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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

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SEDITION LAW IN INDIA AND AUSTRALIA - A COMPARATIVE STUDY

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ABSTRACT

The Right to Speech and Expression unfolds as a fundamental pillar within the tapestry of India's constitutional framework, adorned with the delicate balance of liberty and responsibility. Amidst the sweeping declaration of these rights, there were still traces of the past, relics of a British legacy that had attempted to muzzle the voices of our country's freedom fighters during the turbulent times of colonial rule. The specter of the Sedition law, an ominous tool of suppression, haunted the corridors of power even in Independent India. While its usage was not as oppressive as in the days of British dominion, its existence remained discordant in a nation steadfastly dedicated to safeguarding the cherished ideals of free speech and expression.

The main aim of this law was to preserve harmony and tranquility across the land, shielding the nation from the seditious whispers of separatists and those who would dare besmirch the sanctity of our territorial integrity.

In this context, it becomes imperative to embark on a comparative journey, to discern the status of India's Sedition law in relation to other nations. This endeavor is a pursuit of clarity, a quest to understand how our nation's commitment to liberty and order finds its place in the broader tapestry of global legal paradigms.

INTRODUCTION

The Right to speech and expression in India is of a Fundamental nature subject to certain reasonable restrictions. Although the Fundamental Rights were guaranteed by the Indian Constitution prepared post-Independence, a few remnants of the British toolkit of suppression of free speech still creeped into our Independent India. The Sedition law was one such tool. Prior to independence, the law of

Sedition was being continuously used by the Britishers to suppress the voices of our freedom fighters against the anarchy of the British Empire.

However, in Independent India, the use was not as disproportionate as in the British Raj. The law, however, was still unbecoming for a country that strived to guarantee freedom of speech and expression to its citizens. The stated objective of the law of sedition is to maintain peace and tranquility throughout the country and to ensure that no efforts are made by separatists and Anti-National elements to besmirch the territorial integrity of the country. In India, the traces of the law of Sedition can be found in Section 124-A of the Indian Penal Code. It must, however be noted that with the enactment of the Bhartiya Nyaya Samhita, 2023, sedition as a specific ground for punishment has been done away with. However, through a careful perusal of the legislation, it can be found that in essence, the law has not only been retained, but its scope has been expanded significantly. Thus, it becomes pertinent for a comparative analysis to be carried out in order to discern the status of the Indian Law of sedition vis-a-vis different countries.

1. EVOLUTION OF SEDITION LAW IN INDIA

A historical overview of the act would aid in discerning the intent of the administrators. The experience of the executive as well as the judiciary has provided sufficient insights into the law of sedition. The starting point was the revolt of 1857. The first war of Indian Independence sent alarm bells ringing all across the British Administration and they realized that for their plunder to go unabated, they needed a legislative backing to suppress the voices of the revolutionary freedom fighters. In the year 1870, Section 124-A entered the Statute books and the law of sedition was officially a criminal offense in British India.

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It was now a crime for any person to "promote through word or deed, disaffection against the Government". How arbitrary and draconian the government was did not really matter. One just could not speak a word against the establishment. Great revolutionaries like Bal Gangadhar Tilak have been at the receiving end of the cruel weaponization of the legal system through the sedition law. It was clear that the law of sedition was nothing more than a weapon to suppress the dreams of Indians to live in a free, fair and law-abiding country. According to the British, the law was meant to make the lives of the individuals easier. However, it was sufficiently clear through the actions of the government that it was the lives of the cruel Britishers that was eased. The Indian citizen was, as

usual, subject to anarchy and now, he could not even pen his mouth against the injustice that was continuously being meted out to him.

The political as well as the judicial experience has suggested that the law has always been prone to political weaponization and misuse by arbitrary rulers who do not possess the courage to look into the mirror. There has been a constant need for the law to either be struck off the statute books or be reformed in a manner so as to be beyond the reach of political weaponization and misuse. The law of sedition cannot and should not become a shield for thin skinned politicians to hide behind.

2. THE ROLE PLAYED BY THE JUDICIARY

No given legislation has ever been complete without the involvement of the Judiciary. The law of Sedition is one such law. Ever since its enactment, the courts have had to adjudge numerous cases involving allegations of Sedition. The present section of the study would delve into some of the most notable pre-constitutional as well as post-constitutional judicial pronouncements regarding Sedition. Even after the demise of anarchy, the ghost of the law of Sedition comes to haunt the fearless journalists, activists and politicians who raise their voice against the government.

