



CONSTITUTIONAL VALIDITY OF SEDITION LAWS IN INDIA

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Introduction

The Indian Constitution embodies the principles of a Sovereign, Socialist, Secular, Democratic, Republic, ensuring that India is free from external control and monarchy. The term 'Democratic' signifies the people's authority over the government through universal adult franchise, aiming to protect citizens' rights while maintaining peace and order. The Independence Act of 1947 granted India sovereign legislative power, leading to the Dominion of India with supreme legislative authority. Article 372(1) of the Constitution continued pre-independence laws, allowing their amendment or repeal by a competent Legislature. Among these laws, Sedition, initially used by the British to suppress the nationalist movement, remains controversial. This research paper explores the constitutional validity of the Sedition law in India, examining its historical context and evolution, and its impact on the fundamental right to freedom of speech and expression in a democratic society.

Hypothesis

The research hypothesizes that the pre-constitutional legal provision of sedition in India counters the fundamental rights of speech and expression guaranteed by the Indian Constitution. In a democratic nation like India, the government's functioning is contingent upon the rights provided to its citizens, particularly the right to freedom of speech and expression. This right is essential for enabling citizens to critique and improve governmental systems. The sedition law, a colonial relic, has been used to suppress dissent and restrict free speech under the guise of maintaining public order. The hypothesis suggests that while sedition laws can be justified if applied correctly to protect public order, their historical misuse to curb legitimate criticism has posed significant challenges to democratic principles and fundamental freedoms in post-independence India. Proper interpretation and

application of sedition laws are crucial for aligning them with constitutional values and promoting progressive governance.

Research Methodology

Research Design

This research adopts a doctrinal legal research design, primarily focusing on the critical analysis of the constitutional validity of the sedition law in India. The research is both descriptive and analytical, aiming to provide a comprehensive understanding of the historical evolution, judicial interpretation, and contemporary relevance of sedition law within the framework of the Indian Constitution.

Sources of Data

Primary Sources

1. **Constitution of India:** Analysis of relevant articles, particularly Article 19(1)(a) (freedom of speech and expression) and Article 19(2) (reasonable restrictions).
2. **Indian Penal Code, 1860:** Examination of Section 124A, which defines and prescribes the punishment for sedition.
3. **Judicial Decisions:** Review of landmark judgments by the Supreme Court and High Courts of India that interpret and apply sedition law, including but not limited to:
 - Queen-Empress v. Bal Gangadhar Tilak
 - Niharendu Dutt Majumdar v. Emperor
 - Romesh Thappar v. State of Madras
 - Brij Bhushan v. State of Delhi
 - Kedar Nath Singh v. State of Bihar

Secondary Sources

1. **Books:** Scholarly texts on constitutional law, criminal law, and human rights law, which provide context and theoretical background.
2. **Journal Articles:** Peer-reviewed articles from legal journals that discuss the historical context, judicial interpretations, and criticisms of the sedition law.

3. **Law Commission Reports:** Relevant reports from the Law Commission of India that review and recommend changes to the sedition law.
4. **Newspaper Articles and Commentaries:** Contemporary opinions and debates on the application and impact of sedition law in India.

Data Collection Methods

Document Analysis

The research involves extensive document analysis, including:

- **Statutory Texts:** Close reading and interpretation of legal texts to understand the scope and application of sedition law.
- **Judicial Opinions:** Detailed examination of judicial opinions to discern how courts have interpreted and applied the law over time.
- **Historical Documents:** Analysis of historical documents, such as records of the Constituent Assembly debates, to understand the framers' intent regarding freedom of speech and sedition.

Analytical Framework

1. **Historical Analysis:** Tracing the origins and development of sedition law from colonial times to the present, focusing on significant legal and political events that shaped its evolution.
2. **Comparative Analysis:** Comparing the judicial interpretation of sedition law in pre- and post-constitutional eras to highlight shifts in legal reasoning and application.
3. **Critical Analysis:** Critiquing the current application of sedition law in light of constitutional guarantees of freedom of speech and expression, considering arguments from both proponents and opponents of the law.

The Indian Constitution was framed on the philosophy of a Sovereign, Socialist, Secular, Democratic, Republic. It was believed that after Independence, India would no longer be subject to external control in its domestic or foreign policies, nor will it ever be under the control of any Monarch. The 'Republican' form of the Indian Constitution meant that the country would be lead by an elected President.

