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The position of sedition laws and the freedom of speech and expression in India: A critical analysis

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Abstract
The recent instance of invoking sedition laws in several instances has again raised questions on the undemocratic nature and validity of these laws in the present constitutional democracy. In a democratic country like India, all citizens have the Fundamental Right to Freedom of Speech and Expression. Although reasonable restrictions to such right allow the law of Sedition, the extent of such law is a question of prime importance. In our country where Rule of Law prevails, arbitrary charging a person for the offence of Sedition is an act, which is not in sync with constitutionalism. This paper is an attempt in bringing together all the different facets of sedition and freedom of speech and expression along with the issues that arise under its ambit.

Keywords: constitutional, democracy, freedom of speech and expression, fundamental right, reasonable restrictions, sedition laws

Introduction
The right to Freedom of speech and expression and the Right to dissent lay down the foundation of Democracy in any country. The citizens of the democratic nation have the fundamental right to speak and express themselves, their views, opinion, and thoughts including right to criticize and show dissent towards the governmental actions. However, the government may restrict such fundamental rights by putting reasonable restrictions to maintain societal order and law and order within the boundaries of their country.
The concept of Sedition is a type of a restriction that the law imposes on the citizens prohibiting them from exercising their rights in an unlimited way, which may hinder the security of the state and may be proved fatal to the law and order of the country. However, there are many instances where the government has used the sedition laws as a shield to curb dissent and to suppress the criticism of the people against them. Therefore, the existence of sedition laws in a democratic nation becomes a debatable and controversial question as such existence challenges the spirit of democracy.

The concept of Sedition
The term *Sedition* is derived from the Latin word *sēditiō* that means *discord.* It in turn consists of two words- sēd (meaning "apart") and itiō (meaning "a going") [1].
In simple words, sedition means any act or words that have the power to influence people at large to cause disaffection towards the government and to excite people to overthrow the government by unlawful means.
In India, Sedition is an offense under section 124A of the Indian Penal Code,1860. Section 124A of the Indian Penal Code, 1860 states as follow-

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 obtain 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 [2].

The Section 124A can be simply analyzed as follow

What is penalized: Whoever brings, excites or attempts to bring or excite hatred, or contempt, or disaffection towards the Indian government. Disaffection has been explained as feeling of disloyalty and enmity(Explanation I)

Modes of committing sedition: Using words, signs, visible representation or otherwise. Words can be wither oral or written.

Punishment: The guilty shall be punished with imprisonment for life or imprisonment up to three years, to which fine may be added, or with fine.

Exception under the section itself: Those comments which are expressing disapprobation against the government measures, administrative or any governmental actions without actually exciting any hatred, contempt, etc. or any such attempt are not punishable. Simply, Any such act which is done to alteration in such governmental actions by lawful means are not seditious. (Explanation II and III) [3] Under section 124A, only those words, signs, etc. are punishable if it promotes the idea of overthrowing the government by violent and unlawful means. It has the following characteristics:

Non-bailable: It is a non-bailable offense which means the accused cannot claim bail as a matter of right, and only the court has the right to grant bail at its own discretion.

A cognizable offense: It is a cognizable offense which means the police officer has the power to arrest any suspicious person without an arrest warrant.

Court of Session: The Code of Criminal Procedure expressly provides that the offense of sedition is triable of the Court of Session.

Punishment: It is a punishable offense up to life imprisonment and fine, or imprisonment for three years and fine, or fine.

The History of Sedition laws in India

The history of sedition laws in India can be traced back to the colonial period. The British government introduced it to curb nationalist activities, veil the voice for freedom, and suppress the criticism or dissent against the British government. Thomas Macaulay was the first who originally drafted sedition laws in the year of 1837. However, it was omitted because of the enactment of the Indian Penal Code, 1860.

Lord Macaulay's Draft Penal Code of 1837 consisted of Section 113 that corresponded to today's Section 124A of IPC. The punishment for Sedition proposed at that time was life imprisonment. Sir John Romilly, Chairman of Second Pre- Independence Law Commission commented upon the quantum of punishment proposed for sedition, on the ground that in UK , the maximum punishment had been three years and he suggested that in India it should not be more than five years. However, this section was not included in IPC when it was enacted in 1860. Consequently sedition was included as an offence under section 124A through Special Act XVII of 1870. This section was parallel with the Treason Felony Act of 1848 that penalized all the seditious expressions. The intention behind introducing this section was to punish an act of exciting feelings of disaffection towards the Government, but this disaffection was to be distinguished from disapprobation [4]. Thus people were free to voice their feelings against the Government as long as they project a will to obey its lawful authority.

It is to be noted that section 124A was not initially part of the Indian Penal Code, 1860. Initially, it was introduced by an amendment in 1870 by Sir James Stephen to curb the growth of dissent and nationalist activities. Later, it was modified by an amendment in 1898.

