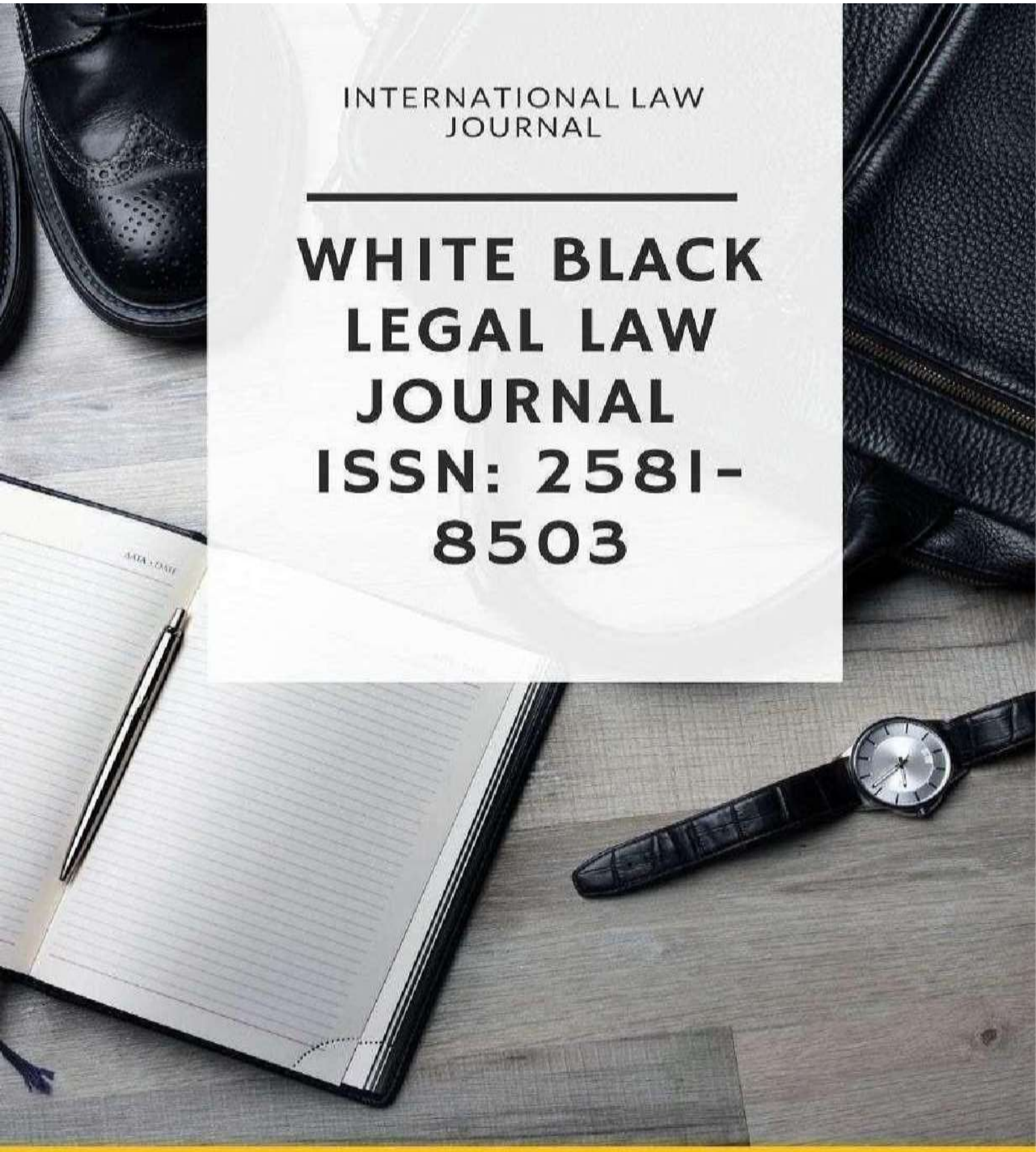

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SEDITION LAWS IN INDIA: PROTECTING NATIONAL SECURITY OR VIOLATING HUMAN RIGHTS?

AUTHROED BY - SEJAL SARNA

ABSTRACT

The law of sedition has a good and bad impact on the citizens of India. The good impact is that the law helps in maintaining unity and stability in the country whereas the bad impact is the misuse of the law by government authorities in the name of national integrity and security that infringes the freedom of speech and expression guaranteed by the Indian constitution. The Law Commission's report on the sedition law is neither unbiased nor does it safeguard human rights.

