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Free Speech and Sedition Laws in India: Conflict or Compatibility?

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I. INTRODUCTION

The ability of humans to express themselves has led to speech and the right to speak further got interrelated with the right to express. These rights of expression through speech are now seen as foundational rights to a liberal and democratic society. Democratic Societies have been philosophically seen as emphasizing liberty, autonomy and truth by thinkers such as John Stuart Mill and Ronald Dworkin.[1]

However, these rights should not be seen, in any society, as absolute and the authority should be vested with the legitimate power to curb the extent of these rights and impose normative restrictions so as to protect the wider social and liberal interest such as social cohesion and human dignity.[2]

Freedom as a supreme value is attached to the inherent assumption that human beings are rationally sound creatures[3] capable of taking decisions for themselves and those which are not contradictory with the mores and order of the society, but human beings have limited altruism[4] to think of society first and themselves later and hence comes the reasonable restrictions that are legitimately accorded against any right present to anyone in a modern society. Furthermore, since freedom to express can be both violent and arbitrarily destructive, it is highly unfavorable to maintain them as being immune to legal restrictions.[5]

Typically, the acts of expression through which "free speech" is concerned are addressed to a large and wide audience, and express propositions or attitudes thought to have a certain generality of interest.[6]

The Constitution of India, under Article 19(1)(a)[7] too guarantees that "All citizens shall have the right to freedom of speech and expression." These rights have been doctrinally and judicially interpreted to include wider themes of expression such as but not limited to "the Freedom of Press"[8]; "Freedom to Remain Silent"[9]; and; "Freedom of Artistic Expression"[10]

These rights as we have discussed above are not absolute and are subject to "reasonable restrictions" authorized under Article 19(2)[11] of the Indian Constitution. The reasonable restrictions can be authorized if the speech is not in the interest of "sovereignty of India"; "friendly relations with foreign state"; "public order"; "defamation"; "contempt of court".

The ideas of rights and restrictions upon them have been accepted by the wider community and settled by judicial decisions despite being subject to debates but "sedition" on the other hand, has been a hot topic of debate throughout the Indian country.

The word sedition has its origin in the later Roman Republic, "seditio" (going apart) this meant to indicate a collective disobedience towards an authority with potential to turn into a rebellion.

Sedition laws in India have deep colonial roots that were aimed at suppressing dissent and maintaining control to perpetuate imperial rule. This law aimed at nothing but criminalizing myriad forms of seditious outrages. This was a calculated tactic by foreign ruling class to suppress the dissident voices of Indian self-determination.[12] The colonial rulers took a shrewd approach by equating criticism of the government to be incoherent with the public order thus ensuring that any kind of anti-colonial voices could be legally persecuted.

Sedition as a law in India was originally drafted in 1837 by Thomas Macaulay. Section 124A of the Indian Penal Code (IPC)[13] was introduced by Sir James Stephen in 1870 which defines sedition and prescribes punishment that could extend to life imprisonment. India gained independence in 1947, yet the law aimed primarily at suppressing individual's criticism of the government.

The law is a non-bailable offence which further raises serious implications on the freedom of speech as guaranteed under Indian Constitution. The colonial law aimed to curb dissent still finds a popular use by the state.

The Bhartiya Nyaya Sanhita (BNS) which has replaced the erstwhile Indian Penal Code (IPC) doesn't explicitly retain the term sedition, but introduces section 152,[14] which criminalizes acts endangering the sovereignty, unity and integrity of India.

While these provisions may sound as in-line with the reasonable restrictions to the fundamental right to speech, it is a matter of serious apprehension as the words can be construed by the state as having the same effect that the law of sedition had.

II. A COLONIAL LEGACY TO CURB DISSENT

Thomas Macaulay's Indian Penal Code has often been claimed as a legislative code way ahead of its time, but even the most scrupulously crafted text can't have an eternal reverence to it. The provision of sedition was initially not found in IPC,1860 but was subsequently inserted through an amendment in 1870 piloted by James Stephen and clearly has certain implicit colonial tendencies attached to it which caters to the monarchial suppression of subjects.[15]

The law was enacted to limit and suppress the nationalist movement. One of the earliest cases of sedition were registered against prominent leaders with popular support for anti-colonial march to independence. Among the main victims of this law was Bal Gangadhar Tilak,[16] a renowned Indian freedom fighter who was arrested twice under the provisions of this law for publishing articles that criticized the British colonial government's policies. Several other freedom fighters such as but not limited to Mahatma Gandhi, who called section 124A as a "prince among the political section of the IPC designed to suppress liberty"; Bhagat Singh among others were at least charged once[17] under the laws of sedition, further clarifying the intent of the law that as it is, "To Curb Dissent.'' With these cases, the perception of sedition further solidified sedition as a provision which equated disaffection to "disloyalty", "ill will", and "enmity".[18]