The word 'Democratic' implies that the Governmental authority is derived from the people, and it exercises its power based on universal adult franchise. The Constitution aims to protect all citizens and assures them of all opportunities and benefits. Still, at the same time, its main aim is also to maintain peace, order and tranquillity throughout India.

Under the Independence Act, 1947, India became the province with sovereign legislative power to affect or repeal all existing laws, including the Government of India Act 1935 and British statutes, which were extended to India. Under sec 6 of the Act, all laws and provisions made by the new province were valid. The province had the power to amend acts, orders, rules or regulations, and no Act passed by the British was to be applied to the new province.

Thus we can see that this created the Dominion of India as supreme Legislative power. Under Article 372(1) of the Constitution, it was provided that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue until they are repealed, altered or amended by a competent Legislature or authority. The term 'laws in force' denotes the laws passed before Independence. Thus this provision provided for continuous of existing laws and provided power to the Indian Legislature to amend, repeal such laws and use them as per the needs of the time.¹

Sedition was one such law that was enacted by the British to suppress the nationalist movement. The framers of the Constitution opposed this law, but still, this provision was retained and supported by some on the grounds of public order and the security of the State. The following chapter discusses the constitutional validity of Sedition law in India through the various laws enacted by the Indian Legislature after Independence based on the ideology of Sedition law.

SCOPE OF SEDITION UNDER INDIAN CONSTITUTION

The concept of Sedition was originally imported from England, which punished any activity against the Britishers. Such activities included holding meetings or processions. The provision also penalized expressing opinions of ill will towards the government. But today, the circumstances have changed, and one can see that the concept of Sedition includes those practices, whether by words, deed or writing, which are likely to cause disturbance and lead the commoner to subvert the government. Uttering honest and reasonable criticism towards the government has become a right of individuals, and one can also say it is the source of strength of the community.²

The law of Sedition is been in controversy since its implementation by the British. In the post constitutional period the law has been in controversy for countering the fundamental right of free speech and expression. The law of Sedition has been used mainly to curb the dissenters and conflict arises mainly when the comments which are charged under section 124A of the Indian Penal Code are merely opinions, views, ideologies and beliefs which are expressed within legal means. The provision of Sedition has been a controversial provision as many times it has been used as a weapon by the government to silence its critics. Due to this, the constitutional validity

¹ Law Commission of India, Fifth Report on British Statutes Applicable in India, 1957, <https://lawcommissionofindia.nic.in/1-50/report5.pdf> visited on Oct 3, 2023

² R. v. Sullivan 1968 11 Cox Cases 55

of Sedition law has always been a topic of discussion especially when the country is built up on the principles of Democracy.

During the British rule the law of Sedition was interpreted by the colonial judges as per their needs. Further, the concept of basic and essential rights was not recognized as there was no constitution during this period. The country was under a dictatorial rule of the British and the people were suppressed for expressing their opinion. The law of Sedition was used frequently against the freedom fighters. The law of Sedition was interpreted and amended as per the whims of the British rule.

Sedition has been an offence which punishes words or speeches or publications or any visible representation that incites disaffection or hatred or dislike or contempt or ill will towards the government established by the law. The punishment for this act is life imprisonment or imprisonment for three years with fine. The provision allows comments which are pure disapproval of the measures or policies of the government aimed for their alterations or changes. However whenever any case of Sedition came before the British courts many a times constructive criticisms were also made punishable under Sedition.

Pre-Constitution Era

During the British rule the scope of Sedition was first discussed in *Bangobasi case*, Sir Petheram explained that Disaffection could not be understood as absence or the contrary of affection or love. Still, it must be taken in a special sense to signify political alienation or discontent: a feeling of disloyalty to the government or existing power, which tends to favour an outlook not to obey but to resist and attempt to subvert the government or authority.³

In *Queen-Empress v. Bal Gangadhar Tilak*, Justice Strachey, while explaining Section 124A regarding charges in that case before the jury, said he agreed with Sir Petheram that disaffection means simply the absence of affection. In this case the judge explained that the term 'disaffection' was understood as disloyalty, hatred, dislike or ill-will towards the government established by law. He further held that the term disloyalty meant a negative feeling towards the government. Strachey further observed that in order to penalize a person under Sedition the intensity of the disaffection is immaterial. Any person who encourages or provokes disloyalty great or small will be punishable under this section. According to the anti-native British judge if the court was satisfied that the accused has excited feelings of disaffection towards the government established by law he would be pronounced guilty. At the same it was also observed by the court that if there is no proper evidence as to whether there was incitement of disaffection that alone will not acquit an offender.⁴

³ Pearson J. in *Bangobasi case*.

