

## Critical Analysis of the Sedition Law in India: In Contradiction with Freedom of Speech: Case Study

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### Abstract

*Freedom of speech and expression cannot ever be taken away from anybody under any circumstance, because it is a fundamental right and can only be subject to justifiable limitations. This right is an indispensable right provided to an individual and hence is important for the growth of the person. This right is the first and the foremost human right of an individual. Although these rights are subject to reasonable restrictions, the question is that up to what extent the restrictions are considered as reasonable. Section 124A of the Indian Penal Code, 1860, defines sedition as an offence. This section has been debated over for centuries as it had some kind of grey area which had to be looked into. This paper discuss the history of law of sedition and freedom of speech and their relations and also deals with comparative studies of different countries with respect to India.*

**Keywords:** Freedom of speech, fundamental right, reasonable restrictions, sedition

### INTRODUCTION

The Indian Constitution's Article 19 (1) (a) provides for the right to freedom of speech, which grants its inhabitants that freedom in the country to present their own views about anything but at the same time this right is subject to certain limitation and the breach of which would lead a person to a sentence of life in prison, or fine, or 3-year sentence, or both. The Indian Penal Code of 1860 also provides for same penalty under section 124(A). We all know that India is democratic country and where the people of the country choose some individuals who will represent them in the government, it is but natural that everyone will not be equal on all points and on all aspects so there will be certain amount of conflict between the State and the Individuals who are governed by the state and in order to help them to raise their voice to the government, the constitution makers inserted this Article in the Indian Constitution. But at the same time it must be thought that what if this article is misused, so in order to strike a balance section 124(A) of the IPC, 1860 was inserted in the law and it is constitutionally valid this was said in the case of Kedar Nath Singh v. State of Bihar [1] Sedition law is a law which punishes any person who tries to create any kind of hatred, contempt or disaffection towards the government will be booked under

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this law. There are many Organizations running across the globe that has declared Freedom of Speech as basic fundamental right. The Right to Freedom of Speech includes the right of a person to express one's views and opinion on any issue and by any means weather it is by words spoken from mouth, or by writing, or by printing, etc. Thus, it encompasses the freedom of speech and the ability to spread ideas or express viewpoints [2]. And at the same time this right asks certain difficult questions such as to which extent the state can regulate individual's conduct. In response, it might be

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claimed that this right can always be subject to reasonable constraints to guarantee that it is exercised responsibly and that it is available to all citizens on an equal basis.

## **HISTORY**

### **History of Sedition Law in India**

In the 17th century, sedition laws were implemented in England because politicians thought that only positive views of the government should endure since negative views may be harmful to the king and the government. The history of law of sedition can be traced back when the first draft of Penal Code by Macaulay in 1837 was made and the current section i.e. 124A was then placed as section 113 of the draft of 113 sections but this section was not implemented in the final draft of IPC which was implemented in 1860 [3]. However, an amendment was added to it in 1870 because the absence of the law of sedition was still felt strongly at the time due to the rise in Wahabi activities between 1863 and 1870, the ease with which their agents moved among the established Muslim populations of Bengal and Bombay, as well as other factors. 'Mutiny' of 1857 and James F. Stephens who is known as the architect of The Indian Evidence Act says that the omission of the said section was a mistake [4]. After the section was added in the Penal Code, the British government tried to strengthen the law by making other statutes that will have the ambit to cover seditious expressions in all form. In order to prevent seditious behavior in plays, the Dramatic Performances Act of 1876 and the Vernacular Press Act of 1876 were passed Vernacular Press Act of 1878 was designed to stifle criticism of British policies in print media and to keep a lid on seditious activity in plays. The Indian Penal Code (Amendment) Act 1898 then changed the clause once more, this time making it possible to get a life sentence or a lesser punishment. This amendment brought about certain changes to the definition that were already in place and made it illegal to incite hate or contempt for the legally formed government or to seek to incite such feelings. The provision was once more revised in 1995, and this time the change relates to the punishment specified in the legislation, which is either life in jail, a fine, or three years in prison, or both Parliament of Great Britain. In order to prohibit public gatherings that may incite sedition or otherwise cause trouble, the British Parliament passed the Prevention of Seditious Meetings Act in 1907.

