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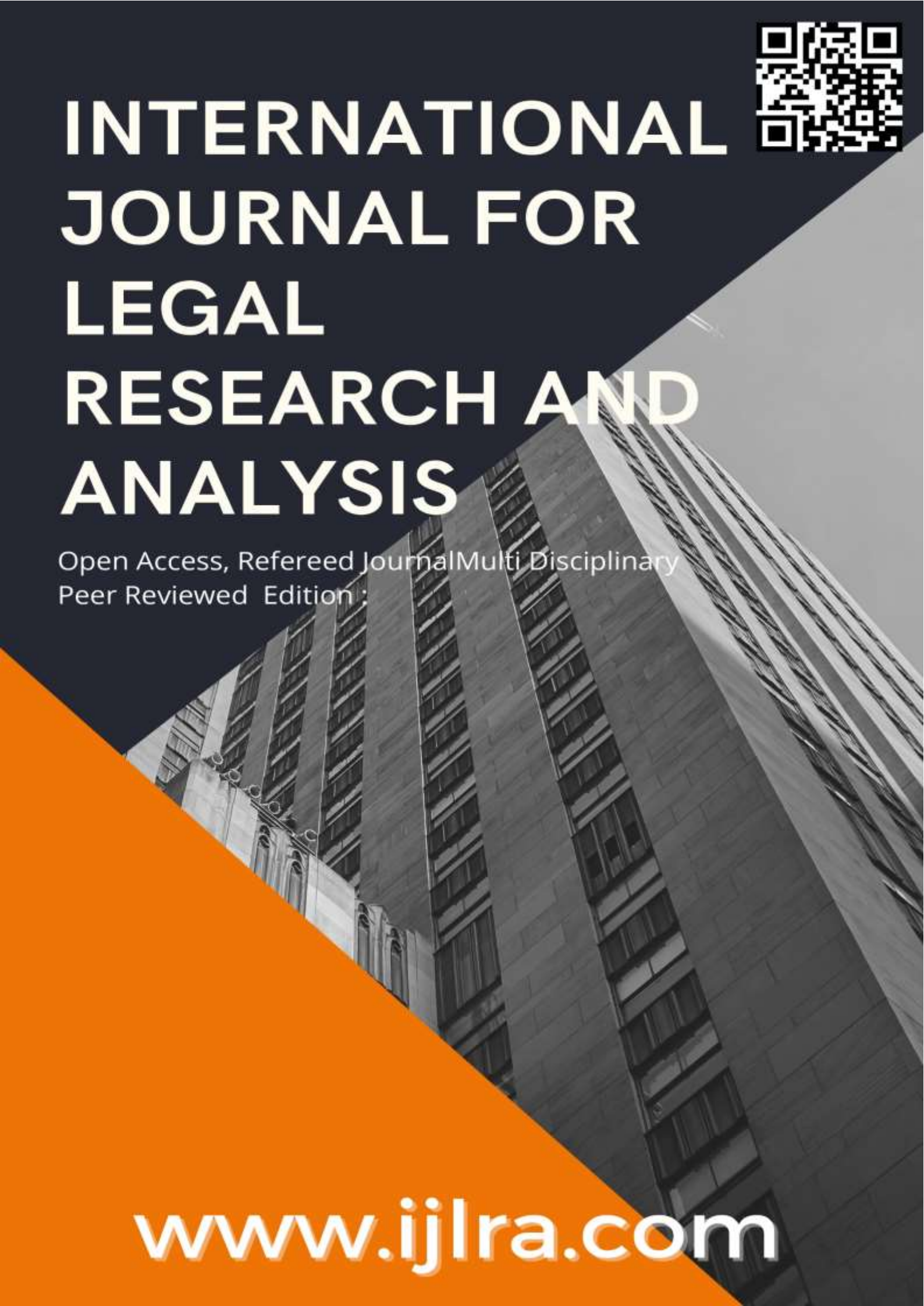

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SEDITION LAW IN INDIA

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Abstract

The right to freedom of speech is a sacrament and fundamental right of every Indian granted by our constitution, the supreme law of the land. Sedition is one of the restrictions on fundamental rights. Though enacted by the British during their rule in India to curb the independence movement with this law was retained by the government of free India to keep their hold on free speech and expression. But year by year Union government and various state governments started misusing this law to crack down on their opponent party and various media houses that resemble different ideology other than the government's.

