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The Sedition Laws in India with Special Reference to ShreyaSinghal vs. Union of India

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Abstract

This paper talks about the case of ShreyaSinghal vs. Union of India1 in detail and the Sedition laws corresponding to it. This is a very famous case in recent times, where the Mumbai police had arrested two women, ShaheenDhada and RinuSrinivasan in 2012, for posting allegedly offensive and objectionable comments on Facebook about the propriety of shutting down the city of Mumbai after the death of a political leader, Bal Thackeray. The offence under S.124-A captioned as "Sedition" is closely allied to treason-an offence against the state. With the Commencement of Indian Constitution in 1950, Article 19(1) (a) provides to every citizen a fundamental right to freedom of speech and expression. With this development Sedition Law contained in Section 124-A comes with direct conflict with fundamental right under Article 19 (1) (a). The decision in ShreyaSinghal is immensely important in the history of Supreme Court for many reasons. In a rare instance, Supreme Court has adopted the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. Also, the paper compares the Indian Sedition laws with the sedition laws of several countries along with their current scenario. In this study, a survey has been conducted among the students, professors,

[1] WRIT PETITION (CRIMINAL) NO.167 OF 2012

advocates and judges to know their opinion about the existing Sedition laws in India and also their view on the judgement of this case. Therefore, this paper critically analyzes the sedition laws implacable in the case of ShreyaSinghal vs. Union of India.

Key Words: Sedition law, advocacy, article 19(1)(a), international scenario, censorship law.

1. Introduction

In a country like India, there is constantly a rift between the government and its people. Many problems arise in day today life. Under the cover of welfare of the people, the government introduces different types of policies, schemes, plans etc. On the other hand, there are resenting voices of the public against the government alleging that the policies, schemes, plans etc. are part of the ideological agenda of a ruling political party which takes off the rights of the people. Therefore, the conflict is inevitable. In order to control the resenting voices, the government uses different modes and among that law is an important tool and one of those laws is the sedition law. The offence under S.124-A[2] captioned as "Sedition" is closely allied to treason-an offence against the state[3]. Many personalities including the Father of the Nation and several freedom fighters have tried and have been punished during the imperial rule under the above section. But the things have undergone significant change after independence. The IPC provision is read with the constitutional provisions to see whether the right to freedom of speech is exercised in permissible limits and whether the action of the State against any person is just or not[4]. This article covers different issues in relation to sedition law in India.

The law of sedition as provided for in Section 124A of the Indian Penal Code, has undeniably had an extraordinary history. This highly controversial section did not form a part of the Indian Penal Code when it was enacted in 1860, although it was presented to be included by the draft prepared by the Indian Law Commissioners in 1837. It is observed that the section 124A was originally enumerated under s. 113 of Macaulay's Draft Penal Code of 1837-39, but it was only in 1870 that the provision for sedition was added by the IPC (Amendment) Act. This provision was later on replaced by the present Section 124A by an amending Act of 1898. According to ArvindGanachari, the framework of this section, the amended sedition law i.e Section 124-A was imported from various sources- the Treason Felony Act (operating in Britain), the Common law of seditious libel, and English law relating to seditious words. The Law of Sedition in India has assumed controversial importance largely because of constitutional provisions of freedom of speech and expression guaranteed as a fundamental right under Article 19 (1) (a) of part III of the constitution. Sedition Laws have been found in the following laws of India: Section 124-A of Indian Penal Code, 1860; Section 954 of the Code of Criminal Procedure, 1973; Section 55 of the Seditious Meeting Act, 1911.

With the Commencement of Indian Constitution in 1950, Article 19(1) (a) provides to every citizen a fundamental right to freedom of speech and expression. With this development Sedition Law contained in Section 124-A

[2] https://indiankanoon.org/doc/1641007/

[3](Stronk 2017)

[4](Stronk 2017; Carroll 1920)

comes with direct conflict with fundamental right under Article 19 (1) (a) as a result of the Privy Council decision in K.E. v. SadashivNaryan's case.