In 1898, the section was amended by the Indian Penal Code (Amendment) Act 1898 providing for punishment of transportation for life or any shorter term. The amended section made new changes in the existing definition and also made bringing or attempting to bring in hatred or contempt towards the Government established by law punishable. The provision was further amended in 1995 substituting the punishment as 'imprisonment for life and/or with fine or imprisonment for 3 years and/ or with fine. The British Parliament enacted the Prevention of Seditious Meetings Act in 1907, in order to prevent public meetings likely to lead the offense of sedition or to cause disturbance as meetings against the British rule were held in different parts of India, with the main objective of overthrowing the Government. In 1911, the Act was repealed by The Prevention of Seditious Meeting Act, 1911 which enabled the statutory authorities to prohibit a public meeting in case such meeting was likely to provide disaffection or to cause disturbance in public tranquility. The violation of the provisions of the Act was made punishable with imprisonment for a term which could extend to six months or fine or both. However the act now stood repealed vide Repealing and Amending (Second) Act. The British government has booked many Indian freedom fighters, for their nationalist activities and for raising anti-British sentiments, like Mahatma Gandhi, Bal Gangadhar Tilak, Jawaharlal Nehru, Bhagat Singh, and other freedom fighters.

The courts have tried to remove the clouds on such wide definition though its judicial pronouncements. The following are the leading judicial pronouncement on sedition in India before Independence.

Queen-Empress v. Jogendra Chunder Bose and Ors [5]. Is one of the highlighted reported cases where the Calcutta High Court held the editors of a Bengali magazine guilty for sedition as they criticized the British Government's policies. C.J. Petharam explained disaffection as a feeling contrary to affection, while disapprobation as disapproval. It also distinguished disapprobation' and 'disaffection' by emphasizing that only disaffection is punishable under sedition.

In another sedition case of *Queen v. Bal Gangadhar Tilak* [6], where Balgangaghar Tilak was charged under sedition for his alleged hate speeches against the British government that led to the killing of British officials. The Court agreed with the previous ruling in Queen-Empress v. Jogendra Chunder Bose And Ors.

In the case of *Niharendra Dutta Majumdar* [7], the court explained that those words, deeds, and writings are seditious if they have the intention or tendency to disturb the tranquility, to create a public disturbance or such incitement.

In *Emperor v. Bal Gangadhar Tilak* [8], Tilak was again charged for seditious writing where he promoted the idea of Swaraj.

After the enforcement of the Constitution of India in the new Independent India, the validity of the sedition law has been challenged from time to time.

The question regarding the constitutional validity of section 124A IPC was first entertained in the case of *Ram Nandan v. State* [9], where the Allahabad High Court observed that it is violative of fundamental right enshrined under Article 19(1)(a) of the Constitution. It was then challenged in *Ramesh Thapar's case* [10] and then in *Kedar Nath Singh's case* [11]. It was challenged on the ground of infringement of the fundamental right of right to Freedom of speech and expression as enshrined under Article 19(1)(a) of the Constitution of India. However, the court has held the constitutional validity of section 124A of the Indian Penal Code and held that it does not infringe the fundamental right as it imposes a reasonable restriction. However, it limited its scope by stating that only those will be considered as seditious if it has the effect and power to create public disorder and incite people to overthrow government through illegal means.

The Supreme Court in the case of *Balwant Singh and Anr. v. The state of Punjab* [12], held that the raising slogans of 'Khalistan Zindabad' following the former Prime Minister Indira Gandhi's assassination was not seditious as it did not create any public disorder and hindered law and order in reality.

It is also significant to note that the presence of an intention to incite violence or disturb public order is not an absolute requirement under this section [13].

The Position of Freedom of Speech and Expression In India

In any democratic country, the right to freedom of speech and expression is substantial. It is an umbrella of rights that shades a variety of other rights like the right to dissent, the right to criticize, the right to have different opinions, etc. Democracy is based essentially on free debate and open discussion, for that is the only corrective of Government action in a democratic set up. If democracy means Government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.

In India, The Constitution of India guarantees the fundamental right of right to Freedom of speech and expression to every citizen. The aforesaid right has been protected under Article 19(1)(a) of the Constitution. It means every citizen has the right to express one's opinion, thoughts, and views freely by way of words, writings, painting, signs, gestures, and any other form. It is not an absolute right, and the Constitution itself restricts this right under Article 19(2). It provides reasonable restrictions on the use of such rights and that state may make such laws to curb this right in the interests of the-sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality or contempt of court, defamation or incitement to an offense [14].

The article has a broad ambit, the Indian judiciary has not failed to interpret this article broadly. It includes the right to know, right to circulate publications freely, right to the commercial advertisement, right to public demonstration, right to freedom of silence, right to express gender identity, etc. Most notably, it includes the Freedom of the Press. Unlike American Constitution, Indian Constitution does not expressly provide for Freedom of the Press. It is implicit under Article(1)(a).

Therefore, every citizen and the Press have the right to express themselves but they are under reasonable restriction not to express something which can be a hindrance to public order, a threat to the security of the state, or challenges the sovereignty and integrity of the state, and other reasonable restrictions as mentioned before.