Similar to India, the colonial government enacted sedition laws widely throughout its colonies[19] and used its provisions, just like in India, to terrorize people against the realization of independence from the colonial government. British-African colonies such as Kenya and Ghana had British era sedition laws while South Africa had "Suppression of Communism Act and Terrorism Act" which was similar to the laws of sedition in its application.[20] South African leader Nelson Mandela who himself was charged under these laws was a staunch supporter of the freedom to speech. South Africa adopted a new constitution in the year 1996 which bolsters freedom of speech and recognizes robust social and political expressions in its bill of rights[21] Even though sedition still finds its presence in the codes of South Africa the same as in India, it is used much less frequently.[22] Further, it can be argued that "South Africa has a more robust constitutional court framework, which works to preserve the right of individuals."

In Kenya, the law took some time to be repealed. On consistent criticism and pressures from civil society and human rights activists, in 1997 Kenya repealed the sedition laws. Apart from Kenya; Ghana a former British colony had similar sedition laws and harsh punishments. The first Prime Minister of Ghana, Kwame Nkrumah and his several comrades were charged for sedition before the country's realization of independence. Eventually, it was realized how this law was being used to suppress the opposition of the government and finally in 2001, the Ghanaian law of sedition was repealed.[23]

From the above examples it would not be wrong to assume that across the British colonies, sedition as a law, was an effective nuclear weapon at the hands of the British state to stifle the voices of dissent and criticisms of the colonial state. This clearly demonstrated a state of impunity on their part as even a fair criticism of policies could leave a person with deep repercussions. Further, it can be seen that the most prominent leaders of the independence struggle of the above cited nations were at least charged once with sedition further reaffirming us of the primary object of the act—which was to silence the voices of struggle for the realization of an independent state unshackled from the chain of British whims.

III. POST-COLONIAL STATUS AND JUDICIAL INTERPRETATIONS.

The Indian Constitution was formed after great dialogue and years of deliberation. India was to be a democracy where ideas of freedom were honored to its citizens. Sedition law was not repealed and the independent state carried forward the oppressive law rather than taking it back. The most concerning factor is the ambiguity behind how the provision was drafted in the then Indian Penal Code (IPC) which left a great autonomy to the interpreter of the text over what meaning to construe to it. The law of sedition, a non-bailable offence had anguishing counter-effects even for the citizens who merely exercised their fundamental right to speak.

Sedition as envisaged in the IPC was a non-bailable, cognizable and non-compoundable offence with rigorous punishments with maximum of imprisonment for life. Getting bail for someone charged with sedition too was extremely difficult to get.[24]

The colonial law was heading towards arbitrary application and even fair criticism of the government and its policies came to be associated with the seditious offence. Freedom to speak came at the cost of incarceration and the right to expression, a basic right that every modern liberal constitution entail was curbed at mere discretion of executive bodies. In a country where prisons are inundated with undertrials for years,[25] this law increasingly started becoming an ominous tool for the government to incarcerate the accused for indefinite periods of time thereby depriving them of their fundamental right to a dignified life. The misuse of this law was against the principle of "active public participation",[26] and such ill-application of the law was clearly undemocratic.

The Indian Supreme Court has dealt with swarm of cases over the years and such landmark judgements as pronounced by the Apex Court of India has gone a long way in the interpretation and giving out exhaustive guidelines vis-à-vis the law of sedition.
One of the earliest post-independence cases challenging the constitutional validity of the was Tara Singh v State[27] where the court struck down sedition as unconstitutional being in contravention of Article 19(1) (a).[28] To ostensibly do away with the objective of the judgement, the government through 1st amendment to the constitution added the "in the interest of" and "public order" in Article 19(2).[29]

The section once again was under judicial eyes when in the case of Ram Nandan v. State of U.P.[30] the High Court of Allahabad voiced its skepticism as to how the provisions of the section could be misjudged and even people who legitimately and peacefully criticized the government or its policies could be held liable under sedition and be punished. Hence, the section was declared to be ultra vires.[31]

In the landmark judgement of Kedar Nath Singh v State of Bihar[32] the question of the constitutionality of sedition again came into question. The court greatly narrowed the scope of the section and emphasized that mere criticism of the government, in spite of how strongly worded it would be, would not amount to the offence of sedition unless it would incite violence or have the tendency to create public disorder. The term disaffection too was interpreted by the court in a liberal manner—as the court stated that mere disapproval of the government or its policies would not be liable for punishment under sedition. This was a welcome route and one which facilitated the democratic right to disapprove.