This paper critically analyzes the sedition laws implacable in the case of ShreyaSinghal vs. Union of India. There was an urge felt to understand this case because the verdict in this case is immensely important in the Apex Court's history for various reasons. In a rare instance, the Apex Court has adopted the extreme step of declaring a censorship law passed by Parliament on the whole as illegitimate. The Judgment has widened the scope of the right available to us to express ourselves freely, and the confined space given to the state in restraining this freedom in only the most exceptional of circumstances. Justice Nariman has highlighted, the liberty of thought and expression is not merely an inspirational ideal. It is also "a cardinal value that is of paramount significance under our constitutional scheme."

This study is a non-doctrinal study where a survey has been conducted among 30 people consisting of law students, professors, advocates, judges and retired judges. The researcher has also collected information from online sources and books.

Statement of the Facts

The Mumbai police had arrested two women, ShaheenDhada and RinuSrinivasan in 2012, for posting allegedly offensive and objectionable comments on Facebook about the propriety of shutting down the city of Mumbai after the death of a political leader, Bal Thackeray. The police arrested the two girls as per Section 66A of the Information Technology Act of 2000 (ITA), that punishes any person who sends through a computer resource or communication device any information that is extremely offensive, or with the knowledge of its falsity, the information is transmitted for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred, or ill will.

Although the police later released the women and dismissed their prosecution, the incident invoked substantial media attention and criticism. These women then filed a petition, challenging the constitutional validity of Section 66A on the ground that it is violative of their right to freedom of expression.'

The Apex Court of India initially issued an interim measure in *Singhal v. Union of India*, (2013) 12 S.C.C. 73, forbidding any arrest pursuant to Section 66A unless such arrest is accepted by senior police officials[5]. In the case in hand, the Court addressed the constitutionality of the provision.

Relevant Provisions

Apart from section 124-A of the Indian Penal Code, 1860 there were various provisions that were challenged being laid down under the Information Technology Act, 2000 and Constitution of India. The major provisions

[5] http://www.legalservicesindia.com/article/article/shreya-singhal-v-u-o-i-2473-1.html

challenged were: section 66A, 67A and 69A of the Information Technology Act, 2000 and Article 14 and 19(2) of the Constitution of India.

Judgment

In a lengthy judgement[6], which widely discussed Indian, English and US jurisprudence on free speech, the Apex Court struck down Section 66-A of the Information Technology Act (ITA), read down Section 79 of the Information Technology Act and the relevant rules, and affirmed the constitutionality of Section 69A of the Act. Speaking for the Court, Justice Nariman discussed the several standards which are pertinent to adjudge when restrictions on speech can be deemed reasonable, as per Article 19(2) of the Constitution of India. The Court held that Sec 66A was vague and over-broad, and therefore, fell afoul of Article 19(1)(a), since the statute was not narrowly tailored to specific instances of speech which it aim to curb.

Essentially, the Court also considered the 'chilling effect' on speech caused by vague and over-broad statutory language as a ground for striking down the provision. Further, the Court held that the 'public order' restriction under Article 19(2) of the Constitution would not apply to cases of 'advocacy', but only to 'incitement', specifically incitement which has a proximate relation to public disorder.

The challenge on the grounds under Article 14[7] of the Constitution of India, the Court held that *"we are unable to agree with counsel for the petitioners that there is no intelligible differentia between the medium of print, broadcast and real live speech as opposed to speech on the internet. The intelligible differentia is clear – the internet gives any individual a platform which requires very little or no payment through which to air his views."*

Furthermore, the Apex Court read down Section 79 and Rule 3(4) of the Intermediaries Guidelines[8], as per the Act, which deals with the liability of intermediaries, mostly those which host content and provide online services. Whereas the Section itself uses the term “receiving actual knowledge”, of the illegal material as the standard at which the intermediary is liable for removing content, the Court declared that it must be read to mean knowledge gained that an order by the court has been passed asking it to take down the infringing material.