Sedition is an allowable restriction as per Article 19 (2) of the Indian Constitution which denotes that reasonable restrictions may be imposed by the government. The punishment for seditious crimes is harsh with a minimum of seven years of imprisonment which may extend to life imprisonment. It is a cognizable, non-bailable and non-compoundable offence triable by the Court of Sessions. Section 124A of the Indian Penal Code states that the prosecution must prove to the hilt that the intention of the accused is to bring into hatred or contempt or excite any form of anti-national views towards the Government of India or the Government of the State in India. Henceforth this study aims to answer questions such as, is the law of sedition and dissent partly or wholly curtailing the freedom of speech and expression? With a comparative analysis of the sedition laws in the United States, this research seeks to assess the current sedition statute considering Article 19(1) (a) and determine if it is necessary for the current Indian context.

This study has also traced the historical development of sedition in order to understand the rationale behind the law during its inception and in contemporary times as well. Through an in-depth analysis of relevant laws, landmark cases, and scholarly opinions, this study seeks to contribute to the ongoing discourse on the balance between national security and the fundamental rights of citizens.

Key Words: Sedition, freedom of speech and expression, national security, human rights

INTRODUCTION

In India, the legal regime surrounding the right to freedom of speech and expression is enshrined under Article 19(1)(a) of the Constitution. Free speech enables one to convey his individual opinions and ideas.

Such expression is vital to permit individuals for their aspiration of a sense of self-fulfilment. Democracy is characterized by self-based governance and enabling its individuals to modulate their opinions across all hues.

In such a society, a conflict between the individual's opinion and the State is inevitable. Punishment or curtailment for depreciating State authority or judicial system is contradictory to the theory of the right to free speech and expression.

The law relating to the offence of sedition was first introduced under S.113 of the Draft Penal Code of 1837 proposed by Macaulay. However, when the IPC was finally enacted in 1860, the said section pertaining to sedition had been omitted. S.124A was placed in the IPC by the IPC (Amendment) Act 1870[1]. This provision was later replaced by the present S.124-A by the IPC (Amendment) Act 1898[2]. S.124A of IPC reads as follows[3]:

"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.

Explanation 1: The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2: Comments expressing disapprobation of the measures of the Government with a view to obtaining their alteration by lawful means, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

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[1] Act XXVII of 1870

[2] Act IV of 1898

[3] Narain, S., "Disaffection and the Law: The Chilling Effect of Sedition Laws in India" Economic & Political Weekly, September 2016

Explanation 3: Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

The difference between the old S.124A and the present one is that in the former the offence consisted in exciting or attempting to excite feelings of "disaffection" but in the latter, 'bringing or attempting to bring into hatred or contempt the Government of India' is also made punishable.

Sedition means the use of words calculated to excite feelings of ill-will against the government and to hold it to the hatred and contempt of the people and that they are used with the intention to create such feelings. Sedition puts a limit on the exercise of the fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India as it threatens public order. The Supreme Court held the law of sedition as constitutionally valid as reasonable restrictions can be imposed within the permissible limits laid down in clause 2 of Article 19 of the Constitution.

The case of Queen-Empress v. Bal Gangadhar Tilak[4] is the first case that interpreted S.124-A of the IPC, 1860[5] which deals with Sedition. The Court described sedition as being a lack of affection. It denotes "enmity, hate, antagonism, disdain, hate, and all types of ill-will against the Government." The court stated that no one should incite or strive to make people feel animosity toward the state.

Several scholars and judges have observed that sedition is an extremely subjective offence. Thereby, judges evaluate the situation on a case-by-case premise to ascertain if any harm is caused to the stability of the State or democratic system. If such a choice is left to executive or legislative action it could enable an oppressive government to weaken the foundations of free speech.[6]

At Present, the freedom of the press is not included expressly in Part III of the Indian Constitution. The protection of freedom of the press is found explicitly. Such inconsistency was brought to the forefront during the debates of the Constituent Assembly.

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[4] 22 ILR Bom 112 (1898).

[5] The IPC, 1860 (Act 45 of 1860), s.124-A.

[6] E Barendt, 'Interests in Freedom of Speech: Theory and Practice' in Kam Fan Sin (ed), Legal Explorations: Essays in Honour of Professor Michael Chesterman (2003) 175.

In Romesh Thapar v State of Madras[7], the court stated that the "freedom of speech and the press lay at the cornerstone of all democratic institution, for without free political discussion, no public education, so necessary for the proper working of the procedure of popular government, is possible."

The Supreme Court further noted that "the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to the Government established by law is not the same thing as commenting in strong terms upon the measures or acts of the Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."

The above extracts make amply clear that dissent is not sedition. Free speech, discussions on matters of government functioning and their criticism and freedom of the press are "essential for the proper functioning of the processes of popular government." Of course, "a freedom of such amplitude might involve risks of abuse." But as noted by James Madison, father of the First Amendment to the American Constitution "It is better to leave a few of its noxious branches to their luxuriant growth, then, by pruning them away, to injure the vigour of those yielding the proper fruits."