The Supreme Court has upheld the constitutionality of the sedition law on this ground only in various cases.

The Hon'ble Supreme Court, while crystallizing the relationship between a democratic society and freedom of speech opined that in a democratic set- up, it is the right of the people to be kept informed about current political, social, economic and cultural life as well as the burning topic and important issues of the day in order to enable them to consider and form a broad opinion about the same and the way in which they are being managed, tackled and administered by the Government [15]. In the case of S. Khusboo v. Kanniamal & Anr [16]. observing that the morality and criminality do not co-exist, the Supreme Court opined that free flow of the idea in a society makes its citizen well informed which in turn results into good governance. For the same, it is necessary that people be not in constant feat to face the dire consequences for voicing out their ideas, not consisting with the current celebrated opinion. Emphasizing the importance of the freedom of speech Sec. 66A of the Information and

Technology Act, 2000 was declared unconstitutional on the ground that it was in direct conflict with the fundamental right of freedom of speech and expression [17]. The Supreme Court held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression 'is a cardinal value and of paramount importance [18]. The freedom of speech not only helps in the balance and stability of a democratic society but also gives a sense of self attainment [19]. In Indian Express Newspaper (Bombay)(P) Ltd. v. Union of India [20] the following four purposes of free speech and expression were set out; (a) it helps an individual to attain self-fulfillment, (b) it assists in the discovery of truth, (c) it strengths the capacity of an individual in participating in decision making and (d) provides mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Having discussed the importance of freedom of speech and expression, one cannot deny the fact that right to freedom of speech and expression in isolation is not enough. It has to be understood that to speak or to express a thought it is necessary to be aware of all the aspects and fundamentals of the issue in discussion. Here comes another aspect of the free speech and that is the right to listen, followed by the free flow of the information available. It was held that the right to know is inherent in the right of freedom of speech and expression under art. 19(1)(a) [21]. The Bombay HC in the case of Cellular Operators Association of India v. Telecom Regulatory Authority of India [22] held that right to information rests upon the right to know, which ultimately was an inseparable part of freedom of speech guaranteed under art.19(1)(a) [23].

The other important aspect to be kept in mind is reasonable restriction on the speech and expression which enables the State to impose certain restrictions on the right to free speech is the "harm principle" which means the until and unless a speech does not result into some sort of harm, the same cannot be suppressed. However the yardstick on which this harm is to measured has to be high. The harm is to be of such intensity that it threatens the very existence of the society; it disturbs the public order and results into the chaos in the society.33 Thus, whenever there is a need to interfere, the Courts have laid down certain rules as touchstones. In case of S. Rangarajan v. P. Jagjivan Ram [24], it was held that unless there is a danger to the society and public order, the right to freedom of speech and expression cannot be restricted. The anticipated danger should be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a powder keg'. The Courts opined the same in subsequent cases [25].

Also in number of cases, skepticism has been expressed about the potential misuse of sedition law. Justice AP Shah, in one of his writings, warns about the very basis for the logic of sedition law. He compared the idea of sedition to a parochial view of nationalism which often endangers the diversity of opinion rather than protecting them against rebellion. The use of religion in electoral campaigns was challenged under s. 123 of Representation of the People Act, 1951 [26]. The contention put forward was that repeated use of open threats to India's constitutional commitment to secularism could be construed as 'disloyalty' and the threat of public nuisance. However, the contention was rejected and it was held that candidate expressed at best a 'hope' for creation of a monolithic rashtra than, in fact, acting on elimination of minorities and thus threatening to eliminate other religions. Significantly, sec.123 of RPA, 1951 covers use of such speed in the campaigns and therefore there is no question of invoking the provisions of sec.124A IPC. Thus, expression of a particular image of the country does not alone amount to a threat to the security of the nation.

Revisiting Constituent Assembly Debates - The Genesis of Right to Free Speech and Expression in India

Whenever it comes to defining the freedom of speech in India, or striking a balance between restrictions and rights, constituent assembly debates are the best resort. Such an approach is also called "originalist approach". This is simply because the founding fathers of the Constitution, with utmost deliberation have manifested the framework of rights of citizenry and the state. This manifestation is always relevant, as it reflects the intention of the framers of the Constitution while conferring these rights to state and citizenry. Further, these debates assist in drawing logical justifications of any power conferred upon citizens or state.

As far as the freedom of speech and expression in the Indian Constitution is concerned, charting out the logic behind the conferred powers and restrictions becomes equally pertinent, to ascertain the scope of curtailment of these rights by the state. In India, article 19(1) (a) confers the freedom of speech and expression to the citizens, and clause 2 of the same deals with reasonable restrictions to be imposed on such a right. The grounds of reasonable restrictions on such freedom are sovereignty and integrity of India, security of state, friendly relation with foreign states, public order, or decency or morality or in relation to contempt of court, defamation or incitement of offence.

