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# Sedition: Fault in our Speech

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## ABSTRACT

*“Sedition is the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen”*

-MAHATMA GANDHI

*Freedom of speech and expression is the most important liberty of the mankind, without which one cannot enjoy other liberties such as right to life, right to religion etc. However despite its importance, the right to speech can be destructed if it is not regulated properly. The Indian Constitution itself can damage this right on the grounds of sovereignty, public order and integrity. In light of these provisions Indian Penal Code prohibits seditious statements under 124A. As we all know the concept of sedition law is often under debate in India because of the actions of the State and Centre against normal activists, writers and even cartoonists who has been criticizing political slip made in the State. Recent data from NCRB shows 93 cases of sedition were filed in 2019 out of which charge sheets were filed in only 17% of the cases and the conviction rate was only about 3.3% and even though the conviction rate is comparatively low, it's not something to be happy about since once arrested for the offence of sedition it's quite a long process to get released which itself is considered to be a punishment. Most importantly the judiciary is grudging against giving bail to person accused of sedition unless they have “reasonable grounds to believe” that the accused is not guilty. The centre has no intention to curtail or strike down this provision anytime sooner despite all these criticisms.*

## I. INTRODUCTION

In order for a democratic country to function peacefully it is integral to criticize the government and not every criticism would be considered as sedition. It is conduct or speech inciting people against the Nation. Due to the Misuse of this law many of the critics have even been demanding to scrape of the law by calling it a “*draconian law*”. While it is essential to protect national integrity, it should not be misused as a tool to curb free speech.

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## GENESIS

Sedition law was first introduced during colonial times through the Draft Indian Penal code drafted by Thomas Macaulay in 1837. Further it was omitted in the year 1860 during the enactment of the Indian penal code. Later the Act was immediately enacted in the year 1863 and inserted the sedition provision due to increasing Wahabi activities against government. The British used the law of sedition to curb any demand for independence:

*In the matter of Queen Empress v. Bal Gangadhar Tilak*<sup>3</sup> Allegations of sedition against Bal Gangadhar Tilak was filed when he delivered several patriotic lectures and speeches. It was alleged that these speeches made references to Shivaji's call for Swarajya (independence) and alluded to the trials of the people under the British rule.

## II. CRITIQUES

Many criticisms has been made regarding the sedition law being misused by the government and it is against freedom of expression and speech and also the constitution, legislature, administration of Justice is not taken into consideration while implementing the law. As per our government anything that is deviant from what is the accepted "Nationalist conduct" invites the charge of sedition. Even nationalism has come to mean that you can't appreciate or say anything praiseworthy of another Nation. If supporting foreign sports team invites sedition then a discourse of majoritarian nationalism has been imposed where even slight a deviation from the popular conception of what is 'national' termed sedition.

## III. ANTI-TERROR LAWS AND SEDITION

The use of Anti-terror law may completely obliterate the possibility of invoking section 124A of IPC in a particular case and also the Unlawful Activities Prevention Act has wider powers than that of Indian penal code. This act has a provision of enhancing punishment if the accused is found floating rules under other section as well. The unlawful activities prevention act may not be invoked directly in the primary framing of particular case sedition may be a primary charge later on with the investigation the unlawful activities prevention act is invoked.

## IV. JUDICIARY ON SEDITION LAW

- *Pankaj Butalia v. Central Board of Film Certification and Ors*<sup>4</sup>.

In this case it was held that while examining any offence under Section 124A, the intention

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<sup>3</sup> (1917) 19 BOMLR 211

<sup>4</sup> WP(C) 675/2015

with which the language of the seditious statement is made has to be looked at holistically and fairly without focusing on isolated passages.

- ***Balwant Singh and Ors v. State of Punjab***<sup>5</sup>

The appellants before the Court shouted the slogans "*Khalistan Zindabad, Raj KaregaKhalsa, and Hinduan Nun Punjab Chon KadhKeChhadange, Hun MaukaAya Hai Raj Kayam Karan Da.*" HELD: appellants had only shouted those slogans a couple of times and the slogans had not received any response from any other person and were acquitted

- ***SanskarMarathe v State of Maharashtra and Ors***<sup>6</sup>.

In this case it was examined whether Mr. Assem Trivedi, a political cartoonist and social activist, through his cartoons, had committed the offence of sedition as through his cartoons, he had allegedly to spread hatred and disrespect against the Government. The matter was dismissed. This case also provided certain guidelines to sedition

- ***Kedarnath singh v. State of Bihar***<sup>7</sup>

If creation of disorder or disturbance of law and order or incitement to violence had not figured, the constitution bench may have in all likelihood, struck down Section 124A. It is constitutional only when read in the context of incitement to violence or creating public disorder or disturbing law and order.