It has been noted in the history of India that most of the India's loved patriots have been convicted under this section by the British because they rose their voices against the then established government. The oldest and first case involving this section was Queen-Empress v. Jogendra Chander Bose [5], in which the defendant, Jogendra Chander Bose, was the editor of the newspaper "Bangobasi" and wrote an article criticising the "Age of Consent Bill" for endangering religion and having a coercive relationship with Indian citizens.

Another famous case in the books of history was of Bal Gangadhar Tilak, who was charged three times under this law Queen Empress v. Bal Gangadhar Tilak [6] in this instance, the British authorities said that the murder of two British officers in Pune was motivated by one of Tilak's speeches about Shivaji's death of Afzal Khan. elevated recently Justice This trial was presided over by James Strachey, who expanded the application of section 124A by equating "disaffection" with "disloyalty." Additionally, he understood the phrase "feelings of disaffection" to refer to all kinds of animosity, antagonism, hate, disdain, and hatred for the government [7].

### **History of Freedom of Speech and Expression**

At the time of colonial rule, British suppressed the voices of the Indians by introducing various legislations from time to time such as the provisions of sedition under section 124A of IPC, The Vernacular Press Act 1870, and the Seditious Meetings Act, 1907. Such laws served as a catalyst for the inclusion of freedom of speech and expression as a basic right [8].

If we take a look at the history we will be able to see that the concept of freedom of speech dates back to ancient Greece. And for the first time the term 'free speech' appeared around the end of the fifth

century BC. The term “parrhesia” is a Greek word that meaning “free speech” or “to speak honestly [9].” Some of the events which recognize the importance of freedom of speech are as follows:

- In 399 BC, Socrates a philosopher was tried for refusing to acknowledge gods recognised by the state. He was accused for propagating antidemocratic views. He was found guilty and was punished with death sentence [10].
- In 1215, Magna Carta was signed, which later was regarded as the touchstone of liberty in England.
- The Declaration of the Rights of Man established free expression in 1789. In 1791, The First Amendment of the United States Bill of Rights guaranteed freedom of speech, prohibiting congress from enacting any law restricting free speech except by due process of law [11].
- Article 19 of the International Covenant on Civil and Political Rights likewise guarantees unrestricted freedom of speech, opinion, and expression, but it also notes that these rights are not unqualified and are subject to legislation that limit free speech in order to preserve morality or public order.

Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression, states that everyone has the right to hold opinions without hindrance and shall have access to and be able to disseminate information through any medium. These are just a few of the international agreements that highlight the importance of freedom of speech [12].

### **PRE-CONSTITUTIONAL ERA OF SEDITION LAW**

The law of Sedition was imported from English law to the Penal Code of India at the time of colonial India. During the time of Indian freedom struggle, the British administration was continuously changing the political regime of India and tried to suppress any sort of hostile criticism of the rulers by widening the scope of the law of ‘sedition’. The law of sedition was important in the British India because it consisted partly of treason-felony act, and the common law. Criticism in Indian press was largely reflected against some of the official measures taken by the British administration however they did not aim at the government. And after 1870 the British administration did not amend the law of sedition in India, but in the year 1898 they tried to cover those dissenting criticism by enacting two major laws that are:

1. The dramatic performances act xix of 1876 (DPA)
2. The vernacular press act (ix) of 1878

As a result, these regulations were referred to as “Preventive Measures” against dissenting opinions.