However, it is crucially important to note that sedition was one of the grounds in the earlier version of the article. Before beginning of debate in relation to the restrictions, the draft in relation to the restrictions read as the following: "Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

Thereafter, significant deliberation was done in relation to the restrictions that could be imposed to curb freedom of speech and expression. Sedition was removed as a ground to restrict free speech and expression after relevant discussion. It, therefore, becomes significant to revisit the discussion in the constituent assembly.

On December 1, 1948, Shri Damodar S. Seth [27] mentioned that if sedition is provided as a ground to curb free speech and expression, then all the regressive Acts such as the Official Secrets Act, 1923 will remain intact. He

further says that the freedom of speech and expression, which includes the freedom of press, will become virtually ineffective if sedition is mentioned as a ground for restriction of freedom of speech and expression. Further, Shree K.M. Munshi [28] referred many incidents where mere criticism of government, or holding an ill-will against the government was termed as sedition. He went on to say that in a democracy, such terms are unwelcome, as criticism of government forms the foundation of a democratic setup of State.

The arguments of Sardar Hukum Singh [29] are very pertinent in this respect. He stated points which emphasized the role of judiciary. He mentioned that the restrictions on the freedom of speech and expression that are being proposed in our constitution have been borrowed from those countries where judiciary works under the principle of 'due process of law', and consequently, it has the power to adjudicate any legislation based on its merits. However, in India, the principle of 'procedure established by law' is followed, and the powers of judiciary are only restricted to the point of determining whether there is a law relating to sedition or not, if freedom of speech and expression of an individual is sought to be curbed. If there is a law, then the hands of the judiciary would be tied enough to be restricted and to adjudicate according to that law which curbs such freedom. Such a setup was therefore found unsuitable for a political structure as that of India.

Consequently, the term ''sedition'' and ''public order'' were removed from the grounds mentioned to restrict free speech in the Constitution. Further, to increase the ambit of the judiciary in matters of restriction of rights to freedom enshrined in the constitution, the term 'reasonable restrictions' was added, as proposed by Shri Das Bhargava [30]. This ensured a wide ambition to the judiciary, which was otherwise not possible because of the limited reach of the principle of 'procedure established by law', as against 'due process of law'. Therefore, the reasonability was now to be decided by the judiciary. If a law was found to be unreasonably restricting freedom of individuals, it could be declared unconstitutional. Therefore, even the legislature agreed that the power to restrict such a crucial right as that of freedom of speech and expression should rest with judiciary, not with legislature, to ensure the rule of law.

Explicating the Judicial Trends in Relation to the Crime of Sedition

The constitutionality of laws relating to sedition have been challenged in the apex court multiple times, however, the same series of precedents are relied upon, and there has been no attempt to view the term 'sedition' from the dynamic perspective of social change. There are some cases that form the series of determination of the constitutionality of legislations relating to sedition. These cases reflect the judicial trend in relation to the freedom of speech and expression, and the 'reasonable restrictions' associated. These are also helpful in determining when 'reasonable restrictions' can be used as a ground to restrict free speech and expression.

The first case is that of Brij Bhushan v. State of Delhi. In the present case, constitutionality of section 7(1)(c) of the East Punjab Public Safety Act, 1949 was challenged. The Supreme Court held (5:1) that the provision was unconstitutional, because "sedition" and affecting public tranquillity are different terms, and the disturbance of public order and tranquillity does not necessarily mean that it is seditious, hence, a prior restraint cannot be imposed on the publications. Those days "public order" was not one of the restrictions under article 19(2). Therefore, the apex court for the want of restriction like "public order" considered the protection of right to free speech to occupy greater importance over restrictions imposed by the State to curb the same.

Second case is the case of Romesh Thappar v. State of Madras. Constitutionality of section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 was challenged, and the provision was declared unconstitutional, where the court held (5:1) that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of State under article 19(2) of the Indian Constitution, such law cannot be declared to be seditious. Restrictions on free speech based on disturbance of public order could not be sustained because "public order" was not a part of article 19(2). Hence, the impugned provision was declared unconstitutional. The Supreme Court gave greater importance to free expression than to restrictions which the legislation aimed at imposing, under the garb of sedition.

Third case in the series of cases is the most significant one, the case of Kedar Nath v. State of Bihar. It forms the primary precedent which is relied not only to adjudicate events of sedition, but also to define the essence of section 124A of the Indian Penal Code, 1860. The constitutionality of sections 124-A of IPC and section 505 of IPC was challenged, as it was contended by petitioners that these sections were against article 19(1) (a) of the Indian constitution. The constitution bench of Supreme Court unanimously held that it is the security of the State, which depends upon the maintenance of law and order and is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such legislation has to fully protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. It was also held that such a restriction is necessary for the safety and integrity of the State. Accordingly, the Supreme held that sections 124-A and 505 of the Indian Penal Code were within constitutional limitations considering article 19(1) (a) read with article 19(2), only if it is suitably read into with "tendency test".

It was, therefore, held that the offence of 'sedition' under section 124A does need incitement to violence or tendency or intention to create public disorders by words spoken or written, which have the effect of bringing the government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the state. In other words, actual violence or disorder is not required for attracting section 124A.