2.1 NOTABLE JUDICIAL PRONOUNCEMENTS PRE-INDEPENDENCE

The first ever trial on record regarding Sedition was the case of **Queen Empress vs Jogendra Chander Bose[1],** also famously known as the Bangobasi case. This case delved into the question of the limits of legitimate criticism against official measures. Considering the fact that India was under the British Rule at that time, even the slightest amount of criticism, no matter how genuine, would naturally fall within the domain of Sedition. The courts were nothing more than an institution to legitimize the anarchy of the British and to make the victims feel that they deserved the cruelty that they were being subjected to.

Newspapers were the primary targets of the British Administration. The **Pratod Case[2]** of 1897 was yet another example of how the legal machinery was established as a weapon against revolutionaries.

[1] (1892) ILR 19 Cal 35
[2] Queen Emperess v. Ramchandra Narayan, (1897) 22 Bom 152

The trial of Bal Gangadhar Tilak was arguably the most significant development in the Pre-Independence jurisprudence of sedition law. It was after this case that the words “hatred” and “contempt” were incorporated into the legislation.

2.2 NOTABLE JUDICIAL PRONOUNCEMENTS POST-INDEPENDENCE

It was in the year 2014 that in Hisar, Rampal was slapped with the charges of Sedition by the police. Furthermore, an MP of the TRS was booked for saying that “Jammu and Kashmir and Telangana were forcefully annexed to India in the year 2014.”

The case of **Kedar Nath Singh vs State of Bihar**[3] saw a challenge to the Constitutional validity of Section 124A of the Indian Penal Code. According to the ruling in the Kedar Nath Singh case, “every state, whatever its form of Government has to be armed with the Power to punish those who, by their conduct, Jeopardize the safety and stability of the state, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the state or to public disorder.” The Supreme Court ruled that Sedition did not exist until the accused incited violence by speech or action, since this would be a violation of the accused's First Amendment right to free expression.

3. SEDITION LAW IN INDIA VIS-A-VIS AUSTRALIA

We have looked at the divergent views on the development of India's law on sedition. Section 124-A of India's criminal code is sometimes cited as an example of common law, however this is not always the case in other countries or even in India. Definitions of what constitutes sedition change throughout time and between locations based on the specifics of each situation.

The law of sedition in Australia is governed by the country's Criminal Code. The common law crime of Seditious from libel is the ancestor of Australia's Sedition Law. Its history from the colonial era until the middle of the 20th century was marred by the persecution of political opponents and social outcasts by the government.

Many analysts have relegated sedition to the "Dustbin of legal History," notwithstanding its short resurgence after World War II in reaction to the feared communist menace. This view prevailed for over half a century, leading other jurisdictions, like the Australian Capital Territory and South

[3] 1962 AIR 955, 1962 SCR Supl. (2) 769

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Australia, to take the precaution of repealing Sedition.

While certain risks may go away over time, criminal offenses may always be revived and redeployed to face new challenges. In 2005, the Howard administration reintroduced the concept of sedition as part of a larger anti-terrorism initiative in reaction to the 9/11 attacks. It is noteworthy that the model Criminal Code project now ongoing in Australia did not inspire this reshaping of Sedition as part of a broader reform initiative of codification and harmonization.

Intent was crucial in Sedition. Seditious activity, as well as the writing, printing, uttering, or publishing of words with a seditious purpose, were all illegal under the terms of Section 24C and 24D of the Act. By definition, the goal of a sedition plot is to

- **a.** Promote feelings of ill-will and hostility between different classes of his majesty's subjects, so as to endanger the peace, order, and good Government of the commonwealth" or
- **b.** Bring the sovereign into hatred or contempt.

The Australian Industrial Workers of the World (IWW) and other anti-war activists were prosecuted under Australia's Sedition Laws during World War I. Montague Miller, an 83-year-old IWW member in Perth described as the "grand old man of the labor movement," was among those charged with Sedition that year. Miller was arrested again in 1917 in Sydney, at the age of 84, for membership to an Unlawful organization and sentenced to six months in prison with hard work at long bay goal.

He was freed after completing a few weeks of his term. Each of the Sydney Twelve was accused of and found guilty of many crimes, including Sedition. Having been largely ignored for almost half a century, these laws were brought back into the spotlight in 2005 when Prime Minister Howard proposed amendments to them as part of an Anti-Terrorism Bill in advance of a "Counter-Terrorism Summit" of the council of Australian Governments on September 27. After amendments were proposed by the government to provide more protection for the reporting of news and items of public interest in response to community demand, the measure was finally signed into law on December 6, 2005. In 2006, the revised statutes will go into effect.