Finally, the Court also upheld the secret blocking process under Section 69A of the Act, by which the Government can choose to take down content from the Internet, holding that it did not suffer from the infirmities in Section 66A or Section 79, and is a narrowly drawn provision with adequate safeguards. Thus, The Court held that the provision of section 66A of the IT Act is derogative to

[6] https://indiankanoon.org/doc/110813550/

[7] https://indiankanoon.org/doc/367586/

[8] http://www.wipo.int/edocs/lexdocs/laws/en/in/in099en.pdf

the Article 19(1)(a)[9] and as such it is an arbitrary provision which breaches the right of citizen to have freedom of speech and expression of their views on internet. As such the provision concerned is constitutionally invalid and as such struck down in its entirety.

Legal Framework of Sedition Law in India

Section 124-A of the Indian Penal Code, named 'Sedition', explains sedition in broad and magnanimous terms. It reads "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 aims to excite disaffection towards the Government established by Indian law" shall be punished with life imprisonment.

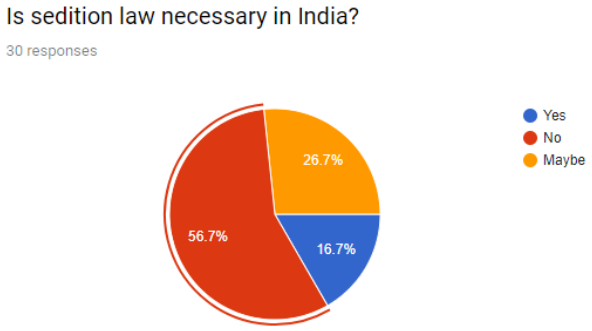
The descriptions which the Indian Penal Code gives are that the term "disaffection" includes disloyalty and all feelings of hate. It also reads as, that the comments that expresses firm disapproval of the measures of the Government, with an opinion to obtain their desired modifications by legal means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense as per this section. In accordance to the section 124-A, comments expressing strong disapproval of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, does not constitute as an offense as per this section. The law was originally drafted by Thomas Macaulay.

It was not a part of the Penal Code in the 1860s and was even dropped from the law. It was introduced in the IPC in the year 1870. Many Indian freedom fighters, including Mahatma Gandhi and BalGangadharTilak, were charged with sedition during freedom struggle. When the first amendment was introduced, which also included detailed limitations on free speech, the then Prime Minister Jawaharlal Nehru was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had told "now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better it is."

Besides Kanhaiya Kumar, Patidar leader Hardik Patel was slapped with sedition charges. In the year 2014, some of the Kashmiri students were charged with sedition for supporting Pakistan in a cricket match between India and Pakistan.

In the survey conducted, it was found that the majority of the target audience was of the view that the existences of such laws for sedition are not needed in a democratic country like India.

[9] https://indiankanoon.org/doc/1142233/



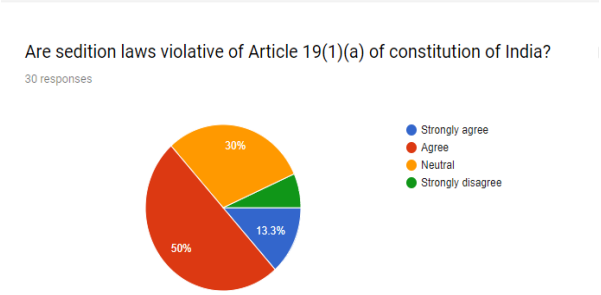
Judicial Interpretation

The judicial controversy on the purview of Section 124-A initiates with the decision of the Calcutta High Court where it held that it is sufficient for the purpose of the section that the words used are evaluated to excite feelings of ill-will against the Government and hold it up to the hatred and contempt of the people and that they were used with the intention to create such feeling. The contention that there can be no offence under the section unless rebellion or armed resistance is incited or sought to be incited was rejected vehemently. Public disorder, or the justifiable anticipation, or likelihood of public disorder, is therefore the gist of the offence. The act 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. Later on this interpretation given by the Federal Court was expressly overruled by the Privy Council.