Further, in the case of Common Cause v. Union of India, it was held that authorities, while dealing with the offences under section 124A of the Indian Penal Code, will be bound by the principles laid down in the Kedar Nath Singh v. State of Bihar case, and sedition charges cannot be invoked merely for criticising the government.

It is, therefore, important to consider that once an overwhelming material on record is available to establish the fact that there has been an attempt to create disaffection for the established government, coupled with an intention or tendency of creating public disorder or violence, only then can the charges of sedition stand in the court of law. In all other cases, however, strong disapprobation towards government is expressed; it does not amount to sedition if it does not intentionally incite contempt, dissatisfaction or hatred towards the government, along with a tendency to arise violence. However, the executives are reluctant to accept the true definition and scope of the term sedition. Many cases reflect a misuse of the section, and there can be seen a rise in registration of cases relating to sedition under section 124A, regardless of the specific definition and scope decided by the judiciary.

Misuse of Sedition laws

The British welcomed the sedition laws in India intending to prohibit any kind of criticism, rebellion, the birth of feelings of disaffection, and the overthrow of the government. Thus, initially, it was the fruit of colonialism to shut the mouth of the Indians against the British government. But still, it has kept its place safe in the Indian laws. Although the intention for keeping such laws in democratic India has shifted to protect the sovereignty and integrity of the state, maintain public order and security of the state and citizens.

The law does not prohibit people to criticize government policies and actions. However, the words used in the definition of section 124A IPC have a wider scope and are subject to judicial interpretation. Therefore, the government has always been accused of misusing the sedition law to keep the mouth of innocent citizens shut. There have been many incidents where the citizens have been booked under sedition law without any sufficient cause, especially the journalists, media reporters, social activists, and scholars.

The National Crime Records Bureau, popularly known as NCRB, collects data on crime in India and publishes it on "Crime in India" [31]. According to the NCRB, the registered cases for sedition have seen a spike by 160% between the years 2016-2019. However, it is shocking to note that the conviction rate has seen a major downfall from 33.3% in 2016 to 3.3% in 2019 [32].

The NCRB data can be summarized as follow including the number of registered cases, conviction on such cases, and the conviction rate in the years 2014-2019 [33].

Table 1

Years	Registered Cases	Conviction	Conviction rate
2014	47	1	25
2015	30	0	0
2016	35	1	33.33
2017	51	1	16.7
2018	70	2	15.4
2019	93	1	3.3

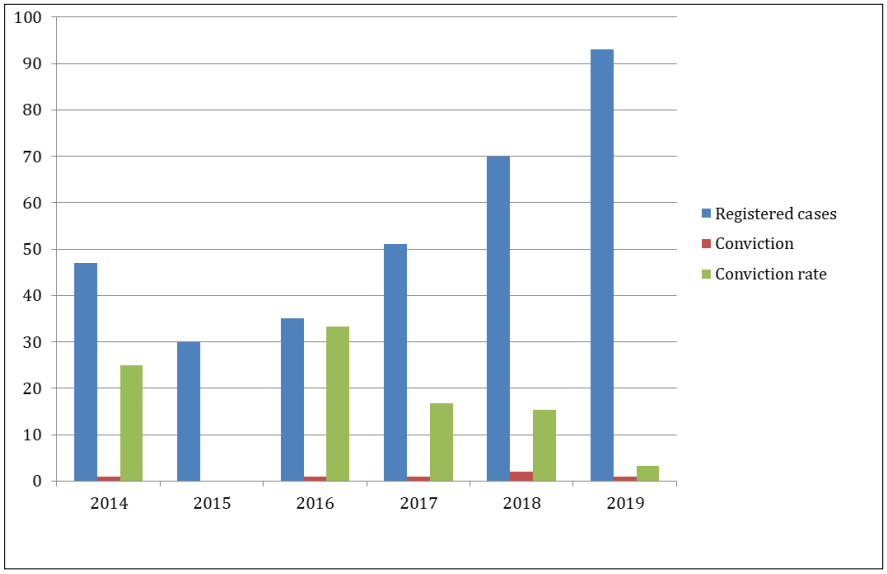

Fig 1

The data indicates that the sedition laws are being misused by the government to curb dissent and criticism. There have been numerous instances of sedition which were highlighted.

The infamous Disha Ravi case, where a young climate change activist was charged with sedition, allegedly for her involvement with an online toolkit related to Greta Thunberg and Farmers protest. However, the court granted her bail [34].

In December 2021, a journalist was booked under sedition and other provisions of the Indian Penal Code for his controversial writings on an arrest of a lawyer was released on Personal Recognizance (PR) [35].

The incident where three Kashmiri students were booked under sedition law for celebrating Pakistan's victory in the T20 Cricket World Cup 2021 raises the question mark on their fundamental rights to speech and expression [36]. Even, the Apex court of India has shown its concern over the misuse of sedition law and suggests its repealing. In July 2021, The Editors Guild of India and a former major general, through their pleas, challenged the constitutionality of the sedition laws in India and prayed for its struck down. The Supreme Court agreed to the misuse of the laws and asked the center why it has not been repealed yet [37].

