SEDITION LAW A COMPARATIVE STUDY

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Introduction
Sedition cases are rising in India and not even 4% of the accused are convicted. It is a non-bailable offence that is punishable up to three years or life imprisonment. It was enacted at the time of colonial British rule with the sole purpose to suppress descending voices against their rule in India. There are many countries that still have sedition under their penal code which is slightly different from Sedition law in Indian under sec 124A of The Indian Penal Code. Most of the countries have removed Sedition law due to its contravention with freedom of speech and expression, but there are many countries that are still continuing sedition law in their respective penal codes to maintain their Dominance and supremacy by suppressing the descending voices against them in their respective States. India is one of the countries where Sedition cases are always in limelight and most of the cases are filed due to political pressure from ruling parties. The paper is written with an objective to understand the evolution of sedition laws in different countries and compare it with sec 124A of The Indian Penal Code that deals with the offence of Sedition in India.

Sedition Law in India

History
Sedition Law was brought by Colonial British Rulers to suppress the voice of Indian Citizens. Thomas Macaulary, the rightful author of Indian penal code passed away on 28th December 1859 just a year before IPC was enacted. The offence of Sedition Corresponding to sec 124A was originally section 113 of macaulay’s Draft Penal code 1837 but for some unknown reason it was omitted from the penal code. Sedition Law was brought back to the code due to act of mutiny and Revolt across India in the form of sec 124A of Indian Penal Code. Further it was amended on 1898 and other minor amendments were made on 1937, 1948, 1950 and 1951, further no major change was made in this section 124A of Indian Penal Code and current section law remains same as it was earlier. Section 124A had survived from British India to the Current government headed by Prime Minister Narindera Modi even though there were many opposing voices against it from the time it was adopted.

Meaning
Bare Act Provision of Sedition law under sec 124A Indian Penal Code.

Sedition - 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, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.¹

In Simple words Sedition means stirring up of a rebellion which includes all the practices which have for their object to excite discontent or disaffection against the

¹ Section 124A of Indian penal code, 1860
Government, Parliament or Constitution of India. Discontent may be excited in number of ways, some of which are Poem, Drama, Story, Novel or essays. The two essentials of Sedition under Indian law are-

- Bringing or attempt to bring into hatred or contempt or exciting or attempting to excite disaffection towards the Government of India
- Such act or attempting may be done by words either spoken or written or sign or by visible Representation

**Sedition in Constituent Assembly**

British Parliament enacted the Indian Independence act on 18th July 1947 for the creation of two states India and Pakistan. India got independence on 15th August 1947 from British rule. The legislatures of both countries were given full power to make laws and draft a legal structure for their respective countries. The constituent assembly was given the task to draft the constitution for Independent India. The fundamental rights Sub – Committee of the Constituent Assembly was headed by one of the greatest freedom fighters Sardar Vallabhbhai Patel who further became the first home minister of India. Freedom of speech and expression appeared in Article 19 in the Final constitution of India as Article (19)(1)(a) and some reasonable restrictions under Article (19)(2). Consequently, the word sedition was dropped from Article 13 and Article 19 due to many opposing voices in The Constituent Assembly. Sedition under Article 124A continued as a statutory provision under sec 124A of The Indian Penal Code as Article 372 of the constitution provides that any existing law in force in India as of 26th January 1950 would continue to be in force unless modified or repealed by the legislatures. Constituent Assembly never approver and ultimately dropped Sedition as a restriction on the fundamental right under Article 19(2) of the Indian Constitution.

**Judiciary on Sedition**

There are many cases before and after the independence of India where sec 124A was challenged and further it was interpreted by judiciary. The initial cases which invoked the charges of sedition were against editors of National and local Newspapers which were published in India. Even Mahatma Gandhi who was editor of the newspaper “young India” along with Shri Shankarlal Ghelabhai Sanker who was Publisher and Printer of this newspaper were charged under section 124A of Indian Penal Code. Mahatma Gandhi pleaded Guilty instead of contesting the charge imposed against him. He was sentenced to 6 year of simple imprisonment.