⁴ *Queen-Empress v. Bal Gangadhar Tilak*, 1917 19 BOMLR 211

Strachey explained that 'Disaffection' necessarily implies a lack of affection, but a mere absence of affection is not "disaffection" within the meaning of Section 124A. Justice Strachey explained that 'Disaffection' means hatred, enmity, dislike, hostility, contempt and every form of ill-will towards the Government.

He explained that 'Disloyalty' is perhaps the best general term, comprehending every possible state of bad feeling to the Government. The judge further observed that the law of Sedition means disaffection, which a man must not excite or attempt to excite: he must not make or try to make others feel enmity of any kind towards the Government. He further stated that the amount or intensity of the disaffection is immaterial, except perhaps in dealing with the question of punishment: if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section.

He further held it is immaterial whether any feelings of disaffection have been excited or not by the publication done by an individual. He said that if there is a person charged under Sedition and the court is satisfied that the concerned person has excited feelings of disaffection towards the government established by law, he will be held guilty. But one feel that the charge is not made out and no one has proved that the feeling of disaffection was excited, that alone would not justify one in acquitting the prisoners. Attempting to excite a sense of disaffection is also punishable under this section. This laid down the foundation for the dark history of Sedition in India and, this is also been carried in present scenario.

In this case the anti native Judge Strachey took the entire onus on liberally the interpreted word 'disaffection' which is still carried on in modern India. He interpreted disaffection as hatred, enmity, disloyalty, contempt and ill- will towards the government established by law. Strachey further observed that to charge Sedition actual excitement of disaffection was not required even attempt to incite disaffection was sufficient.

After Tilak's case it was in Ramchandra Narayan case that the term disaffection was observed as hatred towards the government established by law. In this case it was also observed that such disaffection included political discontent and also creating a feeling of isolation among the people towards their duty to show loyalty towards the government. In the same term disapprobation was explained as not amounting to disaffection provided that the person accused was loyal by heart and ready to obey the government. In short the case tried to explain that the people have right to show their disaffection towards the government but at the sametime need to do it within legal means.

In the Amba Prasad case it was observed that disapprobation will be protected only when such expression or comments do not lead the reader or listener to disloyalty or towards subverting the lawful authority of the State. The court held that such disapprobation needed to be expressed with a temperament to render obedience to the Government and should not aim to subvert or resist the authority by unlawful means. Further in this case the court firmly observed that for an act to be seditious it was not necessary that an actual rebellion or resistance to the Government or any sort of actual disturbance was caused. The courts in India carried on this interpretation for a

long period until 1942 in the Niharendu Dutt case. In this case the court disagreed with the literal interpretation given in the Tilak case and held that the offence of Sedition needed actual disruption of public order and chaos and also reasonable anticipation or likelihood of it. The court also observed that all unpleasant words cannot be regarded actionable.⁵

Thus in this case it was held that use of violent words don't make a writing seditious. The gist of offence of Sedition was public disorder or anticipation or likelihood of public disorder. The act accused of Sedition should be of such intensity that it would convince a reasonable man that there was intention and tendency to create public disorder. This interpretation was similar to the English law of Sedition which explained Sedition as action through words, deeds or writing which affects public tranquillity and lead ignorant people to subvert the government.⁶

Thus, the Niharendu case was one of the cases in the pre-independence era that highlighted that public disorder was gist of the offence.

Post- Constitution Era

In the post-constitutional period the country was built up on democratic principles. A democratic government is a government which is for the people and by the people. In such a democratic set up the citizens are provided with many democratic rights, one of them being freedom of speech and expression.

In a Democratic government one needs to remember that when government is elected by the people majority vote receivers are put in power. But at the same time the section of people who vote against this government have full authority to criticize the elected government within legal means.

