Section A-Research paper
ISSN 2063-5346

A CRITIQUE ON SEDITION LAWS IN INDIA

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Abstract

The statute of sedition outlaws comments or actions designed to inspire dissatisfaction or insurrection against the state's authority. Right to freedom of expression is a double-edged sword; although it provides individuals with enjoyment, it also restricts conduct that might be construed as an abuse of this inherent and unalienable freedom. The researcher analyses the legal implications of Sedition law in several Indian statutes. The author has analysed the parallels and differences between sedition laws and the right to free speech.

Keywords: Sedition, Freedom of Speech and Expression, S.124-A, Sedition Laws, Constitutionality.

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Introduction

The liberal idea that an individual should be shielded from societal constraints is the foundation of the concept of free speech. One of the key assumptions of this line of logic is that the only justification for meddling with a person's freedom of action is when that behavior poses a threat to others. This area which is free from compulsion encompasses 'conscience liberty in the broadest sense'. This is the belief that everyone has the right to their own viewpoint, whatever of how unpopular, offensive, or destructive it may be, so long as it does not directly cause harm to others. This includes beliefs that are practical, speculative, moral, or theological. No matter how it is governed, a society that does not typically uphold its citizens' basic freedoms cannot truly call itself a free society. So, in

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any liberal democracy, the freedom of the press and the freedom of speech are two of the most important rights.[1] These ideas of free speech are fundamental to liberal ideology on a conceptual level. In an endeavor to establish a genuine liberal democratic community and under the impact of earlier experiences in France, the "Founding Fathers" of the U.S. codified these ideals in the First Amendment. The fact that this idea is the topic of the First Amendments and not farther down the list demonstrates that they viewed it as fundamental to a free society. This law is premised on the idea that free speech allows us to uncover the truth.[2] Under S.124-A of I.P.C., sedition is a crime that is often criticised on the grounds that it breaches the sacred right to free speech and expression.

Law Commission on Sedition

In its report from 1968, the Law Commission of India addressed the topic of sedition and emphasized the necessity of updating this law. With the publication of two studies on the topic in 1971 and a distinction between the elements of the Sedition crime and hate speech by the commission in 2017, the two concepts were separated.

The 39th Report, 1968

The primary emphasis of this research was the punishment for this crime, and the authors believed that the suggested sentence was disproportionately harsh. As there are various inconsistencies in the method in which sedition cases are punished, it was stressed that this violation should not be rendered punishable by life imprisonment.[3]

The 42nd Report, 1971

Particularly, this paper argued that the mental component should have been added as an element of the sedition charge and suggested substantial changes to the legislation. Furthermore, discontent with the government should spread to its other branches, including the Judiciary and the Executive. This report's primary assumption is that it has restricted the spectrum of penalty to 7 years accompanied by a fine, highlighting the

[1] Sarah Sorial, Sedition & question of freedom of speech, 2007
[2] Ibid.
[3] Law Commission of India, 39th Report on: "The Punishment of Imprisonment for Life under the Indian Penal Code", 1968

disparity between life imprisonment and three years' incarceration. During that time period, the Union government didn't conform to such a proposal. Only the suggestions from the 42nd report were included in a report issued in 1971.[4]

267th Report, 2017

In 2017, the panel issued a proposal on the topic of hate speech that distinguished amongst hateful speech & sedition as criminal offences. The foundation of this argument is that the former is an offence that disrupts public order, but the latter is a serious offence that involves acts that threaten the "sovereignty" and "unity" of the nation. As what seems like "disaffection" as well as "disloyalty" might actually be constructive criticism pointing towards the genuine problems of the society, many standards have been created to determine whether kinds of speech qualify as seditious. In a healthy modern democratic society, unpleasant statements may prove to be ground-breaking in the understanding of words and phrases, therefore the "freedom to offend" must not be restricted to colonial laws.[5]

Sedition Laws in International Jurisdiction

USA

The First Amendment guaranteeing freedom of speech cannot be infringed upon by state law under the United States Constitution. Jurists have disagreed on whether or not the original intent of the first amendment guarantee was to protect against seditious libel. Many people believe that this concept "provides a legal cover for political repression'.[6] In spite of varying opinions and judicial efforts to limit its application, sedition continues to be a criminal offence in the United States, albeit one that is strictly interpreted and may have even gone into usage.[7]

[4] Law Commission of India, 42nd Report on: "Indian Penal Code", 1971.
[5] Law Commission of India, 267th Report on: "Hate Speech", 2017.
[6] J.S.Koffler and B.L.Gershman, New Seditious Libel 69 *Cornell L. Rev.* 816 (1984).
[7] Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, Sedition Laws and Death of Free Speech in India

ISSN 2063-5346

Several people have claimed that the first amendment was written to prevent seditious libel. To imply, however, that the First Amendment nullified laws against sedition is to read history through the lens of one's own civic sensibilities, which has been a common rebuttal to this position.