Keywords

Sedition, Freedom of free speech and expression, Fundamental rights, Disaffection towards the government, Hate speech.

Research Methodology

This paper is descriptive in nature and various articles, opinions, news articles, and websites have been used for completion of this paper.

Introduction-

Mahatma Gandhi, aptly referred to section 124A as the "prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.".

What does the term sedition mean?

Encouragement of opposition to a government or its laws is considered sedition. In most nations, it is regarded as a serious offense and constitutes an offense against the state, which can result in a fine or imprisonment.

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Historical development of sedition law

The First Statute of Westminster, enacted in 1275, was the earliest known such decree. It was the direct result of a "rebellion of the barons" against the monarch, who "was considered the holder of the Divine Right.". The purpose of this was to keep the ruling class, including the nobility, safe from popular uprisings that tried to overthrow the current system. This law was based on the doctrine of Scandalum Magnatum, which means "scandal of the magnates" in Latin. It prohibited scandalizing or criticizing royalty, judges, or peers. The thirty-fourth chapter of the First Statute states-

"None be so hardy to tell or publish any false news or tales, whereby discord, or occasion of discord or slander may grow between the King and his people, or the great men of the realm."[1]

[1] Lassiter, J. C. 1974.Scandalum Magnatum: The "Scandal of Magnates" in English Law, Society, and Politics,

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This passed through the Statues of Treason in 1352 and 1534 before becoming the crime of seditious libel in 1606 thanks to a Star Chamber decision in *de libellis famosis*, also known as the law of libel or written defamation. In this case, the court decided that criticizing the government and public officials would show disrespect for authority. Surprisingly, some of the safeguards outlined in the crimes of Treason and Scandalum Magnatum were violated in this case. According to Hamburger, the use of sedition against the written word increased in the 18th century. Until its demise in the new millennium, it was a part of English law.

What is sedition law in India?

The term "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"[2] was drafted in 1837 by British historian and politician Thomas Babington Macaulay**.** Sec. 124A, which criminalizes "disaffection towards the Government established by law" or sedition, was finally introduced through an amendment in 1870, by the then Law Member of the Governor-General's Council, James Stephen**.**

Punishment for this offense is imprisonment for life, or imprisonment that may extend to three years, and shall also be liable to a fine and also, it's a nonbailable offense.

This colonial drafted law was enacted with the intention primarily to stamp out the writings, speeches, and movement for independence by the Indian freedom fighters by putting them behind the bar if they revolt against the British government in India and still it remains in force. Interestingly, the person charged under this law is also barred from a government job and their passport is seized by the government.

Sedition law under British India

During the British raj as previously mentioned sedition law was enacted with the intention of stamping out the leaders of the Indian independence movement against their rule. Many prominent freedom fighters were charged under this rule**.**

In *Queen-Empress v. Jogendra Chunder Bose, 1891*[3], the law of sedition was first applied to a case 20 years after its introduction. The Bengali magazine Bangobasi's proprietor, editor, manager, and printer were tried under the law for publishing an article that criticized the Age of Consent Act, which raised the age at which a person can consent to sexual activity. However, there was no conviction in this instance. The jury was unable to reach a unanimous decision. Bose was

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released on bail after the Chief Justice of the Calcutta High Court, W. Comer Petheram, stated that "he would not take any verdict that was not unanimous in this case."

