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A STUDY OF THE CONCEPT OF SEDITION IN THE INDIAN PENAL CODE OF 1860

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ABSTRACT

A major focus of the article is on the notion of Sedition Laws and how this legislation is applicable in the present Indian legal context. In an effort to curtail the abuse of the right to free expression, the Indian government passed the Sedition Act. Seven years to life imprisonment is the minimum sentence for sedition, which may be increased to life imprisonment. As a matter of Indian law, it is regarded a cognizable, non-bailable and non-compoundable offence.

Over time, this rule has come to be widely misunderstood, and it is presently being used as a tactic of harassment in an attempt to curtail free expression. Because of this, there have been several requests to repeal Sedition Clauses, an obsolete piece of law originally passed to safeguard colonial interests in the United States.

Sedition statutes date back to colonial times, according to a Supreme Court writ petition, and the central government was asked if they were still necessary after 75 years of independence. It has been like giving a carpenter a saw to cut a piece of wood, and he uses it to chop the whole forest, according to the Court.[2]

This article focuses mostly on the study of the present sedition laws in our country, as well as the question of whether or not these laws need to be updated. India's sedition legislation has been used as a tactic of intimidation in an effort to limit free expression, As a consequence, there have been several calls for the removal of the anti-sedition statutes, which are considered as outdated legislation intended to protect colonial interests. The primary goal of this article is to determine whether or not a sedition law is necessary and to provide an in-depth examination of the proposed legislation. The legislative and judicial interpretations of the legislation are thoroughly examined in this process. The legislation is also backed by an examination of the concept of free speech and its significance in contemporary society.

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[2]Kishorechandra Wangkhemcha & Anr Vs. Union of India W.P.(Crl.) No.106/20211

KEYWORD: Sedition, Free Speech, Section 124A, Judicial Precedents, Criminalization.

INTRODUCTION

Sedition is described as "efforts performed through assemblies, speeches, or publications to disturb the calm of the state, an insurrectionary movement intending to commit an overt act but headed toward treason." Section 124-A of the Indian Penal Code, which includes a marginal note on the laws relating to sedition in India, deals with sedition legislation in that country. It encompasses the offences that are covered by the legislation but does not define sedition specifically.

This specific sedition law was developed during the era before India's independence to be used against Indian nationalist leaders who fought for our nation's freedom. As the "prince of the political sections of the IPC meant to crush the liberty of the citizen," Mahatma Gandhi described section 124A of the IPC.

This specific sedition rule confronts a fundamental problem between the rights granted by the Constitution and the necessity that those rights be implemented within a legal regulation devised by a foreign power for a goal that is no longer appropriate in the present context. Consequently, there is usually a conflict between rights and pre-Constitutional laws that remain in existence, and courts are regularly required to evaluate the constitutionality of such laws in light of psychologically and socioeconomically distinct wishes and circumstances.

The paper is broken into four sections. The first section addresses the legislation of sedition in India, including the relevant clause and its scope. The second section examines the case against sedition and the typical arguments against the statute of sedition. This section also attempts to explore how the law of sedition has been understood by the courts. The third section discusses the notion of Free Speech, its relevance to diverse philosophies, and its relationship to the constraints imposed by sedition. The fourth section attempts to look at the issue from the other viewpoint by discussing the necessity for a sedition legislation. This section is followed by the conclusion and recommendations section, which attempts to summarise the whole work.

SEDITION LAWS IN INDIA:

The sedition legislation in India is the result of British colonial control and demonstrates how repressive colonial rule may have an impact on a country's laws and regulations. In India, sedition is prohibited under section 124-A of the Indian Penal Code of 1860. Importantly, the term "Sedition" does not appear anywhere in the Constitution; it is only a minor note to the clause of the Indian Penal Code. It was also eliminated as a basis for nullification of legislation under Article 13(2) of the Constitution.

The British administration put Section 124-A into the Indian criminal code of 1870 in order to silence any voices raised against them, as is evident from their behaviour during numerous independence demonstrations. The current version of the clause resides in Chapter VI of the IPC, which is titled "Offenses against the State."

In accordance with section 124-A[3], there are a number of factors that must be considered when determining whether an act is of a seditious character. These factors include:

(i) A person must incite, or try to incite, hate or contempt, or provoke, or attempt to provoke, resentment;

(ii) This discontent should be directed against the Indian government created by law;

(iii) The aforementioned displeasure may be generated by written or spoken words, signs, or visual representations, or other means; and

(iv) These remarks cannot constitute a reasonable critique of government policy or administrative conduct.