Consequently, a citizen has the right to say or write whatever she likes about the Government, or its measures, by way of criticism or comments, so long as she does not incite people to violence against the Government established by law or with the intention of creating public disorder. One wonders, if the law provides this protection, then why is this archaic, yet powerful law, often used to quell all forms of political dissent? The answer, even if overtly simplistic, is poor implementation of the law and the authorities not following directions laid down by Courts.

[7]AIR 1950 SC 124.

Dissent suppressed under sedition law would make democracy week[8], the court also added that:

criticizing the government can never be sedition. Unless the public functionaries are criticized, democracy cannot be strengthened.

The case has created a new controversy in the Indian Constitutional Jurisprudence. Before that, the protest against CAA and its consequences in the country has reignited the debate around India's sedition law. In the era of 21st century, the country has seen drastic changes from the period of colonialism. Indian legislatures are making immense progress.

Almost all Indian laws find their traces back to the British period but many of the British-made laws were only implemented just for the oppression of the Indians unfortunately, they have been retained till now and one of those laws is sedition law. The main objective of the sedition law is to suppress free speech, free expression, and free thought, all of which are not so compatible with the government. It is a significant tool in the hands of the government to suppress a particular dissenter.

The provision was made before we got independence because the colonial rulers wished to penalize anybody who was trying to overthrow the state. But the irony is that this provision is still being used to bully and suppress the voice of citizens in the largest so-called democracy of the world and now a new term 'anti-national' is used for them. It is to be understood that dissent over some issue is not sedition, opposing government or any other authority is not sedition.

The first thing that we should keep in mind is that the law of sedition was implemented when we were ruled by a Monarchy. S.124A contains the offence of sedition under IPC; it was a law similar to treason in England. However, when the I.P.C. came into existence in 1860, the sedition law was not the part of Code even though it was part of the original draft in the year in 1837. There have been many reasons for such omissions.

However, some British termed it as an honest mistake. It was only in 1870 that the law was inserted into the code and the major reason behind that was the mutinies that were taking place. Britain introduced sedition law to curb all types of nationalist movements in their colonies. However, the

[8] Umesh Kumar Sharma v. State of Uttarakhand and another, (2020) W.P. Crl. 1182.

sedition Law was abolished in Britain.

The law was used to curb dissent and liberal views in the face of nationalism. The said offence is cognizable, non-bailable and non-compoundable. The journey started from the case where Bal Gangadhar Tilak was sentenced to imprisonment[9] and is still going on and no one knows when it is going to be eliminated. In the post-independence period, its constitutionality was challenged several times.

We cannot say that nobody has taken the initiative to end this law, but an attempt was made. In Tara Singh v. State of Punjab[10], where the court struck down the S.124A of I.P.C. as unconstitutional. To avert this measure, a constitutional amendment was made thereby coming back to its previous position. The essence of the crime of sedition lies in the intention with which the language is used and the intentional attempt.

The quintessence of sedition is intention. When anyone told the audience about how the government wanted to ruin those people it was not sedition, but is merely a critique of the government's adoptive, measures. We all know that it is not sedition to criticize the administration or the officers of the government, but where an individual exceeds the limits of fair criticism, it amounts to sedition. Now coming to the freedom of speech and expression, it is the basic fundamental right that forms the bedrock of any state that claims to be democratic. But it is not an absolute right.

Giving voice to the importance of freedom of speech, many scholars advocated for the free flow of ideas and expression in society. Many argued that for the stability of a society, one must not suppress the voice of the citizens, however contrary it might be. Freedom of speech makes a democracy vibrant. The laws and some other subjects clarify the distinction between the states and the government.

The Government will change but the state will exist. Therefore, to oppose a government through protests, strikes, and campaigns to make people rebel by legitimate means is a right of a people in a democracy and it cannot be framed as sedition. In a case, Allahabad High Court held that S.124A imposed restriction on freedom of speech and expression is not in the interest of the general public

[9] Queen-Empress v. Bal Gangadhar Tilak, ILR (1898) 22 Bom 112.

[10] Tara Singh v. State of Punjab, AIR 1962 SCC 955 (India).

and declared S.124A as ultra vires the constitution.

But overruling this decision, the Supreme Court held that S.124A was intra vires. It is to be understood that the offenders who are charged with this offence are often termed as 'traitors' even before their guilt is proved and then they are forced to live a disturbed life. They are often seen as the enemy of the country. The law commission also recommended in its consultation paper on sedition that it should be scrapped as only a few were charged with it in the entire country. Thus, we can say that sedition law has become vague, and obsolete and an urgent introspection of I.P.C. is needed.