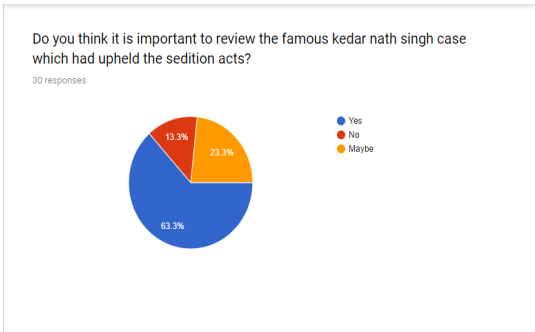
The relationship of Sec 124-A of the IPC and Art 19 of the Constitution of India is a strained relationship. The Indian Constitution guarantees freedom of speech and expression, which implies the right to express their own convictions and opinions without restrictions by words of mouth, writing, printing, pictures or any other means. The fundamental rights contained in Article 19(1) are those great and basic rights which are recognized as the natural rights inherent in every citizen. The basic requisite of validity of law with reference to Article 19 is that it should not be arbitrary and the restrictions or limitations imposed on the rights under Article 19(1)(a) must comply with the reasonable restrictions mentioned in Article 19(2)[10]. The Legislation can be declared to be illegal and unconstitutional only when it fails to clear the test of arbitrariness and discrimination which would render it violative of Article 14 of the Constitution. Sedition is a serious crime against the State — threat to the stability and challenge to the authority of the State — not merely opposition, however strong

[10] https://indiankanoon.org/doc/493243/

or resistance to the policy of the Government. It is correct that it is difficult to decide where to draw a line, but is also correct that the line needs to be drawn, as far as possible.

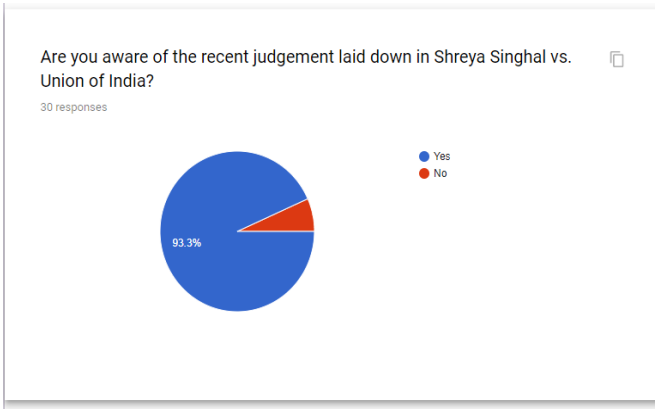


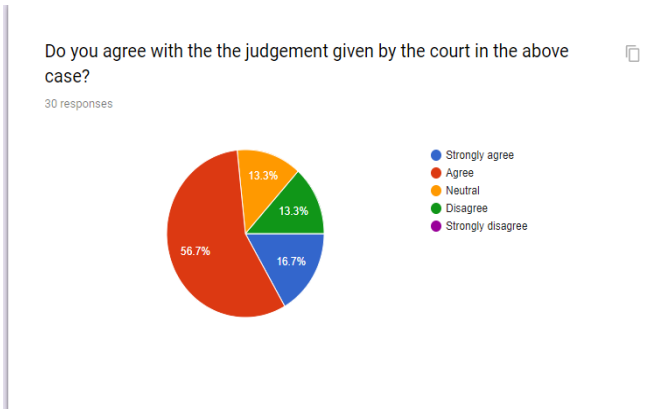
In a 2015 judgment, in ShreyaSinghal v. Union of India, the Supreme Court stated that one had to differentiate between "advocacy" and "incitement", and that only "incitement" was punishable. Paragraph 87 of the judgment penned by Justice RohintonNariman puts out the red flag to the dangers of over expansive terms curbing free speech and thought. Information that may be grossly offensive or which causes annoyance or inconvenience, are undefined terms which take into the net a very large amount of protected and innocent speech. An individual may discuss or even advocate by mode of writing, disseminate information that may be a view or point of view pertaining to governmental, literary, scientific or other matters which may be unpalatable to certain sections of society, any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be complete. Thus, words and speech can be criminalized and punished only in situations where it is being used to incite mobs or crowds to violent action. Mere words and phrases by themselves, no matter how distasteful, do not amount to a criminal offence unless this condition is met.



