition. The court ruled that a statute restricting speech on the grounds that it might undermine public order was unconstitutional in certain instances. It further said that disrupting public order is tantamount to undermining the State's foundations or threatening its overthrow. As a result of these rulings, the First Constitution Amendment was enacted, which changed Article 19 (2) to read “in the interest of public order instead of undermining the security of the state.”

In **Kedar Nath Singh v. State of Bihar**⁸, the Supreme Court ruled on the validity of Section 124A in 1962. It affirmed sedition's legality but confined its scope to “acts containing the purpose or inclination to cause unrest, disturbance of law and order, or encouragement to violence.” These were contrasted from “extremely forceful speech” or the employment of “vigorous phrases” that were harshly critical of the administration.

After Indira Gandhi's assassination, the Supreme Court in **Balwant Singh v State of Punjab**⁹ acquitted people of sedition charges for chanting slogans like “Khalistan Zindabaad” and “Raj Karega Khalsa” outside a theatre. The Court was of the view that mere shouting slogans that do not incite public and it does not amount to sedition. It required more overt actions, here the accused did not intend “to incite people to cause disorder or hindrance to law and order”.

The Supreme Court dismissed a Public Interest Litigation (PIL) seeking to prosecute former Jammu and Kashmir Chief Minister Farooq Abdullah with sedition on March 3, 2021. “Expression of opinions that are dissenting and differ from the government's position cannot be deemed seditious,” the Supreme Court stated. The petitioners were also fined Rs. 50,000 by the Supreme Court for bringing an unfounded accusation of sedition.

⁵ International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶ Brij Bhushan v. State of Delhi, 1950 AIR 129

⁷ Romesh Thappar v.State of Madras, 1950 AIR 124

⁸ Kedar Nath Singh v. State of Bihar, 1962 AIR 955

⁹ Balwant Singh v State of Punjab, (1995) 3 SCC 214

The legislation and its execution make a clear distinction between robust government criticism and incitement to violence. Even if the letter is hostile, or scornful and dismissive of the government, it is not seditious if it does not urge violence. Unfortunately, Indian courts have often failed to recognise this distinction, particularly recently.

The ambiguity of Section 124A, is an opportunity for the state can to use it to pursue individuals who question its authority, and the mere threat of sedition acts as a deterrent to any voice of dissent or criticism.

LAW COMMISSION OF INDIA

- The Law Commission had rejected the notion of removing the provision in its 39th Report (1968).
- The panel requested that the section's scope be broadened to include the Constitution, the legislature, and the judiciary, in addition to the government constituted by law, as institutions against which "disaffection" should not be permitted, in its 42nd Report (1971).
- In August 2018, a consultation document was issued by the Law Commission of India suggesting that section 124A of the Indian Penal Code regarding sedition be reviewed or repealed.
- The Law Commission proposed using section 124A to only prohibit acts done with the aim to disrupt public order or overthrow the government using violence and unlawful methods in a recent consultation paper on sedition.
- "Section 124A - sedition as construed by the Supreme Court is necessary," according to a legal opinion requested by the Centre on a Statute Commission study on the British era sedition law.

NATIONAL CRIME RECORDS BUREAU (NCRB) DATA ON SEDITION LAW

The National Crime Records Bureau (NCRB) has only started collecting sedition statistics separately since 2014. In 2014, there were 47 incidents of sedition, but by 2018, that number had risen to 70.

Since the CAA was enacted on December 11, 2019, 194 charges of sedition have been filed, according to data from the National Crime Records Bureau (NCRB). According to NCRB data, more charges of sedition have been filed after December 11 than in the previous three years combined.

However, while the number of sedition charges filed has increased year after year (statistics for sedition cases began being recorded in 2014), only four instances have resulted in a conviction in the previous four years.

