



Law	BALANCING DISSENT AND SEDITION: AN ANALYSIS OF FREE SPEECH AND STATE AUTHORITY
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Abstract

The right to dissent is a fundamental principle of democracy, enshrined in international human rights declarations and India's constitution. However, the persistence of the sedition laws in India's penal code imposes restrictions on this essential right. This study examines the interplay between the right to dissent and sedition laws in India. Dissent encompasses freedom of expression, assembly, and the right to protest, which are vital to the effective functioning of a democratic system. The Indian Penal Code defines sedition as generating hatred, contempt, or disaffection towards the government, with judicial interpretations evolving post-independence to criminalize activities that incite disorder or violence. Despite this, numerous individuals face sedition charges to express their dissenting views. The ambiguity in sedition legislation allows for a broad interpretation by authorities, constraining citizens' human rights. In a democracy, citizens have the right to criticize the government, foster disaffection, and pursue change through peaceful means. Current legislation fails to distinguish between the state and the government, and the necessity of sedition laws in a democratic system is questioned. The suppression of dissent through sedition laws undermines constitutional freedom and authentic democratic aspirations. This research concludes that abolishing sedition laws is imperative to preserve the right to dissent and uphold the principles of vibrant democracy in India.

Keywords- Right to dissent, Sedition, Freedom, Expression, Protest

Introduction

Democratic governance is a fundamental principle of democracy. However, the democratic process cannot function effectively without ensuring certain essential rights, which are crucial for the establishment of a free and civilized society, to every member of the community. The right to dissent represents one such fundamental right, acknowledged in the 1948 Declaration of Human Rights and the 1966 International

Covenant on Civil and Political Rights, both of which India ratified. Moreover, India's Constitution enshrines the right to dissent as a fundamental right in Part III. Conversely, the offense of sedition, a vestige of British colonial rule designed to suppress political opposition, persisted in India's penal code. This law imposes restrictions on citizens' fundamental rights to dissent. This research examines the right to dissent and its interaction with sedition laws in India.

Right to Dissent: Conceptual Analysis

Dissent is conventionally defined as an attitude or belief system that challenges or opposes dominant ideas, including governmental policies or the individuals and political organizations that support them. This represents a position of disagreement or resistance to prevailing opinions or established authorities. The concept of dissent encompasses the freedom of expression and the right to protest. In a democratic society, freedom of expression is considered fundamental and inseparable. Liberty is deemed essential for democracy to function effectively, playing a vital role in shaping public opinion on various sociopolitical and economic issues. In the case of *Maneka Gandhi V. Union of India* (AIR 1978 SC 597), Justice Bhagawati, emphasized the significance of free speech and expression in a democratic system:

"Democracy fundamentally relies on open debate and free discussion, which serves as the sole corrective measure for government actions in a democratic framework. If democracy is defined as people's governance, it is evident that every citizen must have the opportunity to participate in the democratic process. To enable citizens to make informed choices, unrestricted and widespread discussion of public matters is necessary." Within the hierarchy of human rights, freedom of speech and expression occupies a prominent position. It is regarded as the fundamental principle of liberty and the basis of all other freedoms. Furthermore, the right to assembly and association, which constitute the foundation for the right to protest, serves a vital function in the efficacious operation of a democratic system.

An assembly constitutes a deliberate congregation that facilitates a public forum for interpersonal interaction. Conversely, an association represents a more formalized and persistent entity, encompassing a diverse array of organizations ranging from familial units to political parties and labor unions. The liberties advocated by these collective bodies are reinforced by freedom of association. In exercising this freedom, individuals invariably employ their right to the freedom of expression.

Indeed, a democratic government that genuinely represents its constituents can flourish only through the collective exercise of speech, assembly, and association rights. This interrelationship manifests in protests, demonstrations, and processions, which exemplify the interconnectedness of these fundamental freedoms.

The Universal Declaration of Human Rights (UDHR) recognizes several fundamental human rights, including freedom of expression (Article 19), freedom of assembly (Article 20(1)), and the right to form trade unions (Article 23(4)). The International Covenant on Civil and Political Rights (ICCPR) further elaborates on the right to dissent in Articles 19, 21, and 22(1), which address freedom of expression, assembly, and association, respectively. However, these rights are subject to certain limitations under specific circumstances. The doctrine of necessity permits restrictions on these freedoms, although under stringent conditions.

In India, the Constitution recognizes the right to dissent as a fundamental right under Article 19. Nevertheless, this right may be subject to certain restrictions.

Sedition under Indian Law

Section 124 A of the Indian Penal Code, 1860, defines the offense of sedition as follows:

"Any individual who, through spoken or written words, signs, visible representations, or other means, generates or attempts to generate hatred, contempt, or disaffection towards the government legally established in India, shall be subject to punishment. This may include life imprisonment with the possibility of an additional fine, or imprisonment for up to three years with a potential fine, or solely a fine."

The first explanation attached to this section delineates the scope of disaffection, encompassing disloyalty and all hostile sentiments against the lawfully established government in India. Explanations 2 and 3 differentiate between permissible and actionable comments. In this context, hatred denotes malice, while contempt signifies a low regard or opinion.