The existence of sedition laws seems to be a threat in a democratic country where the government tries to use as a sword against dissent and criticism.

The Indian Press and Media are also directly influenced by the misuse of such laws. It is used as a threat against media reporters and journalists not to raise their voices and not to uncurtain the darkness.

According to the World Press Freedom Index 2021 by a French NGO (Reporters Without Borders), India scores 142 out of 180 countries. It has also shown its concern by saying that "It's one of the most dangerous countries for journalists trying to do their job properly" [38].

The Indian Press Freedom in the world can be analyzed as follow:

Table 2

Year	India's Press Freedom rank in the World
2002	80
2004	128
2006	106
2008	120
2010	105
2012	131
2014	140
2016	133
2018	138
2020	142

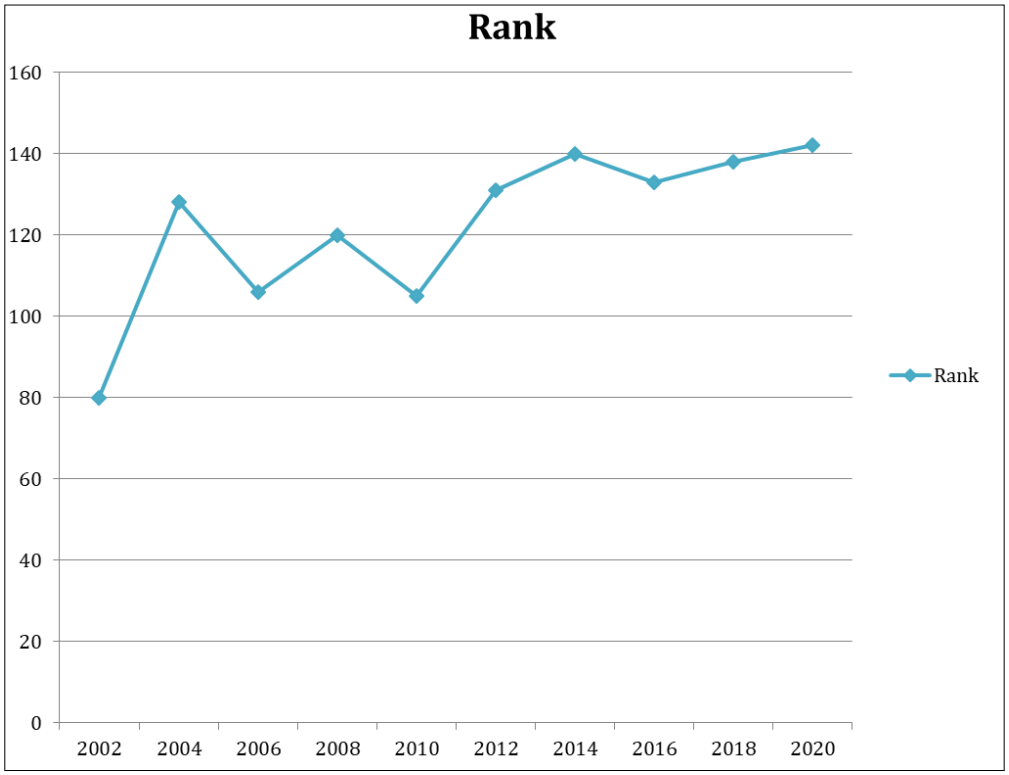

Fig 2

Sedition Laws In Other Countries

It is interesting to note that not many countries have sedition laws. Only a handful of countries are stuck with sedition as a criminal offense in the 21st century; namely- India, Iran, Malaysia, Saudi Arabia, Sudan, Senegal, Turkey, Uzbekistan [39].

It can be analyzed that most countries have either abolished the sedition laws or modified them to the extent that does not curb the freedom of speech and expression like the United Kingdom, South Korea, New Zealand, Australia, Indonesia, etc.
The situation about sedition in the following countries can be analysed as follow:

The United Kingdom
Sedition is no longer a crime in the UK. It has been abolished by the Coroners and Justice Act 2009. It is an irony that the country that has sown the seeds of sedition in India has itself abolished it [40].

The United States of America
The United States of America also has sedition laws but is rarely used. The USA has adopted the concept of sedition laws before over two centuries. The laws have been modified over such a long time and do not aim to become a hurdle in the enjoyment of the fundamental right of speech and expression by the citizens.
Section 2385 of the US Code provides punishment for Advocating the overthrow of the Government. The guilty can be punished with fine, or imprisonment up to twenty years, or both and shall be ineligible for a governmental job for the next five years after such conviction [41].

Canada
The sedition laws still persist in Canada providing maximum punishment of imprisonment up to fourteen years. However, the laws have no significance as it has not been used after the 20th century.

Netherlands
Section 111-113 of the Dutch Penal Code provides punishment for intentional defamation of king, his consort, spouse, heirs, regent, etc. The guilty for intentional defamation of King can be punished up to five years imprisonment or with a fine [42].