It can be concluded from the present instances in the country that the sedition law has been used in numerous ways to restrict the freedom of speech and expression. These restrictions cross all cultural, religious, political, and national boundaries. It should be clearly understood that the government is a part of the state or nation, not the state itself.

Therefore, disaffection towards the government does not mean disaffection towards the state and if this provision remains, then the government someday may choke down the voice of dissenters by charging sedition against them. Every individual in a democracy has the right to freedom of speech and expression and has the right to criticize government policies and laws hence they should not be treated as 'anti-national' or 'traitors'. Criticism is the basic foundation of democracy and hence should not be curbed so that there is a smooth functioning of democracy.

India today as a democratic state needs to overthrow this narrow approach of not tolerating healthy criticism also and it is now the order of the day that legislature and judiciary should come up with newer reforms that either scrap off the law or amend it in such a way that it is no more arbitrary.

MEANING OF SEDITION

The meaning of sedition was explained by Lord Fitzgerald in the case of *Reg v. Sullivan*[11], which was later followed in *Reg v. Burns*[12], thus: "Sedition in itself is a comprehensive term and it embraces all those practices whether by word, deed, or writing which are calculated to disturb the tranquillity of the State and lead ignorant persons to endeavour to subvert the Government and the laws of the

[11] (1868) 11 Cox's Criminal Cases 44

[12] (1873) 16 Cox's Criminal Cases 355

Empire. The objects of Sedition generally are to induce discontent and insurrection and stir up opposition to the Government and the very tendency of Sedition is to incite the people to insurrection or rebellion".

A combined reading of the above-mentioned expositions of sedition under English law and their comparison with the phraseology of S.124A of the IPC disclose that the definition of sedition in S.124A is much narrower as it, unlike in English law, is limited to exciting disaffection towards the government established by law. Further, the promotion of public disorder in some form or other, which is considered to be an essential ingredient of seditious conduct in England, is not brought out in the wording of S.124A. Therefore, merely exciting or attempting to excite feelings of disaffection, hatred, or contempt, irrespective of whether or not disorder follows or is likely to follow therefrom, towards the government established by law is made punishable in India.

In *Nazir Khan v. State of Delhi*[13], the Supreme Court explained the meaning and content of sedition thus:

"Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the state and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of the sedition is to incite the people to insurrection and rebellion. "Sedition" has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the sovereign or the Government, the laws, or constitutions of the realm, and generally all endeavours to promote public disorder."

The decisive ingredient for establishing the offence of sedition under S.124A IPC is the doing of certain acts which would bring to the Government established by law in India hatred or contempt

[13] (2003) 8 SCC 461

etc.[14] Raising of some slogans only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from anyone in the public cannot attract the provisions of S.124A. Some more overt act was required to bring home the charge of the sedition.[15]

Before Independence

The explanation behind this anomaly lies in the colonial-era origin of this law. It was included in IPC by the British back in 1870, exclusively to censure dissenting voices from Indian media, intellectuals, and freedom fighters. Little wonder, then, that the law demands allegiance to government, and not to the nation. Being a Victorian-era law, the demand from all citizens to love the government was couched in the euphemistic "disaffection" -- described bluntly by the presiding judge as "absence of affection" towards the government, during a trial against Bal Gangadhar Tilak.

Mahatma Gandhi, also a victim of this draconian law, eloquently critiqued disaffection towards the government as grounds for sedition by saying, "Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence."

He went on to excoriate the law as "the prince among the political S. of the Indian Penal Code designed to suppress the liberty of the citizen".

After Independence

Post-Independence, erstwhile Indian leaders realized the dangers posed by this law to freedom of speech and expression, contained in Article 19(1)(a) of the Constitution, in an independent India. The Constituent Assembly moved an amendment to drop sedition from the list of restrictions on this fundamental right. On this occasion, highlighting the change needed in the interpretation of sedition law brought about by India's independence, KM Munshi said, "A line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State."

[14] *Bilal Ahmed Kaloo* v. *State of AP (1997) 7 SCC 430*

[15] *Balwant Singh* v. *State of Punjab (1995) 3 SCC 214*

In 1951, India's PM Jawaharlal Nehru publicly voiced his dislike of S.124A, saying, "That particular section is highly objectionable and obnoxious, and it should have no place both for

practical and historical reasons." However, this was ironic given these words were spoken on the occasion of the First Amendment to the Constitution, which imposed greater restrictions on the right to free speech.