The purpose of this clause is to make it illegal to say anything, regardless of what happens as a result of that statement. The clause tacitly excludes public order disturbances as an essential component. The wording employed in this section are so wide that anybody who attempts to defy the authority of the king or queen might be included in the list of seditious acts. When discussing the sedition clause, the most important point is whether or not the act or words against the government come inside the purview of the Crime of Sedition under the Offence Against the State.

DISPUTES WITH SEDITION LAW

One of the most often abused legal provisions in our nation's judicial system is the sedition legislation or its clause. "Section 124A, under which I am cheerfully accused, is arguably the prince among the political provisions of the Indian Penal Code meant to restrict the liberty of the citizen," stated Mahatma Gandhi once.[4]

The Supreme Court of India has only heard 39 cases involving sedition since it was founded in 1950, and only seven of its rulings have included lengthy discussions of the crime. When all of these decisions are taken into account, it is clear that the court only considered a small portion of the concept of sedition. The abuse of this clause by the government has been called into question by a number of rulings, although not to the extent that it might have been.

[3]Indian Penal Code Act No. 45 of 1860 India Code(1860)

[4] Centre For The Study Of Social Exclusion And Inclusive Policy, National Law School Of India University, & Alternative Law Forum, Sedition Laws & The Death Of Free Speech In India 9 (ChandanGowda Ed, 1st Ed. 2011), https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf.

These instances were examined thoroughly in this section of the report, which attempted to comprehend how the Indian court system has dealt with this problem. Tara Singh Gopi Chand vs. State (1951); SabirRaza vs. State (1955); KedarNath Singh vs. State of Bihar (1962); Dr. BinayakSen vs. Chandigarh (1964). For which we have chosen 5 significant judgments: (2007).

TARA SINGH GOPI CHAND V. STATE (1951)

The first sedition case under an independent Indian court was the Tara Singh case. The case is significant because it demonstrates the attitude and practical application of how the Indian legal system and administration saw the idea of sedition.

The Punjab and Haryana High Court declared S.124A to be unconstitutional and ruled that the sedition statute infringed the basic right to freedom of speech and expression. This was the first sedition case in independent India, and it had its share of twists and turns. Political ideology and the dominant political parties will evolve in a democratic state. In times of foreign control, sedition laws may have been essential. However, given the nature of the shift brought about by independence, they are unsuitable.[5]

The court also noted that while Article 19(2) permits reasonable limitations on the basic right to free expression, the limitations must be legal and must not be overbroad. The sedition statute was severely condemned in the verdict, but it was not taken into account, and sedition persisted throughout the nation.

SABIR RAZA V. THE STATE (1955)

A similar stance was taken by the court in this instance, which disapproved of the notion of sedition and its connection to attacks on the governing party. If an MP or government policy is being criticised, the court in the SabirRaza case said, "such criticism is protected under the right to freedom of speech and expression, even if it violates public order."[6]

The Supreme Court ruled that disrupting public order does not lead to the overthrow of the state, as a danger to national security. Rebellion and mutiny are the only ways to topple the State and destroy a Republic.

RAM NANDAN V. STATE OF UP (1959)

This is one of the most well-known cases of sedition legislation when a farmer and activist, Ram Nandan, was charged with sedition. In this instance, he accused the Congress

[5]Tara Singh Gopi Chand v.The State; AIR 1951 Punj 27.
[6]SabirRaza v.The State Cri App No. 1434 of 1955.

administration of neglecting to address the state's acute poverty. Cultivators could assemble an army and topple the government if they wanted to.

He was charged with sedition by the government, which took his actions very seriously. They have made crucial remarks on sedition laws in their nation, stating that S.124A is illegal since it restricts freedom of speech and does not serve the "public interest."

There is no justification for restricting the basic right to free speech and expression because of "the mere risk of public disruption."[7]

KEDAR NATH SINGH V. STATE OF BIHAR (1962)

It was the KedarNath Judgment that set the course for Indian sedition legislation going forward. In the case, the court determined on the constitutionality of Section 124A of the IPC, or the sedition legislation, based on the precedence of all of the above-mentioned cases.

Overruling all High Court precedent, Supreme Court's constitution bench has decided in favour of this case's plaintiff. The court ruled that inciting violence via sedition is a legitimate exception to free speech.

The petitioner, KedarNath, was charged with sedition in 1953 for a speech he gave. VinobhaBhave's initiatives to transfer land had been a subject of his accusations of corruption against the Congress administration. Sedition was defined by the court in its ruling. "Strong phrases" of disdain for the government will not constitute sedition unless they result in "public disruption by acts of violence," according to the law. Thus, this court ruled that sedition could only be used if there was a high probability of violence.