Section 124A was extensively used to curb every kind of political dissent from India, and once Mr Jogendra Chandra Bose was accused of the crime and detained just for his criticism of the Age of Consent statute that had just been approved by the legislature and the detrimental effects that British rule had on the Indian economy. This case was the first case in which section 124A was attracted and tried in the court and it was observed that the scope of sedition in India is Compared to England, where every overt act motivated by seditious feelings was punished, India's law was softer since only overt acts motivated by a desire to resist by force or an attempt to incite such a desire came under this clause. In this specific instance, the Chief Justice was Sir C. Petheram and he interpreted the meaning of the word ‘disaffection’ as the feeling contrary to affection, in other words he meant to say ‘dislike’ or ‘hatred’. The offence of sedition was held to be complete even in the absence of any disturbance [13].

Preindependence sedition was some sort of mechanism which was used by the courts for quashing any negative sentiments that arose against the government. Conflict erupted with the establishment of the Federal Court of India, which at the time predated the Supreme Court as the country's highest court, and in the case of Niharendu Dutt Majumdar v. King Emperor [14] the Federal court held that only the presence of the mere violent words does not make any speech or any publication seditious. The acts or the words should either incite disorder or must be of such nature that satisfies a reasonable man of its

tendency or intention. But Privy Council overruled this view of the Federal court in the case of *King Emperor v. Sadashiv Narayan Bhalerao* [15] where the speaker told the audience that the government sought to destroy everyone trying to lead a moral life, that the British had only come to India to make Indians drinkers, and that the executive and judicial branches of government were similarly biased against English citizens. So in this case it was held by the Privy Council that the speech which was made in front of the audience was calculated and was enough to bring into hatred and contempt in the people and to excite disaffection against the then established government. In *Kedarnath case* [16] the confusion was cleared by the Supreme Court of India and hence settled down the debate of the Constitutional validity of the said section 124A and the freedom of speech and expression, the court in this instance affirmed the constitutionality of sedition and noted that the statute that was established by the Federal court was correct and said that ‘intention’ and ‘incitement to violence’ are the essential of the offence of sedition.

Talking about Freedom of Speech and Expression, the said Fundamental Right is one of the most important rights for the people or the citizens. This right also includes free exchange of ideas, dissemination of knowledge and of opinion. Freedom of speech and expression implies that everyone is free to express his/her opinion whether the opinion is positive or negative.

#### **POST CONSTITUTIONAL ERA OF SEDITION**

It is always said that the law of sedition was a gift to India from the British. The law of sedition provides guidelines regarding how should one feel about the established government and also warns them against the crimes such as disloyalty and disaffection against the government. After independence many of the prominent leaders were not ready to take the law of sedition and were against of this law and one of them was Pandit Nehru, he then clarified in his own words that the abovementioned clause was extremely disagreeable and offensive and should not be included in any set of laws that will be passed by the legislation sooner or later to get rid of the said law of sedition. But while upholding the Sedition law the Hon’ble Supreme Court said that this law should apply to only in the cases where the accused has intended to create public disorder and tried to spread hatred in the public [17].

Sedition law was considered for the first time following India's independence in the historic case of *Romesh Thapar v. State of Madras* [18] in this particular case the highest court of the country i.e. The Hon'ble Supreme Court ruled that any regulation restricting freedom of speech and expression is not covered by Article 19(2) of the Indian Constitution until and unless it poses a threat to national security. In the case of *Tara Singh v. The State of Punjab* [19] Section 124A of the Indian Penal Code was declared illegal because it violated the right to freedom of speech and expression guaranteed by Article 19(1). (a). The first amendment to the Constitution, which added the grounds of “public order” and “relations with friendly states” to the list of legal justifications for limiting the right to free speech and expression under Article 19 of the Constitution, served to prevent the negative consequences of the aforementioned case [20]. Additionally, the term “reasonable” was inserted before “restrictions” in order to reduce the likelihood that the formed government will be abused. As a result, it brought section 124-A of the IPC into compliance with Art. 19 (1) (a), which is justified by the phrase “in the benefit of public order” in Art. 19 (2) [21].