Bal Gangadhar Tilak a prominent figure of the Indian independence movement was convicted twice for the offence of sedition by the British court in India. In 1897, he was convicted by the Bombay High Court for his article using the example of the Maratha warrior Sivaji to encourage the Indian to overthrow British rule from India published in his magazine *Kesari*, a

[2] Sec 124A IPC 1860,

[3] (1892) ILR 19 Cal 35

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Marathi magazine founded by him in 1881. Again in 1908, he was convicted of sedition for his writing in his Marathi magazine *Kesari.*

In 1922, MK Gandhi was charged with sedition for his highly sensitive article published in Young India journal. Both Gandhi and the publisher of the journal were pled guilty and were sentenced to imprisonment for six years in jail. Gandhiji said while pleading guilty that 'section 124A is a prince among all the politically designed IPC sections to suppress the liberty of the citizens.[4]

In the case of *Niharendu Dutt Majumdar v the King-Emperor*[5]in 1942, the most relevant case today, the then British Chief Justice of the federal court of British India held that

This [sedition] is not made an offense in order to minister to the wounded vanity of Governments, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offense.

The acts or words complained of must, either incite to disorder or must be such as to satisfy reasonable men that that, is their intention or tendency.

Sedition law in Free India

While framing our constitution, the constituent assembly debated on this colonial law and whether to retain this law in free India or not. One such debate was of K M Munshi who was also a member of the drafting committee, single-handedly proposed the amendment for the deletion of the word 'Sedition' from the law. He said while moving his amendment on 10 December 1948 that-

"Sir, the importance of this amendment is that it seeks to delete the word 'sedition' and use a much better phraseology, viz., 'which undermines the security of, or tends to overthrow, the state'. The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offense against the state". "I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of courts of law all over the world. Its definition has been very simple and given so far back as 1868. It says 'sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquillity of the state and lead ignorant persons to subvert the government'. But in practice, it has had a curious fortune. A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion that will bring ill will

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towards the government was considered sedition once. Our notorious Section 124- A of the Penal Code was sometimes construed so widely that I remember a case where a criticism of a District Magistrate was urged to be covered by Section 124-A. But public opinion has changed considerably since, and now that we have a democratic government a line must be drawn between criticism of the government, which should be welcome, and incitement,

[4] . S.G. Vombatkere vs Union of India WRIT PETITION(C) No.682 OF 2021

[5] (1942) FCR 48

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which would undermine the security or order on which civilised life is based, or which is calculated to overthrow the state. Therefore, the word 'sedition' has been omitted. As a matter of fact, the essence of democracy is criticism of government. The party system necessarily involves an advocacy of the replacement of one government by another. This amendment therefore seeks to use words which properly answer to the implication of the word 'sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word 'sedition' only is sought to be deleted from the article. Otherwise, an erroneous impression would be created that we want to perpetuate 124A of the IPC [Indian Penal Code] or its meaning, which was considered good law in earlier days."[6] Munshi's amendment was accepted by the assembly unanimously and resulted in erasure of the word 'sedition' from the constitution.

T. T. Krishnamachari one of the members of the constituent assembly, argued that the word sedition was anathema to Indians given their experience of it and he suggested that the only instance where it was valid was when the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder.[7]

One of the early cases of sedition in India was *Romesh Thapar v State of Madras*[8]in this case there was a ban put on the circulation of a magazine named crossroad which was owned by a follower of Marxist ideology Romesh Thapar and criticized Jawaharlal Nehru's policies, particularly his foreign policy, Thapar filed an appeal with the Supreme Court, marking the first case involving Sec. IPC Section 124A. In Romesh Thapar v. State of Madras (1950), the Supreme Court declared that any law restricting freedom of speech and expression would not be subject to Article 19(2) of the Constitution unless the freedom of speech and expression threatened the "security of or tend to overthrow the State.". One of the court's best judges, Justice Patanjali Sastri, was the one who handed down the verdict. She was intelligent, rational, and generous. "It is also worth noting that the word 'sedition' occurred in Article 13(2) of the Draft Constitution prepared by the Drafting Committee and was deleted before the Article was finally passed as Article 19(2)," he stated. This is related to the fact that the Federal Court in *Niharendu Dutt Mazumdar v. The King-Emperor*[9] defined sedition as "the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that this is their intention or tendency." However, the Privy Council overturned that decision and reaffirmed the view expressed in Tilak's case that "the offense consisted in exciting or attempting to excite in others certain bad feelings towards the government.