The sedition law died a judicial death in 1958 when the Allahabad High Court declared it ultra vires Article 19(1)(a), only to be resuscitated in 1962 by the Supreme Court, in Kedarnath Singh vs State of Bihar. However, the SC greatly reduced the scope of offences under which this law could be applied. To make sure S.124A did not impinge on the fundamental right to free speech, the SC added, "Strong words used to express disapprobation of the measures of government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of factions of the government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal."

Thus, the court sided with an effects-based test (based on the implication of words) rather than a content-based test (which examines the text closely) in deciding sedition cases, much like in American law. Further, the court went as far as to say that S.124A would be ultra vires Article 19(1)(a) if it were applied in case of "words written or spoken which merely create disaffection or feelings of enmity against the Government.".

Sedition Law and its Development and Current Scenario in India

As a victim of colonization, India is not an exception to the existence of sedition law in the colonial era to suppress the revolutionary movement and put the leaders behind bars. The British implemented this rule to curtail the wing of political leaders who sought freedom. The famous leaders in the pre-independence era like Mahatma Gandhi, Bal Gangadhar Tilak etc. were the victims of sedition law and after independence Sheikh Abdullah in Jammu and Kashmir. It was perceived that after independence the law would be repealed but so far it exists in the Indian constitution under S.124-A of the IPC and is still in operation till date. Several took place recently in which people were arrested

under sedition law and if not arrested then there was the intention to slap the charge of sedition against Arundhati Roy, Syed Ali Shah Geelani, Varavara Rao and others when they sought to release the prisoner arrested in Jammu and Kashmir during rebellion movement. In a recent case of 2015, Hardik Patel was arrested under the sedition act when they were protesting and seeking reservation for Patel's community. Recently, a folk singer S. Kovan objected to the liquor policy of the Tamil Nadu government in a song and the government slapped him with a charge of despicable colonial sedition law.

TYPES OF SEDITION

Stephen, delving into the definition of sedition under English law enumerated five specific heads of sedition according to the object of the accused.[16] These are as follows:

i) to excite disaffection against the king, government or constitution, or against Parliament or the administration of justice;

ii) to promote, by unlawful means, any alteration in church or state;

iii) to incite a disturbance of the peace ;

iv) to raise discontent among the king's subjects;

v) To excite class hatred.

SEDITION AT COMMON LAW

In England, the crime of sedition has been known for centuries. There were mainly three statutes that provided punishment for the publication of written or spoken words against the Government. These were the Common Law of Sedition Libel, the Statues of Treason, and the Treason Felony Act of 1848. In the Sixteenth century, the British parliament enacted the Slander and Sedition Act in 1275 which outlawed the telling or publishing of "any false news or tales whereby discord or occasion of discord or slander may grow between the king and his people or the great men of the realm." Violations were punished by the King's council presiding in Star Chambers.

[16] Stephen , Commentaries on the Law of England(1950) , Vol. IV, Page-141-142

In the Seventeenth century, the doctrine of seditious libel originated, which prohibited the publishing of scandalous or discordant opinions about the crown, its policies, or its officers. By the Eighteenth century, the ambit of this offence was widened, and it constituted any written censure upon public men for their conduct as such or upon the laws, or the constitutions of the country.[17]

What was sedition at common law?

Sir James Stephen in his 'Digest of the Criminal Law' defined the offence of sedition at Common Law in the following words:

"Everyone commits a misdemeanour who publishes verbally or otherwise any words or any document with a seditious intention. If the matter so published consists of words spoken, the offence is called the speaking of ' seditious words.' If the matter so published is contained in anything capable of being a libel, the offence is called the publication of a ' seditious libel."

In the case of ***Reg. v. Alexander Martin Sullivan***[18] Lord Fitzgerald defined sedition in the following words:

"Sedition is a crime against society, Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection, and to stir up opposition to the Government, and bring the administration of justice into contempt: and the very tendency of sedition is to incite the people to insurrection and rebellion....."

Further, Sedition was been described as disloyalty in action, and the law considered all those practices as sedition which had an object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.

a) Elements of seditious libel

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[17] Stone, Geoffrey R.; Kahan, Dan M. Sedition and Domestic Terrorism, Encyclopaedia of Crime and Justice 2002 retrieved from http://www.encyclopedia.com/topic/Sedition_Act.aspx on 11th November 2012.