Disha A. Ravi vs. State (Nct Of Delhi) & Ors.¹⁰

On 23 February, the Court of Delhi granted bail in a sedition charge to Disha Ravi, an environmental activist, ruling that the government could not place individuals "behind bars just for disagreeing with official policy." On March 3rd, the Supreme Court rejected a public interest lawsuit for the prosecution of Farooq Abdullah, the former Jammu and Kashmir chief ministers, forcing the petitioners to impose a fine of Rs. 50,000 for the crime of sedition, and the court stated that "The offence of sedition cannot be invoked in order to minister to the wounded vanity of governments" "Expressing opinions that are disagreeable and different of that of the government cannot be called seditive," the Supreme Court stated.

VINOD DUA v. UNION OF INDIA & ORS.¹¹

On 31 May the Andhra Pradesh Police, on the accusation of sedition, were stopped by the Supreme Court against two television news networks. "The moment has come to establish sedition bounds," declared the Supreme Court. Three days later on 3 June, Kedar Nath Singh decision was overturned by the Supreme Court in 1962 for the sedition against Vinod Dua. In the 1962 Supreme Court declared that "the citizen has the freedom to tell the government or publish anything he chooses." In the matter of Vinod Dua, the Supreme Court has stated: "Every reporter has the right to safeguard the judgment of Kedar Nath."

Role of Judiciary

The judiciary is responsible for upholding Articles 19¹² and 21¹³ of the Constitution. Section 124A should not be utilized to stifle free expression. The argument against repealing the sedition statute is that the Supreme Court has frequently stated that the mere potential of a provision being misused does not render it unconstitutional. Without liberties, democracy is meaningless, and sedition, as defined and implemented by the police and governments, is a denial of it. As a result, before the legislation loses its force, the Supreme Court, as the guardian of people basic rights, must intervene and assess the law.

It must be scrutinised in light of changing facts and circumstances, as well as against the backdrop of ever-changing criteria of necessity, proportionality, and arbitrariness. The higher courts should utilize their supervisory responsibilities to educate the magistrates and police about the

¹⁰ W.P. (C) 2297/2021 & CM APPLs.6685/2021,

¹¹ WRIT PETITION (CRL.) NO.154 OF 2020

¹² The Indian Constitution, 1950

¹³ The Indian Constitution, 1950

constitutional protections for free expression. The concept of sedition should be limited to exclusively cover concerns relating to India's territorial integrity and sovereignty.

Role of Parliament

Only Parliament has the power to repeal severe legislation like POTA¹⁴, which was widely misapplied. The courts have always supported all of these statutes. It is only when lawmakers are prodded by the people that they take action. A strong Parliamentary will is needed to repeal this harsh colonial-era statute, which has only been used to repress opposition. Given the legal opinion and the government's support for the legislation, it's doubtful that Section 124A will be repealed anytime soon.

The provision should not however be abused for the sake of restricting freedom of expression. The SC warning, delivered in the instance of Kedar Nath¹⁵, can check its misuse on a legal basis. In order to address solely concerns of Indian territorial integrity and the sovereignty of the nation, the concept of sedition should be limited. The word 'sedition' has to be used with caution, and is very complex. It's like a cannon which shouldn't be used for a mouse shooting; however, the arsenal need cannons, mostly to be used as a deterrent, and occasionally for shoot.

Civil society must lead to a more conscious application of the Sedition legislation through arbitrariness.

CONCLUSION

It is the world's greatest democracy, and freedom of speech and expression is a necessary component of democracy. Dissent is democracy's lifeblood. However, in today's climate, when the stink of fascism hangs large, exercising this fundamental freedom might result in being labelled anti-national, being imprisoned, or being lynched by a crowd ready to teach you a lesson. Dissent, criticism of the government, and questioning politicians are all vital to democracy, but under the current political system, the police and a portion of the judiciary have come to regard them as sedition. The terrorization of critics and demonstrators jeopardises democracy itself. The outdated colonial-era sedition legislation has been particularly useful for today's self-proclaimed nationalists in suppressing opposition. Protecting national integrity is, of course, critical. However, it should not be deemed sedition if a speech or opinion is contrary to the current government's policies.

¹⁴ The Prevention of Terrorism Act, 2002

¹⁵ Kedar Nath Singh v. State of Bihar, 1962 AIR 955