Keeping this in mind the Indian constitution has guaranteed various fundamental rights to the citizens of India. One such basic right is Freedom of Speech and Expression. Freedom of speech and expressions plays a very important role in development of an individual. The right has been recognized by International Instruments on Human Rights. One also needs to understand that in a democratic setup criticism is essential for development and reforms in the society and country.

But the Constitution also gives power to the State to curtail the fundamental rights when such rights are used to create violence and disturb the public order or threaten the security of State.

⁵ Niharendu Dutt Majumdar and Ors. vs Emperor AIR 1939 Cal 703

⁶ In Reg. v. Sullivan Fitzgerald, J. said that 'Sedition embraces all those practices by word, deed or writing, which are taken into account to calculate it to the public tranquillity of the state and leading ignorant persons to subvert the government. The object of Sedition is to induce discontent and insurrection to stir up opposition to the government and to bring the administration of justice into contempt and the very tendency of Sedition is to invite the people to insurrection and rebel. Sedition has been described as disloyalty in action and the law considers as Sedition all those practices which have excited discontent or disaffection, to create public disturbances or to lead to civil war, to bring into hatred or contempt towards the sovereign and government the laws or the constitution of the realm and generally all activities to promote public order

Sedition law is one such law which is used to impose restrictions on freedom of speech and expression. Though the law has not been mentioned in under article 19(2) still it is used on the grounds of public order and security of State.

The law of Sedition is necessary to maintain the unity and integrity of the country but, at the same time it is necessary that it needs to strike a balance between the freedom of speech and expression and Sedition law. In today's scenario one can see that the law of Sedition has been in controversy as it is considered to be violative of the fundamental Right of free speech and expression. The 39th and 42nd Law Commission of India Report suggested that the punishment for life imprisonment should be retained if Sedition is proved. On the contrary the 42nd Law Commission Report suggested expanding the scope of government by including the executive and judiciary into it. Further the 267th Law Commission of India on Sedition suggested restricting the wide scope of Sedition and including cases which incite violence with the intent to overthrow the government in power.⁷

In the pre-constitution period the country had no basic rights for its citizens, and due to this, people were harassed under the colonial law. In many cases during the British rule, Sedition was used to punish even an unsuccessful attempt to incite disaffection. Any sort of dislike, hostility, enmity, and contempt was punishable under Sedition even when it did not aim to create disturbance or violence or overthrow the government.

After Independence, the State Government had started imposing restrictions on newspapers that were likely to disturb the public order or were seditious. By this time, the ground of neither public order nor Sedition was added to Article 19(2) as a reasonable restriction on Freedom of speech and expression.

In the post Niharendu scenario it was almost clear that the gist of law of Sedition was creation of public disorder and violence. Though the courts in Independent India were no longer bound by the decisions of the Federal Courts still one can understand from the cases discussed below that they did refer to the pre-independence judgments and tried to justify the use of Sedition for restricting on free speech and expression.

After Independence it was in *Romesh Thapper and in Brij*, Bhushan case the concept of 'over-breath' was applied. It was observed that the term 'public order' was synonymous with public tranquillity and peace, security of State, overthrowing the State. The court also explained that not all acts are against public order and would threaten the State's security. The court meant that under Article 19(2), the government was entitled to prohibit and understand what did not need prohibition.⁸

In these cases it was argued that public order, public tranquillity, security of the State and Sedition were all interchangeable terms that meant the same thing. Thus, after these two judgments, the ground of 'public order' was added as a reasonable restriction in Article 19(2) in 1950. The term 'over breath' means a statute that prohibits

⁷ ILI Review Summar Issue <http://ili.ac.in/pdf/art.pdf> visited on Oct 4, 2023

⁸ Romesh Thapper v. State of Madras AIR 124, SCR 594 1950

certain behaviour and restricts behaviour that is constitutionally guaranteed. Through this, the court tries to explain that when an act endangers the peace and tranquillity of the State or attempts to create public disorder, such an act will come under the scope of reasonable restrictions provided under Article 19(2).⁹

In this case, the court validated Sedition law and considered it to be one of the appropriate restrictions on free speech and expression when it has endangered the Security of State or disturbed the public order. Through this, we understand that the court needs to examine the circumstances and then prohibit certain behaviour.

