

Sedition Law vis-a-vis Freedom of Speech

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ABSTRACT

Under the Indian Constitution of the Article 19(1)(a) it guarantees freedom of speech and expression, stating that the all citizens have the right to free speech and expression. Freedom of speech and expression is at the core value of an organised freedom-loving society's inherent dignity to impart and acquire information about that common interest. Nevertheless, Article 19(2) limits the constitutional right to free expression. In this regard, the Indian Constitution is less protective of peaceful expression than the ICCPR. The significant degree and scope of free speech and expression protection in India are primarily determined by interpretations of the terms in the interests of, and reasonable restrictions on, the number of grounds listed in Article 19(2).

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I. INTRODUCTION

Democracy is indeed not identical with majoritarianism, rather, it is an inclusive system in which every voice is heard.¹ In the immortal thoughts of Charles Bradlaugh, "*a thousand-fold misuse of free speech is preferable to denial of free speech. The abuse dies in a day, but the denial buries the people and buries the character's hopes.*"² Acknowledging that lawlessness and morality cannot coexist, the Supreme Court has ruled that the unfettered spread of thoughts in a nation keeps its citizens informed, which leads to good government.³

The right to freely express one's own thoughts and opinions by words, writing, printing, photographs, or any other methods is referred to as freedom of speech and expression. Hence it covers the articulation of

one's concept through any communicable media or apparent representation, such as gestures and the same.⁴ It is commonly agreed in modern times that the right to free expression is the cornerstone of a free society and must be protected at all times. The unrestricted flow of ideas in an open forum is the first principle of a free and democratic society. Part III⁵ of the Indian Constitution offers a broad range of judicially enforceable fundamental rights, which closely equate to the civil and political rights protected by the 1966 International Covenant on Civil and Political Rights (ICCPR).

The interrelationship between Section 124-A of the Indian Penal Code and Article 19 of the Indian Constitution is strained. Article 19(1)(a) of the Indian Constitution ensures freedom of speech and expression, stating that "all citizens shall enjoy the

right to freedom of speech and expression.”⁶ The Indian Supreme Court has ruled that under Article 19(1)(a), freedom of speech and expression entails the right to seek and receive information, including information held by public bodies.⁷ The Supreme Court ruled in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*⁸ that commercial speech (advertisement) is protected under the right to free expression guaranteed by Article 19(1)(a) of the Constitution. Furthermore, the court made it perfectly clear that the government could prohibit commercial advertisements that are deceitful, discriminatory, misleading, or factually inaccurate. The Supreme Court stated, emphasising the importance of free speech and expression, that *“freedom of speech goes to the heart of the natural right of an organised freedom-loving community to impart and acquire information concerning that common interest.”*

However, Article 19(2)⁹ limits the constitutional right to free expression. The following are the eight grounds for restriction listed in clause (2) of Article 19:

1. Security of the State.
2. Friendly Relations with Foreign State.
3. Public Order.
4. Decency or Morality.
5. Contempt of Court.
6. Defamation.
7. Incitement of an Offence.
8. Sovereignty and integrity of India.

In this regard, the Indian Constitution is less protective of peaceful expression than the ICCPR.¹⁰ The extent and scope of free speech and expression protection in India is mainly decided by how the terms “in the interests of”, and “reasonable limits” of the number of grounds specified in Article 19(2) are interpreted. Like other fundamental rights guaranteed by the Indian Constitution, freedom of speech and expression is not comprehensive. It can be limited if three different and independent conditions have been met:

1. The restriction must be supported by legal authority. Executive orders or administrative actions that lack legal legitimacy cannot limit freedom of expression.
2. Article 19(2) specifies that the law should ultimately fall within one or more of the constraints. Restrictions on freedom of expression cannot be imposed on broad justifications such as “in the general public’s interest”, as is acceptable in the context of fundamental rights such as freedom of trade and enterprise.
3. The constraints must be appropriate. It must not have been unreasonable or exorbitant. The mechanism and approach in which the restriction is imposed must also be just and appropriate.¹¹

However, the Supreme Court's opinions on the subject have been divergent.

To the question of whether Article 19(2) and Section 124-A are mutually exclusive or complementary.

There are three possible arguments:

1. Section 124A violates the Constitution because it violates Article 19(1)(a) and is not justified by the phrase “in the sake of public order”.¹²
2. Section 124A is not null and void because the phrase “is in the interest of public order” has a broader scope and is not limited to ‘violence’. It must weaken the government’s authority by instilling hatred, disgust, or disdain for it.¹³
3. Section 124A was declared partially void and partially legitimate in *Indramani Singh vs. State of Manipur*.¹⁴ Exciting or attempting to induce mere disaffection is illegal, but the restriction under Article 19(2) to incite hatred or contempt towards the government established by Indian law is valid.

Only restrictions in the interest of one of the eight listed interests can pass constitutional scrutiny, according to the Indian Supreme Court.¹⁵ The Supreme Court declared in March 2015, striking down section 66A of the Information Technology Act, that “any regulation intending to impose a restriction on freedom of expression can only pass muster if it is

proximately related to any of the eight subject topics set out in Article 19(2).”¹⁶

II. Relevancy of Freedom of Speech and Expression

The freedom of expression and speech is the cornerstone of democratic government. This independence is required for the democratic process to operate effectively. The first requirement of liberty is freedom of speech and expression. It has a privileged position in the hierarchy of liberties, providing aid and protection to all others. It has been unequivocally established that it is the mother of all other liberties.