There are many important cases where Sedition was interpreted by Judiciary, Judiciary once struck down sec 124A of IPC in the case of “Ram Nandan v. State of Uttar Pradesh” but it was brought back in the case “Kedar Nath v. State of Bihar”. We will look at all these important cases where sedition was challenged and interpreted by Judiciary.

**Queen v. Jogendra Chandra Bose**

Chief justice Petheram explained the word ‘disaffection’ to mean as a feeling contrary to affection in other words, dislike or hatred. Disapprobation simply means disapproval. A person will be guilty under this section if he uses either spoken or written words calculated to create in the minds of the person...

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2 Emperor v Mohandas karamchand Gandhi and Shankarlal Ghelabhai sdankar, Session case no. 45/1922. Ahmedabad

3 Queen v. Jogenrda Chandra Bose, ILR 19 Cal. 35
to whom they are addressed a disposition not to obey the lawful authority of the government, or to subvert or resist the authority, if and when the occasion should arise and if he does so with the intention of creating such disposition in his hearers or readers.

**Queen v. Balgangadhar Tilak**

Justice Strachey j agreed with the ruling given in the case of Queen v. Jogendra Chandra bose and observed that if a man excites or attempt to excite feeling of disaffection great or small, he is guilty under section 124 A of Indian Penal Code.

**Sanskar Marathe v. The State Of Maharashtra**

The Court noted that cartoons and caricatures are a form of expression with an element of humour and sarcasm amd were Drawn by Asim Trivedi were devoid of any wit, humour or sarcasm. The High court highlighted that only those expressions that excite hatred or contempt against the government, having the tendency of creating public disorder through actual violence or incitement to violence are punishable under Section 124A.

**Constitutionality of section 124A**

After India adopted its constitution the question related to validity of sec 124A, IPC with Article 19 of the Indian constitution was argued many times. The first important case related to its constitutionality of Section 124A of the Indian Penal Code came in 1951 when Judiciary struck it down in the case of Tara Singh v. State of Punjab as unconstitutional and held that it is being contrary to freedom of speech and expression guaranteed under Article 19(1)(a) of Indian Constitution. To remove legislative difficulties created by several decision of judiciary Constitution first amendment act came in 1951 and added two words in Article 19(2), ‘the interest of’ and ‘public order’ which gave legislative restrictions to Article 19 of the Indian constitution. Further given below are the two important cases where Constitution validity of section 124A was decided by judiciary.

**Ram Nandan v. State**

The Hon’ble High Court held that section 124 A imposed restrictions on the freedom of speech which are not in the interest of the general public and hence declared 124-A as ultra vires.

**Kedar Nath v. State of Bihar**

After examining entire history of Sedition Law, Court held that freedom of speech and expression should be fully protected but some restrictions are necessary for the safety and integrity of the state. The court decided that Section 124A of the IPC should make penal only on those matters that had the intent or tendency to incite public disorder and violence. Therefore Section 124-A was held Constitutional.

**Sedition Law in other Countries**

**England**

Sedition Law was introduced in England to protect the crown from any potential political uprising but it was abolished through section 6 Tara Singh Gopal Chand v. State, AIR 1950 SC 124; 1950 SCR 594

7 Ram Nandan v. State, AIR 1959 ALL. 101

8 Kedar Nath v. State of Bihar AIR 1962 SC 955

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4 Queen v. Bsl Gangadhar Tilak, (1898) ILR 22 Bom 112

5 Sanskar Marathe v. The state of Maharashtra, cri.PIL 3-2015

6 Tara Singh Gopal Chand v. State, AIR 1950 SC 124; 1950 SCR 594

7 Ram Nandan v. State, AIR 1959 ALL. 101

8 Kedar Nath v. State of Bihar AIR 1962 SC 955
73 of coroners and justice act in 2009. Three sedition offences that were abolished were-
- Offences of sedition and seditious libel
- The offence of defamatory libel
- The offence of obscene libel