Article 19(2) of the Constitution was amended in 1951 to incorporate the constraints of “friendly relations with the foreign state” and “public order,” and the court ruled in the case of *Romesh Thapar* [22] that these restrictions might be justified when there is a severe threat to national security, aggravated form of public disorder that puts the national security in danger. In the case of *Common Cause & Anr v. UOI* [23] a prayer was made in order to issue the directions for the review of pending cases in the courts, and also where the superior police officer certifies that the act committed by the person was ‘seditious act’ which either had led to the incitement of violence in the public or either the said act had the tendency to create public disorder. As a result, the Court in this instance approved the request and issued a directive requiring the authorities to bear in mind the principles established in the

Kedarnath case while handling matters brought under section 124A of the IPC. There was another famous case of the year 2016 i.e. The Kanhaiya Kumar case [24] When exercising one's right to freedom of speech and expression under Article 19 (1) (a) of the Indian Constitution, the Delhi High Court stated that one must keep in mind Part IV, Article 51A of the Constitution, which outlines one's fundamental responsibilities as a citizen.

So in the light of the abovementioned cases it can be understood that unless and until the words used or the acts committed by a person does not threaten the security of the State and/or of the public, or either lead to any kind of public disorder of grave nature, it cannot be held that the act will come under the ambit of section 124A of the Indian Penal Code.

## **SOME JUDICIAL PRONOUNCEMENTS**

### **Decided cases in Pre- Independence in India related to Sedition**

- *The Bangobasi Case 1891*: This case was the first one which came in the official records, the name of the case was Queen Empress v. Jogendrachander Bose and others [25], in this case a question was raised about what are the limits of legitimate criticism against the government. So in short facts of case was that there was a newspaper named Bangobasi which was edited by the Jogendra Chandra while reacting to a passage which was related to the age of consent bill (1891), he mentioned about the 'religion in danger' and also charged the then government for Europeanizing India by the force and is also responsible for the economic crisis. However he also stated that Hindu never believed in rebellion and nor they were capable of doing it. The issue raised in this case was that weather did the Bangobasi exceed the bounds of legitimate criticism? The prosecution from their side stated that there was a clear intention to bring the people in a frame of mind that they would rebel if they had the power to do so and also the religious peace was so excited that the public peace was implied. While on the other hand defence argued that there was no reference to 'rebellion' and it just only differentiated between the 'European and the native methods of thinking.' However the Judge held that it was the thought that attempted to hold it up into hatred and contempt of the people. But at last the accused asked for the apologies from the then government and the charges framed on him were dropped by the court.
- *The Balgangadhar Tilak Trial In 1897*: The trail of Bal Gangadhar Tilak began in the year 1897, so the facts of the case were that the Government claimed that some of the speeches which referred to Shivaji killing Afzal Khan, had instigated the murder of two persons namely the commissioner and British Lieutenant Ayherst, that happened a week later. While Bal Gangadhar Tilak was coming back from the reception and the dinner at government house, Pune where he celebrated the diamond jubilee of Queen Victoria's rule, he was convicted under the charge of sedition, but he was released in the year 1898 after the intervention of internationally know figures like Max Webster on the condition that will never do any act, or speech, or will write an article that excites the feeling of disaffection against the government [26]. In 1898 this sedition law was amended and the British included terms such as 'hatred' and 'contempt' and also disaffection. At that time it was said that disaffection included 'disloyalty and the feelings of enmity.' In the year 1908 a kind of political situation was created after their was partition of Bengal, the British also enforced the newspaper (Incitement of Offences) Act; basically it was a law which gave powers to the district magistrates to confiscate the printing press that used to publish seditious material. They also enacted the Seditious meeting Act so that they can prevent meeting of more than 20 people to assemble. Bal gangadhar Tilak severely criticized these laws [27]. Then in the same year i.e. 1908 Tilak was prosecuted once again with the same charge of sedition. Even Mohammad Ali Jinnah tried to defend him as at that time Jinnah was one of the most prominent faces of the Bombay Bar, but still the Judges of the Hon'ble court sentenced Tilak for 6 years of rigorous imprisonment and transportation.