In our democracy, freedom of speech and expression allow for open discussion of topics. Freedom of speech and expression is critical in shaping public opinion on social, political, and economic issues. Since the 1950s, the Supreme Court has interpreted freedom of speech and expression, as well as the equality clause and the protection of life and liberty, quite broadly. It has alternatively been referred to as a “fundamental human right”, a “natural right” and other terms. The freedom of speech and expression involves not only the right to disseminate one’s own viewpoint, but also the right to propagate or publish the viewpoints of others individuals, otherwise, this liberty would not encompass the freedom of the press.

Freedom of expression serves four broad special purposes:

1. It assists an individual in achieving self-actualization.
2. It aids in the discovery of the truth.
3. It improves an individual's ability to participate in decision making.
4. It provides a means for striking an acceptable balance between stability and societal change. Everyone in society should be able to create their own opinions and freely express them to others.

Freedom of speech and expression has indeed been regarded as fundamental and indispensable for a

democratic state. It is destined to be the foundation of democratic functioning. It is the bedrock of any democratic society. It is critical to the rule of law and citizens’ freedoms. In the case of *Romesh Thaper vs. State of Madras*,¹⁷ Patanjali Shastri, C.J. observed, “*Freedom of speech and of the press lays at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might invoke risks of abuse. But the framers of the constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the federal constitution, but it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away to injure the vigor of those yielding the proper fruits.*”

Freedom of expression is an essential characteristic of any healthy democracy. The right to free expression is critical in a democracy because informative ideas contribute to inform political discourse and are fundamental to public accountability and transparency in government. In order for a democratic system to function, individuals should be able to form their own ideas. Before being able to see the truth, one must be able to acquire and give many diverse thoughts and information, reflecting many various views. That is why free expression is so crucial to the operation of our pluralistic society. One of the primary cornerstones of a democratic society and one of the basic criteria for its advancement and each individual’s self-fulfilment is freedom of expression.

III. Conclusion

Against this backdrop, there is no question that perhaps the sedition statute should be repealed.¹⁸ It has become a weapon used to frighten anyone who speaks out or questions the administration, and it has no validity in 21st century India. A twitter post, a Facebook comment, participation in a protest, or a dissenting opinion are not acts of sedition and should not be interpreted as being such.

Efforts to restrict criticism and free expression are nothing new. Activists and artists were both prosecuted under the same law during the previous period. Opposition leaders, known as the 'Congress', have protested the abuse of the sedition statute. However, when it was in power, the Congress utilised the very same statute against dissenters. "*We have inherited a great amount of colonial rules that were created for a different society*", argues historian Romila Thapar. We are no longer a colony. These laws must be revised immediately.¹⁹ In India, there have been two attempts to repeal it in the recent decade, both through private member legislation, but both have been thwarted by governments. The 21st Law Commission presented a consultation paper in 2018 asking input on removing sedition, however the commission's term expired before it could give its recommendations.²⁰

Despite persistent calls to remove it from the statute and accumulating proof of its abuse over the years, no government official has expressed a readiness to do so. In a society where freedom from fear²¹ is recognised as an international human right, one must wonder if India in 2022 should have such a retrograde and manifestly unconstitutional rule as sedition, which attempts to strike shivers down citizens' spines.²² However, by repeatedly citing this provision, the government has recently provided us with the answers. They do not really appear concerned, and any suggestions would have most certainly gone on deaf ears because in a participatory democracy like India, where sloganeering is the oxygen and disagreement is the blood²³, laws like sedition have no place. When asked in Parliament whether the sedition statute would be repealed, Minister of State for Home Affairs Nityanand Rai responded succinctly, "There is no proposal to repeal sedition. The provision must be kept in order to effectively confront anti-national, separatist, and terrorist elements."²⁴

IV. Suggestions

All speech-related offences should be rendered non-cognizable and bailable in order to provide a judicial

check on police authorities acting on politically motivated accusations. This would also lessen the negative impact of utilising incarceration and arrest to intimidate anyone exercising their rights to free speech and expression guaranteed by Article 19(1)(a)²⁵ of the Indian Constitution.

All police departments must be advised that judgments on whether to arrest somebody for speech should not be determined on threats of violence or disruption made by individuals who oppose or are offended by that speech. Arresting someone just for their speech should be based exclusively on an evidential assessment of whether or not the individual has broken the law.²⁶ In the event of offences under Sections 153-A²⁷ and 295-A²⁸ of the Indian Penal Code, Section 196(1)²⁹ of the Code of Criminal Procedure requires obtaining prior authorization from the government before taking cognizance of the offences. It is proposed that it be expanded to Section 124A of the Indian Penal Code, which deals with sedition. Develop educational programmes for all police personnel to ensure that they are fully aware of the Supreme Court's prohibitions on laws prohibiting free speech and expression. In the event that Section 124A of the Indian Penal Code is repealed or amended, police should be clearly informed³⁰ that, under pertinent Supreme Court decisions:

1. The sedition statute only applies to communication that has the potential or intent to cause public disorder.³¹
2. Simply criticising the government or its policies cannot justify prosecution under Indian Penal Code section 124A.³²
3. A prosecution for sedition cannot be based solely on speech or expression viewed as disparaging to India or its national symbols.
4. Consistent with the principles established by the Bombay High Court, make it essential for police to acquire a written legal opinion from the district's law officer and the state's public prosecutor before pursuing sedition charges.³³

All charges and investigations into matters involving peaceful expression or assembly are to be withdrawn and closed. India must have a clear plan and timeline for repealing or amending laws that penalise peaceful expression or assembly, and where legislation is to be altered, it must consult extensively with the legal community and civil society groups in an open and public manner.

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