Therefore, The implication of the judgment of this is case is that for the past few months, the media and social networking sites had been anxious over what the

Supreme Court verdict would be on the vires of the notorious section 66A of the Information Technology (IT) Act 2000 and now, they are appreciative of the way the Apex Court had guarded the Right to freedom of speech and expression. While having appreciation for the conclusion that the Court reached on the constitutionality of section 66A, there is ample support for the reasoning of the Court from the quarters of legal practitioners and academicians.





Legal Provisions Governing Insulting Speech in International Law[11]

The International Legal Framework of Sedition: The international law framework governing freedom of expression is contained in treaty law: Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR), Article 4 of Convention on the Elimination of Racial Discrimination (CERD), and the specific prohibition on "direct and public incitement to commit genocide" in Article III(c) of the Genocide Convention. There are also relevant but broadly-worded provisions on freedom of expression in the Universal Declaration of Human Rights (UDHR). Implementation of the ICCPR and CERD is monitored by U.N. treaty bodies, and disputes arising under the Genocide Convention can be adjudicated by the International Court of Justice.

[11] https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf

These treaties exist alongside regional conventions that apply in many countries, including the European, African, and Inter-American human rights treaties. State's obligations under these treaties are supervised by the respective regional courts.

a) **International Treaties -** The three principal legal provisions governing speech at the international level—Articles 19 and 20 of the ICCPR[12] and Article 4 of CERD[13]—allow insulting speech to be silenced if it constitutes discriminatory "hate speech" targeting minorities on the basis of race, nationality or religion even if there is no criminal intent or risk that it will lead to violence. Similar provisions are found in the regional human rights instruments applied by the human rights courts that operate in Europe, Africa, and the Americas. There is a tension among the three key provisions in international human rights treaties governing speech. First, Article 20(2) of the ICCPR goes further than Article 19(3). Whereas Article 19 allows for a restriction of speech in the interest of "respect of the rights or reputations of others", Article 20 requires the restriction of any speech that constitutes advocacy of national, racial or religious hatred—as long as it incites "discrimination". Article 4 of CERD then goes further than Article 20 of the ICCPR by requiring the criminalization of certain "hate speech" of a racist nature. In addition, whereas Article 20 of the ICCPR requires that advocacy of hatred must lead to "incitement" of discrimination, hostility or violence, under CERD no incitement is needed—any racist "ideas" must be subject to a criminal ban.

b) **Regional Human Rights Treaties governing Free Expression -** The equivalent of Article 19 of the ICCPR in regional human rights treaties is Article 10 of the European Convention on Human Rights[14] (ECHR), Article 13 of the Inter-American Convention, and Article 9(2) of the African Charter. Article 10 of the ECHR has a longer list of what may constitute a permissible restriction on speech than Article 19(3) of the ICCPR, but there is no equivalent in the ECHR to the speech-restrictive provisions in Article 20 of the neither ICCPR nor Article 4 of CERD. Article 17 has been interpreted to mean that speech which is so odious that it could not possibly be protected under Article 10 of the Convention can be dealt with under Article 17, which allows a case to be struck out without examination of the merits. This is a drastic "guillotine" provision because it does not involve any balancing of the right to free expression against the other values protected in Article 10.

c) **Other International Law Sources relating to Free Expression -** In addition to international and regional treaties, the meaning of the treaty law on freedom of expression has been elaborated upon by various non-treaty sources

[12]https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf

[13] http://www.mpil.de/files/pdf2/mpunyb_wolfrum_3.pdf

[14] http://www.echr.coe.int/Documents/Convention_ENG.pdf

which add some detail to the applicable legal standards for speech. These include U.N. mechanisms, regional courts and commissions, and NGOs. A few soft law sources have sought to restrict the permissible restrictions on insults under these treaty standards. For instance, the United Nations, through soft law, has reached a high degree of consensus in rejecting the concept of "defamation of religions" and finding blasphemy laws incompatible with freedom of speech. Other soft law guidance is also more protective of speech than the treaty framework, and has helped put some flesh on the bones of the terms "hatred," "discrimination," "hostility," "violence," and "incitement." The U.N. High Commissioner has counseled that States' legislation should include "robust definitions" of key terms like "hatred," "discrimination," "violence," and "hostility." And NGOs like Article 19 have sought to define these terms. But such guidance is piecemeal and does not go far enough. Much of it is buried in long U.N. reports or on NGO websites that are not widely accessed, and in some cases their authority is uncertain. In addition, such guidance is not binding, nor is it universally applied.