DR. BINAYAK SEN VS. CHANDIGARH (2007)

In the current case, the petitioner BinayakSen was found with naxalite pamphlets, booklets, and letters that were used as evidence. These items showed the constitution of PLGA, which is an organisation, and "Jan Sena Gorilla Zone KrantikariSamyuktaMorcha," which is a group that fights directly with the government and its machines by using force. In the case the court looked at, there was a clear attempt to make people hate the government that was set up by the law and to make people dislike the government that was set up by the law. There is a lot of evidence that shows how the alleged organisations tried to make people hate and dislike the government. For example, they killed members of the armed forces, destroyed mine-proof police vehicles, used

[7]Ram Nandan v. State of UP; AIR 1959 All 101.

pressure bombs, and stole weapons and ammunition from the police and armed forces.

Dr. BinayakSen was charged with sedition, among other things, because he was said to have helped naxalites. At the Session Court in Raipur, he was given a life sentence. He was accused of helping insurgents, who were very active in the area at the time, by giving someone outside the jail notes from a Maoist prisoner who was his patient. He said that a group set up by the government was meant to stop the insurgency in the villages of indigenous tribes, where they said it was thriving. But Dr. Sen, who is also a paediatrician and a human-rights activist, says that the group's real job was to clear iron ore, bauxite, and diamond-rich village land so that it could be mined. After looking into all of the facts of the case, the court decided that he was guilty of sedition.

PUBLIC SPEAK AND THEORIES RELATING TO PUBLIC SPEAK

This right to freedom of speech and expression is guaranteed under Article 19 in Indian Constitution. This freedom may be expressed verbally, in writing, or via any other medium. Most people who argue against sedition do so on the grounds of free speech, and this is the most often cited example. At issue in this case is whether or not Section 124A, which deals with sedition, is constitutionally permissible since it violates the right to freedom of speech. As to whether or not section 124A violates one's right to free expression, the Supreme Court thoroughly debated the issue in the KedarNath case[8] in 1962 and came to the conclusion that it did not.

India's legal system is heavily influenced by the principle of free speech. As a result of India's democratic system, the ability to express one's views on the government isn't only enticing, but it's also critical to the proper functioning of the government.

Article 19(1)(a) of the Indian constitution guarantees the right to freedom of expression, and the Indian court and constitutional framework have long recognised the significance of this right. The opposite is true of the sedition statute, which has a significant impact on the right to free speech since the law was drafted with the explicit purpose of limiting criticism of the government.

As a barometer of democracy, the freedom to free speech and expression is always under jeopardy because to the sedition legislation. Participation in public discourse and constructive criticism of government policies are essential components of a democratic society. However, the sedition laws allow the executive branch authority to use the ambiguously worded clause to manipulate public opinion and wield power indiscriminately. For decades, sedition laws have

[8]KedarNath Singh v. State of Bihar (1962)

been used by the government to coerce civilians into supporting its agenda.

The notion of free speech is based on a variety of ideas and principles, including the Harm Principle and Free Speech and the Offence Principle and Free Speech. This portion of the article might briefly address these ideas.

DAMAGE PRINCIPLE AND FREEDOM OF SPEECH

John Stuart Mill, a renowned lawyer, defined the damage principle as "an articulation of the notion that the right to self-determination is not boundless." Not only is an action that causes injury to another wrong, but it is wrong enough for the state to interfere to prevent that harm from occurring"[9].

The damage principle is based on the premise that government may restrict individual liberty when doing so is essential to protect society from harm. This theory allows governments to make restrictions that benefit the state, and hence any regulations on the offence of the state are protected. The issue of whether or not freedom of expression is an exception to the damage principle might also arise. In this section, we'll go further into the issue of exceptions.

No matter what the purported damage, constitutional law has created a clear norm forbidding speech restriction based on content. It is presumptively illegal to impose a limitation on free speech based on the content of what is said or expressed or on the qualities of an expression, according to the "cardinal rule" of free speech.[10]

The whole mill's case for freedom of expression rests on the following arguments:

(a) The truth and a clear and vivid sense of it are important; we should help individuals to arrive at accurate worldviews.

(b) Freedom of expression permits individuals to arrive at a clear and lively grasp of the world's truths, while the silencing or censoring of expression stops people from reaching a clear and lively comprehension of the world's genuine beliefs.