The stance that the Apex Court took was further reaffirmed in Balwant Singh v State of Punjab[33] where the top court relied on its exhaustive guidelines that it gave out in the Kedarnath case vis-à-vis sedition. In this case, the accused had raised slogans but it did not incite any violence or caused disruptions to the public order and hence the accused was not penalized for sedition. The police too were admonished for making arrests based on casual remarks further clarifying the court's intent that it saw the law not as a tool to suppress disapproval but as a graver offence that could disrupt the public order altogether. These clarifications paved the way for future judicial interpretations. It can also be argued that the court through such judgements implied that charging under sedition was an exception and the right to express disapproval was a key right in a democracy like ours.

Although the contours of the law have been reduced and that the Supreme court has time and again emphasized against the misuse of the section, it has hardly deterred the government, in recent times, to lessen the use of the provision in the recent years. In contrary, since 2014, the cases registered under

sedition have increased by a considerable 28%[34] with conviction rates remaining low, that indicates both the misuse and overuse of the law.[35] And hence, the Apex court in the S.G. Vombatkare v Union of India[36] put the sedition laws in abeyance until the issues such as constitutional challenges, colonial roots, outdatedness and arbitrary usage are resolved.

The 22nd report of the Law Commission of India[37] advised against the repeal of sedition, it stated that while the law has colonial roots to it but this reasoning alone is not just justified in warranting the repeal altogether. Sedition if used correctly is an effective way to control subversive activities that might harm the security and integrity of the state.

IV. SECTION 152 OF BNS—FURTHERING AN EMBARGO ON FREE SPEECH

The Bhartiya Nyaya Sanhita (BNS) which came into force on July 1st, 2024 replaced the Indian Penal Code. The Honorable Home Minister Mr. Amit Shah proclaimed—that this code was to imbibe an Indian soul within the colonial laws contained in the erstwhile IPC.

It is sure to be an element of temporary relief for superficial readers of the BNS that the term "sedition" is absent from it but this excitement cuts short of its supply upon reading section 152 of this code.[38]

For the "thinking minds", the shrewd tactic of seemingly decolonial drafting of the section with words such as "Acts endangering sovereignty, unity and integrity of India" hardly help to dissuade them from inferring the essence of the section 124A of IPC. In fact, it appears that section 152 has further hazed and opened the room for arbitrary application by the executive by including terms such as "acts of secession", "subversive activities", "separatist tendencies" and "endangering the sovereignty or unity"[39] which are vulnerable to nebulous interpretation that could sheath dissent under the cover of lawful and justifiable grounds.

To add to the apprehension of the reader of the potential license of misuse that this section confers, the punishments that are prescribed are bone-chilling. The section attracts severe punishments such as an imprisonment of life or an imprisonment which may extend up to seven years and a fine. With such rigorous punishments prescribed, it is very difficult to ignore the potency of this act which is largely favorable to gagging public opinion.

This BNS' section 152 has complicated the judicial development with respect to section 124A of the constitution as the Supreme court's commendable intervention in significant rulings have been done away with through the code. Since the act has been passed recently, it is surely to take some years to develop the jurisprudence on the section leaving the right of dissent and disapproval in great jeopardy.

V. CONCLUSION

We understand "democracy is to be a political system in which ultimate governing power rests in the hands of the people". This power is exercised indirectly through a representative government, that government must be chosen by the will of, and be accountable and responsive to, the people. The freedom of speech and expression is considered a "preservative of all rights."[40] It goes very much to the very heart of a natural right of a modern civilized society.[41] It strengthens its citizens and enlarges the capacity of an individual to participate in decision-making and provides a mechanism to facilitate achieving a reasonable balance between stability and social change. Despite Indian constitution's commitment to "Freedom of Speech and Expression"[42], the unreasonable application of "Reasonable Restrictions"[43] have severely undermined the fundamentals of democracy in India. In a system of government which is participative and ideally should cater to the constructive-criticism and expression of disapproval; conferring rights to the government with nebulous provisions like sedition hamper the growth of a vibrant democracy.