## **V. SEDITION AND FREEDOM OF SPEECH AND EXPRESSION**

The said right is the important feature of Democracy which is something which is just not a rule by the people rather it is a society where every Citizen's voice should be counted and must be given the platform for open debates and open public discussions. It ought to be a society where people can express their opinions and convictions, unfettered and unhindered by the fear of Punishment by the Government. Indeed, securing Freedom of speech and expression is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and government and must be preserved<sup>8</sup>. it does not only help in the balance and stability of a democratic society, but also gives a sense of self-attainment<sup>9</sup>. Thus to acknowledge the same, many statues and conventions had recognized the said right in Indian Constitution, Universal Declaration of Human Rights, European Convention on Human Rights and fundamental freedoms, International Covenant

<sup>5</sup> (1995) 3 SCC 214 : AIR 1995 SC 1785

<sup>6</sup> Cri.PIL 3-2015

<sup>7</sup> [1962] 2 Supp. S.C.R. 769

<sup>8</sup>The Secretary, Ministry Of ... vs Cricket Association Of Bengal &others 1995 AIR 1236, 1995 SCC (2) 16

<sup>9</sup>ibid

on Civil and Political Rights etc..

## VI. FREEDOM OF SPEECH AND EXPRESSION IN INDIAN CONSTITUTION

In India, the said right is enshrined in **Article 19** of the Indian Constitution. All citizens shall have the right to freedom of speech and expression, right to assemble peaceably and without arms, right to form unions and associations, right to move freely throughout the territory of India, right to reside and settle in any part of the territory of India; and right to practice any profession, or to carry on many occupation, trade or business<sup>10</sup>. Whilst discussing the said provision, there are also some crucial cases dealing with the said right. Some are:

- ***Sakal v. Union of India*<sup>11</sup>, *Mudholkar, J. said:***

*"This Court must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution"*

- ***S. Khushboo v. Kanniamal&Anr***

*"The importance of freedom of speech and expression though not absolute was necessary as we need to tolerate unpopular views. This right requires the free flow of opinions and ideas essential to sustain the collective life of the citizenry"*

However, it is subjected to reasonable restrictions on the grounds specified in Article 19(2) to limit the misuse of this right. In fact many statues are enshrined with this objective and one of such is sedition. The term "Sedition" is defined under **Section 124A of IPC**

## VII. SEDITION-A FAULT IN OUR SPEECH

*Though the Constituent Assembly omitted "sedition" as one of the permissible grounds of restriction on freedom of speech and expression under Article 19(2) and making the same to be unconstitutional, sedition remained as a criminal offence in the IPC. Secondly, though punishing a traitor for the sake of national security is inevitable, **reattributing a person for the sake of protecting oneself rather the Nation is not.** Despite, freedom of speech and expression, being bedrock of democracy, this colonial law has been misused by our own Indian Government to silent the political Dissent by invoking this section against Social Activists, detractors, writers and cartoonist. In other words Specific interpretation of sedition is not a fault rather creating a monopoly in favor of the Government or any other Authority<sup>12</sup>*

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<sup>10</sup>INDIAN CONSTITUTION- ARTICLE 19

<sup>11</sup> [1962] 3 SCR 842 at 866

<sup>12</sup>Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. &Ors(1995) 5 SCC 139

is a fault in our speech. It is a matter of concern that large number of cases has been filed against many innocent people<sup>13</sup>.

The term sedition defined, is **vague and often misused by the Politicians**. Generally, section 124A relates the offence of sedition to inciting or exciting “disaffection” towards the government. It includes disloyalty and all kinds of enmity. The words ‘contempt’, ‘hatred, disloyalty, also comes within the ambit of disaffection<sup>14</sup>. It is evident from a plain reading of the provision<sup>15</sup> that, there is no clear meaning to the term ‘disaffection’ and the elements of the offences are vague as they give clear instruction neither to the people nor to law-enforcement officials and the Courts regarding what kind of behavior is prohibited.

- *Queen Empress v. Ramchandra Narayan*<sup>16</sup>

The Court did not agree with the notion that ‘disaffection’ was necessarily the opposite of affection, but it advocated that an attempt to excite disaffection amongst the masses was to be construed as an attempt to “excite political discontent and alienation from their allegiance to a foreign sovereign.”

- *SanskarMarathe v. State of Maharashtra and Ors*,<sup>17</sup>

Merely expressing disapproval on the measures of the governments and other authorities to gain its alteration via lawful means does not constitute sedition. There are many cases to prove this fault in our speech:

- *Kamal Krishna v. Emperor*<sup>18</sup>,

*“It is really absurd to say that speeches of this kind amount to sedition..... To suggest some other form of Government is not necessarily to bring the present Government into hatred or contempt”*

## VIII. CONCLUSION

Sedition law, being the law of the land, has to be applied in letter and spirit and unless the actions lead to creation of public disorder, disturbance of law and order or incitement to violence, no action should be taken. In fact, the law of sedition needs to be toned down if not abolished and the least which the government can do is to make it a non-cognizable offence

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<sup>13</sup> Cases been briefed in judicial perspective on sedition law

<sup>14</sup> Amended 1898 during colonial period

<sup>15</sup> Section 124A of IPC

<sup>16</sup> (1931) 33 BOMLR 1169

<sup>17</sup> Cri.PIL 3-2015

<sup>18</sup> In this case the accused was charged with sedition for making a speech which recommended ‘Bolshevik’ form of government in order to replace the then Current Government. The court acquitted the accused

so that the persons are not arrested at the drop of a hat.

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