Considering the definition of sedition in Section 124A, it can be asserted that the fundamental elements of this offense encompass the provocation or attempted provocation of hatred, contempt, or disaffection towards the legally established government in India. The judicial interpretation of Section 124A exhibits inconsistencies due to its historical context. During the pre-independence era, colonial courts interpreted sedition in a literal sense, deeming the mere act of inciting feelings of

ill will against the government as sufficient to constitute disaffection. In this interpretation, disaffection was defined as the absence of affection, which was deemed adequate to establish culpability for the offense.

After the attainment of independence, the constitutional validity of Section 124 A was challenged because it contravened the fundamental rights enshrined in Article 19 of the Constitution. In the landmark case of *Kedar Nath Singh, v. The State of Bihar* (AIR 1962 SC 955), the Honorable Supreme Court, upheld the constitutionality of the sedition laws. The court elucidated that the section intended to exclusively criminalize those activities that are designed to, or possess the potential to, incite disorder, disrupt public peace, or precipitate violence.

In post-independence India, it is evident that Section 124A is applicable solely in instances where there is a propensity for public unrest through the utilization or encouragement of violence. Notwithstanding this unambiguous interpretation, numerous First Information Reports (FIRs) and legal proceedings continue to be initiated against intellectuals, political activists, civil society members, writers, artists, and ordinary citizens.

The conviction of Dr. Binayak Sen on sedition charges by the Raipur Sessions Court is widely acknowledged. Individuals such as Arundhati Roy, Vara Vara Rao, S. A. R. Gilani, Manoj Shinde, Kathuran Bunani, Piyush Sethia, and others have been charged with sedition for expressing dissenting views on various issues, including Kashmir, corruption, and government policies. Furthermore, authorities have instituted sedition charges against peaceful demonstrators opposing the Kudankulam Nuclear Plant.

Balancing Right to Dissent and Sedition

Strict interpretation of sedition laws has the potential to criminalize opposition to the government. The term "sedition" is broadly defined utilizing subjective terminology such as "hatred," "contempt," "enmity," and "disaffection" without precise definitions. This ambiguity in legislation allows for extensive interpretation by authorities, resulting in the arrest of numerous individuals who criticize discriminatory governmental policies and corporate exploitation.

The capacity for dissent and its exercise by citizens is deemed essential for the development and establishment of a fully functional democracy. A vague statute such as a sedition imposes constraints on citizens' human rights and elicits concerns regarding the necessity of such an offense within a democratic system, as delineated below.

1. In a democratic system, opposition parties typically endeavor to generate public dissatisfaction with the incumbent administration. Their objective was to remove the government from power by mobilizing popular support and potentially supplanting it. Every citizen possesses a constitutional right to criticize governmental misconduct. They may express disapproval, foster disaffection and disloyalty in the populace, and strive to remove the government through democratic processes. Given that fostering disaffection is a constitutional right in democracy, how can it be considered a criminal act?
2. In any democratic system, citizens possess the right to peacefully express dissent, engender discontent with the government, and pursue change through non-violent means. How does this democratic prerogative conflict with an established legal framework?
3. Current legislation fails to distinguish between the state and the government. It is evident that the state is enduring and sovereign whereas the government is not. India will persist, even as governments may change. Consequently, in a democratic system, citizens possess the right to oppose the government, critique its policies, and organize campaigns to influence public opinion against it to remove it through legitimate means. Such actions cannot be construed as sedition.
4. British colonial administration employed state power to exploit India for the benefit of Great Britain. They implemented legislation to economically exploit the country and enforced stringent laws, including those against the sedition, to suppress public resistance to colonial exploitation. The fundamental question is why democratic India would require laws such as sedition that inhibit dissenting voices, which are essential for the proper functioning of a thriving democracy.

The responsibility of a legitimate democratic government is to employ state power and resources to address the primary demands of the largest segment of the population, thereby minimizing conflicts between citizens and governing authorities. When such conflicts are minimal, legislation such as sedition laws becomes superfluous. If a democratic government requires such legislation, it indicates a failure to address the needs of the majority and may instead serve the interests of the governing elites.

The Constitution of our nation guarantees freedom and the right to dissent to achieve social, political, and economic equity. Its directive principles delineate policies aimed at reducing income and status disparities, preventing the concentration of

wealth, and utilizing resources for communal benefit. It is reasonable for citizens to advocate for the implementation of these principles to transform the nation into a genuine welfare state. However, this endeavor becomes challenging when small elite groups (comprising businesses, corporations, politicians, and bureaucrats) exert control over the government. To dismantle such elite monopolies, citizens must exercise their right to dissent from the government. While laws such as those about sedition, which suppress public opinion and peaceful movements, may be legally valid, they fail to meet the standards of a democratic society.

Conclusion

In a flourishing democratic society predicated on the principle of liberty, there is no justification for offenses analogous to sedition. The fundamental nature of a vibrant democratic system is rooted in its right to be dissent. The suppression of this right through legislative measures, such as sedition laws, undermines the freedom enshrined in the constitution. Dissent is an essential element of a nation's democratic framework. Therefore, it is imperative to abolish sedition laws to preserve the authentic democratic aspirations of India's citizens.

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