### **Decided cases Post-Independence Era in India Related to Sedition**

- *Aseem Trivedi Case of Sedition In 2012*: Aseem Trivedi is a famous cartoonist but he was arrested in the year 2012 which generated a topic for debate i.e. What purpose does the Sedition Law

serve in India, and does it violate the constitutionally protected right to free speech and expression? In *Trivedi's* case sedition was used to punish the cartoon which deemed to be insulting the nation. One of the cartoon replaced the four lions of the Indian emblem with hungry wolves and it also said that the inception 'Satyamev Jayate' which means truth always prevail, was replaced with 'Bhrastmev Jayate' which means only corruption prevails. He was also been accused for insulting the national emblem of the country and violating India's information technology law. One cartoon depicts Indian parliament building as a toilet and with the same cartoon a toilet paper was also attached. Aseemtrivedi faced serious allegations and a case of sedition was filed against him in Beed district court of Maharashtra, apart from this additional charges were framed against him for insulting the national emblems and the symbols of the country. He was arrested on 9<sup>th</sup> September 2012 from Mumbai on the charge of sedition which was in the relation of the content of his work. Trivedi was supported by former justice Markanday katju, who claimed that he didn't do anything wrong. Aseem trivedi stated that he would wait to request for release until the sedition charges that had been brought against him were dropped, but his bail was granted on a personal bond of Rs. 5000 on the basis of a petition filed by an independent lawyer.

- *Binayak Sen Sedition Case Trail:* Binayak sen was once convicted for the offence of sedition in the year 2010 by Bilaspur District court. In this case he moved an application for the suspension of the sentence which was given to him and also prayed to grant the bail during the time of pendency of the appeal which was against him, which was rejected by the Chhattisgarh High Court, so Binayak sen preferred to file an appeal in the Hon'ble Supreme Court against the Chhattisgarh High Court's directive. In the appeal, the High Court observed that the court is only obligated to examine an application for bail and sentencing relief at this point to summarily assess all the evidences so that the court can come to a conclusion that weather the conviction was well founded or not and by doing so in this case the High court have found that Sen was closely in contract with the people who belongs to Maoist groups and was also involved in the activities which created disloyalty and public hatred and also inciting the people against the state, which has resulted in the killing of the armed force personnel's. Sen's argument was that he was an activist who was working with an organization named People's Union for Civil Liberties (PUCL) which worked in remote rural and forest areas and he was trying to expose the atrocities of the police and the armed forces. And in response, the Hon'ble High Court ruled that Article 19 (1) (a) of the Indian Constitution's right to freedom of speech and expression should be exercised in a reasonable manner and should not be used to incite unrest in the public square or undermine the rule of law. The court said that Sen was found with the possession of certain documents that attempted to incite hatred in the public against the government and thus his appeal was rejected.

But the Hon'ble Supreme Court allowed his appeal for the suspension of his sentence and to release him on bail till the sessions court is satisfied. The Supreme Court did not provide a justification for the ruling, although it did make the suggestion that the mere possession of the materials was insufficient to support a sedition prosecution. So Binayak Sen was released on bail [28].

## COMPARATIVE ANALYSIS OF LAW OF SEDITION IN INDIA AND IN OTHER COUNTRIES

The makers of the Constitution of India did not wanted to add sedition as a sort of restriction Because it goes against the basic right to freedom of speech and expression guaranteed by Article 19(1)(a), India's criminal law was left in its current form after independence.