As discussed, previously criticism is the gist of democracy. It is necessary that before a restriction is imposed, one needs to see whether the act is of such nature, which would genuinely disturbing the peace and order in the State. Based on this, one can say that Sedition though not included in article 19(2), the above two cases make it clear that the law of Sedition was applied as a reasonable restriction when public order was in danger.

In *Debi Soren and ors. v. The State*, case, the accused Debi Soren with two others was charged under section 124-A, and section 153- A of the Indian Penal Code for speeches delivered by them at an adivasi conference held at a place called Lakhikundi in March 1949. The speech criticized the Bihar government for suppressing the people especially the Adivasi. In the speeches the government was called coward and criticized for the taxes imposed by it. The speech also expressed that the Bihari people should go back to their own place and stay there like a cow by the side of Ganga. The speeches further stated that the Bihar government had killed many Adivasi people and taken undue advantage of the poor.¹⁰

The accused denied making of any such speech. Two police officers were present at the conference who recorded the speeches translated, them to English as they were originally in Adivasi language.

In this case when the validity of section 124-A was questioned it was held that the speeches in question were made prior to coming of the Constitution in force and the and also the section with which the accused were charged became void after the Constitution came in force. The judge in this case referred the original article 19(2) and how the State was given powers to make laws to restrict free speech on the grounds of slander, libel, defamation, contempt of court, security of State or overthrow of the State.

Further the court observed that the original clause was altered and grounds of restriction now included security of State, friendly foreign relations, public order, decency or morality, defamation etc. The judge further held that after the amendment, the scope and ambit of restrictions had widened when public order was added. The judge further observed that Sedition becomes void when it is used in cases where the attempt to excite disaffection is unsuccessful and does not tend to overthrow the government. Thus the court further observed that when the right is restricted on the grounds of public order it will be valid and permissible.

⁹ Brij Bhushan and Anr. v. The State of Delhi AIR 129, SCR 605 1950

¹⁰ Debi Soren and ors v. The State CriLJ 758 1954

Further it was also held that if the interpretation laid down by J.Strachey is followed then Sedition will be void on the grounds that it violates free speech and expression and at the same time is not mentioned as a reasonable restriction on freedom of speech and expression. Deletion of the word 'Sedition' from the draft of Article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justified ground for restricting the individual freedom of expression and freedom of the press, unless it is such as to undermine the security of or tends to overthrow the State. Referring to Niharendu judgment the court further observed that the gist of offence of Sedition is public disorder and the provision was not to be used when the people employed for administration of the government are criticized, but is to be applied when the people disobey law and due to which disorder may follow.

Additional, referring to Article 19(2) the court observed that the words used in the clause are 'in the interest of public order' and not 'public order'. The former expression has a wider meaning and is not confined to incitement of violence and will include all such actions which undermine the authority of the Government by hatred or contempt. The court further held that Sedition if interpreted narrowly will be inconsistent with the Constitution of India, it was also observed that time has changed and what was deemed seditious fifty years ago may not be so in today's scenario. Thus when a question whether a particular act comes under the purview of Sedition or not it is necessary to consider that the society has changed and the circumstances are different.

Further the court held up the validity of section 124-A and observed that it is a reasonable restriction on freedom of speech and expression when applied in the interest of public order and also held that the British interpretation should no more be applied. Hence the alleged speeches were not held liable under Sedition and the sentence was suspended.

The scope of Sedition was discussed in the light of the new Amendment in Article 19(2), and it was held that Sedition is void when it is applied against the unsuccessful attempt to incite disaffection or any sort of act which does not tend to overthrow the government. The court further observed that it would be valid and permissible when Sedition is used for public order. Thus, the court, in this case, observed that mere criticism of government measures or its policies would not attract the provision of Sedition.

The court further observed that Sedition includes even the mildest form of disaffection and provision under this section is too wide and cannot be said to be applied only when public disorder is created. Further the court in this case held that Sedition can be imposed even when mildest form of hatred or contempt or disaffection is excited and due to this it cannot come under the purview of Article 19(2) as acts punished under Sedition also include the ones which do not create a likelihood of public disorder.