Prosecutions of communist party members for sedition between 1948 and 1953 are a prime example of this. William Fardon Burns, publisher of the communist newspaper the Tribune, was the last person

to be successfully prosecuted for his communist activities in 1950. The articles he published were seditious because they said, "Not a Man, Not a ship, Not an airplane, Not a Gun for the aggressive imperialist war on Korea and Malaya."

In **Burns v. Ransley and Sharkey**[4], the High Court ruled that Section 24A of the Crimes Act, which criminalizes seditious speech, is constitutional. In Sharkey, all of the judges agreed that Commonwealth legislation may be used to shield government agencies from seditious speech.
But there are limits to the power. This commonwealth authority would not authorize legislation on topics that are prima facie within the competence of the State on premise of a link with federal concerns that is merely tenuous, imprecise, fanciful, or remote; for the time being, it is necessary to notice that this.

4. SUGGESTIONS FOR THE INDIAN LEGAL FRAMEWORK

As long as one does not resort to violence or break any laws in the process of spreading or establishing his political beliefs, every person has the freedom to hold and advocate for his or her own political theories and views. When taken at face value, the requirements of Section 124A would include anything that may be seen as defamation of the Government; however, legitimate criticism of specific administrative actions or policies would be excluded from this definition.

Since India's independence in the wake of the **Emperor v. Sadashiv Narayan Bhalerao**[5] decision by the Lords of the Privy Council, article 19(1)(a) of the Indian Constitution has guaranteed all citizens the right to freedom of speech and expression, with the only limitations being those outlined in clause (2) of that article. It is widely established that a court, when interpreting a statute, must take into account not only the plain meaning of the words but also their context, the legislative intent, and the harm that the statute is meant to prevent. It is also generally established that if a law provision is within the legislature's constitutional authority, but can only be applied in a certain way because of a preference for one position, then it is unconstitutional.

No matter how true the accusations may be, the government cannot punish seditious speech regardless

[4] [1949] HCA 45 - 79 CLR 101
[5] Criminal Appeal No. 363 of 1943

of their veracity. The accuracy of the underlying facts does not justify seditious criticism if they are exploited as a hook to hang inflammatory remarks. However, expressing displeasure with the government need not provoke hostility if done in a fair and reasonable manner. In **R. v. Sullivan**[6], the Supreme Court ruled that journalists had a First Amendment right to criticize government actions and policies.

The irony of the legislation is that it permits criticism of the government but does not permit the defense of the truth. How the people could ignore the truth as a justification of the crime when it is their responsibility to remark honestly on the Government is beyond me. The legitimacy of the idea of sovereignty is important to understanding the nature of this crime. It is not the government but the people that have ultimate power in a democratic republic. Since the government is no longer the ultimate authority, it can no longer claim sovereign immunity from sedition.

The Allahabad High Court noted in **Ram Nandan v. State**[7] that it is not possible to assume that public order would be disrupted as a result of the speech, which is a crucial part of the offense. The court said unequivocally that the public's reaction to the words is impossible to predict. Therefore, we cannot accuse someone of sedition on the basis of a presumed threat to public order if, at that time, public order has not been disrupted. The cases of Dr. Binayak Sen and Aseem Trivedi are textbook illustrations of how the law may be misapplied. No disruption of public order occurred in each instance; the justification for the use of force was based on the possibility of such an event occurring and the need to take preventative action.

New conditions call for new legislation. Since the original justification for this statute is now obsolete, it must be repealed. This legislation is slowly being rescinded in other nations.

Surprisingly, the flaws in the statute were only discovered at a very early stage. In its 42nd Report, the Law Commission of India noted the shortcomings of section 124A. They said explicitly that article 19(2) of the Constitution renders the provision invalid because it fails to account for Mens Rea. The court ruled that the provision was flawed because it failed to ensure that "the pernicious tendency or intention" behind the seditious remark was directly tied to the interests of India's security and public

[6] [1984] AC 156
[7] AIR 1959 All 101, 1959 CriLJ 1

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order. This anarchy would not exist if the suggestions of the Law Commission of India had been adopted and the judicial interpretation had been more pragmatic in this respect.

Such prohibitions have no place in the present age of free expression, when advocates for free speech may be found in international venues as well. We must examine the reason for and use of law itself. If nations like England, where the law has been in existence for the last 400 years and the parliament is considered sovereign, can abolish the law, then why can't we? In order for democracy to thrive, it is necessary that such repressive legislation be abolished and civil liberties restored. First, it is stated that everyone has the freedom to freely share their thoughts and beliefs using whatever methods they want, whether it is spoken, written, printed, visual, etc. Thus, it encompasses the use of any visual representation of ideas, including gesture, sign language, and written text. The degree to which a population is able to exercise its freedom establishes that freedom's worth.