In the case of *Kedar Nath Singh v. Union of India*[10]*, the* accused was charged under the sedition law for criticizing the state government of Bihar accused's conviction was upheld by the Patna

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High Court but in Supreme Court held that sedition is defined as any spoken or written words that "implicit in them the idea of subverting government by violent means." However, the Court made it clear that strong statements criticizing the government's actions or policies do not fall

[6] https://frontline.thehindu.com/the-nation/how-a-supreme-court-judgment-brought-back-the-sedition-law-in-india/article33481062.ece

[7] https://thewire.in/law/sedition-and-the-status-of-subversive-speech-in-india

[8] 1950 AIR 124

[9] (1942) FCR 48

[10] 1962 AIR 955

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under the definition of seditious speech. Therefore, any words or statement which criticizes the government established by law will not be considered as a sedition. Though Supreme Court made it clear that "allegedly seditious speech and expression may be punished only if the speech is an 'incitement' to 'violence', or 'public disorder'".

Sedition case in recent time

In most recent case of sedition is *Vinod Dua v Union of India*[11] in which Vinod Dua a journalist criticises Prime Minister Narendra Modi for his tactic of death and terror act to get vote in an election and handling of the COVID pandemic. The local BJP leader from Shimla lodged an FIR against him with sedition charges. Respondent argued that the aforementioned claims made by the petitioner are bizarre and unfounded, as well as false. By claiming that the PM has gained votes through acts of terrorism, Mr. Vinod Dua has spread erroneous and malicious information. This is directly inciting citizens to act violently and will undoubtedly disturb public peace. This is an attempt to provoke violence against the Prime Minister and the government. Additionally, he attempts to disseminate false information, such as the erroneous assertion that the government lacks sufficient testing facilities, which causes panic and disturbs public order. The government has taken all necessary measures to control the pandemic and has sufficient facilities to contain it. But the Supreme Court confided in the judgment of Kedar Nath Singh in which the Supreme Court held that the mere speech or comment against the government did not attract the sedition law unless and until it incites violence against the government established by the law. So, in the present case, the journalist only made a comment that is critical of the government and the Prime Minister did not attract the sedition law. There is no incitement of violence in his comments against the government. Supreme Court quashed the charges of sedition against the journalist.

Recently, the National Crime Record Bureau (NCRB) released its report on sedition cases. In its report, Assam was on the top for recording sedition cases (69) followed by Haryana (42), Jharkhand (40), Karnataka (38), Andhra Pradesh (32) then Jammu & Kashmir (29) respectively These six states accounted for 250 cases more than half the number of total sedition cases recorded in the country in the last eight-year period. Among states Meghalaya, Mizoram, and among union territories Andaman & Nicobar Islands, Chandigarh, Pondicherry, Dadra & Nagar Haveli & Daman & Diu where sedition cases were not registered even one case was not registered[12].

Sedition around the World[13]

The global movement has been overwhelmingly anti-sedition, and various nations have either relaxed or abolished the law. The United Kingdom, Ireland, Australia, Canada, Ghana, Nigeria,

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and Uganda are just a few democratic nations that have viewed sedition laws as undemocratic,

[11] Writ Petition (Criminal) No.154 of 2020

[12] https://indianexpress.com/article/india/most-number-of-sedition-cases-in-last-8-years-came-from-assam- ncrb-data-8131263/

[13] https://www.indiatoday.in/law/story/how-countries-junked-sedition-law-supreme-court-section-124a-1948152-2022-05-11

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undesirable, and unnecessary. The protection of free speech has been the primary justification for banning sedition. Another factor is the possibility of using sedition laws to advance political goals. Following below are the examples of nations that removed the law of sedition from their statute or eased their seditious law.

South Korea

The Republic of Korea abolished sedition laws during democratic and legal reforms in the year 1988.

Ghana

On July 27, 2001, Ghana's parliament unanimously repealed the Criminal Libel and Seditious Laws, which had been used to incarcerate a number of journalists in the past. The repeal follows the passage of the Criminal Code (Repeal of the Criminal and Seditious Laws Amendment Bill) Act 2001 by a unanimous vote in the House.

Scotland

Section 51 of the Criminal Justice and Licensing Act, 2010 abolished the common law offences of sedition with effect from March 28, 2011.

Indonesia

In 2007, Indonesia declared sedition law as an unconstitutional provision of law, similar to the laws of its Dutch colonizers.