The aforementioned ideas provide the basis for mills' whole approach to the damage concept and freedom of expression. He has also remarked that freedom of expression is a prerequisite for intellectual and social advancement. He argues that we can never be certain that a quiet viewpoint does not contain some element of truth. Thus, it is clear that the damage principle is an essential component, but it does not imply a totalitarian authority to restrict the freedom of

[9]JOHN STUART MILL, ON LIBERTY 80 (David Bromwich & George Kateb eds., Yale Univ. Press 2003) (1859)

[10]R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992)

society.

OFFENSIVENESS AND FREE SPEECH

The offence principle may refer to a theory of crime that requires a moral or legal justification for enshrining an actor's behaviour. It relates to the moral standards or sentiments of society. This concept indicates that it is typically a fair reason on the side of a proposed criminal exclusion because it would presumably be an effective technique to dealing with persons who have committed a major felony in a strict manner. In addition to the notion that creating injury is more serious than causing offence, the punishments for causing harm should be more severe.

On the basis of a comparison between the damage principle and the offence principle, the renowned lawyer Joel Feinberg advocates the necessity for an offence concept that might lead public condemnation. The fundamental argument is that the damage principle sets the bar too high, and that we may lawfully restrict certain types of communication because they are very offensive. Feinberg's principle states, "It is always a good reason to support a proposed criminal restriction if it is likely to be an effective method of avoiding significant offense...to individuals other than the actor, and if it is likely to be a necessary means of achieving that objective." In essence, the idea says that preventing objectionable behaviour is the state's responsibility"[11]

Many individuals take offence because of their excessively sensitive nature, or even worse, because of their bigotry and unwarranted prejudice. There are many liberal democracies where individuals are punished for a range of actions, including speech that would not be prosecuted if the damage principle were used. As far as Feinberg is concerned, there are several variables involved in determining whether speech may be restricted by the offence principle. There are a variety of factors to consider, such as the breadth, length, and social significance of the speech, the ease with which it may be avoided, the speaker's motivations, the number of persons offended, the severity of the offence, and the community's overall interest.

As a result, it can be concluded that the principle of free speech is being questioned in numerous nations at various levels, which is backed by diverse ideas as well. As a result, it's clear that free speech isn't a set of unqualified rights but rather a social construct based on individual choices. Accordingly, it can be concluded that regulations like sedition laws are never a completely bad conduct, but the worth and the legitimacy of such legislations would be mostly reliant on the use by the involved authorities.

[11]Feinberg, J., 1984, Harm to Others: The Moral Limits of the Criminal Law, Oxford: Oxford University Press.

SEDITION LAW IS IMPORTANT:

Keeping sedition as a crime against the state is essential because the state is the guardian of our rights, and without it, there are no substantive rights. Because of this, undermining the state's stability in any way is a bad idea that will be held accountable.

In addition, it is widely accepted that some phrases may encourage violence when said by specific individuals, and these individuals may include religious leaders, politicians, or even violent organisations. That's why it's so important to have a robust regulatory framework in place to prevent people from just waging a war against the nation inside just by using their words or writing.

That such activities, which aim to disrupt both the country's social cohesion and its democratic framework, are exempt from free speech protections since the words themselves are acts that are not covered by the free speech theory because of their nature and potential for causing violence.

Sedition laws are necessary for every state, based on the above-mentioned ideas and contemporary causes, but the extent of control or restriction they exert on the rights of citizens will be a major factor in determining the effectiveness of such laws.

CONCLUSION AND SUGGESTION

The entire essay, which examines the constitutionality and applicability of section 124A of the IPC, or the sedition law, has reached its conclusion section, where the primary goal is to find an answer to the research question posed at the beginning of the essay, namely, whether the current sedition law is out-of-date and needs to be amended.

The conversation as a whole makes it abundantly clear that there is a genuine and compelling need to maintain harmony between the opposing and pro-sedition legislation viewpoints. Thus, the article offers certain changes to the existing legal system in order to reach the aforementioned balance that is necessary by any governing legislations.

The primary modification is a clearer definition of what constitutes sedition or what actions can be seen as sedition in the updated legislative text of the sedition legislation. This may include taking a close look at the act's background or even demonstrating the act's propensity to create a difficult scenario. The second step is to demonstrate that the accused was in a circumstance where he could have created havoc or was in a position to do so.

The study remedies or modification recommendations that have been made in this conclusion

section primarily strive to sustain the need of the sedition law while also attempting to maintain it with respect to the rights of the people without turning it become an arbitrary and unconstitutional law.