In a constitutional democracy like ours, the public has an absolute right to know how its elected representatives are spending their time and money in order to ensure that they are implementing policies that are in their best interests. But there are limits to this freedom, just as there are to other kinds of liberty. Article 19(1)(a) of the Constitution of India guarantees the right to freedom of speech and expression, which includes the freedom to both disseminate and receive information.

The right to know has been cited as a key component of good government. With the passage of time, this notion has grown not just in the realm of law, but also in its scope and use. This court has noted that the public interest is best served by proper application of the right to information, which it has emphasized while underlining the necessity for the society and its entitlement to know. Different countries of the globe have adopted this freedom to varying degrees.

When it comes to protecting people's right to life and liberty, the current body of legislation is, indeed, adequate. Although Article 19(1) dealt with substantive rights and Article 21 dealt with procedural rights, it was contended that both should be interpreted together in order to provide a whole picture of Indian constitutional law. The phrase "due process of law" was also used to explain the meaning of the phrase "Procedure established by law" in Article 21. The majority concluded that the freedoms addressed in Articles 19 and 21 are distinct. Article 19 protects against unjustified restrictions (which is only partial control) on the freedom to mobility, whereas Article 21 protects against deprivation

(complete loss) of personal liberty. Only when a person's personal liberty is unrestricted by law is he able to enjoy the freedoms promised by Article 19. The Supreme Court rejected the argument that Article 21's reference to "law" signified anything other than state law—namely, the Principle of natural justice.

However, the court ruled that challenges to the Act might be filed on the grounds that it violated Article 19. He defined "Personal liberty" in a broad sense, including the ability to go anywhere you choose. Therefore, any rule that restricts an individual's freedom must meet the criteria of both Article 19 and Article 21. However, the Supreme Court has not adhered to its narrow reading of the phrase "Personal liberty" in the Gopalan case in its subsequent rulings. It was decided in the 407 case of Kharak Singh that "Personal liberty" encompassed not just the freedom from physical restraint and prison confinement guaranteed by Article 19(1), but also the full range of rights that contribute to an individual's "Personal liberty" outside of that provision. To rephrase, "Personal liberty" in Article 21 encompasses and includes the remainder after "Freedom of religion" in Article 19(1) has addressed certain varieties or aspects of that right. In the future, the definition of "Personal liberty" was significantly expanded by the Supreme Court in **Maneka Gandhi v. Union of India**[8]. To give Bhagwati his due to quote Article 19 of the Indian Constitution: "The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man.

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5. CONCLUSION

The history of the sedition law in India is deeply rooted in the colonial era, where it was used as a tool to suppress dissent and maintain British rule. Despite gaining independence, India retained the sedition law, albeit with some modifications. Over the years, the law has been subject to interpretation and judicial rulings, which have sometimes upheld its constitutionality and at other times challenged its scope.

In contrast, we have also examined the sedition laws in Australia, which have had their own complex history. These laws have seen periods of enforcement and repeal, depending on the prevailing political climate and perceived threats to the government.

[8] 1978 AIR 597, 1978 SCR (2) 621

In the modern context, the sedition law in India is seen by many as an outdated and repressive tool that stifles free speech and expression. While it is essential to maintain public order and national security, the law's broad interpretation and potential for misuse have raised concerns about its compatibility with the principles of democracy and free expression.

To move forward, there is a need for a comprehensive review and reform of India's sedition law. It should be brought in line with contemporary democratic values and international standards for freedom of speech and expression. While preserving the security of the state is crucial, it should not come at the cost of stifling legitimate criticism and dissent. The law should be precise in its definition of sedition and should require a clear intent to incite violence or public disorder for an offense to be established.

Moreover, it is essential to ensure that the right to freedom of speech and expression, as enshrined in the Indian Constitution, is protected and upheld. This includes allowing space for critical discourse, even if it is directed towards the government or its policies, as long as it does not incite violence or pose a genuine threat to national security.

Furthermore, it's essential for civil society, activists, legal experts, and lawmakers to engage in meaningful discussions and advocacy for reforming or repealing the sedition law. Public awareness and pressure can drive legislative change and ensure that the legal framework aligns with the values of a modern, democratic India.

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The sedition law in India, inherited from the colonial era, is a contentious issue that needs urgent attention and reform. While maintaining national security is vital, it should not be achieved at the expense of stifling free speech and expression. A reformed sedition law should strike a balance between safeguarding the state and upholding the fundamental rights and freedoms of Indian citizens. It's a crucial step toward building a more just and democratic society in the 21st century.