With the implementation of the Sedition Act in 1798, sedition became a criminal offence in the US.[8] The Sedition Act was abolished in 1820, but during World War I, Congress reinstated it in 1918 to protect the interests of the United States.[9] In Schenck v. United States,[10] while deciding whether or not the Sedition Act of 1918 was constitutional, the court established the clear and present danger standard for limiting free speech.

Words that would normally and in most contexts be protected by the right to free speech by purview of the First Amendment may be outlawed if they pose a clear and present risk of bringing about all the substantial evils that Congress was having the right to avoid.

In the case of Abrams v. United States[11], the US Supreme Court ruled that the First Amendment did not protect the circulation of circulars encouraging a strike in industries to impede the production of machinery that would be used to oppress Russian revolutionaries. However, Justice Holmes defended the broad interpretation of free speech in his dissenting opinion, stating that Congress could only restrict free speech when there is an immediate danger or intent to cause harm. Those who advocated for the violent overthrow of the government were also prosecuted under the Alien Registration Act of 1940 (also known as the Smith Act), which was challenged for its constitutionality in the case of Dennis v. United States. The court found the act constitutional by applying the clear and present danger test and upholding the conviction.

…the language used in the act does not imply that the government must wait until the coup is fully organized, prepared, and ready to be executed before taking any action. The Government has a responsibility to intervene if it becomes aware of a group plotting its overthrow and actively indoctrinating its members and committing them to a course

[8] Section 2 of the Sedition Act, 1798
[9] This Act was a set of amendments to enlarge Espionage Act, 1917.
[10] 249 U.S. 47 (1919).
[11] 250 U.S. 616 (1919).

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wherein they would strike when the leaders deem the conditions warrant. There's no point in responding to the claim that the government doesn't have to care since it's powerful and can easily put down a revolt or crush a revolution. So it is not the question at hand. Even if a military coup against the government is doomed from the start due to insufficient numbers or authority, Congress should nonetheless act to prevent it. The physical and political harm that such efforts do to a country makes it hard to evaluate their merit in terms of the likelihood of success or the timeliness of an attempt.

Yet, following decisions have narrowly interpreted the speech restriction. The SC made this distinction between "overthrow as an abstract notion" and "advocacy to action" in the case of Yates v. United States[12]. It was contended that the Dennis (supra) did not further complicate the situation and that demands for the "abstract overthrow of the government" were not illegal under the Smith Act[13]. The determination was made that the critical difference between these two types of advocacy is whether the audience is being encouraged to take action immediately or in the future, rather than just believing in something.

In New York Times v. Sullivan,[14] In a democracy, the Supreme Court emphasized, free expression is essential, and the government should not be able to stifle speech that it deems "unwise, untrue, or malevolent."

In Brandenburg v. Ohio,[15] the SC has made it evident that until advocacy for the use of force or of law violation is intended to incite or produce imminent criminal activity and is likely to promote or create such conduct, a state might not even prohibit such advocacy.

This decision has overruled the judgment of SC in Whitney v. California,[16] The court had ruled that joining, creating, or aiding an association that advocates, advises, or assists in committing acts of force, aggression, or terrorism to achieve economic or political reforms poses a significant threat to public peace, safety, and national security. Therefore,

[12] 354 U.S. 298 (1957)
[13] Ibid
[14] 376 U.S. 254, 273-76 (1964).
[15] 395 U.S. 444 (1969).
[16] 274 U.S. 357 (1927).

such behaviors should be penalized by the court's police authority. Laws criminalising these behaviours were not seen as an excessive use of state authority.

As a result of the Brandenburg case, constraints on speech are under close review. For this reason, the instigation of immediate unlawful action is required for criticism or advocacy to qualify for reasonable limitation under the First Amendment.

Although the First Amendment of the US Constitution prohibits unlawful censorship, there are various approaches to combat hate speech, such as the "reasonable listeners test," the "present danger test," and the "fighting words" theory. The idea of the chilling effect is often mentioned and clearly expressed in judgments mainly focused on the procedural errors of free speech adjudication.

Australia

Sedition was first recognized as an offence in the 1920 Criminal Act. The sedition sections of this Act had a broader scope than the common law concept as there was no need to provide evidence of subjective purpose or incitement to violence or public disruption to secure a conviction. It was proposed by the 1984 Hope Commission that Australia adopt the Commonwealth's definition of sedition.[17] In 1991, the Gibbs Committee once again examined the sedition clauses. It was recommended to continue punishing sedition, but only in cases where violent incitement was used to undermine or topple legitimate government. The Anti-Terrorism Act (No 2) of 2005 in Australia included changes to the sedition offence and defence found in sections 80.2 and 80.3 of the Criminal Code Act 1995. The Australian Law Reform Commission (ALRC) conducted a study on whether the term "sedition" should be used to describe the offences outlined in the 2005 amendment. After thorough research, the ALRC report recommended that "sedition" should be removed from Australia's federal criminal code. Part 5.1 and Division 80 of the Criminal Code (Cth) should be titled "Treason or encouraging political and inter-group force or violence," while section 80.2 of the

[17] Royal Commission on Australia's Security and Intelligence Agencies, *Report on the Australian Security Intelligence Organization* (1985) cited in Australian Law Reform Commission, Report on Fighting Words: A Review of Sedition Laws in India‖ (July 2006).