Speaking on the term 'public order' the court further observed that public order depends upon the respect and regard towards the rule of law and not towards a particular government. It was further observed that restrictions u/a 19(2) are in the interest of public order and not in the interest of government. Further the court held that even

the framers of the constitution did not consider adding Sedition under Article 19(2) as they thought legislation relating to public order already existed in the clause. Further the court observed that Sedition also covers acts which a person might do while exercising the rights conferred on him by the Constitution and thus Sedition fails to make distinction between acts punishable under Sedition and those which are recognized as rights. As a result Sedition can be called violative of fundamental rights provided by constitution. The judge further held that the term reasonable restrictions should not be arbitrary and excessive and should not overrun the rights of an individual. Thus in the end the Judge observed that section 124-A, IPC, is ultra vires of Article 19(1) because it is not in the interest of public order.³⁹⁶ The court, while deciding the scope of Sedition, observed that the speech charged u/s 124A tends to create public disorder and excite the listeners to do so. It was further observed that the State has the power to restrict such acts that are typical to create public disorder and should do so even when the actual disorder has not taken place.

Any discussion on Sedition law in India will be incomplete if the landmark case of Kedar Nath case is not mentioned. This case remains a precedent on Sedition and is considered a basic interpretation of section 124A. The constitutional validity of Sedition was upheld in Kedar Nath case, and it was observed that Sedition involves only those acts which have an inclination to encourage disturbance and provoke violence. In Kedar Nath case the accused had criticized the policies of the Congress party by calling them 'goondas' and further articulated that there is a need for revolution and that would only happen when Capitalists and Zamindars were burnt to ashes. The accused was convicted and sentenced to rigorous imprisonment of one year.

When an appeal was filed with the Patna HC, the conviction was upheld and further the matter was referred to the Constitutional Bench of the SC of India. In this appeal the constitutional validity of Sedition was challenged and it was also argued that the provision of Sedition infringes the constitutional right of free speech and expression. The SC in this case held that law of Sedition can only be used when words spoken or written had the potential to create threat to the security of State as well as cause violence and disturbance in the State. The SC in this case further explained the term government should be considered different from the people who are in administration. The SC holding up the validity of Sedition emphasized that Sedition will come under the purview of Article 19(2), only when it is used for incitement of disaffection which causes violence and public disorder. The court also explained that the term government is different from the people who are employed to work for the government and disaffection should not be punished when people in the administration are criticized within legal means.

Further, the SC in this case, held that the term 'government' and 'people who do administration' are two different terms. Additionally, the court also said that the State must maintain peace and order. The SC held that Sedition is a valid restriction on the right to freedom of speech and expression as the State has the right to restrict activities in the interest of the public order or disturbance of law and order in the State. One needs to understand that for extended period, the interpretation of section 124A, IPC, was followed as was given in the Tilak case.

The case explains that the incitement of disaffection should make violence, and only then can it come under the scope of Article 19(2) of the Constitution. It also explained that such intention or tendency to create disturbance would also have to be directed towards the "Government established by law" and not "Persons for the time being engaged in carrying on the administration". Only then can Sedition fall under the purview of Article 19(2), making section 124A of I.P.C. constitutionally valid. In this case, it was explained that government established by law is the evident symbol of the State.

The court further said that State would be in danger if a subversion of government is installed by law. Despite the guidelines laid down from Niharendu case to Kedarnath case still in the present scenario, the question of the constitutional validity of section 124A remains unsolved as many are slapped with this provision of the Indian Penal Code even when it is clear from the above discussion as to when Sedition is to be charged in a particular case and when it should not.

In 1995 the S.C. of India held in *Balwant Singh v. State of Punjab* that raising of casual slogans by two individuals a couple of times without any other overt act and without intention to create disorder or to incite people to violence does not attract section 124A, IPC. However, if public disorder with intent to incite violence is given way, then such slogans are unconstitutional. Moreover, if the slogans are not casual but serious in nature, and are not spoken a couple of times but many times, the precedent of *Balwant Singh* will have little persuasive force. The *Balwant Singh* case does not legitimize all types of slogans against the country.¹¹

In 2007 a renowned human rights activist Dr Binayak Sen was arrested, two others and sentenced under the charges of Sedition for supporting Maoists. S.C. has followed the judgment held in the *Kedar Nath* case and came to a conclusion that mere possession of certain documents does not suffice to prove a charge of Sedition, and just sympathizing with a cause cannot amount to Sedition. The court further observed that merely providing medical treatment to Maoists and supporting their ideology will not amount to Sedition.¹²