The Sedition Act, 1661 - This act passed by British Parliament which imposed punishment on anyone who wrote, printed or speak any words against the Authorities. It evolved to mean slander and libel against the reputation or actions of government officials and judges. The aim of the act was to protect the faith of a common person in government and avoid any circumstances which can result in ‘breach of peace’ in the society. A person may be liable for sedition in England if they have any of the followings tendencies:

- To bring into hatred or contempt or excite disaffection against the authorities or the Government and Constitution established by United Kingdom or either house of the parliament.
- Excite sovereign’s subjects to attempt or otherwise than by Lawful means the alteration of any matters in church or state by Law established.
- To incite person to commit crime in the disturbance of the peace.
- To raise discontent or disaffection amongst the sovereign subject.
- To promote feelings of ill-will and hostility between different classes of those subjects.

Sedition law is no more applicable in England but some of its provisions can be seen in the Treason act 1695 and Treason and Felony act 1848.

Australia
Australia got its independence in 1901 from the colonial British rule and from colonial time to commonwealth government of Australia sedition remained in criminal legislations of many states in Australia. Some of the States codified these Sedition offences and therefore it still exists in Australian legislations. In 1914 war precaution act came into force and further in 1918 new Regulation 27A was introduced into the War Precautions Regulations 1915 by Statutory Rule no. 86 of 1918 which made sedition a Commonwealth offence in Australia. The regulation stated that-

"Any person who by word of mouth or in writing or by any act or deed:
- advocates, incites, or encourages disloyalty or hostility to the British Empire or to the cause of the British Empire in the present war; or
- Advocates the dismemberment of the British Empire, or who says or does anything calculated to incite encourage or assist such disloyalty or hostility, shall be guilty of an offence against the Act”.

First World War ended in 1918 and Australia concluded its peace treaties with other countries in 1920. After this Sedition was made a permanent Commonwealth offence in Australia by the passage of the War Precautions Repeal Act 1920, which inserted new sections, 24A-24E into the Crimes Act 1914. The major change in Sedition law in Australia came on 2005 due to a Terrorist attack in Australia. Australia introduced anti terrorist act 2005 which repealed existing sedition provision in crimes act and replaced it with new provisions into the criminal code.

Sec 80.2 to sec 80.6 were introduced that expanded the offence of sedition law which now included the behavior of ‘urging’ and the element of recklessness. United States of America

Sedition is considered as a serious felony in United States of America which can be punishable with 20 years of imprisonment and fine. It is considered as an act of inciting revolt or violence against the lawful authority of United States with the aim of overthowing them. Title 18 of the U.S. code is a federal law against the Seditious activities which deals with the activities like treason, rebellion and other similar activities. According to it sedition is a crime for two or more people within the jurisdiction of United States:

- To conspire to overthrow or destroy by force the government of the United States or to level war against them
- To oppose by force the authority of the United States government; to prevent, hinder, or delay by force the execution of any law of the United States
- To take, seize, or possess by force any property of the United States contrary to the authority thereof

Freedom of Speech is given very much importance in United States and it is protected by 1st amendment to the Constitution. To convict a person with the charges of Sedition State need to prove that defendant Conspire to use force against the lawful authorities rather than advocating to use the force. One of the most important sedition case cases of USA was Puerto Rican nationalist’s case. Pedro Albizu Campos with nine other accomplices plotted to overthrow the U.S control and started violent revolt to gain their independence. He was held guilty for the sedition charges and was jailed for 10 years. While Sedition is not a commonly charged offence in United States and punishment given is quite sever compared to other countries.