Further, with BNS being applied to matters filed after July 1, 2024 and the matters before them by the IPC, it is sure to create a lot of confusion and unfairness as two different provisions with different prescribed punishments would be there for the same act. It is high time that the courts take it actively upon their shoulders an imperative to curb the injustices and unfair use that this colonial law has so far made and with the new section—might continue to do. What is needed is that we wash the stains of the cruel suppression of legitimate expression. While it is uncontested that the security of the state is of paramount importance, this reasoning should not be

used to dubiously frame dissenters under such severe provisions. While it is somewhat unanimously held that merely a law being a potent device for misuse doesn't warrant that it needs to be repealed, Section 152 of the BNS needs to be carefully guarded against executive misuse through procedural limitations and judicial intervention. If these are not realized, the law, no matter how good its intentions might be, can be an ominous tool to "oppress and rule".

REFERENCES

[1] Ronald Dworkin, 'Free Speech and Censorship' (1994).
[2] Mill, J. S. (1859). "On Liberty"
[3] Andrew Heywood, *Key Concepts in Politics and International Relations* (2nd edn, Red Globe Press 2015).
[4] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 193.
[5] Thomas Scanlon, 'A Theory of Freedom of Expression' (1972) 1(2) Philosophy & Public Affairs 204.
[6] Ibid.
[7] Constitution of India 1950, art 19(1)(a).
[8] *Romesh Thappar v State of Madras* AIR 1950 SC 124.
[9] *Bijoe Emmanuel v State of Kerala* AIR 1987 SC 748.
[10] *Imran Pratapgarhi v State of Gujarat* (SC, 28 March 2025).
[11] Constitution of India 1950, art 19(2).
[12] Rongeet Poddar, 'Sedition and Colonial Legalism' Economic and Political Weekly (2023), 58(24),4-5.
[13] Indian Penal Code 1860, s 124A.
[14] Bharatiya Nyaya Sanhita 2023, s 152.
[15] Ali SMA and Mukhopadhyay P, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?" [2024] International Annals of Criminology 1.
[16] *Emperor v Bal Gangadhar Tilak* (1908) 10 BOMLR 848.
[17] Akksharra P V, 'A Comprehensive Review of Sedition Laws in India: Analysis of Section 152 Of BNS and Section 124 A of IPC' (2025) 2 *Journal of Law and Legal Research Development* 9-14.
[18] Ali SMA and Mukhopadhyay P, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?" [2024] International Annals of Criminology 1.
[19] Rajesh Aadi, "Freedom of Speech and Sedition in Post- Colonial Democracies: Lessons from Kenya, Ghana and South Africa for India" (2024) 12 Acta Humana 114.
[20] Ibid.
[21] *Constitution of the Republic of South Africa 1996*, ch 2 s 7.
[22] Rajesh Aadi, "Freedom of Speech and Sedition in Post- Colonial Democracies: Lessons from Kenya, Ghana and South Africa for India" (2024) 12 Acta Humana 109.
[23] Ibid.
[24] Nivedita Saksena and Siddhartha Srivastava, 'An Analysis of the Modern Offence of Sedition' (2014) 7 NUJS L Rev 121.
[25] *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* (1979) 3 SCR 532.
[26] Jitasha Bahl, 'Sedition Laws in India' (2021) 2 Law Essentials J 85.
[27] *Tara Singh v The State* [1951] SCR 729.
[28] Constitution of India 1950, art 19(1)(a).
[29] Constitution of India 1950, art 19(2).
[30] *Ram Nandan v State of Uttar Pradesh* AIR 1959 All 101.
[31] Manisha Kumari & Chandermohan Aashish, 'Sedition Law: A Boon or Bane' (2022) 4 Indian JL & Legal Rsch 1.
[32] *Kedar Nath Singh v State of Bihar* AIR 1962 SC 955.
[33] *Balwant Singh v State of Punjab* AIR 1995 SC 1785.
[34] Rajesh Aadi, "Freedom of Speech and Sedition in Post- Colonial Democracies: Lessons from Kenya, Ghana and South Africa for India" (2024) 12 Acta Humana 109.
[35] Ibid.
[36] *S.G. Vombatkere v Union of India* (2022) 7 SCC 433.
[37] Law Commission of India, *Usage of the Law of Sedition (*Law Com No 279, 2023).
[38] The Bharatiya Nyaya Sanhita 2023, s 152.
[39] Ali SMA and Mukhopadhyay P, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?" [2024] International Annals of Criminology 1.
[40] *Yick Wo v. Hopkins* (1886) 118 U.S.
[41] Momna Taufeeq & Umer A. Ranjha, 'Decolonisation of Section 124A of the PPC: A Critical Analysis of the Law of Sedition' (2024) 15 PLR 115.
[42] Constitution of India 1950, art 19(1)(a).

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[43] Constitution of India 1950, art 19(2).