New Zealand, South Korea, and Indonesia
These countries have either abolished the sedition law or held it unconstitutional. Therefore, sedition is no more an offense in these countries.

Discussion
The preceding analysis suggests that the law on sedition is draconian in its nature, extent and scope and hence has no place in a functioning democracy like India. Established by our colonial masters in 1870, it was initiated as a repressive law to clamp down on dissenting voices against the colonial rule like Bal Gangadhar Tilak and Mahatma Gandhi
In 1848, under Lord Macaulay's rule, the definition of sedition was an attempt to bring hatred, contempt or disaffection to the government established by law. In 1942, it was the Federal Court that clearly asserted that an act was seditious only if the disaffection was accompanied by an appeal to "violence or disruption of public order". This definition becomes extremely important to understand the law on sedition in its totality. After the Privy Council dismissed the Federal Court's definition, the Supreme Court of India, after Independence, chose the Federal Court's definition and Section 124A IPC that sedition is only applicable to acts that cause "violence or disruption of public order" or are an "incitement to violence" and public order.
Consequently, any word, spoken or written, will be deemed to be seditious in nature only if it is accompanied or backed by an imminent threat to violence and not otherwise. This was upheld by the Supreme Court in Balwant Singh vs State of Punjab where slogans like 'Khalistan Zindabad', 'Raj Karega Khalsa' were not termed seditious because, however disturbing they might be to the idea of the nation state, they were not an "imminent threat to violence" or an incitement to violence. Similarly, in Kedarnath vs State of Bihar and Indra Das vs State of Assam, the court upheld that as there was no "incitement to violence", the sedition charge did not hold good. More to the point, the Supreme Court ruled in a now-defunct Terrorist and Disruptive Activities (Prevention) Act (TADA) in 2011 that "a member of a terrorist organisation could not be convicted for mere membership, unless he had been involved in inciting people to lawless action" (Bhatia, 2016). Similarly, in the Shreya Singhal case, the Supreme Court, having distinguished between 'advocacy' and 'incitement', ruled that incitement alone could be punished consistent with Article 19 (2) of the Constitution [43].
Surely, this gains prominence in the Jawaharlal Nehru University case where Kanhaiya Kumar and other student leaders were arrested for raising slogans that are still under investigation. As the nuances of the law on sedition are crystal clear, mere sloganeering should not be construed as sedition. Even vocal expressions of hatred and contempt towards the government – at the Centre and in the States – are no ground for sedition unless they have been an incitement to violence or a threat to disruption of public order.
Critiquing the judiciary's role in the hanging of Afzal Guru does in no way amount to sedition as clearly proved by all the student leaders having been released on bail. Critiquing the government and criticising the administration is a right that makes a participatory democracy like India functional in letter and spirit. Under Article 19 (1) (a) of the Indian Constitution, the right to dissent is a guaranteed facet of free speech. The fact that sedition has not been included in reasonable restrictions under Article 19 (2) of the Constitution is both symbolic and explicitly indicative of the fact that it is archaic and draconian.

Kanhaiya Kumar demanding Azadi or freedom from corruption, hunger or caste politics might make him an anti-national in the eyes of some citizenry but it cannot legally make him guilty of sedition. Notwithstanding the high standards set by the Supreme Court, as elucidated above in some cases, the government and the police have been using sedition as a political tool to clamp down on any ideology that does not conform or align with its own. The symbolic as well as literal assertion of power by making use of sedition reposes the danger of understanding the ideas of nationalism in homogenous terms. Like the founding fathers of the Constitution having asserted that sedition is not made an offence to "minister the wounded vanity of governments" [44].

The irony of this statement cannot go unnoticed in the recent context. Also in most cases of sedition charged by governments, conviction is not even the point. The process is the punishment. The symbolic, hegemonic legitimisation of what is "national" is the point. The politicisation of a singular discourse is the point. Are state-manufactured ideals and symbols of nationalism enough to brand one as anti-national? Under the right to dissent, critique and criticise, can a citizen not express dissatisfaction with the policies and programmes of the government? Treatment to sedition in a democracy like ours is self-reflective of the confidence of a government in itself.

There is a need to revisit this law. Undoubtedly, sedition has become irrelevant today. It is also anachronistic and out of sync with the present-day society which is modern, liberal, democratic, humane and forward looking. The fact that sedition is a relic and was used by the British as a tool of oppression and exploitation of Indians and, more important, to muzzle dissent, makes it all the more irrelevant today.

It goes to the credit of the Supreme Court that in an important observation on September 5, 2016, in response to Advocate Prashant Bhushan's petition on behalf of his NGO Common Cause, a Bench comprising Justice Dipak Misra and Justice U.U. Lalit has made it clear that the government cannot charge sedition or defamation cases on anyone criticising it. The Bench went a step further and ruled that "constables do not need to understand Section 124 A IPC. It is the magistrate who needs to understand and follow the guidelines as laid down by the Supreme Court while invoking sedition charge" [45] The law is crystal clear now as has been clarified by the Supreme Court and the government – at the Centre and in the States – would do well to follow and obey the ruling in letter and spirit. More important, the magistrates have an onerous responsibility to call a spade a spade and follow the Supreme Court's ruling whenever they need to hear a case of sedition.