[18] (1868) 11 Cox's Criminal Cases 44

i)Publication of the material

" To publish a libel," is to deliver it, read it, or communicate its purport in any other manner, or to exhibit it to any person other than the person libelled, provided that the person making the publication knows, or has an opportunity of knowing, the contents of the libel if it is expressed in words, or its meaning expressed otherwise.

ii)Seditious Intention must be there

Article 114 of the Stephen's Digest defines Seditious Intention in the following words:

> *"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or* disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects."[19]

b) Law in England that made sedition an offence

S.3 of the Treason-Felony Act 1848 envisaged the comprehensive definition of sedition in England and made it a punishable offence. The Section reads as follows:-

" If any person whatsoever after the passing of this Act shall, within the United Kingdom or without compass, imagine, invent, devise or intend to deprive or depose our most Gracious Lady the Queen, Her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their- measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either house of Parliament,

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[19] Stephen's Digest ,9th Edition,Art.114 cited by Gupta H.P & Sarkar P.K , Law relating to Press and Sedition in India , 2002, Orient Publishing Company , New Delhi Page-147

or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominions or countries under obeisance of Her Majesty, her heirs or successors, and such compassing, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing and printing or writing, or by open and advised speaking, or by any overt actor deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the Court shall direct."

What was not sedition at common law?

Since 1692 there was complete liberty of the Press in Great Britain and Ireland. In other words, the Press had complete freedom to write and publish without censorship and restriction. Even at that point in time freedom of the press was considered to be necessary for the preservation of English society. Every Public Journalist was allowed to criticise the acts of the government but within his legitimate bounds. The imperative position of a free press along with the parameters of legitimate criticism was outlined by Lord Fitzgerald[20] in the following words:

"Our civil liberty is largely due to a free Press, which is the principal safeguard of a Free State, and the very foundation of a wholesome public opinion. Every man is free to write as he thinks fit, but he is responsible to the law for what he writes; he is not, under the pretence of freedom, to invade the rights of the community, or to violate the constitution, or to promote insurrection, or endanger the. Public peace, or create discontent, or bring justice into contempt or embarrass its functions. Political or party writing, when confined within proper and lawful limits, is not only justifiable, but is protected for the public good, and such writings are to be regarded in a free and liberal spirit. A writer may criticise or censure the conduct of the servants of the Crown or the acts of the Government—he can do it freely and liberally—but it must be without malignity, and not imputing corrupt or malicious motives."

Thus, from the above discussion, it can be deduced that fair and legitimate criticism of the acts of the

[20] Reg. v .Alexander Martin Sullivan , (1868) 11 Cox's Criminal Cases 44

Government and its officials was allowed. But in case legitimate limits were crossed the acts were categorised as seditious acts. In other words, when a public writer exceeded his limits and used his privileges to create discontent and dissatisfaction he became guilty of sedition.

THE LEGAL FRAMEWORK OF SEDITION LAWS IN INDIA

S.124A of the IPC reads as follows:

"124A Sedition– 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.

Explanation 1. —The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2. —Comments expressing disapprobation of the measures of the Government with a view to obtaining their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3. —Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

It was inserted in the criminal jurisprudence of India in 1870 as it was derived from the British Sedition Act of 1661. Although it was abolished in Britain in 2009 stating that it was against the freedom of speech that is guaranteed to its citizens, it continues to be a part of the Indian legal framework. This offence is also non-bailable and one who commits this offence would be punished with imprisonment for life, along with a fine, or three years imprisonment, along with a fine, or with a fine.

Analysis of S.124A

To analyse the unconstitutionality of S.124A of IPC, one will have to look into the several threats that it poses to the Indian Constitution and the democracy of the country.

Firstly, this provision infringes upon a person's right to freedom of speech and expression that is guaranteed under Article 19(1)(a) of the Constitution of India. The fundamental freedom under Article 19(1)(a) can be reasonably restricted for the purposes mentioned in Article 19(2) and these restrictions must be justified on the anvil of necessity, and any limitation on the exercise of right beyond the scope of restrictions enlisted in Article 19(2) would not be valid. It is important to keep in mind that the "harm principle" applies when a State attempts to restrict free speech, which means that the speech must do some sort of harm for it to be restricted by the State and the harm must be of an intensity that poses a threat to the very existence of the society and disrupts public order. S.124A, on the other hand, is vague and can be interpreted in a wide manner to curb the freedom of speech that is guaranteed to people. In conclusion, it can be stated that this provision violates Article 19(1)(a) as it is a disproportionate restriction on the freedom of expression and does not fall within the ambit of Article 19(2).