Comparative Law

Several formerly colonized countries have retained sedition laws even after their independence from colonial rule. This paper examines six such countries which have retained these laws, but whose judiciary and civil society actors have been critically engaged in conversations regarding their constitutionality. In these countries, the offence of sedition has either been removed or the courts have read it down to aim on an extremely narrow range of activities. In all the cases discussed below, either the judiciary or civil society has recommended the abolition of the crime. While countries like the United Kingdom and New Zealand have removed the offence of sedition, in the United States and Nigeria, prosecutions for sedition have mostly fallen into disuse. Further, in Australia and Malaysia, laws relating to sedition have attracted much criticism.

United Kingdom: In England, the forerunner of the crime of sedition was the crime of treason. Under the Treason Act, 1795[15], any act which endangered the person of the King, his government or the constitution would be considered treason. A seditious intention has to be proved. A seditious intention is one where the person of the sovereign or of the government, the constitution, either House of Parliament, or the justice administration system could be brought into hatred or contempt. In removing the offence of sedition, the primary consideration was that the language in which the crime was framed was archaic and did not reflect the values of current day constitutional democracies. Furthermore, although the prosecutions were few and far between, even the sporadic uses of the law had a "chilling effect" on free speech. However, although the crime of sedition has been done away with, the Terrorism Act, 2000 consists crimes of "inciting terrorist acts" and attempting or "providing

[15] http://www.legislation.gov.uk/apgb/Geo3/36/7/data.pdf?view=extent

training for terrorist purposes at home or overseas", which are as broadly defined and as vague as the earlier crimes.

New Zealand: The crime of sedition in New Zealand attentively mirrors the understanding of sedition in England. It was codified in Sections 81 – 85 of the Crimes Act of 1961[16]. Following are the points that were noted by both England and New Zealand in abolishing the crime of sedition:

Sedition is defined in vague and uncertain terms. This offends the fundamental principles of criminal law. In any case, it refers to a particular historical context (sovereignty residing in the person of the King) which no longer holds. The law is archaic and must be done away with. While certain political views may be unreasonable or unpopular, they cannot be criminalized. This offends democratic values. The definition of sedition offends fundamental freedoms of speech and expression which are universally recognized. In practice, the law is used to silence political opposition or criticism of the government. This has a "chilling effect" on free speech.

United States of America: In the United States, the Sedition Act was enacted in 1798[17], in a bid to protect the nation from 'spies' or 'traitors'. In the United States, the courts have generally afforded wide protection to political speech, excepting where it results in immediate lawless action. Article 94 of the Uniform Code of Military Justice, which governs those in the U.S. military, punishes mutiny by creating violence or disturbance, by refusing to obey orders or perform duties. In contrast, sedition governs those who were resisting civil authority. Failure to prevent sedition is also punishable. The offence is punishable by death after a court-martial.

Nigeria: Introduced during the early years of the twentieth century, the law on sedition in Nigeria too is of colonial origin. Reading Section 51 of the Criminal Code, it is evident that it draws inspiration from the English definition of sedition. It classes an act as seditious if it is done with an intention to harm the person of the President or the governor, the justice administration system or the government, if it attempts to alter "any matter's without the use of lawful means, or if it raises discontent, disaffection, ill will of hostility in the population or between different classes of the population in Nigeria. Writers have come to the conclusion that the law was introduced with a view to curbing the writings and speeches of the educated elite under British colonial rule.