- *India:* In *Kedarnath's* case [29] the Apex Court clearly stated that for an offence to be booked under sedition in India, it will be complete only if the words spoken or written are such that they incite people to do violence or create any sort of public disorder which has the intention to take violent methods to overthrow the government. In India it is seen that generally the courts adopts liberal interpretation of the crime of sedition as established in the English common law. The courts use liberal interpretation for such kind of crime so that it balances the exigent demand of

the state and also the civil right of a person. If we try to analyze this draconian law then we will realize that this law was implemented by the colonial government upon the people of India so that they can suppress the voices of the people who tried to go against the government and also who tried to question the rule of the government. From time to time all the governments in power, used this law of sedition as a tool to suppress the ideas of dissent against the government that is in power. In a democracy having such kind of law which punishes the ones who express discontent against the government also raise a question on the democracy of the Country and the principles which the country follows. Additionally, the Hon'ble Supreme Court ruled in the Romesh Thappar case that any regulation that restricts freedom of speech and expression does not fall under the purview of Article 19(2) of the Indian Constitution unless and until such time as it constitutes a threat to national security [30].

- *Malaysia:* A general overview of sedition is, that it punishes a person whenever he tries to say something or puts his views which are not in the favour of the government or in simple words whenever he tries to show dissent against any government. In Malaysia the law of sedition was adopted and enacted in the year 1948 [31] because the government at that time wanted to stop the spread of communist ideology and communist insurgency which started to grow in late 1940s. Although Malaysia got independence almost five decades ago, but still the Sedition Act of Malaysia is used continuously by the executives so that they can suppress the critics. But one of the disadvantages of this draconian law is that it can be used against members of parliament (MPs) as well. The Malaysian Sedition Act is well-known for both its strict guidelines and its broadening definition to cover comments critical of Islam and other religions [32]. In the year 2012 there were many promises made to repeal this sedition act by the then Prime Minister but instead of repealing this act he promised to make this act even stronger [33]. Ideologies incite uprisings and rebellions, and the legislation against sedition can be used to stifle the nation's culture of free speech.
- *United Kingdom:* In United Kingdom, the offence of sedition could be traced in the statute of Westminster in the year 1275 because at that time the king was considered as the only person who was the holder of the divine rights [34]. Initially the offence of sedition was created to prevent speeches of hatred and to necessary respect the government [35]. This was one of the first instances where seditious libel, whether true or false, was rendered punished, according to *The De Libellis Famosis* [36]. This was the case which established seditious libel in United Kingdom [37]. Sedition as an offence was abolished back in the year 2009 from the United Kingdom and the reason which was given by the parliament of that time was that-Defamatory libel and sedition are obscure offences from the past. Other nations have used the existence of these out-of-date offences in this nation as justification for keeping identical laws that had been regularly utilised to stifle political opposition and restrict press freedom [38].

## CONCLUSION AND SUGGESTIONS

### Conclusion

The sedition law tries to limit the scope of right of freedom of speech and expression more than what is permitted under the International law. In the opinion of the researcher the scope of the sedition law must be narrowed down with regard to certain aspects. One of the main purposes of restricting freedom of speech and expression is the protection of National security of the country. However exercising freedom of speech is fundamental for the proper functioning of the democracy of the country, but it can be restricted when there is some kind of serious threat to the security of the country. People should have the freedom to express their love and feelings for the country in a democratic nation in any way they want. And this can be done when there is certain kind of constructive criticism, as well as finding loopholes in the plans and policies of the Government of the country. There might occur a situation where it seems that the criticism was harsh and unpleasant but that doesn't mean that it was sedition, in the opinion of the researcher section 124A should be invoked only in the cases where there is serious intention to disturb the public order at large or where there could be a threat to the national security.

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**Suggestions**

The researcher suggests that:

- i. The Indian Penal Code's Section 124A has to be reorganized.
- ii. The scope the law of sedition must be narrowed down.
- iii. If section is not reorganized then the said section must be repealed from the Indian Penal Code.

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