Secondly, the over-breadth test must be applied to the provision to test its constitutionality. If a provision's ambiguity leads to an expansive breadth, it would lead to problems in the interpretation of the provision in the statute. S.124A is vague and can be widely interpreted, considering how it encompasses all forms of expression- "words, either spoken or written", "signs", "visible representation" or "otherwise". The provision gives no clear interpretation as to what behaviour is prohibited and the elements that constitute the offence are ambiguous, throwing it open to misuse through the means of subjective interpretation. In Shreya Singhal v. Union of India ((2013) 12 SCC 73), the Hon'ble Court, inter alia, struck down Sec. 66A of the IT Act due to the vagueness of the language. This case also speaks in length about how regardless of the degree of insult, there needs to be a certain level of proximity between the utterance and the possibility of public disorder. Moreover, it has been in The State of Bombay & Anr. v. F.N. Balsara (1951 AIR 318) by the Supreme Court that:

"The words "which frustrates or defeats the provisions of the Act, or any rule, regulation or order made thereunder" are so wide and vague that it is difficult to define or limit their scope."

Bearing in mind the wide interpretation that could be given to this provision and the punishment, this could be used as a means to further abuse of power and arbitrariness. Therefore, S.124A is draconian

and unconstitutional.

Lastly, the case of Kedar Nath Singh v. State of Bihar (AIR 1962 SC 955), while considerably limiting the scope of S.124A, clarifying what sedition is not and stating that the provision cannot be interpreted literally, also upheld the constitutionality of the provision. Despite its attempt at decoding the constitutional intent of the provision, the guidelines that were established in the case are insufficient to provide clarity on the scope of S.124A. The prevailing circumstances do not agree with the judicial intention at the time of the judgment. Therefore, the sedition law in India needs to be held unconstitutional.

ESSENTIAL INGREDIENTS OF SEDITION 124A

- **Words, signs, visible representations or otherwise**

As per S.124A, how seditious activities can be carried out is by words, either spoken or written, or by signs or by visible representation, or otherwise. Otherwise means any form of communication that is visible to the eye. It includes pictures or dramatic performances in a mime show where no words are spoken. Distribution or circulation of seditious material will also continue as an offence.

- **Brings or attempts to bring into hatred or contempt.**

As per S.124A, words, either spoken or written, or by signs or by visible representation, or other means should be exercised in such a manner as to bring or attempt to bring into hatred or contempt towards the government established by law. What is contemplated under this section is not the actual causing of hatred or contempt, but even an attempt to do so. So, ultimately, whether one fails or succeeds is not material. It is sufficient if he even attempts to cause hatred or contempt.

- **Excite disaffection!**

  Explanation 1 of the section states that disaffection includes disloyalty and all feelings of enmity. A Constitutional Bench explained the meaning of the words, 'excite disaffection' in the case of *Kedar Nath* v. *State of Bihar*[21] as:

  "Disaffection means a feeling contrary to affection, in other words, dislike or hatred.

[21] AIR 1962 SC 955

Disapprobation simply means disapproval. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed, a disposition not to obey the lawful authority of the government, or to subvert or resist that authority, if and when the occasion should arise, and if he does so intending to create such a disposition in his hearers or readers, he will be guilty of the section, though no disturbance is brought about by his words or any feeling of disaffection produced by them. It is sufficient for the section that the words used are calculated to excite feelings of ill-will against the Government, and to hold it up to the hatred and contempt of the people, and that they were used with an intention to create such feeling."

- **Government established by law.**

S.17, IPC, defines government as denoting 'the Central Government' or 'the Government of a State'. The term 'Government established by law' has to be understood as being distinct from the government formed by a particular ruling party or the bureaucracy running the government. Thus criticism of a particular government or campaigning to bring down a particular government by a particular ruling party, will not amount to exciting disaffection towards 'the government established by law'. The Supreme Court, Kedar Nath case held that the expression 'the government established by law' has to be distinguished from the persons for the time being engaged in carrying on the administration.

'Government established by law' is the visible symbol of the state. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the government established by law is an essential condition of the stability of the State. That is why 'sedition' as the offence in S. 124-A comes under Chapter VI, relating to offences against the State...In other words, any written or spoken words etc. which have implicit in them, the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', which have been made penal by the section.

- **Expressing disapprobation-Explanations 2 and 3**

The word disapprobation means disapproval. Explanations 2 and 3 provide that as long as a person does not excite or attempt to excite hatred, contempt or disaffection, then expressing disapproval of

the acts of the government in order to bring about change by lawful means or criticizing or disapproving the administration, does not constitute an offence under this section.

CONCLUSION

India is the largest democracy in the world and the right to free speech and expression is an essential ingredient of democracy. The expression or thought that does not align with the policy of the government of the day should not be considered sedition.

S.124A should not be misused as a tool to curb free speech. The SC caveat, given in the Kedar Nath case, on prosecution under the law can check its misuse. It needs to be examined under the changed facts and circumstances and also on the anvil of ever-evolving tests of necessity, proportionality and arbitrariness.

The higher judiciary should use its supervisory powers to sensitize the magistracy and police to the constitutional provisions protecting free speech.