Currently, the Supreme Court is seized of the issue. A jury formed by the Supreme Court is reviewing whether the law needs to be amended. The focus area is on the words stated in the law "act against the State". It has also decided to examine if abusive language against public figures on social media can constitute sedition leading to a person being booked under the law while admitting a plea by a Madhya Pradesh politician who had criticised Chief Minister Shivraj Singh Chauhan on Facebook. This researcher is of the opinion that notwithstanding the constitutional freedom of speech and expression, people cannot use abusive language against anyone, more so a constitutional functionary, in their utterances, actions and decisions, either in the print, electronic or social media. The problem with social media is that it has no filters and this has made the citizens' utterances and actions all the more responsible.

Additionally, the Law Commission of India is also looking into making amendments to the law. Union Home Minister Rajnath Singh has announced this in the Lok Sabha. It is good news if there is a refreshing change in the Union Government's attitude towards the most controversial piece of legislation. Parliament, in the larger interest of the nation and the world's largest democracy, should repeal it. As criticism is a celebrated facet of democracy, Parliament, which is the citadel of citizen's civil liberties, should rise to the occasion and stop the misuse of sedition law by scrapping it from the statute book.

Recommendations

Sedition in India is not unconstitutional. According to Fali S. Nariman, noted jurist and constitutional expert, sedition should be treated as an offence only if the words spoken or written are accompanied by disorder and violence and/or incitement to disorder and violence. Similarly, mere expressions of hate, and even contempt for one's government, are not sedition, according to Nariman. In the opinion of Soli J. Sorabjee, constitutional expert and former Attorney-General of India, Parliament should repeal Section 124A IPC to protect the citizens' freedom of speech and expression. Alternatively, it should amend or "strike down actions not in conformity with the section", according to Sorabjee. According to Allahabad High Court Chief Justice Yashwant Varma, action should be taken against judges invoking Section 124A without proper examination and valid reason on the ground that it is "manifest illegality". Kulpahar (Uttar Pradesh) Civil Judge Ankit Tyagi has been suspended for charging suo motu Union Finance Minister Arun Jaitley with sedition for writing an article against the Supreme Court judgment on the impugned National Judicial Accountability Act in his Facebook blog. The Supreme Court should penalise the Centre and the States (as the case may be) for willful disobedience of its ruling that one should be charged with sedition only when there is an imminent threat to violence and public order. Compensation should be paid to victims in case of wrong application of the sedition law. This may act as a strong deterrent. If Parliament, in its wisdom, deems that the existing Acts are adequate enough to deal with offences and that the sedition law cannot be repealed, it should amend Section 95, Criminal Procedure Code, 1973, and remove references to sedition. Parliament should explore the possibility of repealing the following Acts to prevent misuse of the sedition law by the executive and the police: The Prevention of Seditious Meetings' Act, 1911; the Unlawful Activities (Prevention) Act, 1967 together with dropping reference to "disaffection"; and the Criminal Law Amendment Bill.

Conclusion

"The Constitutional guarantees of free speech and free press do not permit a State to forbid or prescribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action". In the realms of Martin Luther King and Mahatma Gandhi, the echoes of the importance of free speech and expression can never be forgotten. It is often said that Martin Luther King was sent to jail by the world's oldest democracy, and Binayak Sen by the world's largest. A simple Google search on "Sedition" would permit the understanding that most of the democracies in the world have removed it from their statute books.43 The reason being – that it is an outdated law, more a law of colonial times to oppress rather than deal justice, which suddenly seems to reveal its ugly head in the present generation which is rather unforgiving of anything that curtails its fundamental freedoms.

For far too long the laws of this land have been used as means of attacking the fundamental principles of democracy. It is to be remembered that this is not a judgment call on whether or not section 124A should be repealed. Rather, it is a call on whether 124A should remain as it is or whether the liberty of free speech and thought should be further subjected to the fancies of a whimsical government that seldom tolerates any dissent towards its many policy decisions.

It can be concluded that Freedom of Speech and Expression act as a foundation to the wall of democracy. While the sedition laws aim to safeguard the sovereignty and integrity of the state, and the security of the state. But, the misuse of such laws and the wide extent of such laws have put a question mark on the existence of such laws.

Most countries have abolished it while upholding the freedom of speech and expression. Many activists, scholars, lawyers, even the Supreme Court Judges of India advocate the repealing of such laws in India, a democratic country. The sedition is being used as a sword by the government against dissent and criticism. It should not be acceptable in the world's largest democracy, India. Laws must change with time and the needs of the people.

The day isn't far when simple essays written by aspiring lawyers which are critical of the government could be considered seditious. In ardent hopes that such a day never comes, and in celebration of liberty in all its forms and manifestations: "If there is anything that cannot bear free thought, let it crack" said Wendell Phillips.

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