Criminal Code (Cth) should be titled "Urging politically or inter-group force or violence."

The ALRC's recommendation to replace all references to sedition with "urging violence acts" was enacted in the National Security Law Reform Act of 2010.

England

In 1275, when the King was still seen as having Divine authority, parliament passed the Statute of Westminster, which established sedition as a crime. [18] Intent was also taken into account with the veracity of the utterance when determining guilt for sedition. The original intent of making it illegal to make statements "inimical to a required respect to government" was to silence anyone who might otherwise speak out against the establishment. [19] One of the earliest cases in which "seditious libel," whether true or untrue, was rendered punished was the De Libellis Famosis case. [20] The precedent set by this case for seditious libel in the United Kingdom is rock solid. This ruling was made on the grounds that serious criticism of the government poses a larger threat to public order since it undermines the credibility of authoritative figures.

Fitzgerald J. provided a definition of sedition in R. v. Sullivan[21] as:

"The term "sedition" refers to any action, whether verbal or written, that is intended to cause disorder in the State and encourage uninformed citizens to work against the government and the law. The fundamental nature of sedition is to inspire the people to revolt and rebellion, and its goals are to cause unrest and upheaval, to instigate hostility towards the government, and to undermine public faith in the fair and impartial administration of justice."

[18] E.PEN, *A Briefing on the Abolition of Seditious Libel and Criminal Libel* (2009).
[19] W.T.Mayton, Seditious Libel and the Lost Guarantee of a Freedom of Speech 84 *Colum. L. Rev*. 91 (1984).
[20] 77 Eng. Rep. 250 (K.B. 1606).
[21] R v. Sullivan (1868) 11 Cox C.C. 44 at p. 45

ISSN 2063-5346

As an illustration of why a rule against seditious libel was required in a contemporary democracy, the UK Law Commission pointed to the SC of Canada's ruling in R. v. Boucher[22] in 1977. The SC of Canada concluded in that case that only violent acts with the purpose to disrupt public order or the constitutional authority may be declared seditious. In its white paper, the Commission issued a comment on the matter.

Even though there may be a wide variety of other offences that adequately cover conduct adding up to sedition, we think it is safer in general to rely on these traditional statute as well as common law offences instead of having to have retreat to an offence which involves the implication that the conduct in issue is 'political. Our first impression is that a sedition crime is unnecessary under current criminal law.

This incident served as a turning point in the fight to outlaw seditious libel in the UK. Seditious libel has been seen as a violation of the Human Rights Act, 1998 and the ECHR since the act's inception[23]. Overall, there has been a growing movement throughout the world that opposes sedition and supports free expression. The then Parliamentary Under-Secretary of State in the UK's Ministry of Justice cited it as grounds for getting rid of sedition as a crime in 2009.

"Arcane crimes like sedition and seditious or defamatory libel date back to a time when free speech was not protected by law. Countries that have utilized comparable laws to repress political dissent and limit press freedom have pointed to the U.S.' continued enforcement of these antiquated offences as justification for doing the same. The United Kingdom may set an example by eliminating these crimes, which are used to stifle free expression in other countries".[24]

Last but not least, section 73 of the Coroners and Justice Act, 2009[25], removed the seditious libel. Seditious libel was outlawed because, among other things,

[22] [1951] 2 D.L.R.369.
[23] ECHR, 1950, 213 UNTS 221.
[24] Criminal libel and Sedition Offences Abolished, *Press Gazette* (Jan. 13, 2010).
[25] Section 73: Abolition of common law libel offences

Since the same issues are covered by other laws, it's not only confusing to have a common law crime of sedition that may stifle free speech and send the incorrect signal to other nations that keep and actively utilise sedition penalties to suppress political discourse, but it's also unneeded.[26]

Conclusion

Sedition has been used to suppress citizens' intrinsic and natural right to free speech ever since its inception in colonial times. By falsely accusing some of the freedom fighters of this crime, the British were able to effectively thwart their efforts to gain independence. Yet, in the post-independence era, this particular criterion has been unfairly enforced on Indian people. Indians, legal professors, and other notables are outraged by this and have demanded that it be changed or removed. They've also stressed the need to change other laws to keep the country together and keep people believing in Indian democracy. Free speech is a vital part of a democratic society, and it is a basic human right in the modern day. If there's ever a choice between sedition laws and people's right to free speech, people's right to free speech should win every time. Personally, I believe that the right to express oneself freely is inherent in every human being and must not be infringed upon.

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