The definition of sedition should be narrowed down, to include only the issues pertaining to the territorial integrity of India as well as the sovereignty of the country.

The word 'sedition' is extremely nuanced and needs to be applied with caution. It is like a cannon that ought not to be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.

The sedition law should not be abolished as some measures are needed to check communal violence & insurgency activities like Naxals.

The court also needs to examine the classification of the offence of sedition as cognizable and non-bailable.

Invocation of the section should only be in cases of slogans or statements that incite violence and have a manifest tendency to create public disorder.

The SC has directed all authorities to scrupulously follow the Kedarnath verdict. It should be followed by all the courts.

The right remedy is to educate our law enforcement agencies and impress upon them that incitement

to violence is the indispensable prerequisite for invoking S.124-A.

Our state rests on solid foundations, which cannot be disturbed by ill-tempered pungent or stupid slogans.

Misuse of the sedition law should attract appropriate penalties for law enforcement agencies coupled with a provision for compensation to the injured party.

The enforcement or the threat of invocation of sedition constitutes an insidious form of unauthorized self-censorship by producing a chilling effect on the exercise of one's fundamental right to free speech and expression. That is why the law needs to be repealed. However, it is unlikely that any government will give up this power, and it is therefore left to the courts to re-examine the constitutionality of sedition. It is not enough to expect an acquittal by the courts after 4-5 years; we need to stop the misuse of the law to silence dissent by removing the source of the power itself.

The way that S.124A is phrased appears so wide that it would douse any attempt at criticizing the functioning of the government of India. The wide interpretation of this Section and the punishments make this law draconian. It also intervenes with the freedom of speech and expression under Article 19(1)(a), making it unconstitutional. This also interferes with the elements that characterize a democracy. Although India has progressed substantially through the years, this sedition law poses a threat to its growth. Therefore, there is a need for sedition law in India to be re-examined, as ruled by the Supreme Court recently.

While looking into the provision, India has to consider it from the point of the public in order to understand how the lacunas in the provision would impact the lives of people by crippling their freedom of speech. Furthermore, it also needs to be considered that this law interferes with the rights and livelihood of journalists as well. If the country decides to not altogether strike down sedition law but only partially hold the section to be unconstitutional, the scope of the section must be altered in such a way that it cannot be widely interpreted and gives exact actions that would fall within the ambit of the section. Individual definitions and scope of terms and punishments would also reduce the arbitrariness involved in sedition law to a great extent, so much so that it does not curb the freedom of speech and expression but only imposes a reasonable restriction on it.

The sedition laws in India, primarily outlined in Section 124A of the Indian Penal Code (IPC), have been a subject of debate regarding their role in protecting national security versus their potential violation of human rights, particularly freedom of speech and expression.

Protecting National Security

- Maintaining Order: Proponents argue that sedition laws are necessary to maintain public order and prevent actions that could incite violence or threaten the integrity and sovereignty of the nation.
- National Unity: Sedition laws are seen as a tool to safeguard national unity by discouraging speech or actions that could promote disaffection or hatred among different communities or against the government.
- Deterrence: The existence of sedition laws acts as a deterrent against individuals or groups engaging in activities perceived as threatening to national security, thereby preventing potential harm.

Violating Human Rights

- Freedom of Speech: Critics argue that sedition laws curtail the fundamental right to freedom of speech and expression, as enshrined in the Indian Constitution. They contend that the vague and broad language of the law allows for its misuse to suppress dissent and criticism of the government.
- Misuse and Abuse: Sedition laws have been historically misused to target political dissidents, journalists, activists, and others expressing dissenting opinions, stifling legitimate criticism and opposition.
- Chilling Effect: The mere existence of sedition laws creates a chilling effect on free speech, leading to self-censorship among individuals and media organizations, thus undermining democratic principles of open discourse and accountability.

Balancing National Security and Human Rights

- Narrow Interpretation: There is a need for a narrow and precise interpretation of sedition laws to ensure that they are not used to suppress legitimate criticism, dissent, or peaceful protest.

- Legal Safeguards: Implementing robust legal safeguards, such as clear criteria and limitations on the application of sedition laws, can help prevent their misuse while still addressing genuine threats to national security.
- Dialogue and Reforms: Encouraging dialogue and debate on the relevance and scope of sedition laws is essential. Periodic reviews and reforms to align these laws with democratic principles and international human rights standards can help strike a balance between national security concerns and the protection of human rights.

In conclusion, while sedition laws may have a role in safeguarding national security, their potential for violating human rights, particularly freedom of speech, necessitates careful consideration, legal reforms, and ongoing dialogue to ensure a balance between security imperatives and democratic principles.