Australia: Seditious words, participation in a seditious conspiracy and publishing seditious statements were of colonial origin and common law offences, which still remain in the criminal codes of several states. The law was mostly used to censor "undesirable" publishing and as in the case of U.S. and in

[16]legislation.govt.nz/act/public/1961/0043/37.0/096be8ed80488ad9.pdf

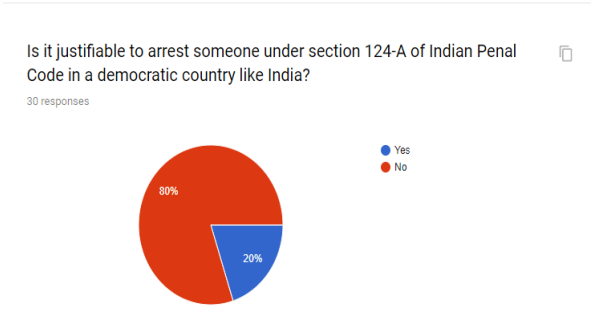
[17]http://www.english.illinois.edu/-people-/faculty/debaron/310/310%20readings/Alien_Sedition.pdf

India, was used to target the Communist Party of Australia. In 2001, the Law and Justice Legislation Amendment Act, 2001[18], repealed and substituted section 24C to effect the removal of the references in paragraphs 24C (a)-47 (c) to agreeing or undertaking to engage in a seditious enterprise, conspiring with any person to carry out a seditious enterprise and counseling, advising or attempting to procure the carrying out of a seditious enterprise.

Malaysia: In Malaysia, the Sedition Act, 1948[19], is of colonial origin. Section 4 defines seditious acts as one where someone "does or attempts to do, or makes any preparation to do, or conspires with any person to do" any act which has or would have a seditious tendency, who utters any seditious words, or who prints, publishes or imports any seditious publication. Furthermore, it is a crime to have in one's possession, without lawful excuse, any seditious publication. Although Article 10(1) of the Malaysian Constitution guarantees freedom of speech and expression, reasonable restrictions have been placed in Articles 10(2) – (4).(4).

Analysis on the Judgment

The verdict in ShreyaSinghal is immensely important in the Supreme Court's history for many reasons. In a rare instance, Supreme Court has adopted the extreme step of declaring a censorship law passed by Parliament as altogether illegitimate. The Judgment has increased the scope of the right available to us to express ourselves freely, and the limited space given to the state in restraining this freedom in only the most exceptional of circumstances. Justice Nariman has thrown light on the liberty of thought and expression is not merely an aspirational ideal. It is also "a cardinal value that is of paramount significance under our constitutional scheme." Thus, the decision given in this case was a fair one keeping in mind the welfare of the society and protecting their basic fundamental rights.

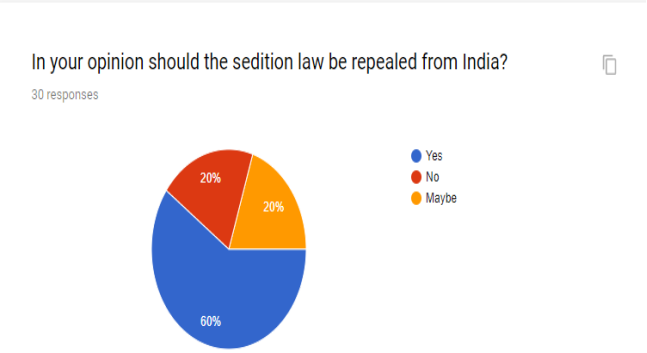


[18] https://www.legislation.gov.au/Details/C2004A00794

[19] http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2015.pdf

2. Conclusion

Section 124A, on the face of it, appears clear in that it seeks to penalise any activities that lead to disloyalty against or feelings of contempt or enmity against the government. The ShreyaSinghal judgment offers a very clear exposition of the difference between advocacy and incitement, as the latter is essential to prove an offence under Section 124A while the former is not a criminal activity. Thus, in this case it was clear that the two girls arrested for posting their views on social media have not constituted the offence of sedition. This paper also throws light on the cases which constitute the offence of sedition. Thus, in recent times, the ShreyaSinghal case is given utmost importance as it clearly states what action can come under Sedition and the judgment is given in order to secure the rights of the citizens.



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[7] https://indiankanoon.org/doc/1142233/

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