Australia

The first comprehensive law in Australia to include a sedition offense was the Crime Act of 1920. It was the subject of reviews in 1984 and 1991. In 2005, Schedule 7 of the Anti-Terrorism Act (No. 2) of 2005 underwent revisions. The Australian Law Reform Commission (ALRC) investigated the use of the term "sedition" to describe the offenses outlined in the 2005 amendment. An ALRC proposal was adopted in 2010 and the definition of "sedition" was changed to "urging violence offenses" in the National Security Amendment Act of 2010. Section 51 of the Criminal Justice and Licensing Act of 2010 abolished the common law offense of sedition in Scotland on March 28, 2011.

Singapore

83 years after it was first enacted to quell local opposition to British colonial rule, Singapore,

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which, like India, inherited colonial English law, repealed its sedition law last year. According to the Home Ministry, the Sedition Act's key provisions have not been relevant in contemporary Singapore for a considerable amount of time, and prosecutions rarely made use of the law. It stated that the issues covered by the sedition law could be adequately addressed by a number of new laws. Over the years, Singapore has enacted additional laws to address Act-covered issues in a more targeted and calibrated manner.

United States

Some sedition laws in the United States have been struck down or are no longer in effect. Free speech is well-protected by the courts. The US Code's sections 2381 to 2385 deal with acts of treason, sedition, and subversion that call for the overthrow of the government. However, the law of sedition is rarely enforced in order to uphold the right to free speech.

New Zealand

The Crimes (Repeal of Seditious Offences) Amendment Bill, which was introduced in 2007 and took effect on January 1, 2008, abolished the crime of "sedition."

United Kingdom

In the UK, the sedition law was finally repealed in 2009 after becoming obsolete in the 1960s. Sedition by an alien—one who is a resident but not a citizen of the country—is still an offense.

Criticism of the law

This sedition law is always criticized especially in the colonized country due to its colonial relic it resembles as it was introduced by the colonial power to quell the anti-colonial movement. The natives of the colonies suffered from this barbarian law. Many colonies after gaining independence repealed or eased the inherited law of sedition. The government misuses this law to suppress the opposition party, especially government attacks on media platform under this law.

This law has been criticised also for putting restrictions on the fundamental right of free speech and expression. The provision of it is that any individual charged with sedition will be barred from government jobs and they cease to have a passport. People charged with sedition are required to present themselves whenever required by court or government which is a complete violation of the right to live with dignity.

India signed the International Covenant on Civil and Political Rights (ICCPR) in 1979, going against its international commitment. There are sections in both the IPC and the Unlawful

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Activities Prevention Act that make "disturbing the public order" or "overthrowing the government by violence and criminal means" illegal. These are adequate to safeguard national integrity. Section 124A is not specifically required.

Argument for the support of sedition law

The IPC's Section 124A is helpful in the fight against terrorist, separatist, and anti-national organizations, which is why it is supported.

Additionally, it shields the elected government from illegal or forceful attempts to overthrow it.

If disrespecting the court results in criminal prosecution, then disrespecting the government should also result in criminal prosecution. The stability of the state depends on the legal government remaining in place.

In several districts of states, Maoist rebel groups successfully run a parallel government. These organizations are outspoken supporters of a revolution to topple the state legislature.

Suggestion

The government should not always use the law of sedition to quell its criticism, as India is a democratic country and criticism is an essence of democracy. Sedition provision should be made less stringent against its citizens.

The government should welcome criticism with an open hand but not always.
Sedition should only be used against terrorists or those who tend to disturb the public peace.

Government – citizen relation is like of parent and their children, parent don't abandon their children for their disrespect. The government should treat citizens as its children.

Sedition law should be reformed or reviewed from time to time.

Conclusion

India is the largest democratic country in the country and its people have fundamental rights of freedom of speech and expression. Criticism is an essential ingredient of any democratic institute. The government should not use sedition law arbitrarily against its own citizens. The purpose of the sedition law should be to secure national integrity of the nation. Sedition law must be reviewed in order to satisfy the restriction mentioned under article 19 of the Constitution.

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