In another case famously known as the *Jehovah's* or the *National Anthem* case, Sedition charges were slapped on three students for not singing the National Anthem. The bench explained that National Anthem is the tool for National integration. It also observed that the Preamble uses the word 'fraternity and assures integrity. The court held that proper respect is shown to the National Anthem by standing when it is sung. Still, at the same time, the bench held that expulsion for refusing to sing the National Anthem was against free speech and expression as it also includes the right to remain silent and no provision of law obliges any one to sing.¹³

¹¹*Balwant Singh and Anr. vs. State of Punjab*, 1995, 3 SCC 214

¹²Global Freedom of Expression, Columbia, <https://globalfreedomofexpression.columbia.edu/cases/binayaksen-v-chhatisgarh/> visited on Oct 3, 2023

¹³*Bijoe Emmanuel and Ors. v. State of Kerala and Ors.* AIR 748, SCR (3) 518, 1986

Justice O. Chinnappa Reddy upheld the Jehovah witnesses' right to practice their religious belief and explained that their opposition to actual singing was because of their honest opinion and conviction that their religion does not permit them to join any rituals except it be in their prayers to Jehovah, their god. Thus, we can understand through this case that the court read the guidelines provided in Kedarnath case appropriately, delivered a sensible verdict, and made a proper distinction between incitement of violence and expressing personal opinion.

In one more case, a Cartoonist was slapped with a charge of Sedition portraying corruption among Indian politicians through his cartoons. The cartoonist was charged for defaming the National Emblem, the Parliament, and India's Constitution by disrespecting the government through his cartoons. The Bombay High Court, in this case, differentiated between disloyalty and criticism.

A bench of Bombay HC observed that it was clear that the provision of section 124A IPC cannot be involved to penalize criticism of the persons carrying on administration or strong words used to express disapprobation of the measures of the government with a view to their improvement or alteration by lawful means. It further held that commenting on measures or acts of the government or its agencies to improve those acts or actions by lawful means came under the purview of constructive criticism.

At the same time, disloyalty leads to public disorder. It uses violence as the key to creating confusion. These guidelines were provided by the HC to the Maharashtra Police which they were to follow before booking someone for Sedition. From this case, we can understand that the gist of Sedition is public disorder and violence. The Bombay High Court rightly interpreted the provision and observed that all criticism does not lead to violence and disturbance.¹⁴

Recently, in the Vinod Dua case a renowned journalist was charged with Sedition for commenting against the Prime Minister Narendra Modi in his show on YouTube. Dua was alleged of inciting violence amongst the citizens and also disturbing public tranquillity. He was also blamed for spreading false information and instigating violence against the government.

Dua was also blamed for expressing comments when there was unrest in India as people were in panic due to the pandemic. He was also charged for spreading rumors with intent to defeat the lockdown. Dua was also charged for creating an impression in the minds of the people that the government was a complete failure during the pandemic situation. Mr. Vinod Dua was charged for an offence punishable under Sections 124-A, 268, 501 and 505 of the Indian Penal Code, 1860 (IPC).

The petitioner challenged the allegation u/s 124A, IPC and argued that the FIR needs to be seen in light of guideline given by the SC in Kedar Nath case. Further Dua is one who argued that Sedition won't be attracted in this case as the petitioner did a critical analysis of the functioning of the present government.

¹⁴ Sanskar Marathe v. The State of Maharashtra and Anr. 17th March, 2015

The Court further observed that for an act to be termed as seditious, it needs to resort to violence and create disorder or disturbance. The court also held that the statements that were alleged were expressions of disapprobation of the actions of the government and its functions. The main aim of these disapprovals was to resolve the issues efficiently and quickly. The court further observed that the expressions were not made with an intention to incite people neither did they have a tendency to create disorder or disturbance of public peace. Hence the court held that the prosecution of Vinod Dua under section 124A, IPC was unjust and such allegations would be violative of the democratic right of free speech and expression.

The scope of Sedition has always been a question of debate for the Indian Judiciary. But we see that the Judiciary has tried to save this provision from being invalidated and provided a proper explanation of when and how the section can be used in different circumstances. The validity and scope of Sedition can be understood only if the definition of Sedition is studied and interpreted properly. Even though the section penalizes disaffection, such disciplining will be valid only if disaffection towards the government is done with an intention or tendency to create public disorder and disturb the country's peace and tranquillity whole.