Malaysia

Sedition Act 1948 was brought by British colonies in Malaysia to suppress any Nationalist movements and deal with the spread of the communist ideology and the communist insurgency. Malaysia got its independence on 31st August 1957 but this act is still a part of Malaysia’s legal system and is often used by the executive to silence critics. The Sedition law has a different approach in Malaysia as it can be used against members of parliament. Article 149 of the Malaysia’s constitution provides that any Law designed to stop or prevent the six specified incidents or circumstances contained in article is valid, notwithstanding that it is inconsistent with any of the provisions in article 10(1). The six grounds are as followings:

1. To cause a substantial number of citizens to fear organized violence against the person or property,
2. To excite disaffection against the yang Dipetuan Agong or the Government in the federation
3. To promote feelings of ill-will and hostility between races or other classes of the population likely to cause violence,

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10 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/sedition
11 https://www.findlaw.com/criminal/criminal-charges/sedition.html
12 Article 10(1) (a) Reads: Every Citizen has the Right to Freedom of Speech and Expression
4. To procure the alteration otherwise than by Lawful means of anything by Law established.
5. This is prejudicial to the maintenance or the functioning of any supply or service to the public in the federation or any part thereof.
6. Which is prejudicial to public in or the Security of the federation or any part thereof.

**Uganda**

Section 39 and Section 49 of The Uganda Penal Code act deals with Seditious intentions and offence of Sedition. According to Section 39 Seditious intentions include the intention to bring into hatred or contempt or to excite disaffection against the person of the president, the Government or the Constitution; to excite any person to Unlawfully attempt the alteration of any matter in Government possession, to bring into hatred or to excite disaffection against the administration of justice, subvert or promote the subversive of the Government or the administration of a district. This formulation of the Law raises serious legal issues in light of article 43(2) (c) of the Constitution. On other hand Section 39(2) the defenses include instances where the publication or speech was intended to:

- Show that Government was misled or mistaken in its measures
- Point out errors or defects in various Government organs with a view to remedying the same
- Persuade anyone to procure alteration to any matter in Government possession through Lawful means

The offences of Sedition provided for in the following phraseology;

1. Any person does or attempt to do or make preparations to do, or conspire with any person to do, ant Act with a Seditious intentions
2. Utters any words with a Seditious intention,
3. Prints, publishes, sells offers for sale, distributes or reproduces any Seditious publication.
4. Imports any Seditious publication unless he or she has no reason to believe, the proof of which shall lie on him that it is Seditious.

Five judge Bench of Uganda Constitutional Court on August/25/2010 by a unanimous decision struck down sec 39 and section 40 of Uganda Penal Code and declare it Null and Void.

**Conclusion**

Every state had struggled and some are still struggling with the applicability of Sedition law in their respective penal codes. Some countries have struck down Sedition laws from their penal codes like England and Uganda and some Countries have kept it in their penal code like India and Malaysia. The reason that states are giving to curtail people's freedom of speech and expression under sedition law is National security and Separatist movements, but the real picture shows something else. Sedition law is mostly being used against the people with opposite political views. Sedition law restricts freedom of speech and expression far beyond permissible under International Law. States are using sedition law as a tool to suppress the voice of opposition parties and their supporters which is leading to arbitrariness. Speech and expression is the only thing that separates Human beings from other living beings. It is one of the basic ingredients of a democracy and states should amend it in such

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a way that it fits modern society where freedom of speech and expression holds very much importance.

India is the largest democracy which had seen many foreign invasions by different rulers and countries over its existence. India became an independent country in 1947 and established its own constitution in 1950 which guarantees its citizens fundamental rights. These fundamental rights include freedom of speech and expression under Article 19(1)(a) of The Indian Constitution with some reasonable restrictions which is further given under Article 19(2) of The Indian Constitution. Sedition law under section 124A of The Indian Penal Code was introduced by colonial British rulers to suppress opposing voices of Indian Citizens and it still holds a place in Indian legal system as a tool with the elected governments to suppress voices of opposition parties and their supporters. People have a right to give a descending view which should be respected by ruling parties. It is time for India to either amend Section 124A of IPC or repeal it as it is the fundamental right of every citizen to have his own political theories and ideas and to propagate them and work for their establishment so long as the person does not seek to do so by force and violence or contravene the provision of law.

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