Thus Sedition is an offence that punishes those acts that tend to incite disaffection towards the government established by law and affects public order by such disaffection. But at the same time, one needs to understand that constructive criticism or disapprobation is permitted under this offence, and it does not amount to Sedition. As discussed earlier, criticism is the gist of

Democracy and citizens who are unhappy with the government and its policies can peacefully put forth such discontent. Recently we see that the government is using charges of Sedition even for peaceful dissent expressed by the citizens.

The history of Sedition reveals that the law was used to suppress the independence movement. Still, one needs to understand that after Independence, the political scenario of India has completely changed. During the British rule, freedom fighters were slapped with Sedition, but today the scenario has changed, and people are well aware of their rights and duties. Our country works in a democratic set-up where the people of this nation have the right to opinion.

But at the same time, citizens are responsible for expressing their dissent in a lawful and nonviolent way.

In today's scenario, one can see that expressing criticism of an existing system and having an opinion in favour of a different administrative system is not prohibited. But when such criticism or disapprobation leads to public disorder or reasonable anticipation or likelihood of public disorder, it becomes the main element of this offence. While understanding this offence, one needs to study the intention behind the act, words or expression brought

under the ambit of Sedition. One needs to know that all acts do not amount to disturbance. The court needs to understand the intention and tendency behind the act, and then it needs to apply this section.¹⁵

Thus, when a particular act is termed with Sedition, it is necessary to distinguish whether such an act leads to public disturbance or it is just an expression of citizens to show dissent against the government or its policies. It can be further said that the central government must maintain law and order and punish acts that disturb public order. For this, there must be a differentiation between the acts that disturb public order and those that are just constructive criticism.

Thus, it is clear that the offence is not to be used to minister to the government's wounded pride but rather use it when certain acts go beyond constructive criticism and create violence and public disorder. Hence criticism of general measures or comments on government action, however strongly worded, if within reasonable limits and if consistent with fundamental rights of free speech and expression, will not attract this section.¹⁶

In India, the Supreme Court has further widened the scope of Sedition and has explained that mere authorship of seditious material alone is not a parameters of the offence; the one who circulates the seditious material is equally held guilty of Sedition. The court has laid down that acting as a courier is sometimes enough in a case of conspiracy. The court also explained that the conspirator need not be part of the conspiracy from beginning to end. Therefore, it is necessary to understand that merely making speeches with extravagant words charging government members with inefficiency, corruption, and personal ill feeling cannot rightly be regarded as acts intended or likely to bring hatred or contempt or excite disaffection towards the government established by law.¹⁷

CONCLUSION

The above discussion has proved the hypotheses pre-constitutional legal provision relating to Sedition law in India counters fundamental rights of speech and expression. In a democratic country like India, the government cannot function without providing rights to its citizens. The country's mechanism works on the energetic and intellectual contribution of people. Keeping this in mind, the country's Constitution has provided the citizens with various rights, and one of such rights is the Freedom of speech and expression.

The canvas is provided to the citizens to express their views on the multiple administration elements and peacefully criticize the system. It is a well-established rule in India that the country's citizens can peacefully criticize and protest if they are unhappy with any particular event or happening in this country. Freedom of speech and expression is a fundamental right that is protected by reasonable restrictions.

¹⁵ Niharendu v. Emperor AIR 1942 FC 22,26

¹⁶ Kedarnath Singh v. State of Bihar, AIR 955, 1962 SCR Supl. (2) 769

¹⁷ Ghulam Mohammad Khan v. The Crown, 86 Ind Cas 814 1950.

These reasonable restrictions are imposed based on security, public order and peace in the country. Sedition though not a ground of restriction yet from the above discussion, we can see that various prevalent provisions similar to Sedition are accepted as reasonable grounds for restriction on free speech and expression.

Though Sedition has been considered an independent provision and different from the provisions discussed above, it is still very difficult to draw a clear line between Sedition and the general provisions explained in this chapter.

The common thread that attaches all these offences is 'public disorder'. Sedition can be considered constitutionally valid if it does not infringe the Freedom of speech and expression and is understood and applied as it means. Thus we can conclude that if the law is interpreted properly, we can positively use this law and help the country function progressively.

